

THE PRISONERS ACT, 1900
(III of 1900)

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TEXT

¹THE PRISONERS ACT, 1900 (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;
²[(2) It extends to the whole of Pakistan].
³[(3) * * * * *]
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 ⁴[Provincial Government], by general or special order, to be a subsidiary jail.

PART II GENERAL

3. **Officers incharge of prisons to detain persons duly committed to their custody.**— The officer incharge 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 incharge of prisons to return writs, etc., after execution or discharge.**— The officer incharge 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 [PRISONERS IN THE PRESIDENCY-TOWNS].

Omitted by the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. 4 of 1949), Schedule.

PART IV ⁵[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.

¹For statement of objects and reasons, see Gazette 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.

²Substituted by the Central Laws (Statute Reform) Ordinance, 1960 (XXI of 1960), section 3 and 2nd Schedule, (with effect from the 14th October, 1955), for the original sub-section (2) as amended by the Repealing and Amending Act, 1914 (X of 1914), the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. 4 of 1949), and the Federal Laws (Revision and Declaration) Act, 1951 (XXVI of 1951).

³Sub-section (3) repealed by the Repealing and Amending Act, 1914 (X of 1914), section 3 and Schedule II.

⁴Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for “Local Government”.

⁵Substituted by the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. 4 of 1949), Schedule, for the original heading “PRISONERS OUTSIDE THE PRESIDENCY-TOWN”.

15. Power for officers incharge of prisons to give effect to sentences of certain Courts.

(1) Officers in charge of prisons ⁶[* * *] may give effect to any sentence or order or warrant for the detention of any person passed or issued—

- (a) by any court or tribunal acting, whether within or without ⁷[the Provinces ⁸[* * *], under the general or special authority of ⁹[the ¹⁰[Federal Government], or of any Provincial Government, or of the Government of Burma] ¹¹[or of any Court or tribunal which was before the twenty-third day of March, 1956, acting under the general or special authority of Her Majesty, or of the Crown Representative]; or
- (b) by any Court or tribunal in ¹²[any Acceding State]—
 - (i) if the presiding Judge, or if the Court or tribunal consists of two or more Judges, at least one of the Judges, is an officer of the ¹³[Government] authorised to sit as such Judge ¹⁴[by the State or the Ruler thereof] or by ¹⁴[the ¹⁵[Federal Government] or the Crown Representative], and
 - (ii) if the reception, detention or imprisonment ¹⁶[* * *] in any provinces ¹⁷[* * *] of persons sentenced by any such Court or tribunal has been authorised by general or special order by ¹⁸[* * *] the ¹⁹[Provincial Government] ²⁰[* * *]; or
- (c) by any other Court or tribunal ²¹[in any Acceding State], with the previous sanction ²²[***] of the ²³[Provincial Government] in the case of each such sentence, order or warrant:

²⁴[Provided that effect shall not be given to any sentence or order or warrant for detention passed or issued by any Court or tribunal in Burma without the previous sanction of the Provincial Government concerned].

(2) Where a Court or tribunal of such a ²⁵[Ruler] or State has passed a sentence which cannot be executed without the concurrence of an officer of the ²⁶[Government] and such

⁶The words "outside the Presidency-towns", omitted, *ibid.*

⁷Substituted the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. 4 of 1949), Articles 3(2) and 4, for "British India".

⁸The words "and the [Federal Territory of Karachi]," omitted by the Central Adaptation of Laws Order, 1964 (P.O. 1 of 1964), Article 2 and Schedule the words in crotchets were substituted by the Repealing and Amending Ordinance, 1961 (I of 1961), section 3 and 2nd Schedule, for "Capital of the Federation".

⁹The original words, "Her Majesty, or of the Governor-general in Council, of any Local Government", have successively been amended by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937 and by the Central Laws (Adaptation) Order, 1961 (P.O. 1 of 1961), Article 2 and Schedule (with effect from the 23rd March, 1956), to read as above.

¹⁰Substituted by the Punjab Laws (Adaptation) Order, 1974 (Pb. A. O. 1 of 1974), for "Central Government".

¹¹Inserted by the Central Laws (Adaptation) Order, 1961 (P.O. 1 of 1961), Article 2 and Schedule (with effect from the 23rd March, 1956).

¹²The original words, "the territories of any Native Prince or State in India", have been amended by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937 and the Federal Laws (Revision and Declaration) Act, 1951 (XXVI of 1951), section 4 and III Schedule, to read as above.

¹³Substituted by the Central Laws (Adaptation) Order, 1961, Article 2 (with effect from the 23rd March, 1956), for "Crown", which had been substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "British Government".

¹⁴Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937 for "the Governor-General in Council".

¹⁵Substituted by the Punjab Laws (Adaptation) Order, 1974 (Pb. A. O. 1 of 1974) for "Central Government".

¹⁶The words, "in British India or" repealed, *ibid.*

¹⁷The words, "of British India", omitted by the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. 4 of 1949), Schedule

¹⁸The words, "the Governor-General in Council or", repealed by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.

¹⁹Substituted *ibid.*, for "Local Government".

²⁰The words, "as the case may be", repealed, *ibid.*

²¹The original words, "the territories of any Native Prince or State in India", have been amended by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937 and the Federal Laws (Revision and Declaration) Act, 1951 (XXVI of 1951), section 4 and III Schedule, to read as above.

²²The words, "the Governor-General in Council or", repealed by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937.

²³Substituted *ibid.*, for "Local Government".

²⁴Inserted *ibid.*

²⁵Substituted *ibid.*, for "Native Prince".

²⁶Substituted by the Central Laws (Adaptation) Order, 1961 (P.O. 1 of 1961), Article 2 (with effect from the 23rd March, 1956), for "Crown", which had been substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "British Government".

sentence has been considered on the merits and confirmed by any such officer specially authorised in that behalf, such sentence, and any order or warrant issued in pursuance thereof, shall be deemed to be the sentence, order or warrant of a Court or tribunal acting under the authority of ²⁷[the ²⁸[Federal Government] or the Crown Representative].

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 incharge of prison doubts the legality of warrant sent to him for execution under this Part.— (1) Where an officer incharge 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 ²⁹[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 ³⁰[Court established by the authority of the ³¹[Federal Government]] exercising, in or with respect to territory beyond the limits of ³²[the Provinces ³³[* * *]], jurisdiction which ³⁴[the ³⁵[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 execution in a decent and humane manner, be executed in ³⁶[the Provinces ³⁷[* * *]], has issued its warrant for the execution of such sentence to the officer incharge of a prison in ³⁸[the Provinces ³⁹[* * *]], 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, 1898⁴⁰.

(2) The prisons of which the officers incharge are to execute sentences under any such warrants as aforesaid ⁴¹[shall in each Province be such as the Provincial Government] may, by general or special order, direct.

²⁷Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "the G.G. in C".

²⁸Substituted by the Punjab Laws (Adaptation) Order, 1974 (Pb. A. O. 1 of 1974), for "Central Government".

²⁹Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "Local Government".

³⁰Substituted by the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. 4 of 1949), Schedule, for "British Court".

³¹Substituted by the Punjab Laws (Adaptation) Order, 1974 (Pb. A. O. 1 of 1974), for "Central Government".

³²Substituted the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. 4 of 1949), Articles 3 (2) and 4, for "British India".

³³The words, "and the [Federal Territory of Karachi]", omitted by the Central Adaptation of Laws Order, 1964 (P.O. 1 of 1964), Article 2 and Schedule. The words in crotchets were substituted by the Repealing and Amending Ordinance, 1961 (I of 1961), section 3 and 2nd Schedule, for "Capital of the Federation".

³⁴Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "the G.G. in C".

³⁵Substituted by the Central Laws (Adaptation) Order, 1961 (P.O. 1 of 1961), Article 2, for "Crown" (with effect from the 23rd March, 1956).

³⁶Substituted by the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. 4 of 1949), Articles 3(2) and 4, for "British India".

³⁷The words, "and the [Federal Territory of Karachi]", omitted by the Central Adaptation of Laws Order, 1964 (P.O. 1 of 1964), Article 2 and Schedule. The words in crotchets were substituted by the Repealing and Amending Ordinance, 1961 (I of 1961), section 3 and 2nd Schedule, for "Capital of the Federation".

³⁸Substituted by the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. 4 of 1949), Articles 3(2) and 4, for "British India".

³⁹The words, "and the [Federal Territory of Karachi]", omitted by the Central Adaptation of Laws Order, 1964 (P.O. 1 of 1964), Article 2 and Schedule. The words in crotchets were substituted by the Repealing and Amending Ordinance, 1961 (I of 1961), section 3 and 2nd Schedule, for "Capital of the Federation".

⁴⁰V of 1898.

⁴¹Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 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".

(3) A Court shall be ⁴²[deemed, for the purposes of this section, to be a Court established by the ⁴³[Federal Government]] if the presiding Judge, or if the Court consists of two or more Judges, at least one of the Judges, is an officer of the ⁴⁴[Government] authorised to act as such Judge ⁴⁵[by any Acceding State] or the Ruler thereof or the ⁴⁶[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 ⁴⁷[Government] authorised as aforesaid.

⁴²Substituted by the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. 4 of 1949), Schedule, for "deemed to be a British Court for the purposes of this section".

⁴³Substituted by the Punjab Laws (Adaptation) Order, 1974 (Pb. A. O. 1 of 1974), for "Central Government".

⁴⁴Substituted by the Central Laws (Adaptation) Order, 1961 (P.O. 1 of 1961), Article 2 (with effect from the 23rd March, 1956), for "Crown", which had been substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "British Government".

⁴⁵The original words, "by any Native Prince or State in India or by the G.G. in C.", have been successively amended by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. 4 of 1949), Schedule and the Federal Laws (Revision and Declaration) Act, 1951 (XXVI of 1951), section 4 and 3rd Schedule to read as above.

⁴⁶Substituted by the Punjab Laws (Adaptation) Order, 1974 (Pb. A. O. 1 of 1974), for "Central Government".

⁴⁷Substituted by the Central Laws (Adaptation) Order, 1961 (P.O. 1 of 1961), Article 2 (with effect from the 23rd March, 1956), for "Crown", which had been substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "British Government".

PART V
[PERSONS UNDER SENTENCE OF PENAL SERVITUDE]

Omitted by the Criminal Law (Extinction of Discriminatory Privileges Act, 1949) (II of 1950), Schedule.

PART VI
REMOVAL OF PRISONERS

28. 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.

48[29. Removal of prisoners.— (1) The ⁴⁹[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 or transportation, or
- (c) in default of payment of a fine, ⁵⁰[* * *],
- (d) in default of giving security for keeping the peace or for maintaining good behaviour,

⁵¹[(e)unconvicted criminal prisoners], to any other prison in ⁵²[the province, or, with the consent of the Provincial Government concerned, to any prison in ⁵³[the other Province]], ⁵⁴[or, with the consent of the ⁵⁵Central Government] to any prison maintained ⁵⁶[by it or under its authority] in any part of ⁵⁷[Pakistan].

⁵⁸[(2) Subject to the orders, and under the control of the Provincial Government the Director of Prisons may, in the like manner provide for the removal of any prisoner confined as aforesaid in a prison situate in the area for which he is appointed to any of the prison in such area].

⁵⁹[(3) The ⁶⁰Central Government may, by general or special order, provide for the removal of any prisoner or class of prisoners confined in any prison to any other prison in Pakistan maintained by or under the authority of the ⁶¹Central Government or of a Provincial Government with the consent ⁶²[***] of the Provincial Government concerned].

30. Lunatic prisoners how to be dealt with.— Where it appears to the ⁶³[Provincial Government] that any person detained or imprisoned under any order or sentence of any Court is of unsound mind, the ⁶⁴[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 ⁶⁵[Provincial Government] directs during the remainder of the term for which he has been ordered or sentenced to be

⁴⁸Substituted by the Amending Act, 1903 (I of 1903), section 3 and Schedule II.

⁴⁹Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "G.G. in C".

⁵⁰The word "or", deleted by Notification No: Prs. I (M) 1572, dated 6th July, 1977.

⁵¹Added *ibid*.

⁵²Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "British India or to any prison in Berar". The words, "or to any prison in Berar" had been added by the Prisoners (Amendment) Act, 1923 (XVII of 1923), section 2.

⁵³Substituted by the Central Adaptation of Laws Order, 1964 (P.O. 1 of 1964), Article 2 and Schedule, for "any other Province".

⁵⁴Added by the Prisoners (Amendment) Ordinance, 1942 (XV of 1942).

⁵⁵Now 'Federal Government', see P.O. 4 of 1975.

⁵⁶Substituted by the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. 4 of 1949), for "by him or under his authority".

⁵⁷Substituted by the Federal Laws (Revision and Declaration) Act, 1951 (XXVI of 1951), section 4 and III Schedule, for "India".

⁵⁸Substituted by the West Pakistan (Adaptation of Laws) Ordinance, 1962 (XXV of 1962).

⁵⁹Added by Act XVII of 1953.

⁶⁰Now "Federal Government" see P.O. 4 of 1975.

⁶¹*Ibid*.

⁶²The words "where such other prison is situated in a Province not being a Chief Commissioner's Province", omitted by the Central Adaptation of Laws Order, 1964 (P.O. 1 of 1964), Article 2 and Schedule.

⁶³Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "Local Government".

⁶⁴*Ibid*.

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 ⁶⁶[Provincial Government] that the prisoner has become of sound mind, the ⁶⁷[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 9 of the Lunatic Asylums Act, 1858⁶⁸, 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.

⁶⁹[(4) In any case in which the ⁷⁰[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 ⁷¹[Provincial Government] may order his removal to any such asylum or place within ⁷²[the other Province] or within ⁷³[any Acceding State] by agreement with the ⁷⁴[Provincial Government] of such other Province or with ⁷⁵[such State or the Ruler thereof], 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. *[Removal of prisoners from territories under one Local Government to territories under another]. Repealed by the Amending Act, 1903 (I of 1903), section 4 and Schedule III.*

PART VII PERSONS UNDER SENTENCE OF TRANSPORTATION

32. Appointment of places for confinement of persons under sentence of transportation and removal thereto.— ⁷⁶[(1)] The ⁷⁷[Provincial Government] may appoint places within ⁷⁸[the Province] to which persons under sentence of transportation shall be sent; and the ⁷⁹[Provincial Government], or some officer duly authorised in this behalf by the ⁸⁰[Provincial Government], 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.

⁶⁵Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "Local Government".

⁶⁶*Ibid.*

⁶⁷*Ibid.*

⁶⁸XXXVI of 1858.

⁶⁹Substituted by the Devolution Act, 1920 (XXXVIII of 1920), section 2 and Schedule I.

⁷⁰Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "Local Government".

⁷¹*Ibid.*

⁷²Substituted by the Central Adaptation of Laws Order, 1964 (P.O. 1 of 1964), for "any other Province".

⁷³The original words "the territories of any Native Prince or State in India", were first substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937 and then amended by the Federal Laws (Revision and Declaration) Act, 1951 (XXVI of 1951), section 4 and III Schedule, to read as above.

⁷⁴Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "Local Government".

⁷⁵Substituted, *ibid.*, for "such Native Prince or State",

⁷⁶Section 32 was re-numbered as sub-section (1) of that section by the Devolution Act, 1920 (XXXVIII of 1920), section 2 and Schedule I.

⁷⁷Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "Local Government".

⁷⁸Substituted by the Devolution Act, 1920 (XXXVIII of 1920), section 2 and Schedule I, for "British India".

⁷⁹Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "Local Government".

⁸⁰Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "Local Government".

⁸¹[(2) In any case in which the ⁸²[Provincial Government] is competent under sub-section (1) to appoint places within the Provinces and to order the removal thereto of persons under sentence of transportation, the ⁸³[Provincial Government] may appoint such places in ⁸⁴[the other Province] by agreement with the ⁸⁵[Provincial Government] of that Province and may by like agreement give orders or duly authorise some officer to give orders for the removal thereto of such persons].

PART VIII DISCHARGE OF PRISONERS

33. Release, on recognizance, by order of High Court, of prisoner recommended for pardon.— ⁸⁶[A High Court], may, in any case in which it has recommended to ⁸⁷[the President] 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. 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 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 incharge 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 ⁸⁸[* * *], 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.

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 incharge of the prison:

⁸¹Inserted by the Devolution Act, 1920 (XXXVIII of 1920) section 2 and Schedule I.

⁸²Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "Local Government".

⁸³*Ibid.*

⁸⁴Substituted by the Central Adaptation of Laws Order, 1964 (P.O. 1 of 1964), for "any other Province".

⁸⁵Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "Local Government".

⁸⁶Substituted by the Central Laws (Statute Reform) Ordinance, 1960 (XXI of 1960), section 3 and 2nd Schedule (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 substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "Any court established under the Indian High Courts Act, 1861".

⁸⁷Substituted by the Central Laws (Adaptation) Order, 1961 (P.O. 1 of 1961), Article 2 and Schedule, for "Her Majesty" (with effect from the 23rd March, 1956).

⁸⁸The words, "outside a Presidency Town", omitted by the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. 4 of 1949).

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 ⁸⁹[Sessions Judge] 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 ⁹⁰[Sessions Judge or] Magistrate within the local limits of whose jurisdiction the person is confined, and that ⁹¹[Court] shall cause it to be delivered to the officer incharge 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 ⁹²[* * *] in a prison more than one hundred miles distant from the place where any Court, subordinate to a 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 incharge of the prison.

(2) The High Court making an order under sub-section (1) shall send it to the ⁹³[Sessions Judge or] Magistrate within the local limits of whose jurisdiction the person named therein is confined, ⁹⁴[* * *] and such ⁹⁵[Court] ⁹⁶[* * *] shall cause it to be delivered to the officer incharge 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 ⁹⁷[Provincial Government] of the territories within which the prison is situate, and the ⁹⁸[Provincial Government] may, ⁹⁹[* * *] direct that the person be so removed, subject to such rules regulating the escort of prisoners as the ¹⁰⁰[Provincial Government] may prescribe.

41. Prisoner to be brought up.— Upon delivery of any order under this Part to the officer incharge of the person 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.

⁸⁹Substituted for the words "District Magistrate" by the Prisoners (Punjab Amendment) Ordinance, 2001 (XXXIX of 2001), which will remain in force under the Provisional Constitution (Amendment) Order 1999 (9 of 1999), Article 4, notwithstanding the maximum limit of three months prescribed under Article 128 of the Constitution of the Islamic Republic of Pakistan.

⁹⁰*Ibid.*, for the words "District or Sub-divisional".

⁹¹*Ibid.*, for the word "Magistrate".

⁹²The words, "in a prison within a Presidency-town, or", omitted by the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. 4 of 1949).

⁹³Substituted for the words "District or Sub-divisional" by the Prisoners (Punjab Amendment) Ordinance, 2001 (XXXIX of 2001), which will remain in force under the Provisional Constitution (Amendment) Order 1999 (9 of 1999), Article 4, notwithstanding the maximum limit of three months prescribed under Article 128 of the Constitution of the Islamic Republic of Pakistan.

⁹⁴The words, "or in the case of a person confined in a prison within a Presidency-town to the Commissioner of Police", omitted by the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. 4 of 1949), Schedule.

⁹⁵Substituted for the word "Magistrate" by the Prisoners (Punjab Amendment) Ordinance, 2001 (XXXIX of 2001), which will remain in force under the Provisional Constitution (Amendment) Order 1999 (9 of 1999), Article 4, notwithstanding the maximum limit of three months prescribed under Article 128 of the Constitution of the Islamic Republic of Pakistan.

⁹⁶The words, "or Commissioner", omitted, by the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. 4 of 1949), Schedule.

⁹⁷Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "Local Government".

⁹⁸*Ibid.*

⁹⁹The words, "if it thinks fit" deleted by the Prisoners (Punjab Amendment) Ordinance, 1984 (XXVIII of 1984).

¹⁰⁰Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "G.G. in C".

42. Power to Government to exempt certain prisoners from operation of this Part.—¹⁰¹[***] The ¹⁰²[Provincial Government] may, by notification in ¹⁰³[* * *] the ¹⁰⁴[Official Gazette], ¹⁰⁵[***] 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 incharge 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 incharge of the prison in which he is confined, shall apply to the ¹⁰⁶[Sessions Judge or] Magistrate within the local limits of whose jurisdiction the prison is situate, and if such ¹⁰⁷[Court], 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 incharge 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

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

¹⁰¹The words “the G.G. in C. or” repealed by the Devolution Act, 1920 (XXXVIII of 1920), section 2 and Schedule I.

¹⁰²Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for “Local Government”.

¹⁰³The words “the Gazette of India or” repealed by the Devolution Act, 1920 (XXXVIII of 1920), section 2 and Schedule I.

¹⁰⁴Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for “local official Gazette”.

¹⁰⁵The words “as the case may be”, repealed by the Devolution Act, 1920 (XXXVIII of 1920), section 2 and Schedule I.

¹⁰⁶Substituted for the words “District or Sub-divisional” by the Prisoners (Punjab Amendment) Ordinance, 2001 (XXXIX of 2001), which will remain in force under the Provisional Constitution (Amendment) Order 1999 (9 of 1999), Article 4, notwithstanding the maximum limit of three months prescribed under Article 128 of the Constitution of the Islamic Republic of Pakistan.

¹⁰⁷*Ibid.*, for the word “Magistrate”.

the Code of Civil Procedure¹⁰⁸, 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 Code of Civil Procedure¹⁰⁹, 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 situated, and the District Judge shall commit the execution of the commission to the officer incharge 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 incharge 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 incharge 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 incharge of the prison shall cause it to be so sent.

Miscellaneous

49. *[Application of Part in certain cases]. Omitted by the Adaptation of Central Acts and Ordinances Order, 1949 (G.G.O. 4 of 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 ¹¹⁰[Provincial Government] from any person ordered by the Court to pay the same, as if it were costs in a suit recoverable under the ¹¹¹Code of Civil Procedure 1882.

51. Power to make rules under this Part.— (1) The ¹¹²[Provincial Government] ¹¹³[* * *] 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

¹⁰⁸XIV of 1882, subsequently replaced by the Code of Civil Procedure 1908 (V of 1908).

¹⁰⁹*Ibid.*

¹¹⁰Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "Govt".

¹¹¹Now the Code of Civil Procedure, 1908 (V of 1908).

¹¹²Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "Local Government".

¹¹³The words, "and in cases arising under section 40, the G.G. in C", repealed *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 ¹¹⁴[official Gazette] ¹¹⁵[* *] 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 incharge of prison.— The ¹¹⁶[Provincial Government] may declare what officer shall, for the purposes of this Part, be deemed to be the officer incharge of a prison.

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

¹¹⁴Substituted *ibid.*, for "local official Gazette".

¹¹⁵The words, "or the Gazette of India, as the case may be", repealed, *ibid.*

¹¹⁶Substituted by the Government of India (Adaptation of Indian Laws) Order, 1937 as amended by the Government of India (Adaptation of Indian Laws) Supplementary Order, 1937, for "Local Government".

THE FIRST SCHEDULE

(See section 35 and 37)

Court of _____

To the officer incharge 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.

THE SECOND SCHEDULE

(See section 37)

Court of _____

To the officer incharge 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]. Repealed by the Repealing and Amending Act, 1914 (X of 1914), section 3 and Schedule II.