

THE PRISONERS' ACT, 1871.

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ACT No. V OF 1871.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor General on the 27th
January 1871).*

An Act to consolidate the laws relating to Prisoners
confined by order of a Court.

Preamble. **F**OR the purpose of consolidating the laws relating
to prisoners confined by order of a Court; It is
hereby enacted as follows :—

I.—PRELIMINARY.

Short title. **1.** This Act may be called “The Prisoners’ Act,
1871”:

Local extent. It extends to the whole of British India;

Commence- And it shall come into force on the passing thereof.
ment.

Repeal of **2.** The Acts mentioned in the Schedule hereto
Acts. annexed are repealed to the extent specified in the
third column of the said Schedule.

II.—PRISONERS IN THE PRESIDENCY TOWNS.

Warrants and **3.** All writs or warrants for the arrest or ap-
writs to be prehension of any person, issued or awarded by the
directed to High Court in the exercise of its ordinary, extraor-
Police Offi- dinary, or other criminal jurisdiction, shall be direct-
cers. ed to and executed by any officer of Police within the
local limits of such jurisdiction.

Power to ap- **4.** The Local Government may appoint officers
point Super- who shall have authority to receive and keep prisoners
intendents of committed to their custody under the provisions of
Prisons. this Part.

All such officers appointed under any Act hereby
repealed, shall be deemed to be appointed under this
Act.

Such officers shall be called, in Calcutta, the Super-
intendent of the Presidency Prison, in Madras, the
Superintendent.

Superintendent of Prisons for the town of Madras, and in Bombay, by such title or respective titles as the Local Government from time to time directs.

Every such officer is hereinafter referred to as 'the Superintendent.'

5. The Superintendent is hereby authorized and required to keep and detain all persons duly committed to his custody pursuant to the provisions of this Act, or otherwise, by any Court, Judge, Justice of the Peace, Magistrate of Police, Coroner, or other public officer lawfully exercising civil or criminal jurisdiction according to the exigency of any writ, warrant or order by which such person has been committed, or until such person is discharged by due course of law.

Superintendents to detain persons committed.

6. The Superintendent shall forthwith after the execution of every such writ, order, or warrant, except warrants of commitment for trial, or after the discharge of the person committed thereby, return such writ, order, or warrant to the Court or other officer by which or by whom the same has been issued or made, together with a certificate endorsed thereon and signed by the Superintendent, showing how the same has been executed, or why the person committed thereby has been discharged from custody before the execution thereof.

Superintendents to return writs, &c., after execution or discharge.

7. Whenever any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to imprisonment or to death, the Court shall cause him to be delivered to the said Superintendent, together with the warrant of the said Court, and such warrant shall be executed by the Superintendent and returned by him to the High Court when executed.

Delivery of persons sentenced to imprisonment or death.

8. Whenever any person is sentenced by the High Court in the exercise of its original criminal jurisdiction to transportation or penal servitude, the Court shall cause him to be delivered for intermediate custody to the Superintendent, and the imprisonment of such person shall have effect from such delivery.

Delivery for intermediate custody of persons sentenced to transportation or penal servitude.

9. Whenever any Judge of a High Court makes, under any Act for the time being in force for punishing mutiny and desertion, and for the better payment

Order under Mutiny Act for intermediate custody.

of

of the Army and their quarters, an order for the intermediate custody of an offender sentenced by a Court Martial holden in India, the Judge shall order such offender to be detained for intermediate custody by the Superintendent.

Committals by High Court in execution of a decree or for contempt.

10. Whenever any person is committed by the High Court, whether in execution of a decree or for contempt of Court, or other cause, he shall be taken by the officer to be appointed for that purpose by such Court, and shall be delivered to the Superintendent, together with a warrant of commitment.

Delivery of persons sentenced by Police-Magistrate.

11. Whenever any person is sentenced by a Magistrate of Police for the town of Calcutta, Madras, or Bombay, to imprisonment, either absolutely or for default of payment of any fine imposed by any such Magistrate, or is committed to prison for failure to find security to keep the peace and to be of good behaviour, the Magistrate shall cause him to be delivered to the Superintendent, together with a warrant of the Court.

Delivery of persons committed by Justice or Magistrate or Coroner for trial by High Court.

12. Every person committed by a Justice of the Peace or Magistrate or Coroner for trial by the High Court in the exercise of its original criminal jurisdiction shall be delivered to the Superintendent, together with a warrant of commitment, directing him to have the body of such person before the Court for trial, and the Superintendent shall, as soon as practicable, cause such person to be taken before the Court at a Criminal Session of the said Court, together with the warrant of commitment, in order that he may be dealt with according to law.

Custody, pending enquiries under Act XXIII of 1861, section eight.

13. Pending any such enquiry as is mentioned in section eight of Act No. XXIII of 1861 (*to amend Act VIII of 1859*), which the High Court considers it necessary to make, the defendant may be delivered by the officer of the said Court to the Superintendent, subject to the provisions as to deposit of fees and as to release on security contained in the same section,

and the Superintendent is hereby authorized and required to detain such defendant in safe custody until he is re-delivered to the officer of the Court for the purpose of being taken before the said Court in pursuance

pursuance of an order of the said Court or of a Judge thereof, or until he is released by due course of law.

• 14. Every person arrested in pursuance of a writ, warrant, or order of the High Court, in the exercise of its original civil jurisdiction,

Delivery of persons arrested in pursuance of warrant of High Court or Small Cause Court.

or in pursuance of a warrant of any Court established in Calcutta, Madras, or Bombay under Act No. IX of 1850 (*for the more easy recovery of small debts and demands in Calcutta, Madras and Bombay*),

or in pursuance of a warrant issued under section three of this Act,

shall be brought without delay before the Court by which, or by a Judge of which, the writ, warrant, or order was issued, awarded, or made, or before a Judge thereof, if the said Court, or a Judge thereof, is then sitting for the exercise of original jurisdiction ;

and if such Court, or a Judge thereof, is not then sitting for the exercise of original jurisdiction, shall, unless a Judge of the said Court otherwise orders, be delivered to the Superintendent for intermediate custody, and shall be brought before the said Court, or a Judge thereof, at the next sitting of the said Court, or of a Judge thereof, for the exercise of original jurisdiction, in order that such person may be dealt with according to law ;

and the said Court or Judge shall have power to make or award all necessary orders or warrants for that purpose.

15. Any warrant of commitment under Regulation III of 1818 of the Bengal Code (*for the Confinement of State Prisoners*), Regulation II of 1819 of the Madras Code (*for the Confinement of State Prisoners*), and Regulation XXV of 1827 of the Bombay Code (*for the Confinement of State Prisoners, and for the Attachment of the Lands of Chieftains and others, for Reasons of State*), may be directed to the Superintendent in the same manner as the same might have been directed to the Sheriff under Act No. XXXIV of 1850 (*for the better Custody of State Prisoners*), and Act No. III of 1858 (*to amend the Law relating to the arrest and detention of State Prisoners*).

Warrants under Regulations for confinement of State prisoners.

III.—PRISONERS IN THE MOFUSSIL.

Officers in charge of prisons may give effect to sentences of certain Courts.

16. Officers in charge of prisons situate outside the local limits of the ordinary original civil jurisdictions of the High Courts of Judicature at Fort William, Madras and Bombay, shall be competent to give effect to any sentence or order or warrant for the detention of any person passed or issued by any Court or tribunal acting under the authority of Her Majesty, or of the Governor General in Council, or of any Local Government.

Warrant of officer of such Court to be sufficient authority.

17. A warrant under the official signature of an officer of such Court or tribunal shall be sufficient authority for holding any prisoner in confinement, or for sending any prisoner for transportation beyond sea, in pursuance of the sentence passed upon him.

Procedure where jailor doubts the legality of warrant sent to him for execution.

18. Any officer in charge of a prison doubting the legality of any warrant sent to him for execution under this Part, or the competency of the person whose official seal and signature are affixed thereto to pass the sentence and issue such warrant, shall refer the matter to the Local Government, by whose order on the case such officer and all other public officers shall be guided as to the future disposal of the prisoner.

Pending any such reference, the prisoner shall be detained in such manner and with such restrictions or mitigations as may be specified in the warrant.

Imprisonment in British India of persons convicted of certain offences in Native States.

19. The Local Government may authorize the reception, detention, or imprisonment in any place under such Government, for the periods specified in their respective sentences, of persons sentenced within the territories of any Native Prince or State in alliance with Her Majesty to imprisonment or transportation for any of the following offences:—

counterfeiting coin,

uttering counterfeit coin,

murder,

culpable homicide not amounting to murder,

being a thug,

voluntarily causing grievous hurt,

administering poison,

kidnapping,

kidnapping,
 selling minors for purposes of prostitution,
 rape,
 robbery,
 dacoity,
 dacoity with murder,
 robbery or dacoity with attempt to cause death or
 grievous hurt,
 attempt to commit robbery or dacoity when armed
 with a deadly weapon,
 making preparation to commit dacoity,
 belonging to a gang of dacoits,
 dishonest misappropriation of property,
 breach of trust,
 house-burning,
 house-breaking,
 forgery, and
 theft of cattle ;
 or for an attempt to commit any of the above
 offences,

or for abetment, within the meaning of the Indian
 Penal Code, of suicide by burning or burying alive, or
 of any of the other offences above specified,

or for such other offences as the Governor General
 in Council, from time to time, by order published in
 the *Gazette of India*, thinks fit to prescribe :

Provided that such sentences have been pronounced Proviso.
 after trial before a tribunal in which an officer of Gov-
 ernment, duly authorized in that behalf by such
 Native Prince or State, or by the Governor General
 in Council, is one of the presiding Judges.

20. Every officer of Government so authorized as Certificate of
conviction.
 aforesaid shall forward with every prisoner a certifi-
 cate of his conviction, and a copy of the proceedings Copy of pro-
ceedings.
 held at the trial, that the same may be forthcoming
 for reference at the place where the sentence of im-
 prisonment or transportation is carried into effect.

IV.—

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IV.—CONVICTS SENTENCED TO PENAL SERVITUDE.

Persons sentenced to penal servitude where sent, and how dealt with.

21. Every person sentenced to be kept in penal servitude may, during the term of the sentence, be confined in such prison within British India as the Governor General in Council by general order, from time to time, directs;

and may, during such time, be kept to hard labour;

Intermediate imprisonment.

and may, 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 sentenced by the convicting Court to rigorous imprisonment may, for the time being, by law be dealt with.

Time of intermediate imprisonment to count in discharge of sentence.

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.

Law respecting convicts sentenced to transportation or imprisonment with hard labour applied to persons sentenced to penal servitude.

22. All Acts and Regulations now in force within British India, with respect to convicts under sentence of transportation, or under sentence of imprisonment with hard labour, shall, so far as may be consistent with the express provisions of this Act, be construed to apply to persons under any sentence of penal servitude.

Power to grant license to convict sentenced to penal servitude.

23. The Governor General in Council may grant to any convict sentenced to be kept in penal servitude, a license to be at large within British India or in such part thereof as in such license is expressed, during such portion of his term of servitude, and upon such conditions as to the Governor General in Council seem fit.

The Governor General in Council may at any time revoke or alter such license.

Holder of license to be allowed to go at large.

24. So long as such license continues in force and unrevoked, such convict 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 such license.

Apprehension of convict where license revoked.

25. In case of the revocation of any such license as aforesaid, any Secretary to the Government of India may, by order in writing, signify to any Justice of the Peace

Peace or Magistrate that such license has been revoked, and require him to issue a warrant for the apprehension of the convict to whom such license was granted, and such Justice or Magistrate shall issue his warrant accordingly.

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

Execution of
warrant.

27. The convict, when apprehended under such warrant, shall be brought, as soon as conveniently may be, before the Justice or Magistrate by whom it has been issued, or before some other Justice or Magistrate of the same place, or before a Justice or Magistrate having jurisdiction in the district in which the convict is apprehended.

Apprehend-
ed convict
to be brought
up for re-com-
mitment.

Such Justice or Magistrate shall thereupon make out his warrant under his hand and seal, for the re-commitment of the convict to the prison from which he was released by virtue of the said license.

28. Such convict shall be re-committed 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.

Re-commi-
ment.

29. If a license be granted under section twenty-three upon any condition specified therein, and the convict to whom the license is granted violates any such condition,

Penalty for
breach of con-
dition of the
license.

or goes beyond the limits specified in the license,

or, knowing of the revocation of such license, neglects forthwith to surrender himself, or conceals himself, or endeavours to avoid being apprehended,

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:

V.—REMOVAL

V.—REMOVAL OF PRISONERS.

Removal from one jail to another in territories under Local Government.

30. When any person is, or has been, sentenced to imprisonment by any Court, the Local Government, or (subject to its orders and under its control) the Inspector General of Jails, may order his removal during the period prescribed for his imprisonment, from the jail or place in which he is confined to any other jail or place of imprisonment within the territories subject to the same Local Government.

Removal of lunatic prisoners.

31. Whenever it appears to the Local Government that any person, detained or imprisoned under any order or sentence of any Magistrate or Court is of unsound mind, such Government, by a warrant setting forth the grounds of belief that such person is of unsound mind, may order his removal to a lunatic asylum, or other fit place of safe custody, within the territories subject to the same Government, there to be kept and treated as the Local Government directs during the remainder of the term of imprisonment ordered by the sentence; or, if it be certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be detained under medical care or treatment, then until he is discharged according to law.

Remand on recovery.

When it appears to the said Government that such prisoner has become of sound mind, the Local Government, by a warrant directed to the person having charge of the prisoner, shall remand the prisoner to the prison from which he was removed, if then still liable to be kept in custody, or if not, shall order him to be discharged.

Discharge.

Act XXXVI of 1858, section nine, applied to prisoners in lunatic asylum.

The provisions of section nine of Act XXXVI of 1858 (*relating to Lunatic Asylums*) shall apply to every person confined in a lunatic asylum under this section after the expiration of the term of imprisonment to which he has been sentenced; and the time during which he has been so confined shall be reckoned as part of such term.

Government of India may order removal of prisoners from one prison to another.

32. When any person is, or has been, sentenced to imprisonment by any Court, the Governor General in Council may order his removal during the period prescribed for his imprisonment, from the prison in which he is confined to any other prison in British India.

VI.—MANAGEMENT

VI.—MANAGEMENT OF TRANSPORTED CONVICTS.

33. The Governor General in Council may appoint the Governor or other authority at any place in British India, or one or more Superintendents at any such place, as the persons to whom convicts undergoing transportation shall be delivered. Power to appoint persons to whom convicts shall be delivered.

34. The Governor General in Council may, from time to time, prescribe rules as to the following matters:— Power to make rules as to convicts.

the classification of convicts;

their confinement, treatment, discipline, and employment;

their punishment for misbehaviour, disorderly conduct, neglect, or disobedience; and

the manner in which the proceeds (if any) of their employment shall be disposed of.

VII.—DISCHARGE OF CONVICTS.

35. Any Court established under the twenty-fourth and twenty-fifth of Victoria, chapter one hundred and four, may in any case in which it has recommended to Her Majesty the granting of a free pardon to any convict, permit him to be at liberty on his own recognizance. Discharge of convicts recommended for pardon.

SCHEDULE.

(See section 2.)

Number and year of Act.	Subject or Title.	Extent of repeal.
VII of 1837 ...	Charter Courts' power to discharge Convicts recommended for pardon.	The whole.
XVI of 1840 ...	An Act concerning the management of Convicts transported to places within the territories of the East India Company.	The whole.
XXIV of 1855 ...	An Act to substitute penal servitude for the punishment of Transportation in respect of European and American Convicts, and to amend the Law relating to the removal of such Convicts.	Sections five, six, seven, nine, ten, eleven, and twelve.

Number and year of Act.	Subject or Title.	Extent of repeal.
XVII of 1860 ...	An Act to repeal Act V of 1858 (for the punishment of certain offenders who have escaped from jail, and of persons who shall knowingly harbour such offenders) and to make certain provisions in lieu thereof.	The whole.
XXV of 1861 } VIII of 1869 }	The Code of Criminal Procedure ...	Sections forty-nine, forty-nine A, and three hundred and ninety-six.
VIII of 1863 ...	An Act for the amendment of the law relating to the confinement of prisoners sentenced by Courts acting under the authority of Her Majesty, and by certain other Courts, and of prisoners convicted of offences in Native States.	The whole.
VIII of 1865 ...	An Act to make valid the imprisonment of certain persons arrested under the process of the High Court of Judicature at Fort William in Bengal, in the exercise of its ordinary original Civil jurisdiction.	The whole.
II of 1867 ...	An Act to make further provision for the removal of prisoners.	The whole.
XII of 1867 ...	An Act to amend the law relating to the custody of prisoners within the local limits of the original jurisdiction of Her Majesty's High Courts of Judicature at Fort William in Bengal, Madras, and Bombay.	The whole.
XXVI of 1869 ...	An Act to correct a clerical error in Act No. VIII of 1863.	The whole.