

THE EXCHANGE OF PRISONERS ACT, 1948

ACT NO. 58 OF 1948

[10th September, 1948.]

An Act to provide, in pursuance of an agreement with Pakistan for the exchange of prisoners, for the of certain prisoners from India to Pakistan and the reception in India of certain prisoners from Pakistan.

WHEREAS an agreement has been reached between the Government of India and the Government of Pakistan for the exchange of certain classes of prisoners between the two countries;

AND WHEREAS it is necessary to provide in pursuance of the said agreement for the transfer of certain prisoners from India to Pakistan and for the reception in India of certain prisoners from Pakistan;

It is hereby enacted as follows:—

1. Short title and extent. — (1) This Act may be called the Exchange of Prisoners Act, 1948.

(2) It extends to the whole of India ¹* * *

2. Definitions.— In this Act, unless there is anything repugnant in the subject or context, —

(a) “prison” includes any subsidiary jail, judicial lock-up or police lock-up, and anyplace used for the custody of persons who are ordered to be detained under any law for the time being in force;

(b) “prisoners” means any person committed to custody in a prison on or before the 1st day of August, 1948 under the writ, warrant or order of any Court or authority other than a civil Court or Court-martial.

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(d) “transferable prisoner” means—

(i) in the State of Punjab ³[as it existed before the 1st November, 1956,] any prisoner who, being a Muslim, is willing to be transferred to Pakistan under the provisions of this Act, and

(ii) in any other part of India, any prisoner of such category as the Central Government may specify by notification in the Official Gazette who, being a Muslim, is willing to be transferred to Pakistan under the provisions of this Act.

3. Issue of warrants for transfer of prisoners.—The State Government may issue a warrant addressed to the officer in charge of a prison to deliver to the person presenting the warrant any transferable prisoner confined or detained in the prison, together with all the records relating to such prisoner and the personal effects taken from him at the time of his admission into the prison.

4. Removal and delivery of prisoners.—Upon the presentation of a warrant issued under section 3, the officer in charge of the prison shall forthwith comply with the warrant and obtain thereon the signature of the person to whom delivery of the prisoner, records and articles is made in pursuance of the warrant; and that person shall cause the prisoner, records and articles to be removed from the prison and delivered at such place, and to such authorised officer of Pakistan, as the State Government may, by general or special order, specify in this behalf.

5. Cessation of jurisdiction of Indian Courts and authorities over prisoners.—Upon the delivery of custody of a prisoner to an officer of Pakistan in accordance with the provisions of section 4, all Courts and authorities in India shall, save as otherwise provided in section 8 or for the purposes of that section, cease to have or exercise, in relation to the prisoner, any jurisdiction in respect of the offence or other matter which the cause of his confinement or detention in the prison.

1. The words “except the State of Hyderabad” omitted by Act 3 of 1951, s. 3 and the Schedule.

2. Omitted by the A. O. 1950.

3. Ins. by the A. O. (No. 3), 1956.

6. Lawfulness of custody and retaking upon escape.—It shall be lawful for any officer of Pakistan to whom the custody of a prisoner is delivered under the provisions of section 4 to receive and hold in custody such prisoner and to convey him out of India, and if the prisoner escapes from such custody within India he may be retaken as a person accused of an offence may be retaken upon an escape.

7. Transfer of records relating to transferable prisoners.—Where a prisoner is or is to be transferred to Pakistan under the provisions of this Act, the State Government may requisition the record of any proceedings, including judicial proceedings, relating to that prisoner from any Court or office, and may direct that such record shall be sent to the Government of Pakistan or the Government of any¹Province in Pakistan.

8. Prohibition of return of India of transferred prisoners.—(1) No person who has been transferred to Pakistan under the provisions of this Act shall return to India except with the permission in writing of the Central Government.

(2) If any person contravenes the provisions of sub-section (1), he shall be punishable with imprisonment for a term which may extend to three years, and if at the time of his transfer to Pakistan, he was undergoing a sentence of imprisonment in India, he shall further be sentenced to undergo the unexpired portion of such sentence without taking into account any period for which he may have been detained or confined in Pakistan after the transfer.

(3) If at the time of his transfer to Pakistan, the person contravening the provisions of sub-section (1) was undergoing trial in any Court in India for any offence, he shall, without prejudice to the provisions of sub-section (2), be liable to be tried for such offence by the same or any other Court having jurisdiction:

Provided that if such person has, before his return to India, been tried for the offence by a Court of competent jurisdiction in Pakistan and convicted or acquitted of the offence, he shall not be liable to be tried again for the same offence by any Court in India.

9. Reception in India of prisoners transferred from Pakistan.—(1) The Central Government may, by general or special order, specify the place or places at which, and the officer or officers to whom, the custody of prisoners confined or detained in Pakistan is to be delivered in pursuance of the agreement reached in this behalf between the Government of India and the Government of Pakistan.

(2) It shall be lawful for any such officer as aforesaid to receive and hold in custody any prisoner so delivered and to convey such prisoner to any prison in a State of India for being dealt with in accordance with law; and if the prisoner escapes from such custody he may be retaken as a person accused of an offence against an Indian law may be retaken upon an escape.

10. Repeal of Ordinance 6 of 1948.—(1) The Exchange of Prisoners Ordinance, 1948 is hereby repealed.

(2) The repeal by this Act of the said Ordinance shall not affect the previous operation thereof, and any order made, action taken, or thing done, in the exercise of any powers conferred by or under the said Ordinance shall for all purposes be deemed to have been made, taken or done in the exercise of powers conferred by this Act as if this Act had commenced on the 20th day of April, 1948.

1. The word “province” stands unmodified, cf. the A. O. 1950.