

SYNOPSIS

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301. Definitions:

In this Chapter,--

(a) "detained" includes detained under any law providing for preventive detention;

(b) "prison" includes,--

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

(ii) any reformatory, Borstal institution or other institution of a like nature.

302. Power to require attendance of prisoners:

(1) Whenever, in the course of an inquiry, trial or proceeding under this Sanhita, it appears to a Criminal Court,--

(a) that a person confined or detained in a prison should be brought before the Court for answering to a charge of an offence, or for the purpose of any proceedings against him; or

(b) that it is necessary for the ends of justice to examine such person as a witness, the Court may make an order requiring the officer in charge of the prison to produce such person before the Court answering to the charge or for the purpose of such proceeding or for giving evidence.

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(2) Where an order under sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by, the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate, to whom such Magistrate is subordinate.

(3) Every order submitted for countersigning under sub-section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.

**303. Power of State Government or Central Government to exclude certain persons from operation of section 302:**

(1) The State Government or the Central Government, as the case may be, may, at any time, having regard to the matters specified in sub-section (2), by general or special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained, and thereupon, so long as the order remains in force, no order made under section 302, whether before or after the order of the State Government or the Central Government, shall have effect in respect of such person or class of persons.

(2) Before making an order under sub-section (1), the State Government or the Central Government in the cases instituted by its central agency, as the case may be, shall have regard to the following matters, namely:--

(a) the nature of the offence for which, or the grounds on which, the person or class of persons has been ordered to be confined or detained in prison;

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- (b) the likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison;
- (c) the public interest, generally.

**304. Officer in charge of prison to abstain from carrying out order in certain contingencies:**

Where the person in respect of whom an order is made under section 302--

- (a) is by reason of sickness or infirmity unfit to be removed from the prison; or
- (b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or
- (c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or
- (d) is a person to whom an order made by the State Government or the Central Government under section 303 applies, the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining:

Provided that where the attendance of such person is required for giving evidence at a place not more than twenty-five kilometres distance from the prison, the officer in charge of the prison shall not so abstain for the reason mentioned in clause (b).

**305. Prisoner to be brought to Court in custody:**

Subject to the provisions of section 304, the officer in charge of the prison shall, upon delivery of an order made under sub-

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section (1) of section 302 and duly countersigned, where necessary, under sub-section (2) thereof, cause the person named in the order to be taken to the Court in which his attendance is required, so as to be present there at the time mentioned in the order, and shall cause him to be kept in custody in or near the Court until he has been examined or until the Court authorises him to be taken back to the prison in which he was confined or detained.

**306. Power to issue commission for examination of witness in prison:**

The provisions of this Chapter shall be without prejudice to the power of the Court to issue, under section 319, a commission for the examination, as a witness, of any person confined or detained in a prison; and the provisions of Part B of Chapter XXV shall apply in relation to the examination on commission of any such person in the prison as they apply in relation to the examination on commission of any other person.