



## THE PRISONERS ACT, 1900



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# THE PRISONERS ACT, 1900

## <sup>1</sup>ACT No. III OF 1900

[2nd February, 1900]

### **An Act to consolidate the law relating to Prisoners confined by order of a Court.**

WHEREAS it is expedient to consolidate the law relating to prisoners confined by order of a Court;

It is hereby enacted as follows :—

#### **PART I**

#### **PRELIMINARY**

**1. Short title and extent.**—(1) This Act may be called the Prisoners Act, 1900 ;

<sup>2</sup>[(2) It extends to the whole of Pakistan.]

<sup>3</sup>\* \* \* \* \*

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

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

(b) “prison” includes any place which has been declared by the <sup>4</sup>[Provincial Government], by general or special order, to be a subsidiary jail.

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<sup>1</sup> For Statement of Objects and Reasons, see Gaz. of India, 1899, Pt. V, p. 101; for Report of the Select Committee, see *ibid.*, 1900, p. 23; for Proceedings in Council, see *ibid.*, 1899 Pt. VI, pp. 102 and 242; *ibid.*, 1900, p. 21.

This Act has been applied to Phulera in the Excluded Area of Upper Tanawal to the extent the Act is applicable in the N.W.F.P., subject to certain modifications, see N.W.F.P. (Upper Tanawal) (Excluded Area) Laws Regulation, 1950. It has been extended to the Excluded Area of Upper Tanawal other than Phulera by the N.W.F.P. (Upper Tanawal) (Excluded Area) Laws Regulation, 1950 and declared to be in force in that area with effect from 1st June, 1951, see N.W.F.P. Gazette, Extraordinary, dated 1st June, 1951. It has also been extended to the Leased Areas of Baluchistan, see the Leased Areas (Laws) Order, 1950 (G. G. O. 3 of 1950); and applied in the Federated Areas of Baluchistan, see Gaz. of India, 1937, Pt. I, p. 1499.

This Act, as in force in the North West Frontier Province immediately before the commencement of N.W.F.P. Regulation No. II of 1974, has been applied to the Provincially Administered Tribal Areas of Chitral, Dir, Kalam, Swat and Malakand Protected Areas by N.W.F.P. Regulation No. II of 1974, s. 3.

This Act has also been amended in its application to the Province of N.W.F.P. by N.W.F.P. Act VI of 1977.

This Act has also been amended in its application to the Province of Punjab by Punjab Ordinance XXVIII of 1984.

This Act has also been amended in its application to the Province of Sind by Sind Ordinance I of 1978 and Sind Ordinance X of 1984.

<sup>2</sup> Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Sch. (with effect from the 14th October, 1955), for the original sub-section (2) as amended by the Repealing and Amending Act, 1914 (10 of 1914), A. O., 1949, and the Federal Laws (Revision and Declaration) Act, 1951 (26 of 1951).

<sup>3</sup> Sub-section (3) rep. by Act 10 of 1914, s. 3 and Sch. II.

<sup>4</sup> Subs. by A. O. 1937, for “L. G.”.

## PART II

### GENERAL

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

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

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### ***PART III.— [PRISONERS IN THE PRESIDENCY-TOWNS.] Omitted***

*by A.O., 1949, Sch.*

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## PART IV

### <sup>1</sup>[EXECUTION OF SENTENCES]

**14. References in this Part to prisons, etc., to be construed as referring also to Reformatory Schools.** In this Part all references to prisons or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein.

<sup>2</sup>[**15. Power of officers in charge of prisons to give effect to sentences of certain Courts.** Officers in charge of prisons may give effect to any sentence or order or warrant for the detention of any person passed or issued by any Court or tribunal, whether within or without Pakistan, established by law.]

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<sup>1</sup> Subs. by A. O. 1949, Sch., for the original heading "PRISONERS OUTSIDE THE PRESIDENCY-TOWNS".

<sup>2</sup> Subs. by Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981) s. 3 and Second Sch. for the original section 15, which was amended by various Acts.

**16. Warrant of officer of such Court to be sufficient authority.** 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, <sup>1</sup>\* \* \* in pursuance of the sentence passed upon him.

**17. Procedure where officer in charge of prison doubts the legality of warrant sent to him for execution under this Part.**—(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 <sup>2</sup>[Provincial Government], 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.

**18. Execution in the Provinces, etc., of certain capital sentences not ordinarily executable there.**—(1) Where a <sup>3</sup>[Court established by the authority of the <sup>4</sup>[Federal Government]] exercising, in or with respect to territory beyond the limits of <sup>5</sup>[Pakistan] <sup>6</sup>\* \* \*, jurisdiction which <sup>7</sup>[the <sup>8</sup>[Government]] 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

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<sup>1</sup> The words “or for sending any person for transportation” omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and Second Sch.

<sup>2</sup> Subs. by A.O., 1937, for “L. G.”.

<sup>3</sup> Subs. by A.O., 1949, Sch., for “British Court”.

<sup>4</sup> Subs. by F.A.O., 1975, Art. 2 and Table, for “Central Government”

<sup>5</sup> Subs. by Ordinance 27 of 1981, s. 3 and Second Sch., for “the Provinces”, which had been subs. by A. O., 1949, Arts. 3 (2) and 4, for “British India”.

<sup>6</sup> The words “and the [Federal Territory of Karachi]” omitted by A.O., 1964, Art. 2 and Sch. The words in crotchets were subs. by the Repealing and Amending Ordinance, 1961 (1 of 1961), s. 3 and 2nd Sch., for “Capital of the Federation”.

<sup>7</sup> Subs. by A.O., 1937, for “G. G. in C”.

<sup>8</sup> Subs. by A.O., 1961, Art. 2, for “Crown” (with effect from the 23rd March, 1956).

execution in a decent and humane manner, be executed in <sup>1</sup>[Pakistan] <sup>2</sup>\* \* \*], has issued its warrant for the execution of such sentence to the officer in charge of a prison in <sup>1</sup>[Pakistan <sup>2</sup>\* \* \* ],

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, 1898 ([V of 1898](#)).

(2) The prisons of which the officers in charge are to execute sentences under any such warrants as aforesaid <sup>3</sup>[shall in each Province be such as the Provincial Government] may, by general or special order, direct.

(3) A Court shall be <sup>4</sup>[deemed, for the purposes of this section, to be a court established by the <sup>5</sup>[Federal Government]] 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 <sup>6</sup>[Government] authorised to act as such Judge <sup>7</sup>[by <sup>8</sup>\* \* \* the <sup>5</sup>[Federal Government]]:

Provided that every warrant issued under this sub-section by any such tribunal shall, if the tribunal consists of more than one Judge, be signed by a Judge who is an officer of the <sup>6</sup>[Government] authorised as aforesaid.

**[PART V.-PERSONS UNDER SENTENCE OF PENAL SERVITUDE.] *Omitted by the Criminal Law (Extinction of Discriminatory Privileges Act, 1949 (II of 1950), Schedule.***

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<sup>1</sup> Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and Second Sch., for “the Provinces”, which had been subs. by A.O., 1949, Arts. 3(2) and 4, for “British India”.

<sup>2</sup> The words “and the [Federal Territory of Karachi]” omitted by A.O., 1964, Art. 2 and Sch. The words in crotchets were subs. by the Repealing and Amending Ordinance, 1961 (1 of 1961), s. 3 and 2nd Sch., for “Capital of the Federation”.

<sup>3</sup> Subs. by A.O., 1937, for “shall be such as the G. G. in C. or a L. G. authorised by the G. G. in C. in this behalf”.

<sup>4</sup> Subs. by A.O., 1949, Sch., for “deemed to be a British Court for the purposes of this section”.

<sup>5</sup> Subs. by F. A.O., 1975, Art. 2 and Table, for “Central Government”

<sup>6</sup> Subs. by A.O., 1961, Art. 2 (with effect from the 23rd March, 1956), for “Crown” which had been subs. by A.O., 1937, for “British Govt.”.

<sup>7</sup> The original words “by any Native Prince or State in India or by the G. G. in C.” have been successively amended by A. O., 1937, A. O., 1949, Sch. and the Federal Laws (Revision and Declaration) Act, 1951 (26 of 1951), s.4 and III Sch., to read as above.

<sup>8</sup> The words “any Acceding State or the Ruler thereof or” omitted by Ordinance 27 of 1981. s. 3 and Second Sch.,

## PART VI

### REMOVAL OF PRISONERS

**28. References in this part to the prisons, etc., to be constructed as referring also to Reformatory Schools.** In this Part, all references to prisons or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein.

<sup>1</sup>**29. Removal of prisoners.**—(1) The <sup>2</sup>[Provincial Government] 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 <sup>3</sup>\* \*, 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 other prison in <sup>4</sup>[the Province, or, with the consent of the Provincial Government concerned, to any prison in <sup>5</sup>[the other Province]] <sup>6</sup>[or, with the consent of the <sup>7</sup>[Federal Government] to any prison maintained <sup>8</sup>[by it or under its authority] in any part of <sup>9</sup>[Pakistan].]

(2) <sup>10</sup>[Subject to the orders, and under the control, of the Provincial Government] the Inspector-General of Prisons may, in like manner, provide for the removal of any prisoner confined as aforesaid in a prison in the Province to any other prison in the Province. <sup>11</sup>\* \* \* .]

<sup>12</sup>[(3) The <sup>13</sup>[Federal Government] may, by general or special order, provide for the removal of

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<sup>1</sup> Subs. by the Amending Act, 1903 (1 of 1903), s. 3 and Sch. II, for the original section.

<sup>2</sup> Subs. by A. O., 1937 for "G. G. in C."

<sup>3</sup> The words "or transportation" omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and Second Sch.

<sup>4</sup> Subs. *ibid.*, for "British India or to any prison in Berar". The words "or to any prison in Berar" had been added by the Prisoners (Amdt.) Act, 1923 (17 of 1923), s. 2

<sup>5</sup> Subs. by A. O. 1964, Art. 2 and Sch., for "any other Province".

<sup>6</sup> Added by the Prisoners (Amdt.) Ordinance, 1942 (15 of 1942), s. 2, for so long as the Ordinance remains in force.

<sup>7</sup> Subs. by F. A.O., 1975, Art. 2 and Table, for "Central Government", which had been subs. by A. O., 1949, Sch., for "Crown Representatives".

<sup>8</sup> Subs. *ibid.* for "by him or under his authority".

<sup>9</sup> Subs. by the Federal Laws (Revision and Declaration) Act, 1951 (26 of 1951), s. 4 and III Sch, for "India".

<sup>10</sup> Subs. by A. O., 1937, for "The L. G. and (subject to its orders and under its control)".

<sup>11</sup> The words "or, in the case of a prisoner so confined in a prison in the C. P., for his removal to any other prison in the Province or to any prison in Berar", which had been added by Act 17 of 1923, s. 2, were rep. by A. O., 1937.

<sup>12</sup> New sub-section (3) added by the Prisoners (Amdt.) Act, 1953 (17 of 1953), s. 2.

<sup>13</sup> Subs by P.A.C., 1975, Art and table, for "Central Government"

any prisoner or class of prisoners confined in any prison to any other prison in Pakistan maintained by or under the authority of the <sup>1</sup>[Federal Government] or of a Provincial Government with the consent<sup>2</sup>\* \* \* of the Provincial Government concerned.]

**30. Lunatic prisoners how to be dealt with.**—(1) Where it appears to the <sup>3</sup>[Provincial Government] that any person detained or imprisoned under any order or sentence of any Court is of unsound mind, the <sup>3</sup>[Provincial Government] 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 the Province, there to be kept and treated as the <sup>3</sup>[Provincial Government] 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 <sup>3</sup>[Provincial Government] that the prisoner has become of sound mind, the <sup>3</sup>[Provincial Government] 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 the Province, or, if the prisoner is no longer liable to be kept in custody, order him to be discharged.

(3) The provisions of section <sup>4</sup>[31 of the Lunacy Act, 1912 (IV of 1912)] , 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.

<sup>5</sup>[(4) In any case in which the <sup>3</sup>[Provincial Government] is competent under sub-section (1) to order the removal of a prisoner to a lunatic asylum or other place of safe custody within the Province, the <sup>3</sup>[Provincial Government] may order his removal to any such asylum or place within <sup>6</sup>[the other Province]<sup>7</sup>\* \* \*

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<sup>1</sup> Subs. by F. A. O., 1975, Art. 2 and Table, for "Central Government".

<sup>2</sup> The words and commas " , where such other prison is situated in a Province not being a Chief Commissioner's Province," omitted by A. O., 1964, Art. 2 and Sch.,

<sup>3</sup> Subs. by A. O., 1937, for "L. G.".

<sup>4</sup> Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and Second Sch., for "9 of the Lunatic Asylums Act, 1858 (XXXVI of 1858)".

<sup>5</sup> Subs. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch., I, for the original sub-Section (4).

<sup>6</sup> Subs. by A. O., 1964, Art. 2 and Sch., for "any other Province".

<sup>7</sup> The words "or within [any Acceding State]" omitted by Ordinance 27 of 1981, s. 3 and Second Sch., the words in crotchets were amended by Act 26 of 1951, s. 4 and Sch III.



by agreement with the <sup>1</sup>[Provincial Government] of such other Province <sup>2</sup>\* \* \* ; 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.** *[Removal of prisoners from territories under one local Government to territories under another]. Rep. by the Amending Act, 1903 (1 of 1903), s. 4 and Sch. III.*

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*Part VIII.— [Persons under Sentence of Transportation.] Omitted by the Federal Laws (Revision and Declaration) Ordinances, 1981 (XXVII of 1981) s.3 and 2<sup>nd</sup> Sch.*

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## **PART VIII**

### **DISCHARGE OF PRISONERS**

**33. Release on recognizance, by order of High Court, of prisoner recommended for pardon.** <sup>3</sup>[A High Court,] may, in any case in which it has recommended to <sup>4</sup>[the President] the granting of a free pardon to any prisoner, permit him to be at liberty on his own recognizance.

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## **PART IX**

### **PROVISIONS FOR REQUIRING THE ATTENDANCE OF PRISONERS**

#### **AND OBTAINING THEIR EVIDENCE.**

##### *Attendance of Prisoners in Court*

**34. References in this part to prisons, etc., to be construed as referring also to Reformatory Schools.** In this Part, all references to prisons or to imprisonment or confinement shall be construed as referring also to Reformatory Schools or to detention therein.

**35. Power for Civil Courts to require appearance of prisoner to give evidence.** 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 its appellate jurisdiction, if it is a High Court, or, if it is not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is

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<sup>1</sup>Subs. by A.O,1937, for "L. G."

<sup>2</sup>The words "or with [such State for the Ruler thereof], as the case may be." omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and Second Sch., The words in crotchets were amended by A. O , 1937.

<sup>3</sup>Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Sch. (with effect from the 14th October, 1955) for "Any Court which is a High Court for the purposes of the Government of India Act. 1935," which had been subs. by A. O., 1937, for "Any Court established under the Indian High Courts Act, 1861."

<sup>4</sup>Subs. by A. O., 1961, Art. 2 and Sch., for "Her Majesty" (with effect from the 23rd March, 1956).

subordinate, 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.

**36. District Judge in certain cases to countersign orders made under section 35.**—(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<sup>1</sup>\* \* \*

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 subsection (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.

**37. Power for certain Criminal Courts to require attendance of prisoner to give evidence or answer to charge.** 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 its appellate jurisdiction, if it is a High Court, or, if it is not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, 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.

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

**39.- Procedure where removal is desired of person confined more than one hundred miles from place where evidence is required.**—(1) Where a person is confined<sup>2</sup>\* \* \* in a prison more than one hundred miles distant from the place where any Court, subordinate to a High

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<sup>1</sup>The words “outside a Presidency-town” omitted by A. O., 1949, Sch,

<sup>2</sup>The words “in a prison within a Presidency-town. or” omitted *ibid*.

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,<sup>1</sup> \* \* \* and such Magistrate <sup>2</sup>\* \* \* shall cause it to be delivered to the officer in charge of the prison in which the person is confined.

**40. Persons confined beyond limits of appellate jurisdiction of High Court.** Where a person is confined in a prison beyond the local limits of the appellate jurisdiction of a High Court, any Judge of such Court may, if he thinks that such person should be removed under this Part for the purpose of answering a charge of an offence or of giving evidence in any criminal matter in such Court or in any Court subordinate thereto, apply in writing to the <sup>3</sup>[Provincial Government] of the territories within which the prison is situate, and the <sup>3</sup>[Provincial Government] may, if it thinks fit, direct that the person be so removed, subject to such rules regulating the escort of prisoners as the <sup>4</sup>[Provincial Government] may prescribe.

**41. Prisoner to be brought up.** 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 authorises him to be taken back to the prison in which he was confined.

**42. Power to Government to exempt certain prisoners from operation of this Part.** <sup>5</sup>\* \* \* The <sup>3</sup>[Provincial Government] may, by notification<sup>6</sup> in <sup>7</sup>\* \* \* the <sup>8</sup>[official Gazette],<sup>9</sup>\* \* \*

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<sup>1</sup> The words "or, in the case of a person confined in a prison within a Presidency-town, to the Commissioner of Police" omitted by A. O., 1949, Sch.

<sup>2</sup> The words "or Commissioner" omitted, *ibid.*

<sup>3</sup> Subs. by A. O., 1937, for "L. G."

<sup>4</sup> Subs. *ibid.*, for "G.G. in C."

<sup>5</sup> The words "The G.G. in C. or" rep. by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I.

<sup>6</sup> For rules made under this section in conjunction with section 51, see different local Rules and Orders.

<sup>7</sup> The words "the Gazette of India or" rep. by Act 38 of 1920, s. 2 and Sch. I.

<sup>8</sup> Subs. by A. O., 1937, for "local official Gazette".

<sup>9</sup> The words "as the case may be" rep. by Act 38 of 1920, s. 2 and Sch. I

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.

**43. Officer in charge of prison when to abstain from carrying out order.** 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.
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### *Commissions for Examination of Prisoners*

**44. Commissions for examination of prisoners.** 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 such Court, if it is a High Court, or if it is not a High Court, then within the local limits of the appellate jurisdiction of the High Court to which it is subordinate, 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 <sup>1</sup>[Code of Civil Procedure, 1908 ([Act V of 1908](#))], for the examination of the person in the prison in which he is confined.

**45. Commissions for examination of prisoners beyond limits of appellate jurisdiction of High Court.** Where it appears to a High Court that the evidence of a person confined in a prison beyond the local limits of its appellate jurisdiction is material in any civil matter pending before it or before any Court subordinate to it, the High Court may, if it thinks fit, issue a commission, under the provisions of the <sup>1</sup>[Code of Civil Procedure, 1908 ([Act V of 1908](#))], for the examination of the person in the prison in which he is confined.

**46. Commission how to be directed.** Every commission for the examination of a person issued under section 44 or section 45 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*

**47. Process how served on prisoners.** 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.

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<sup>1</sup>Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981. (27 of 1981), s.3 and Second Sch., for “Code of Civil Procedure, (XIV of 1882).”.

**48. Process served to be transmitted at prisoner's request.**—(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*

<sup>1</sup>**49.** [*Application of Part in certain cases.*] Omitted by A. O., 1949, Schedule.

**50. Deposit of costs.** 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 <sup>2</sup>[Provincial Government] from any person ordered by the Court to pay the same, as if it were costs in a suit recoverable under the <sup>3</sup>[Code of Civil Procedure, 1908 ([Act V of 1908](#))].

**51. Power to make rules under this part.**—(1) The <sup>4</sup>[Provincial Government] <sup>5</sup>\* \* \* 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

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<sup>1</sup>Sub-sections (2) and (3) of section 49 had been repealed previously by the Lower Burma Courts Act, 1900 (6 of 1900), s. 48 and Sch. II.

<sup>2</sup>Subs. by A. O., 1937, for "Govt."

<sup>3</sup>Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981(27 of 1981), s. 3 and Second Sch., for "Code of Civil Procedure, (XIV of 1882)".

<sup>4</sup>Subs. by A. O., 1937, for "L. G".

<sup>5</sup> The words "and in cases arising under section 40, the. G.G."in. C rep. *ibid*.

(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 <sup>1</sup>[official Gazette] <sup>2</sup>\* \* \*, and shall, from the date of such publication, have the same force as if enacted by this Act.

**52. Power to declare who shall be deemed officer in charge of prison.** The <sup>3</sup>[Provincial Government] may <sup>4</sup> declare what officer shall, for the purposes of this Part, be deemed to be the officer in charge of a prison.

**53. [Repeals]** *Rep. by the Repealing and Amending Act, 1914 (X of 1914), s. 3 and Schedule II.*

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## THE FIRST SCHEDULE

( See sections 35 and 37 )

Court of

To the officer in charge of the (state name of prison)

You are hereby required to produce , now a prisoner in,

under safe and sure conduct before the Court of at on

the day of next by of  
the clock in the forenoon of the same day, there to give evidence in a matter now pending before the  
said Court, and after the said has then and there given his evidence before the said Court or the  
said Court has dispensed with his further attendance, cause him to be conveyed under safe and sure  
conduct back to the prison.

The day of

A.B

(Countersigned)C.D

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<sup>1</sup>Subs. by A. O., 1937, for "local official Gazette".

<sup>2</sup>The words "or the Gazette of India, as the case may be" rep., ibid.

<sup>3</sup>Subs. Ibid., for "L. G.".

<sup>4</sup>For notifications issued under this section, see different local Rules and Orders.

## THE SECOND SCHEDULE

(See sections 37 )

Court of

To the officer in charge of the

(state name of prison).

You are hereby required to produce

, now a prisoner in

,

under safe and sure conduct before the Court of

at

on

the

day of

next by

of the

clock in the forenoon of the same day, there to answer a charge now pending before the said Court, and after such charge has been disposed of or the said Court has dispensed with his further attendance, cause him to be conveyed under safe and sure conduct back to the prison.

The

day of

A.B

(Countersigned)C.D

**[THE THIRD SCHEDULE.]** Rep. by the Repealing and Amending Act, 1914 (X of 1914), s.3 and Schedule II.



