

THE PRISONS ACT, 1894¹
(Act No IX of 1894)
(As Applicable in Uttar Pradesh)

[22nd March, 1894]

CONTENT

CHAPTER I
PRELIMINARY

Sections

1. Title, extent and commencement.
2. [*Repealed.*].
3. Definitions.

CHAPTER II
MAINTENANCE AND OFFICERS OF PRISONS

4. Accommodation for prisoners.
5. Inspector- General.
6. Officers of Prisons.
7. Temporary accommodation of prisoners.

CHAPTER III
DUTIES OF OFFICERS
Generally

8. Control and duties of officers of prisoners.
9. Officers not to have business dealings with prisoners.
10. Officers not to be interested in prison-contracts.

Superintendent

11. *Superintendent.*
12. Records to be kept by Superintendent.

Medical Officer

13. Duties of Medical Officer.
14. Medical Officer to report in certain cases.
15. Report on death of prisoner.

Jailor

16. Jailor.
17. Jailor to give notice of death of prisoner.
18. Responsibility of Jailor.
19. Jailor to be present at night.
20. Powers of Deputy and Assistant Jailors.

Subordinate Officers

21. Duties of gate-keeper.
22. Subordinate officers not to be absent without leave.
23. Convict officers.

CHAPTER IV
ADMISSION, REMOVAL AND DISCHARGE OF PRISONERS

Sections

24. Prisoners to be examined on admission
25. Effects of prisoners.
26. Removal and discharge of prisoners.

CHAPTER V
DISCIPLINE OF PRISONERS

27. Separation of prisoners.
28. Association and segregation of prisoners.
29. Solitary confinement.
30. Prisoners under sentence of death.

CHAPTER VI.
FOOD, CLOTHING AND BEDDING OF CIVIL AND UNCONVICTED CRIMINAL PRISONERS

31. Maintenance of certain prisoners from private sources
32. Restriction on transfer of food and clothing between certain prisoners.
33. Supply of clothing and bedding to civil and unconvicted criminal prisoners.

CHAPTER VII
EMPLOYMENT OF PRISONERS

34. Employment of civil prisoners.
35. Employment of criminal prisoners.
36. Employment of criminal prisoners sentenced to simple imprisonment.

CHAPTER VIII
HEALTH OF PRISONERS

37. Sick prisoners.
38. Record of directions of Medical Officers.
39. Hospital.

CHAPTER IX
VISITS TO PRISONERS

Sections

40. Visits to civil and unconvicted criminal prisoners.
41. Search of visitors.

CHAPTER X
OFFENCES IN RELATION TO PRISONERS SECTIONS

42. Penalty for introduction or removal of prohibited articles into or from prison and communication with prisoners.
43. Power to arrest for offence under section.
44. Publication of penalties.

CHAPTER XI

PRISON-OFFENCES

45. Prison-offences.
46. Punishment of such offences.
47. Plurality of punishments under section 46.
48. Award of punishments under sections 46 and 47.
49. Punishments to be in accordance with foregoing sections.

Sections

50. Medical Officer to certify to fitness of prisoner for punishment.
51. Entries in punishment-books.
52. Procedure on committal of heinous offence.
53. Whipping.
54. Offences by prison-subordinates.

CHAPTER XII

MISCELLANEOUS

55. Extramural custody, control and employment of prisoners.
56. Confinement in irons.
57. Confinement of prisoners under sentence of transportation in irons.
58. Prisoners not to be ironed by Jailer except under necessity.
59. Power to make rules.
60. [*Repealed.*].
61. Exhibition of copies of rules.
62. Exercise of powers of Superintendent and Medical Officer.
THE SCHEDULE.—[*Repealed.*].

An Act
to amend the law relating to Prisons.

Whereas it is expedient to amend the law relating to prisons in India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States and to provide rules for the regulation of such prison;

It is hereby enacted as follows: —

CHAPTER I
PRELIMINARY

1. Title, extent and commencement.—

- (1) This Act may be called the Prisons Act, 1894.
(2) It extends to the whole of India except the territories which immediately before the 1st November, 1956, were comprised in Part B States.
(3) It shall come into force on the first day of July, 1894.
(4) Nothing in this Act shall apply to civil jails in the State of Bombay as it existed immediately before the 1st November, 1956 outside the city of Bombay, and those jails shall continue to be administered under the provisions of sections 9 and 16 (both inclusive) of Bombay Act II of 1874 as amended by subsequent enactments.

COMMENT

Commencement of sentence.- The accused commences undergoing the sentence of imprisonment imposed by the judgment as soon as the accused is detained in Court custody by reason thereof. [*Bhajan Naik v. Somanth Mohanty*, 1969 Cri Lj 1414 at 1417 (Orissa) : AIR 1969 Ori 268]

2. **Repealed.** [Repealed by the Repealing Act, 1938 (Act No 1 of 1938), Section 2 and the Schedule 3].

3. **Definitions.**—In this Act—

(1) “*prison*” means any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include—

(a) Any place for the confinement of prisoners who are exclusively in the custody of the police;

(b) Any place specially appointed by the State Government under section 541¹ of the Code of Criminal Procedure, 1898; or

(c) Any place which has been declared by the State Government, by general or special order, to be a subsidiary jail;

(2) “*Criminal prisoner*” means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial;

(3) “*Convicted criminal prisoner*” means any criminal prisoner under sentenced of a Court or Court-martial, and includes a person detained in prison under the provisions of Chapter VIII of the Code of Criminal Procedure, 1898 (10 of 1898)², or under the Prisoners Act, 1871 (V of 1871) ;

(4) “*Civil prisoner*” means any prisoner who is not a criminal prisoner;

(5) “*remission system*” means the rules for the time being in force regulating the award of marks to, and the consequent shortening of sentences of, prisoners in jail;

(6) “*history-ticket*” means the ticket exhibiting such information as is required in respect of each prisoner by this Act or the rules there under;

(7) “*Inspector General*” means the Inspector General of Prisons and in relation to the performance of such function of the Inspector-General as are entrusted by or under the rules made under this Act to Deputy-Inspector-General of Prison, includes such.

(8) “*Medical Subordinate*” means an Assistant Surgeon, Apothecary or qualified Hospital Assistant; and

(9) “*Prohibited article*” means an article the introduction or removal of which into or out of a prison is prohibited by any rule under this Act.

CHAPTER II MAINTENANCE AND OFFICERS OF PRISONS

4. **Accommodation for prisoners.**—The State Government shall provide for the prisoners in the territories under such Government, accommodation in prisons constructed and regulated in such manner as to comply with the requisitions of this Act in respect of the separation of prisoners.

COMMENT

Direction to consider question of introducing more open air prisons.— For the greater good of the society which consists in seeing that the inmates of jail come out not as a hardened criminal but as a reformed person no management problem is insurmountable. [*Rama Murthy v. State of Karnataka*, 1997 Cri Lj 1508 at 1518 (SC): AIR 1997 SC 1739; 1997 AIR SCW 929]

5. **Inspector General.**—¹[(1)] An Inspector General shall be appointed for the territories subject to each State Government, and shall exercise, subject to the orders of the State Government, the general control and superintendence of all prisons situated in the territories under such Government.

²[(2)] The State Government may also appoint one or more Deputy Inspector-General of Prisons, and they shall perform such of the function of the Inspector-General under this Act or under any other law for the time being in force as may be entrusted to them by or under the rules made under this Act]

NOTIFICATION

Notification No. 4182 IXXII-423-81,, dated 22nd October, 1981 and published in the U.P Gazette, dated 22nd October, 1981.— In exercise of the power under sub-section (2) of Section 5 of the Prisons Act, 1894, the Governor is pleased to appoint, with effect from the date of publication of this notification, all the District Magistrate in Uttar Pradesh except the District Magistrate in Uttar Pradesh and except the District Magistrate of district Chamoli³, Ghaziabad, Kanpur Dehat, Pithorgarh³ and Uttarkarshi³, *ex officio* Deputy Inspector-General of Prison within the local limits of the area within which they exercise jurisdiction.

6. **Officers of prisons.**—For every prison there shall be a Superintendent, a Medical Officer (who may also be the Superintendent), a Medical Subordinate, a Jailor and such other officers as the State Government thinks necessary :

Provided that the State Government of Bombay may declare by order in writing that in any prison specified in the order the office of Jailer shall be held by the person appointed to be Superintendent.

7. **Temporary accommodation for prisoners.**—Whenever it appears to the Inspector-General that the number of prisoners in any prison is greater than can conveniently or safely be kept therein, and it is not convenient to transfer the excess number to some other prison, or whenever from the outbreak of epidemic disease within any prison, or for any other reason, it is desirable to provide for the temporary shelter and safe custody of any prisoners, provision shall be made by such officer and in such manner as the State Government may direct, for the shelter and safe custody in temporary prisons of so many of the prisoners as cannot be conveniently or safely kept in the prison.

CHAPTER III DUTIES OF OFFICERS

Generally

8. **Control and duties of officers of prisons.**—All officers of a prison shall obey the directions of the Superintendent; all officers subordinate to the Jailor shall

perform such duties as may be imposed on them by the Jailor with the sanction of the Superintendent or be prescribed by rules under section 59.

9. Officers not to have business dealings with prisoners.—No officer of a prison shall sell or let, nor shall any person in trust for or employed by him sell or let, or derive any benefit from selling or letting, any article to any prisoner or have any money or other business dealings directly or indirectly with any prisoner.

10. Officers not to be interested in prison-contracts.—No officer of a prison shall, nor shall any person in trust for or employed by him, have any interest, direct or indirect, in any contract for the supply of the prison nor shall he derive any benefit, directly, or indirectly, from the sale or purchase of any article on behalf of the prison or belonging to a prisoner.

Superintendent

11. Superintendent. —(1) Subject to the orders of the Inspector- General, the Superintendent shall manage the prison in all matters relating to discipline, labour, expenditure, punishment and control.

(2) Subject to such general or special directions as may be given by the State Government, the Superintendent of a prison other than a central prison or a prison situated in a Presidency Town shall obey all orders not inconsistent with this Act or any rule there under which may be given respecting the prison by the District Magistrate, and shall report to the Inspector-General all such orders and the action taken thereon.

12. Records to be kept by Superintendent .—The Superintendent shall keep, or cause to be kept, the following records :—

- (1) a register of prisoners admitted;
 - (2) a book showing when each prisoner is to be released;
 - (3) a punishment-book for the entry of the punishments inflicted on prisoners for prison-offences;
 - (4) a visitors book for the entry of any observation made by the visitors touching any matters connected with the administration of the prison;
 - (5) a record of the money and other articles taken from prisoners;
- and all such other records as may be prescribed by rules under section 59

Medical Officer

13. Duties of Medical Officer.—Subject to the control of the Superintendent, the Medical Officer shall have charge of the sanitary administration of the prison, and shall perform such duties as may be prescribed by rules made by the State Government under section 59.

14. Medical Officer to report in certain cases.—Whenever the Medical Officer has reason to believe that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected, the Medical Officer shall report the case in writing to the Superintendent, together with such observations as he may think proper.

This report, with the orders of the Superintendent thereon, shall forthwith be sent to the Inspector-General for information.

15. Report on death of prisoner.— On the death of any prisoner, the Medical Officer shall forthwith record in a register the following particulars, so far as they can be ascertained, namely —

- (1) the day on which the deceased first complained of illness or was observed to be ill,

(2) the labour, if any, on which he was engaged on that day,
(3) the scale of his diet on that day,
(4) the day on which he was admitted to hospital,
(5) the day on which the Medical Officer was first informed of the illness,
(6) the nature of the disease,
(7) when the deceased was last seen before his death by the Medical Officer or Medical Subordinate,
(8) when the prisoner died, and
(9) (in cases where a post-mortem examination is made) an account of the appearances after death,
together with any special remarks that appear to the Medical Officer to be required.

Jailor

16. Jailor.—(1) The Jailor shall reside in the prison, unless the Superintendent permits him in writing to reside elsewhere.

(2) The Jailor shall not, without the Inspector General's sanction in writing, be concerned in any other employment.

17. Jailor to give notice of death of prisoner.—Upon the death of a prisoner, the Jailor shall give immediate notice thereof to the Superintendent and the Medical Subordinate.

18. Responsibility of Jailor.—The Jailor shall be responsible for the safe custody of the records to be kept under section 12, for the commitment warrants and all other documents confided to his care, and for the money and other articles taken from prisoners.

19. Jailor to be present at night.—The Jailor shall not be absent from the prison for a night without permission in writing from the Superintendent but, if absent without leave for a night from unavoidable necessity, he shall immediately report the fact and the cause of it to the Superintendent.

20. Powers of Deputy and Assistant Jailors.—Where a Deputy Jailor or Assistant Jailor is appointed to a prison, he shall, subject to the orders of the Superintendent, be competent to perform any of the duties, and be subject to all the responsibilities, of a Jailor under this Act or any rule thereunder.

Subordinate Officers

21. Duties of gate keeper.—The officer acting as gate-keeper, or any other officer of the prison, may examine anything carried in or out of the prison, and may stop and search or cause to be searched any person suspected of bringing any prohibited article into or out of the prison, or of carrying out any property belonging to the prison, and, if any such article or property be found, shall give immediate notice thereof to the Jailor.

22. Subordinate officers not to be absent without leave.—Officers subordinate to the Jailor shall not be absent from the prison without leave from the Superintendent or from the Jailor.

23. Convict officers.—Prisoners who have been appointed as officers of prisons shall be deemed to be public servants within the meaning of the Indian Penal Code (XLV of 1960).

CHAPTER IV

ADMISSION, REMOVAL AND DISCHARGE OF PRISONERS

24. Prisoners to be examined on admission.—(1) Whenever a prisoner is admitted into prison, he shall be searched, and all weapons and prohibited articles shall be taken from him.

(2) Every criminal prisoner shall also, as soon as possible after admission, be examined under the general or special orders of the Medical Officer, who shall enter or cause to be entered in a book, to be kept by the Jailor, a record of the state of the prisoner's health, and of any wounds or marks on his person, the class of labour he is fit for if sentenced to rigorous imprisonment, and any observations which the Medical Officer thinks fit to add.

(3) In the case of female prisoners the search and examination shall be carried out by the matron under the general or special orders of the Medical Officer.

25. Effects of prisoners.—All money or other articles in respect whereof no order of a competent Court has been made, and which may with proper authority be brought into the prison by any criminal Prisoner or sent to the prison for his use, shall be placed in the custody of the Jailor.

26. Removal and discharge of prisoners.—(1) All prisoners, previously to being removed to any other prison, shall be examined by the Medical Officer.

(2) No prisoner shall be removed from one prison to another unless the Medical Officer certifies that the prisoner is free from any illness rendering him unfit for removal.

(3) No prisoner shall be discharged against his will from prison, if labouring under any acute or dangerous distemper, nor until, in the opinion of the Medical Officer, such discharge is safe.

CHAPTER V

DISCIPLINE OF PRISONERS

27. Separation of prisoners.—The requisitions of this Act with respect to the separation of prisoners are as follows:

(1) In a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with, the male prisoners ;

(2) in a prison where male prisoners under the age of twenty-one are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not;

(3) unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners ; and

(4) civil prisoners shall be kept apart from criminal prisoners.

28. Association and segregation of prisoners.—Subject to the requirements of the last foregoing section, convicted criminal prisoners may be confined either in association or individually in cells or partly in one way and partly in the other.

29. Solitary confinement.—No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and immediately on his arrival in the prison after sentence, be every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical Subordinate.

COMMENT

Solitary confinement.— Any harsh isolation from society by long, lonely, cellular detention is penal and so must be inflicted only consistently with fair procedure, in such cases written consent and immediately report to higher authority are the least if abuse is to be tabooed. [*Sunil Barta v. Delhi Administration*, 1980 Cri Lj 1099 at 1115 (SC) : AIR 1980 SC 1579 : (1980) 2 SCR 577 : (1980) 4 SCC 488].

30. Prisoners under sentence of death.—(1) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by order of, the Jailor and all articles shall be taken from him which the Jailor deems it dangerous or inexpedient to leave in his possession.

(2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed by day and by night under the charge of a guard.

CHAPTER VI FOOD, CLOTHING AND BEDDING OF CIVIL AND UNCONVICTED CRIMINAL PRISONERS

31. Maintenance of certain prisoners from private sources.—A civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessities, but subject to examination and to such rules as may be approved by the Inspector General.

32. Restriction on transfer of food and clothing between certain prisoners.—No part of any food, clothing, bedding or other necessities belonging to any civil or unconvicted criminal prisoner shall be given, hired or sold to any other prisoner and any prisoner transgressing the provisions of this Section shall lose the privilege of purchasing food or receiving it from private sources, for such time as the Superintendent thinks proper.

33. Supply of clothing and bedding to civil and unconvicted criminal prisoners.—(1) Every civil prisoner and unconvicted prisoner unable to provide himself with sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding as may be necessary.

(2) When any civil prisoner has been committed to prison in execution of a decree in favour of a private person, such person, or his representative, shall, within forty-eight hours after the receipt by him of a demand in writing, pay to the Superintendent the cost of the clothing and bedding so supplied to the prisoner ; and in default of such payment the prisoner may be released.

CHAPTER VII

EMPLOYMENT OF PRISONERS

34. Employment of civil prisoners.—(1) Civil prisoners may, with the Superintendent's permission, work and follow any trade or profession.

(2) Civil prisoners finding their own implements, and not maintained at the expense of the prison, shall be allowed to receive the whole of their earnings; but the earnings of such as are furnished with implements or are maintained at the expense of the prison shall be subject to a deduction, to be determined by the Superintendent, for the use of implements and the cost of maintenance.

COMMENT

Wages for prison labour.— The provisions of Minimum Wages Act, 1948 and the obligation thereunder to comply with the statutory notification would apply equally to the Government when the Government takes labour from the prisoners inside a prison. [*Mustaram Sitaram Shinde v. State of Maharashtra*, 1997 Cri Lj 3458 at 3462 (Bom)]

35. Employment of criminal prisoners.—(1) No criminal prisoner sentenced to labour or employed on labour at his own desire shall, except on an emergency with the sanction in writing of the Superintendent, be kept to labour for more than nine hours in any one day.

(2) The Medical Officer shall from time to time examine the labouring prisoners while they are employed, and shall at least once in every fortnight cause to be recorded upon the history-ticket of each prisoner employed on labour the weight of such prisoner at the time.

(3) When the Medical Officer is of opinion that the health of any prisoner suffers from employment on any kind or class of labour, such prisoner shall not be employed on that labour but shall be placed on such other kind or class of labour as the Medical Officer may consider suited for him.

36. Employment of criminal prisoners sentenced to simple imprisonment.—Provision shall be made by the Superintendent for the employment (as long as they so desire) of all criminal prisoners sentenced to simple imprisonment; but no prisoner not sentenced to rigorous imprisonment shall be punished for neglect of work excepting by such alteration in the scale of diet as may be established by the rules of the prison in the case of neglect of work by such a prisoner.

¹**[36-A. Remuneration of Prisoners.**— (1) Every convicted criminal prisoners employed for labour in prison and working satisfactorily shall be entitled to get such remuneration as may be prescribed by the State Government :

Provided that out of the amount payable to a convicted criminal prisoner under this sub-section, an amount not exceeding 20 per cent thereof shall be deducted and be paid as compensation to the deserving victims of the offence committed by that prisoner.

(2) All deduction made under sub- section (1) shall be credited to a common fund to be created for the purpose.

(3) The creation of the fund, credit of amount therein and the operation thereof shall be regulated in such manner as may be prescribed.]

CHAPTER VIII

HEALTH OF PRISONERS

37. Sick prisoners.—(1) The names of prisoners desiring to see the Medical Subordinate or appearing out of health in mind or body shall, without delay, be reported by the officer in immediate charge of such prisoners to the Jailor.

(2) The Jailor shall, without delay, call the attention of the Medical Subordinate to any prisoners desiring to see him, or who is ill, or whose state of mind or body appears to require attention, and shall carry into effect all written directions given by the Medical Officer or Medical Subordinate respecting alterations of the discipline or treatment of any such prisoner.

SYNOPSIS

- 1. Direction issued for the sick prisoners 2. Steps to be taken for giving proper medical facilities in jails.*

1. Direction issued for the sick prisoners.— The prisoners at the time of their prison in regard to their health especially relating to tuberculosis and AIDs be asked about disease cure treatment can be also examined. It is an obligation of the State to see that such type of serious disease are cured and not allowed to spread not only to other prisoners but also the other person living outside the prison. [*Anil Kumar v. State of M.P, 2000(1) C Crj 118 at 131 (MP)*]

2. Steps to be taken for giving proper medical facilities in jails.— Whether a prisoner can seek any relief from the Court because of neglect of medical treatment on the ground of violation of their constitutional right is to be borne in mind by policy makers while deciding about recommendation of Mulla Committee report. [*Rama Murthy v. State of Karanataka, 1997 Cri Lj 1508 at 1517 (SC) : AIR SC 1739 : 1997 AIR SCW 929.*]

38. Record of directions of Medical Officers.—All directions given by the Medical Officer or Medical Subordinate in relation to any prisoner, with the exception of orders for the supply of medicines or directions relating to such matters as are carried into effect by the Medical Officer himself or under his superintendence, shall be entered day by day in the prisoner's history-ticket or in such other record as the State Government may by rule direct, and the Jailor shall make an entry in its proper place stating in respect of each direction the fact of its having been or not having been complied with, accompanied by such observations, if any, as the Jailor thinks fit to make, and the date of the entry.

39. Hospital.—In every prison an hospital or proper place for the reception of sick prisoners shall be provided.

CHAPTER IX

VISITS TO PRISONERS

40. Visits to civil and unconvicted criminal prisoners.—Due provision shall be made for the admission, at proper times and under proper restrictions, into every

prison of persons with whom civil or unconvicted criminal prisoners may desire to communicate, care being taken that so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other person.

COMMENT

Liberal visits by family members, close friend to be respected.— Visit to prisoners by family and friend are a solace in insulation; and only a dehumanized system can drive vicarious delight in depriving prison inmates of this humane amenity. The whole habilitative purpose of sentencing is to soften, not to harden, and this will be prompted by more such meeting. [*Sunil Batra v. Administration, 1980 Cri Lj 1099 at 1115 (SC) : AIR 1980 SC 1579 : (1980) 2 SCR 557 : (1980) 4 SCC 488*].

41. Search of visitors.—(1) The Jailor may demand the name and address of any visitor to prisoner, and, when the Jailor has any ground for suspicion, may search any visitor, or cause him to be searched, but the search shall not be made in the presence of any prisoner or of another visitor.

(2) In case of any such visitor refusing to permit himself to be searched, the Jailor may deny him admission; and the grounds of such proceeding, with the particulars thereof, shall be entered in such record as the State Government may direct.

CHAPTER X OFFENCES IN RELATION TO PRISONS

42. Penalty for introduction or removal of prohibited articles into or from prison and communication with prisoners.—Whoever, contrary to any rule under section 59 introduces or removes or attempts by any means whatever to introduce or remove, into or from any prison, or supplies or attempts to supply to any prisoner outside the limits of a prison, any prohibited article, and every officer of a prison who, contrary to any such rule, knowingly suffers any such article to be introduced into or removed from any prison, to be possessed by any prisoner, or to be supplied to any prisoner outside the limits of a prison, and whoever, contrary to any such rule, communicates or attempts to communicate with any prisoner, and whoever abets any offence made punishable by this section, shall, on conviction before a Magistrate, be liable to imprisonment for a term not exceeding six months, or to fine not exceeding two hundred rupees, or to both.

43. Power to arrest for offence under section 42.—When any person, in the presence of any officer of a prison, commits any offence specified in the last foregoing section, and refuses on demand of such officer to state his name and residence, or gives a name or residence which such officer knows, or has reason to believe, to be false, such officer may arrest him, and shall without unnecessary delay make him over to a Police-officer, and thereupon such Police-officer shall proceed as if the offence had been committed in his presence.

44. Publication of penalties.—The Superintendent shall cause to be affixed, in a conspicuous place outside the prison, a notice in English and the Vernacular setting forth the acts prohibited under section 42 and the penalties incurred by their commission.

CHAPTER XI

PRISON-OFFENCES

45. Prison-offences.—The following acts are declared to be prison-offences when committed by a prisoner :—

- (1) such wilful disobedience to any regulation of the prison as shall have been declared by rules made under section 59 to be a prison-offence ;
- (2) any assault or use of criminal force ;
- (3) the use of insulting or threatening language ;
- (4) immoral or indecent or disorderly behaviour ;
- (5) wilfully disabling himself from labour ;
- (6) contumaciously refusing to work ;
- (7) filling, cutting, altering or removing handcuffs, fetters or bars without due authority ;
- (8) wilful idleness or negligence at work by any prisoner sentenced to rigorous imprisonment ;
- (9) wilful mismanagement of work by any prisoner sentenced to rigorous imprisonment ;
- (10) wilful damage to prison-property ;
- (11) tampering with or defacing history-tickets, records or documents ;
- (12) receiving, possessing or transferring any prohibited article ;
- (13) feigning illness ;
- (14) wilfully bringing a false accusation against any officer or prisoner ;
- (15) omitting or refusing to report, as soon as it comes to his knowledge, the occurrence of any fire, any plot or conspiracy, any escape, attempt or preparation to escape, and any attack or preparation for attack upon any prisoner or prison-official ; and
- (16) conspiring to escape, or to assist in escaping, or to commit any other of the offences aforesaid.

SYNOPSIS

- | | |
|--------------------------------|---|
| 1. <i>Prison vices.</i> | <i>Imposed without prior opportunity of</i> |
| 2. <i>Punishment not to be</i> | <i>hearing.</i> |

1. *Prison vices.*— Jail authority need not take action against the prisoners indulging in vices but in the situation in which they are placed a sympathetic approach is also required. [*Rama Murthy v. State of Karnataka*, 1997 Cri Lj 1508 at 1517 (SC) : AIR 1997 SC 1739 : 1997 AIR SCW 929].

2. *Punishment not to be imposed without prior opportunity of hearing.*— The District and Session Judge shall ensure that as and when the Prison Authority forward any papers pertaining to punishment for this confirmation. The concerned prisoner is kept present before him and given an opportunity of making representation against the proposed punishment of which confirmation is sought. [*Muktaram Sitaram Shinde v. State of Maharashtra*, 1997 Cri Lj 3458 at 3463 (Bom).]

46. Punishment.— The Superintendent may examine any person touching any such offence, and determine thereupon, and punish such offence by—

(1) a formal warning :

Explanation.— A formal warning shall mean a warning personally addressed to a prisoner by the Superintendent and recorded in the punishment-book and on the prisoner's history-ticket ;

(2) change of labour to some more irksome or severe form ²[for such period as may be prescribed by rules made by the State Government;

(3) hard labour for a period not exceeding seven days in the case of convicted criminal prisoners not sentenced to rigorous imprisonment ;

(4) such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rules made by the State Government ;

(4-A) forfeiture or reduction of grade, either temporarily or permanently, and temporary forfeiture of prison privileges;

(5) the substitution of gunny or other coarse fabric for clothing of other material, not being woollen, for a period which shall not exceed three months;

(6) imposition of handcuffs of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the State Government ;

(7) imposition of fetters of such pattern and weight, in such manner and for such period, as may be prescribed by rules made by the State Government ;

(8) separate confinement for any period not exceeding months ;

Explanation.—Separate confinement means such confinement with or without labour as secludes a prisoner from communication with, but not from sight of, other prisoners, and allows him not less than one hour's exercise per diem and to have his meals in association with one or more other prisoners ;

(9) penal diet,—that is, restriction of diet in such manner and subject to such conditions regarding labour as may be prescribed by the State Government :

Provided that such restriction of diet shall in no case be applied to a prisoner for more than ninety-six consecutive hours, and shall not be repeated except for a fresh offence nor until after an interval of one week ;

(10) cellular confinement for any period not exceeding fourteen days :

Provided that after each period of cellular confinement an interval of not less duration than such period must elapse before the prisoner is again sentenced to cellular or solitary confinement.

Explanation.—Cellular confinement means such confinement with or without labour as entirely secludes a prisoner from communication with, but not from sight of, other prisoners ;

¹[* * *]

(11) penal diet as defined in clause (9) combined with cellular confinement ;

(12) whipping, provided that the number of stripes shall not exceed thirty :

Provided that nothing in this Section shall render any female or civil prisoner liable to the imposition of any form of handcuffs or fetters, or to whipping.

47. Plurality of punishment, under section 46.—(1) Any two of the punishments enumerated in the last foregoing Section may be awarded for any such offence in combination, subject to the following exceptions, namely :—

- (1) formal warning shall not be combined with any other punishment except loss of privileges under clause (4) of that section ;
- (2) penal diet shall not be combined with change of labour under clause (2) of that section, nor shall any additional period of penal diet awarded singly be combined with any period of penal diet awarded in combination with cellular confinement ;
- (3) cellular confinement shall not be combined with separate confinement, so as to prolong the total period of seclusion to which the prisoner shall be liable ;
- (4) whipping shall not be combined with any other form of punishment except cellular and separate confinement and loss of privileges admissible under the remission system ;
- (5) no punishment will be combined with any other punishment in contravention of rules made by the State Government.

(2) No punishment shall be awarded for any such offence so as to combine, with the punishment awarded for any other such offence two of the punishment which may not be awarded in combination for any such offence.

48. Award of punishments under sections 46 and 47.—(1) The Superintendent shall have power to award any of the punishments enumerated in the two last foregoing sections, subject, in the case of separate confinement for a period exceeding one month, to the previous confirmation of the Inspector-General.

(2) No officer subordinate to the Superintendent shall have power to award any punishment whatever.

49. Punishments to be in accordance with foregoing sections.—Except by order of a Court of Justice, no punishment other than the punishments specified in the foregoing sections shall be inflicted on any prisoner, and no punishment shall be inflicted on any prisoner otherwise than in accordance with the provisions of those sections.

50. Medical Officer to certify to fitness of prisoner for punishment.—

(1) No punishment of penal diet, either singly or in combination, or of whipping, or of change of labour under section 46, clause (2), shall be executed until the prisoner to whom such punishment has been awarded has been examined by the Medical Officer, who, if he considers the prisoner fit to undergo the punishment, shall certify accordingly in the appropriate column of the punishment-book prescribed in section 12.

(2) If he considers the prisoner unfit to undergo the punishment, he shall in like manner record his opinion in writing and shall state whether the prisoner is absolutely unfit for punishment of the kind awarded, or whether he considers any modification necessary.

(3) In the latter case he shall state what extent of punishment he thinks the prisoner can undergo without injury to his health.

51. Entries in punishment-books.—(1) In the punishment-book prescribed in section 12 there shall be recorded, in respect of every punishment inflicted, the prisoner's name, register number and the class (whether habitual or not) to which he belongs, the prison-offence of which he was guilty, the date on which such prison-offence was committed, the number of previous prison-offences recorded against the Prisoner, and the date of his last prison-offence, the punishment awarded, and the date of infliction.

(2) In the case of every serious prison-offence, the names of the witnesses proving the offence shall be recorded, and, in the case of offences for which whipping

is awarded, the Superintendent shall record the substance of the evidence of the witnesses, the defence of the prisoner, and the finding with the reasons therefor.

(3) Against the entries relating to each punishment the Jailor and Superintendent shall affix their initials as evidence of the correctness of the entries.

COMMENT

Prison Officer- No witness examined at enquiry to prove.- If the names of the two co-prisoners are not to be found in column 10. There is no reason why the necessary inference to be followed that the two co-prisoners were never examined at all should not be drawn on the basis of the document filed by the respondent No.1 himself. [D.H. Walcott v. Central Prison, Nagpur, 1972 Cri Lj 673 at 679 (Bom)]

52. Procedure on committal of heinous offence.—If any prisoner is guilty of any offence against prison-discipline which, by reason of his having frequently committed such offences or otherwise, in the opinion of the Superintendent, is not adequately punishable by the infliction of any punishment which he has power under this Act to award, the Superintendent may forward such prisoner to the Court of the District Magistrate or of any Magistrate of the first class or Presidency Magistrate having jurisdiction, together with a statement of the circumstances, and such Magistrate shall thereupon inquire into and try the charge so brought against the prisoner, and, upon conviction, may sentence him to imprisonment which may extend to one year, such term to be in addition to any term for which such prisoner was undergoing imprisonment when he committed such offence, or may sentence him to any of the punishments enumerated in section 46 :

Provided that any such case may be transferred for inquiry and trial by the District Magistrate to any Magistrate of the first class and by a Chief Presidency Magistrate to any other Presidency Magistrate : and

Provided also that no person shall be punished twice for the same offence.

COMMENT

Act of going on hunger strike is an offence under Section 52 of Prison Act.- In the interest of maintaining discipline in jails, the refusal to take food by a prisoner has been made an offence. [Lakshmi Narain v. State, 1959 Cri Lj 283 at 284 : AIR 1959 All 164 (DB)]

53. Whipping.—(1) No punishment of whipping shall be inflicted in instalments, or except in the presence of the Superintendent and Medical Officer or Medical Subordinate.

(2) Whipping shall be inflicted with a light ratan not less than half an inch in diameter on the buttocks, and in case of prisoners under the age of sixteen it shall be inflicted, in the way of school discipline, with a lighter ratan.

54. Offences by prison-subordinates.—(1) Every Jailor or officer of a prison subordinate to him who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice in writing of his intention for the period of two months, or who shall wilfully overstay any leave granted to him, or who shall engage without authority in any employment other than his prison-duty, or who shall be guilty of cowardice, shall be liable, on conviction before a Magistrate, to fine not exceeding two hundred rupees, or to imprisonment for a period not exceeding three months, or to both.

(2) No person shall under this section be punished twice for the same offence.

CHAPTER XII MISCELLANEOUS

55. Extramural custody, control and employment of prisoners.— A prisoner, when being taken to or from any prison in which he may be lawfully confined, or whenever he is working outside or is otherwise beyond the limits of any prison in or under the lawful custody or control of a prison officer belonging to such person, shall be deemed to be in prison and shall be subject to all the same incidents as if he were actually in prison.

56. Confinement in irons.—Whenever the Superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoners) for the safe custody of any prisoners that they should be confined in irons, he may, subject to such rules and instructions as may be laid down by the Inspector General with the sanction of the State Government, so confine them.

SYNOPSIS

- | | |
|---|---|
| 1. <i>Confinement in irons- Only in gravest situation.</i> | 3. <i>Order to remove leg irons from the feet of the undertrial prisoners and to desist from taking work from them.</i> |
| 2. <i>Legal aid- To undertrial prisoners a fundamental right enshrined in Article 21 of Constitution.</i> | 4. <i>Removal of fetters—Not to be ordered by Sessions Judge as visitor of jail.</i> |

1. Confinement in irons—Only in gravest situation.—To fetter prisoners in irons is an inhumanity unjustified save where safe custody is otherwise impossible. The routine resort to handcuffs and irons speaks abhorrently hostile to our goal of human dignity and social justice. [*Sunil Batra v. Delhi Administration*, 1980 Cri LJ 1099 : AIR 1980 SC 1579 : (1980) 2 SCR 557 : (1980) 4 SCC 488].

2. Legal aid—To undertrial prisoners a fundamental right enshrined in Article 21 of Constitution.— Since the trial Court has not made any provision for the last over eight years. The Session Judge is directed to take the case immediately and to proceed it from day to day without any interruption. These petitioners will be provided legal representation by fairly competent lawyers at the cost of the State since legal aid has been declared to be a fundamental right implicit in Article 21 of the Constitution. [*Kadra Pehadiya v. State of Bihar*, 1981 Cri LJ 481 at 482 (SC) : AIR 1981 SC 939].

3. Order to remove leg irons from the feet of the undertrial prisoners and to desist from taking work from them.—The Superintendent of Pakud sub-jail is directed to explain as to why he kept the four petitioners in leg irons contrary to the law of the land and exacted work from them when they are merely undertrial prisoners. [*Kadra Pehadiya v. State of Bihar*, 1981 Cri LJ 481 at 483 (SC) : AIR 1981 SC 939].

4. Removal of fetters—Not to be ordered by Sessions Judge as visitor of jail.—There is no provision in the Prisons Act or the Rules framed thereunder as found in the manual or any other law which empowers the Sessions Judge to pass order directing removal of fetters placed on the prisoner under the order of the

Superintendent who enjoys statutory discretion to confine a person in fetters if considered necessary for his safe custody. [Mathu Ram v. State of HP, 1984 Cri LJ 940 at 942 : 1984 Sim LJ 21 (HP)]

57. Confinement of prisoners under sentence of transportation in irons.—

¹[(1) The sentence of imprisonment for life shall be regarded as a sentence of rigorous imprisonment and the prisoners undergoing such sentence may subject to any rules made under Section 59, be confined in fetters for the first three months after admission to prison.]

(2) Should the Superintendent consider it necessary, either for the safe custody of the prisoner himself or for any other reason, that fetters should be retained on any such prisoner for more than three months, he shall apply to the Inspector General for sanction to their retention for the period for which he considers their retention necessary, and the Inspector General may sanction such retention accordingly.

58. Prisoners not to be ironed by Jailor except under necessity.—No prisoner shall be put in irons or under mechanical restraint by the Jailor of his own authority, except in case of urgent necessity, in which case notice thereof shall be forthwith given to the Superintendent.

59. Power to make rules.—²[(1)] ³[The State Government may, ³[by notification in the Official Gazette] make rules consistent with this Act—

- (1) defining the acts which shall constitute prison-offences ;
- (2) determining the classification of prison-offences into serious and minor offences;
- (3) fixing the punishments admissible under this Act which shall be awardable for commission of prison-offences or classes thereof ;
- (4) declaring the circumstances in which acts constituting both a prison-offence and an offence under the Indian Penal Code (XLV of 1860) may or may not be dealt with as a prison offence ;
- (5) for the award of marks and the shortening of sentences ;
- (6) regulating the use of arms against any prisoner or body of prisoners in the case of an outbreak or attempt to escape ;
- (7) defining the circumstances and regulating the conditions under which prisoners in danger of death may be released ;
- (8) for the classification of prisons, and description and construction of wards, cells and other places of detention;
- (9) for the regulation by numbers, length or character of sentences, or otherwise, of the prisoners to be confined in each class of prisons;
- (10) for the government of prisons and for the appointment of all officers appointed under this Act;
- (11) as to the food, bedding and clothing of criminal prisoners and of civil prisoners maintained otherwise than at their own cost;
- (12) for the employment, instruction and control of convicts within or without prisons;
- (13) for defining articles the introduction or removal of which into or out of prisons without due authority is prohibited;
- (14) for classifying and prescribing the forms of labour and regulating the periods of rest from labour;
- (15) for regulating the disposal of the proceeds of the employment of prisoners;
- (16) for regulating the confinement in fetters of prisoners sentenced to transportation;
- (17) for the classification and the separation of prisoners;

- (18) for regulating the confinement of convicted criminal prisoners under section 28;
- (19) for the preparation and maintenance of history-tickets;
- (20) for the selection and appointment of prisoners as officers of prisons;
- (21) for rewards for good conduct;
- (22) for regulating the transfer of prisoners whose term of transportation or imprisonment is about to expire subject, however, to the consent of the State Government of any other State to which a prisoner is to be transferred;
- (23) for the treatment, transfer and disposal of criminal lunatics or recovered criminal lunatics confined in prisons;
- (24) for regulating the transmission of appeals and petitions from prisoners and their communications with their friends;
- (25) for the appointment and guidance of visitors of prisons;
- (26) for extending any or all of the provisions of this Act and of the rules thereunder to subsidiary jails or special places of confinement appointed under section 5411 of the Code of Criminal Procedure, 1898, and to the officers employed, and the prisoners confined, therein;
- (27) in regard to the admission, custody, employment, dieting, treatment and release of prisoners; and
- (28) generally for carrying into effect the purposes of this Act.

SYNOPSIS

1. Release of life convict
2. Release on furlough

3. Rejection of parole leave- Properly
4. Pre mature release of convicts.

1. Release of life convict.- It is clear that the convict has not completed the ten years of imprisonment so he is not entitled to be released . [*Peesa Jayalakshmi v. Principal Secretary, Home Department, Government of A.P., 1977 Cri Lj 2025 at 2027 (AP) (DB); See also Palusani Sahadeva Rao v. State of A.P., 1996 (2) Andh LD (Cri) 414*].

2. Release on furlough - When High Court directed release of prisoner on furlough on furnishing surety of Rs. 500 lying in deposit with jail authorities while recommendation of Police was not commented upon the order of release was set aside. [*State of Maharashtra v. Suresh Pandurang Darvalur, AIR 2006 SC 2471 at 2472*]

3. Rejection of parole leave - Properly. Where application for parole leave on ground of illness of son of prisoner was rejected only on the ground of Police report without considering illness of son, the order was set aside, [*Sahebrao Tukuran Juware v. State of Maharashtra, 2008 Cri LJ 131 at 137 (Bom)*].

4. Pre mature release of convicts.- Where High Court held that while remitting sentence no discrimination could be made inter se among the life convicts and it was challenged the order of High Court was sustained. [*State of Haryana v. Mahendra Singh 2010 (3) SLT 117 (SC)*]

60. [Repealed]

61. Exhibition of copies of rules.—Copies of rules, under section 59 so far as they effect the Government of prisons, shall be exhibited, both in English and in the Vernacular, in some place to which all persons employed within a prison have access.

62. Exercise of powers of Superintendent and Medical Officer.—All or any of the powers and duties conferred and imposed by this Act on a Superintendent or Medical Officer may in his absence be exercised and performed by such other officer as the State Government may appoint in this behalf either by name or by his official designation.

THE SCHEDULE.—

Enactments Repealed. [*Repealed by the Repealing Act, 1938 (1 of 1938), Section 2 and Schedule*].