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**PRISONERS ACT, 1977 (1920 A.D.)**

**(Act No. XXXIII of Svt. 1977)**

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**THE PRISONERS ACT, 1977 (1920 A.D.)****(Act No. XXXIII of Samvat 1977)**

*[Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 read with the State Council Resolution No. 1, dated 8th April, 1925.(Notification No. 14-L/81.)]*

**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, extent and commencement. —(1) This Act may be called the Prisoners Act, 1977.

(2) It extends to the whole of Jammu and Kashmir State. It shall come into force on the 1st day of Baisakh, 1978.

2. *Definitions.*— 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 <sup>1</sup>[the Government], by general or special order, to be a subsidiary jail.

**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.

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1. In sections 2, 17, 29 (1) & (2), 32, 42, 51 and 52 words “the Government” substituted for “His Highness” by Act X of Samvat 1996.

*Explanation:*—For the purpose of execution, a sentence of “imprisonment for life” shall mean a sentence of imprisonment for 20 years.

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.

### PART III

5 to 13. Omitted.

### PART IV

#### **Prisoners**

14. Omitted.

15. *Power for officers in charge of prisons to give effect to sentences of certain Courts.*— Officers in charge of prisons shall give effect to any sentence or order or warrant for the detention of any person passed or issued by any Court or Tribunal in the State.

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, or for sending any person for transportation, 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 <sup>1</sup>[the Government], by whose order on the case he and all other public officers shall be guided as to the future disposal of the prisoner.

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1. See foot-note under section 2.

(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. Omitted.

#### PART V

#### **Servitude**

19 to 27. Omitted.

#### PART VI

#### **Removal of Prisoners**

28. Omitted.

29. *Removal of prisoners.* —(1) <sup>1</sup>[The 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 or imprisonment for life, 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 the State.

(2) <sup>1</sup>[The Government], and (subject to its orders and under its control) the <sup>2</sup>[Inspector General] may in like manner, provide for the removal of any prisoner confined as aforesaid in a prison in the State to any other prison in the State.

30. *Lunatic prisoners how to be dealt with.* —(1) Where it appears to <sup>3</sup>[the Government] that any person detained or imprisoned under any order or sentence of any Court is of unsound mind, <sup>3</sup>[the Government] may, by a warrant setting fourth 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

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1. See foot-note under section 2.

2. Substituted for "Controller" by Act II of 1985, s. 2.

3. Substituted by Act VII of Samvat 2001 for "His Highness".

State, there to be kept and treated as <sup>1</sup>[the 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 <sup>1</sup>[the Government] that the prisoner has become of sound mind, <sup>1</sup>[the 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 31 of 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.

31. Omitted

#### PART VII.

##### **Persons under sentence or imprisonment for life**

32. *Appointment of places for confinement of persons under sentence of imprisonment for life and removal thereto.*—<sup>2</sup>[The Government] may appoint places within the State to which persons under sentence of imprisonment for life shall be sent ; and <sup>2</sup>[the Government], or some officer duly authorised in this behalf by <sup>2</sup>[the Government], shall give orders for the removal of such persons to the places so appointed, except when sentence of imprisonment for life is passed on a person already undergoing imprisonment for life under a sentence previously passed for another offence.

#### PART VIII

##### **Discharge of Prisoners**

33. *Release, on recognizance, by order of High Court, of prisoner recommended for pardon.*— The High Court may, in any case in which it has

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1. Substituted by Act VII of Samvat 2001 for "His Highness".

2. See footnote under section 2.

recommended to <sup>1</sup>[the Governor] 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 Prisoner in Court*

34. Omitted.

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 the High Court, or, if it is not the High Court, then 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.

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,

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 situated.

(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.

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1. Substituted by the Constitution of Jammu and Kashmir (Sixth Amendment) Act, 1965 for "Sadar-i-Riyasat".



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 the High Court, or, if it is not the High Court, then 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 <sup>1</sup>[or the Chief Judicial Magistrate, as the case may be] 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 situated, the order shall be sent by the Court by which it is made or countersigned to the <sup>2</sup>[District Magistrate or the Chief Judicial 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 in a prison more than one hundred miles from place where evidence is required.* — (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, 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 <sup>2</sup>[District Magistrate or the Chief Judicial 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.

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1. Inserted by Act XL of 1966.

2. Substituted *ibid* for “District or Sub-Divisional Magistrate”.

40. Omitted.

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>1</sup>[The Government] may, by notification in the Government 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.

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 <sup>2</sup>[District Magistrate or the Chief Judicial 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 :

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1. See foot-note under section 2.

2. Substituted by Act XL of 1966 for “District or Sub-Divisional Magistrate”.

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

- (i) the order has been made under section 37 ;
- (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*

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, 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. Omitted.

46. *Commission how to be directed.*— 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*

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.

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*

49. Omitted.

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 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.

51. *Power to make rules under this Part.* —(1) <sup>1</sup>[The Government] 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

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1. See foot-note under section 2.

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 Jammu and Kashmir Government Gazette, 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.*—<sup>1</sup>[The Government] may declare what officer shall, for the purposes of this Part, be deemed to be the officer in charge of a prison.

53. Omitted.

#### 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 an 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 more 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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1. See foot-note under section 2.

THE SECOND SCHEDULE

*(See section 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 said prison.

The day of

A. B.

(Countersigned) C. D.

THE THIRD SCHEDULE

Omitted.

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