

CHAPTER 20

Execution of Sentences

Part A FINES

Realization of fines—For instructions regarding the realization of fines, *see* Volume IV Chapter 11.

Part B WARRANTS FOR EXECUTION

1. Filling in warrants—Warrants of commitment issued by European Magistrates should, as a rule, and especially in cases where more than six month's imprisonment is awarded, be filled up in English; but cases need never be delayed on this account, as the printed forms leave very little to be filled up in writing.

Note—Instructions have been issued to Superintendents of jails that in cases in which more than six month's imprisonment is awarded by a European Magistrate and the warrant is not filled up in English, a fresh warrant in due form should be called for and substituted for that originally sent.

2. Officer signing the warrant is responsible for its accuracy—Warrants issued by an Indian Magistrate should be in Urdu unless he is well acquainted with English. The objects to be attained are, that the officer who signs a warrant should be responsible for its contents, and that all warrants should, as far as possible, be uniform.

3. (i) *Signature by means of a stamp not permissible*—The Code of Criminal Procedure enacts that every warrant should be signed by the Magistrate with his own hand, and the practice of affixing a signature by means of stamp is strictly and should never be resorted to. An officer in charge of a jail would be justified in refusing to receive or detain a prisoner in jail on a warrant to which is affixed a signature by means of a stamp.

(ii) *Warrants should be signed, sealed and in the prescribed form*—Warrants of commitments should be in the form prescribed by Schedule V to the Code of Criminal Procedure, and should be signed in full (not initialled) by the Judge or Magistrate who issues it, and should be sealed with the seal of the Court.

(iii) *Separate warrants for each person*—In the case of under-trial prisoners, the warrant of commitment for intermediate custody should be prepared with the greatest care possible with reference to the above instructions. A separate warrant should be issued in respect of each person committed to jail.

(iv) Superintendent of Jail should not refuse to admit a prisoner owing to defect in the warrant—Except in cases falling under clause (i) of this rule the Superintendent of a Jail not refuse to admit a person where the above instructions have not been carried out, but he should draw the immediate attention of the Magistrate concerned to the defect, and ask for its rectification at once, sending at the same time a copy of his letter to the Magistrate of the district for his information.

(v) *Leper convicts to be sent to Tarn Taran Jail*—Persons sentenced to imprisonment who are found to be suffering from leprosy in a communicable form should be sent to the Leper Asylum at Tarn Taran.

(vi) *Class of prisoner when other than C to be noted in the warrant*—When a Court places a prisoner in a class other than C, it should make an endorsement to this effect on the warrant of commitment.

4. Warrants for release or remission of sentence—Warrants for the release or remission of sentences of prisoners confined in jail warrants for the release of prisoners on bail, and intimations of payment of fine sent to jail authorities should always be drawn up in Urdu or in English, and should be signed in full by such officer and sealed with the seal of his Court.

On receipt of a warrant for the release of a prisoner it should be forwarded without delay by *registered* cover to the jail in which the prisoner is confined, if it is necessary to send it through the agency of the post.

5. (i) *In case of dacoity or other organised crime, Court should note on the warrant the nature of the crime and convict*—In accordance with the request of the State Government communicated in the letter from the junior Secretary to Government, Punjab, No. 35, dated the 31st January, 1898, it is directed that, in every case of a sentence for dacoity, or other organized crime, the convicting Court shall enter on the warrant of commitment, for the information of the jail authorities, the nature of the crime, and whether the prisoner is a professional, hereditary or specially dangerous criminal.

(ii) *If this is not note the jail authorities should take steps to have this noted*—If in any case this information is not given, the jail authorities will refer the warrant to the Court, which should then have the proper entry made on it.

(iii) *Court should consult record if required*—If there is any doubt as to the entry to be made, the Court should decide the question by a reference to the record of the case, or by further inquiry, if necessary.

6. Rules about classification and treatment of convicted and under trial prisoners—The following rules have been made by the Punjab Government under Section 60 of the Prisons' Act, 1894, to regulate the classification and treatment of convicted and under-trial prisoners :—

Section I

Rules for the classification of convicted and under-trial prisoners

1. Three classes—(1) Convicted persons shall be divided into three classes, namely, A, B, and C, Class 'A' will contain all prisoners who are—

(a) non-habitual prisoners of good characters.

(b) by social status, education and habit of life been accustomed to a superior mode of living, and

(c) have not been convicted of—

(i) offences involving elements of, cruelty, moral degradation or personal greed;

(ii) serious or premeditated violence;

(iii) serious offences against property;

(iv) offences relating to the possession of explosives, firearms and other dangerous weapons with the object of committing an offence or of enabling an offence to be committed;

(v) abetment or incitement of offences falling within these sub-clauses.

(2) Class 'B' will consist of prisoners who by social status, education or habit of life have been accustomed to a superior mode of living. Habitual prisoners may be included in this class by order of the State Government.

(3) Class 'C' will consist of prisoners who are not classified in classes A and B.

2. Classifying authority—In the case of classes A and B the classifying authority will be the State Government. Class C will be classified by the trying Courts, but such prisoners will have a right to apply for revision to the State Government.

Part C

IMPRISONMENT FOR LIFE

Record of the case in which a woman has been sentenced to imprisonment for the murder of her child should be sent to Government through High Court—In every case in which a sentence of Imprisonment for life is passed on a woman for the murder of her infant child, and the sentence is not appealed against, the record of the case shall, after the expiration of the period allowed for appeal, be forwarded to the High Court for submission to Government, with a view

to the consideration of the question whether any commutation or reduction of the sentence should be allowed.

Part D
SENTENCE OF DEATH

1. Order of High Court to be sent to Sessions Judge for carrying out sentence—After a death sentence has been confirmed or other order has been made by the High Court, the Registrar will return the record, with a duplicate or an attested copy of the order under the seal of the Court, to the Sessions Judge, who will take the steps prescribed by Section 381 of the Code of Criminal Procedure to cause the sentence or order to be carried into effect.

For the procedure in issuing a warrant for the execution of a sentence of death, reference should be made to rule (ii) of Part E of this Chapter.

2. Record of case wherein death sentence has been confirmed should be forwarded to Government—The record of every case, as prepared for the use of the High Court, in which the sentence of death has been confirmed by the High Court, should as soon as orders have been passed confirming the death sentence, be forwarded to the State Government together with the Court's order thereon, and the English record of the Sessions Court.

Part E
EXECUTION OF THE ORDERS OF CRIMINAL APPELLATE
COURTS AND COURTS OF REVISION

The following rules, as to the mode of carrying out the orders passed on appeal or in revision by Criminal Courts, should be observed:

(i) *High Court will certify its decision to Lower Court*—The High Court will certify its decision to the Court from whose judgment the petition of appeal or application for revision was preferred:

Provided that if such judgment was that of a Court subordinate to the Magistrate of the district, the decision of the High Court will be certified to the Magistrate of the district.

(ii) *Lower Court will inform prisoner and the Jail Superintendent*—The Court, to which the decision is certified will, in cases of rejection of appeal or confirmation of sentence, cause the appellant to be informed, and in cases of alteration, reversal or enhancement of sentence, will issue a warrant accordingly to the Superintendent of the Jail of the district in which the trial was held, or, if the original sentence was one of fine only to the person to whom the original warrant was addressed.

Sessions Judges should not fail to communicate the High Court's orders in Murder References and appeals to the convicts merely on the assumption that the High Court will itself directly communicate the result to the convicts.

When a sentence of death is confirmed or passed by the High Court in appeal or revision, the Sessions Judge to whom the decision of the High Court is certified, shall issue the warrant for the execution of the sentence of death, to the superintendent of the Jail to which the prisoner was originally committed. If the condemned prisoner has been or should be transferred to another jail, and the Superintendent to whom the original warrant of commitment was addressed returns the warrant for the execution of the sentence of death to the Session Judge with an intimation that the prisoner has been transferred to another jail, the Sessions Judge shall issue a revised warrant for the execution of the sentence of death to the Superintendent of the Jail in which the condemned prisoner is confined.

Note—When a sentence of death has been suspended under Chapter XXIX of the Code of Criminal Procedure, the passing of further orders regarding the carrying out of such sentence is matter for the Government ordering the suspension and not for the Sessions Judge.

(ii) *Appellate Court will at once inform Jail Superintendent direct about all orders of release or alteration or enhancement of sentence passed by it*—The Sessions Court or any other appellate Court will, in all cases in which its order on appeal requires the immediate release of a prisoner, issue a warrant of release direct to the Superintendent of the Jail in which the prisoner is confined. The Superintendent of Jail will, after executing such warrant, forward it with the original warrant of commitment duly filled up, to the Magistrate of the district in which the trial was held. If in any case the warrants have not been received from the Superintendent of the Jail by the time the records in the case are returned by the Appellate Court, it will be the duty of the Magistrate of the district to at once institute inquiries as to whether the prisoner has been released and, if necessary to issue his own warrant for the release of the prisoner.

In cases of alteration, or enhancement of sentence, also the Sessions Court or any other appellate Court will issue a warrant direct to the Superintendent of the Jail in which the prisoner is confined. In cases of rejection of appeal or confirmation of sentence the Appellate Court will certify its decision on appeal to the Magistrate of the district in which the trial was held, who will cause the appellant to be informed. When an appeal is rejected the Superintendent of the Jail in which the prisoner is confined should also be informed direct by the Appellate Court.

Note—The attention of the Judges of the High Court has been drawn to the great delays which frequently occur between the decision of criminal appeals and the communication of the result to the Superintendent of the Jail in which the convict is confined. In many cases it is apparently necessary for the Superintendent to issue several reminders to the Appellate Court before he can obtain the information desired. As this state of things is contrary to the procedure prescribed in the foregoing instructions a strict compliance therewith is enjoined in order to prevent the occurrence of any such delay.

(iv) *Prisoners not to be transferred from the jail until decision of appeal. Exceptions*—the Magistrate of the district will, in communication with the Superintendent of the Jail, arrange that no prisoner is removed from the Jail in which he has been confined by order of the Court sentencing him to imprisonment until the period of appeal has expired, or, if at that time an appeal is pending until the decision of the Appellate Court is known :

Provided that prisoners committed to the Gurgaon, Hoshiarpur, and Dharamsala Jails may be transferred respectively to the Delhi, Jullundur and Gurdaspur jails at the discretion of the jail authorities; but no prisoner so transferred shall be removed from the jail to which the transfer is made until the period of appeal has expired, or, if an appeal has been filed, until the decision of the Appellate Court is known; and that notices issued by any Court for service on such prisoner shall be forwarded without delay to the Superintendent of the Jail in which the prisoner is confined, with instructions that it be returned *direct*, after service, to the Court issuing such notice.

(v) *Duty of Jail Superintendent to inform the Superintendent of the Jail to which the prisoner has been transferred about orders passed by appellate Court*—If for any person an exception is made to the above rule, and a prisoner is transferred before the order of the Appellate Court is known, the Superintendent of the Jail to which the prisoner was originally committed will forward the information or warrant of the order of the Appellate Court to the Superintendent of the Jail to which the prisoner has been transferred, and the latter officer, having executed the order, will report execution to the Court issuing the information or warrant.

(vi) *Execution of sentences passed under Section 35, Criminal Procedure Code*—In Inspector-General of Prisons has pointed out that difficulties occasionally arise in carrying out sentences, passed under Section 35 of the Code of Criminal Procedure, of which one is to take effect after the expiration of the other, when the first sentence to be executed is subsequently set aside on appeal.

(vii) *If the sentence which is to take effect first is set aside on appeal the appellate Court should direct the original Court to issue a fresh warrant directing that the second sentence be carried out at once*—When a prisoner on whom separate sentences are passed under Section 35 of the Criminal Procedure Code, is committed to jail under two separate warrants, the sentence in the one to take effect from the expiry of the sentence in the other, the date of such second sentence shall, in the event of the first sentence being set aside on appeal, be presumed to take effect from the date on which he was committed to jail under the first or original sentence. A direction to this effect should invariably be given and communicated by the Appellate Court to the Court which passed the original sentence, with a view to the issue of a fresh warrant to the Jail authorities in supersession of the original warrant.

(viii) *Procedure for execution of order of Appellate Court when accused has been admitted to bail*—Where an accused has been admitted to bail pending the hearing of his appeal, the original warrant of commitment shall be forwarded by the jail authorities to the Appellate Court which will take action as follows on the decision of the appeal:—

(1) In every case in which a sentence is reversed on appeal, the Appellate Court shall return the original warrant with a copy of its order to the Court by which the accused was admitted to bail, with directions to discharge him.

(2) In every case in which a sentence is modified on appeal, the Appellate Court shall prepare a fresh warrant (in the form prescribed in the following rule) and shall forward the same, with the original warrant and with a copy of its order, to the Court by which the accused was admitted to

bail, with directions to take measures to secure his surrender and commitment to jail on the modified warrant.

(3) In every case in which a sentence is confirmed on appeal, the Appellate Court shall make an endorsement on the original warrant to the effect that the sentence has been confirmed and return it with a copy of its order to the Court by which the accused was admitted to bail, with directions to take measures to secure his surrender and recommitment to jail on the original warrant.

In each of the cases last above-mentioned it shall be the duty of the Court to which the accused surrenders to his bail to endorse on the warrant the dates of his release on bail and of his subsequent surrender.

(ix) Procedure when accused surrenders to his bail in appellate Court—Where an accused who has been released on bail presents himself in an Appellate or a Revision 1 Court and his sentence is confirmed or so modified that he has still to serve some term of imprisonment, such Court shall commit, him to Jail on the original or a modified Warrant, and shall inform the District Magistrate concerned of the action taken when sending a copy of its judgment.

(x) Procedure when re-trial is ordered—When, on appeal, re-trial is ordered and the accused is not released on bail, but is remanded to the judicial lock-up, the Jail authorities should return the original warrant of commitment to the trial Court. If, however, the order for re-trial is subsequently set aside, and the appellate Court is directed to re-hear the appeal, the appellate Court should take care to re-call the original warrant and re-commit the accused to jail to serve his sentence, pending disposed of the appeal. If it thinks fit to release the accused on bail, the procedure laid down in paragraph (viii) above should be followed.

(xi) Form of warrant when a sentence is modified or altered on appeal—The following form of warrant is prescribed for use by appellate Courts when sentence is modified or altered on appeal:

In the Court of the at To the Officer-in-charge of the Jail. at

Whereas son of of Village
..... Pargana Police Station in the district of
..... was convicted byMagistrate of of the offence of
..... and was sentenced on the day of 19 to which
conviction and sentence have been modified on appeal by this Court, and in lieu thereof the said .
..... has been convicted of the offence

of and sentenced on the day of 19 to
This is to authorise and require you the said Superintendent to receive the said into
your custody in the said jail, together with this warrant, and carry the aforesaid sentence into
execution according to law; and this is further to authorise and require you to return to this Court
the original warrant of commitment in lieu whereof this warrant is issued.

Given under my hand and the seal of the Court this day of 19

Sessions Judge

Part F
SUSPENSION AND REMISSION OF SENTENCES

I. It happens at times that a sentence which a Judge or a Magistrate can pass under the law is unsuitable in view of all the circumstances of the case. In such cases all that can be done is to make a recommendation to the 'appropriate Government' to take action under Sections 401 and 402 of the Code of Criminal Procedure. When a Sessions Judge or a Magistrate passing a sentence wishes a case to be brought to the notice of appropriate Government for remission or commutation of the punishment he should submit the recommendation with his proceedings through the High Court otherwise the High Court may hear in appeal a case in which the Government has remitted or commuted the punishment, without knowing of such remission or commutation. 'Appropriate Government' for the purposes of Sections 401 and 402 of the Code has been defined in sub-section (3) of Section 402 of the Code (as amended by Adaptation of Laws Order, 1950). In this connection also see Articles 72 and 161 of the Constitution of India.

II. The Central Government has made the following rules in exercise of powers conferred by sub-section (6) of Section 401 of the Code—

Published in the Gazette of India, Part II—Section 3, dated November 19, 1955.

Ministry of Home Affairs, New Delhi-2, the 9th November, 1955.

S.R.O. 3491—In exercise of the powers conferred by sub-section (6) of Section 401 of the Code of Criminal Procedure, 1898, [Section 432 of new Code] (Act V of 1898) the Central Government hereby makes the following rules—

1. Where a petition for suspension of the execution of sentence of imprisonment or for remission of the whole or part of a sentence of imprisonment is made by or on behalf of a person sentenced to imprisonment for an offence against any law relating to a matter to which the executive power of the Union extends and the person sentenced to such sentence of imprisonment is in Jail, the execution of the sentence shall be suspended and such person released on parole, subject to the conditions specified in Rule 3, for such period not exceeding fifteen days, as may be necessary for obtaining the orders of the Central Government on the petition, if the State Government of the State in which such person is detained in jail is satisfied that the immediate release of such person on parole is rendered necessary by reason of any illness constituting a grave threat to the life of such person or of a parent, wife, husband or child of such person.

2. State Government ordering a release on parole under Rule 1 shall forthwith report the full facts and circumstances of the case to the Central Government while forwarding the petition to the Central Government and the Central Government may on consideration of the report and petition make such order as they deem fit.

3. A person released on parole under Rule 1 shall enter into a bond undertaking to reside during the period of his parole at a place specified therein and not depart therefrom without the previous permission of the State Government and to return to the jail in which he is confined on expiry of

the period of his parole, and to confirm to such other conditions as the State Government may consider necessary. (No. 40/32/55-Judl, I)