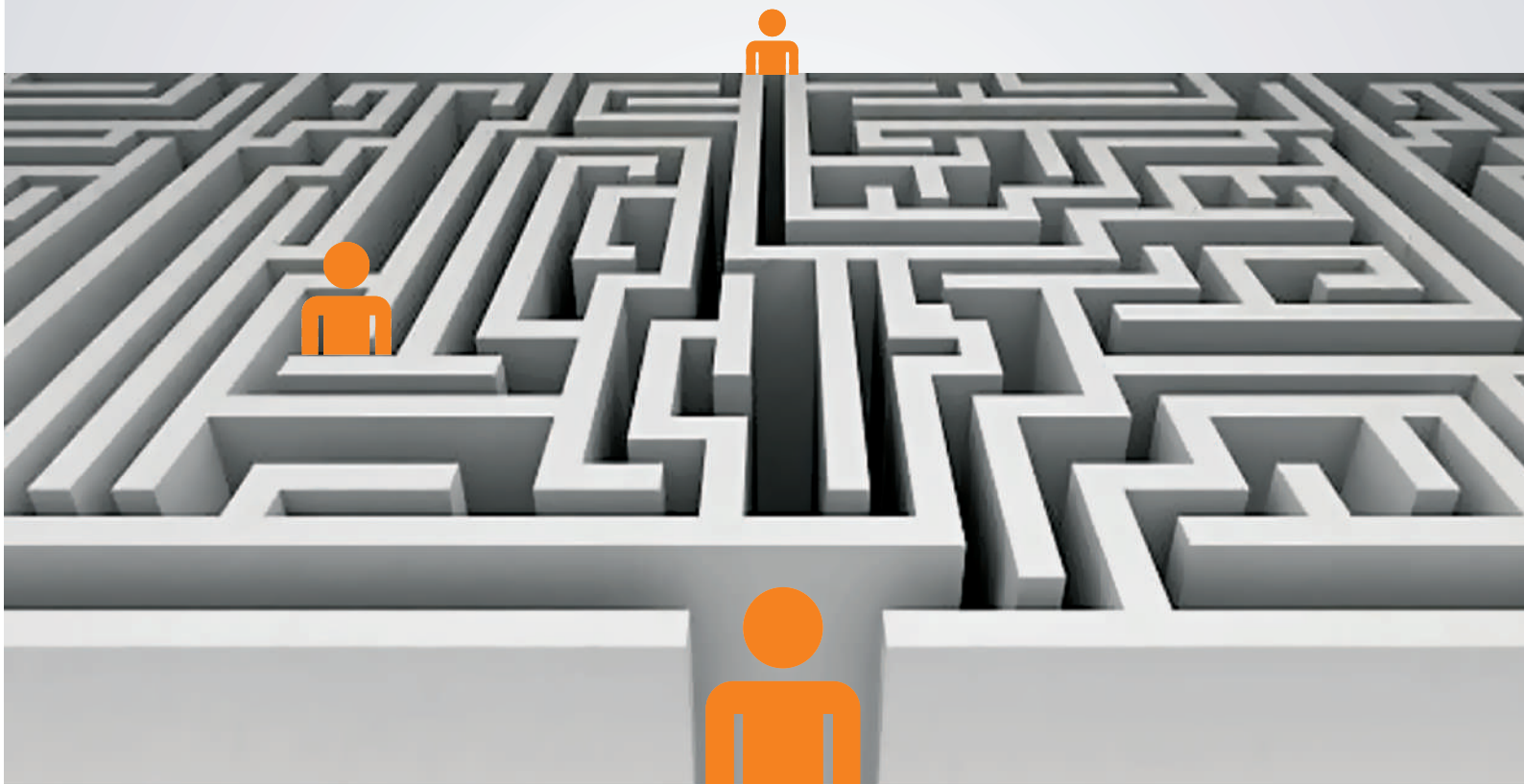


CHRI 2017

BRINGING THEM HOME



Repatriation of Indian Nationals from Foreign Prisons A Barrier Analysis



CHRI

Commonwealth Human Rights Initiative
working for the *practical* realisation of human rights in
the Commonwealth

Commonwealth Human Rights Initiative

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Bringing Them Home

Repatriation of Indian Nationals from Foreign Prisons
A Barrier Analysis

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About the Report

This report has been prepared by the Commonwealth Human Rights Initiative in 2017, under its Prison Reforms Programme. The Institute of Correctional Administration, Chandigarh, set up by the Government of India in 1989 for imparting training to prison and police officers and advancing research activities on prison administration and human rights, was an extremely valued partner in this project with its shared concern for the rehabilitation of Indian nationals in foreign prisons.

Hundreds of thousands of Indian nationals are known to travel abroad irregularly every year and many thousands more by due process. Some of them come into conflict with law because of offences committed due to personal circumstances, ignorance of the law in the foreign country or lack of authentic travel documents. Several are compelled to languish behind bars because of their poverty, inadequate consular access and legal assistance, lengthy application processing time of Government of India, and insufficient information about rights and procedures to complete their sentence in the prisons of their home country.

Under the Repatriation of Prisoners Act, 2003 and the transfer arrangements entered both bilaterally with 30 countries and multi-laterally, the Government of India is obliged to ensure the rehabilitation of sentenced prisoners by letting them serve part of their sentence in their home countries closer to their families. In August 2017, 7620 Indian nationals were known to be in the prisons of 86 foreign countries. As many as 5269 (70%) of them were in the prisons of only 28 out of more than 50 countries where treaty arrangements were known to exist. The domicile status of a very small number of 226 Indian nationals, i.e., 3% alone, was known to Indian authorities. The trial details of only 3646 of the 7620 prisoners (48%), was known to the Indian Missions and Government of India. Relevant to this study, 2095 of the 3646 prisoners (57%) were sentenced prisoners. Has anything changed since the time of the research? By March 2018, the number of Indian nationals in foreign prisons had grown to 7850, but the pool of information about them had shrunk. The trial and sentence details were not available except for those who had completed their sentence. Information of only 360 Indian nationals who had completed their sentence and were awaiting deportation or release was known to Gol. Domicile and gender information were equally scanty.

In 2017, the Minister of State for External Affairs informed the Parliament that since 2003, Government of India had received 171 applications for transfer from Indian prisoners abroad of which only 61 (36%), have led to actual transfer into India. By March 2018 only 2 more actual transfers could be reported by the same office to the Parliament, thereby revealing once again the constraints of transfers.

Bringing them Home identifies the policy and practical factors hindering efficiencies in the transfer process at more than thirty checkpoints encompassing the stages of application screening, verification of nationality, sentence adaptability, issuing of travel documents, and various permissions and clearances to be obtained for the final movement of the prisoner. It presents the bottlenecks experienced by key stakeholders like the Indian Missions, the Ministry of Home Affairs, Ministry of External Affairs, Ministry of Law, the State Home Departments and Police and Prison Departments in executing their duties. It identifies a governance framework by which these could be removed, supported by suitable policy changes, procedural guidance and monitoring, inter-agency coordination, transparency, budgetary and technological solutions. *Bringing them Home* calls upon stakeholders to prioritise prisoner transfers with a strong political will and capacities that are vital to reducing the alienation of Indian nationals in foreign prisons from their own country and families.

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The Commonwealth Human Rights Initiative (CHRI) prepared this report as a response to the increasing incarceration of Indian nationals in foreign prisons and to probe and suggest ways of removing barriers to their transfer into India. It was also an opportunity to explore the missing side of its consistent work on the repatriation of foreign national prisoners from India.

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Abbreviations

CAG:	Comptroller & Auditor General
CCTNS:	Crime and Criminality Tracking Networks and Systems: E-governance project of Government of India for integrated system of effective policing
CHRI:	Commonwealth Human Rights Initiative
CrPC:	Criminal Procedure Code
CID:	Criminal Investigation Department
CPV:	Consular, Passport & Visa Division of the Ministry of External Affairs
CS:	Centre-State Division of the Ministry of Home Affairs
DoPT:	Department of Personnel & Training of the Government of India
DYSP:	Deputy Superintendent of Police
FNO:	Foreign National Offender (term used for sentenced prisoner in UK)
GoI:	Government of India
Guidelines:	Guidelines of the MHA prepared by the Ministry of Home Affairs in 2015 for the transfer of sentenced prisoners for the implementation of the Repatriation of Prisoners Act, 2003
IB:	Intelligence Bureau
ICA:	Institute of Correctional Administration
IP:	Internet Protocol
IPC:	Indian Penal Code
KPI:	Key Performance Indicators
MHA:	Ministry of Home Affairs
MEA:	Ministry of External Affairs
MoL:	Ministry of Law
NCB:	Narcotics Control Bureau
NCRB:	National Crime Records Bureau
NIC:	National Informatics Centre
NHRC:	National Human Rights Commission
NOC:	No Objection Certificate
NOMO:	National Offender Management Office (Part of UK Home Office)
PLIS:	Productivity Linked Scheme introduced by the Ministry of External Affairs for Passport Officers
PTA:	Prisoner Transfer Agreement
RPA:	Repatriation of Prisoners Act, 2003 legislated by Government of India

RPR/Rules 2004:	Repatriation of Prisoners Rules, 2004
SHO:	Station House Officer
SHRC:	State Human Rights Commission
SP:	Superintendent of Police
UK:	United Kingdom
UNODC:	United Nations Office on Drugs and Crime

1. Introduction

Transfer of Sentenced Prisoners into India

The number of Indian nationals in foreign prisons has been increasing over the last few years. The number of transfers into India, however, has been relatively of small number despite India's legislation on prisoner transfers under the Repatriation of Prisoners Act, 2003. This report is an attempt to identify policy and on-ground barriers responsible for this gap between incarceration and transfers. At a policy level, the research asks whether provisions of transfer into India are substantively dealt with; whether there is sufficient guidance put in place with operational procedures for implementation, review and monitoring to ensure the rehabilitation objectives of the Repatriation of Prisoners Act, 2003. At a practical level, it tracks the checkpoints in the process. Are they all necessary? Are existing policy provisions being implemented on ground? What difficulties are faced by duty holders at the Centre and state levels in this? what initiatives could improve the efficiency of the process, and whether these initiatives should be technological, infrastructural, legal, oriented towards creating more guidance and accountability, or motivated towards capacity development of stakeholders? The information furnished in this study relies on responses of Government of India to Parliament in 2017, responses of Indian Missions and Ministries to right to information requests and interactions with stakeholders at the Centre and state levels. Graphs and tables of information are provided in the Annexures. Since 2017, there has been new data furnished by Gol in Parliament in 2018. A comparative table of the imprisonment data of Indian nationals in foreign prisons in August 2017 and March 2018 has been provided in the Annexures for reference.

The report structure combines a review of policy issues and materials as well as challenges and barriers to implement on ground. Thus each chapter articulates both issues - policy issues and outlines in varying detail the barriers that exist on ground. Each chapter is stand alone and whole in itself in outlining the problem and resolutions to them. We would like to emphasize the final chapter which lays down a process of regular review of the process affecting all relevant stakeholders, including prisoners so there is a sense of swiftness and justice to the process.

The humanitarian and legal framework for transfer of foreign prisoners: The humanitarian need for the transfer of foreign prisoners to their own country emerges from the disadvantages they face due to language, culture, lack of knowledge of legal system, economic disadvantage and other differences that create barriers in access to justice and also pose challenges for stay inside prison, both for prison authorities and inmates. The pain of incarceration is exacerbated by isolation and difficulties of family contact as well as greater anxiety and emotional hardship for the prisoner's family in having a family member in prison abroad.¹ Foreign prisoners, who in practice do not enjoy all the facilities accorded to nationals and whose conditions of detention are generally more difficult, should be treated in such a manner as to counterbalance, so far as may be possible, these disadvantages.² Further, as the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in 1980,³ affirmed, the chances of successful settlement and reintegration at home are better as families may provide the social capital and support.⁴

The transfer of sentenced prisoners is also well supported in international human rights law like the International Covenant on Civil and Political Rights (ICCPR). Article 10 of ICCPR states that the essential aim of a penitentiary system is the "reformation and social rehabilitation" and under Article 12 enshrines that no one shall be arbitrarily deprived of the right to enter his own country.

1 Upneet Lalli and Praveen Kumari. "Repatriation of Prisoners: Legal Issues and Development in India". RGNUL Review, Volume V, Number II, 2015.

2 13, Council of Europe, Committee of Ministers, states in Recommendation No. R (84) 12 Concerning Foreign Prisoners.

3 Held at Caracas-Venezuela, 25 August-5 September, 1980.

4 Upneet Lalli and Praveen Kumari. "Repatriation of Prisoners: Legal Issues and Development in India". RGNUL Review, Volume V, Number II, 2015.

The process of international transfer was given a considerable boost by the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders which met in 1975. The Sixth Congress adopted resolution 13 on the transfer of prisoners in which Member States were urged “to consider the establishment of procedures whereby such transfers of offenders may be effected, recognizing that any such procedure can only be undertaken with the consent of both the sending and the receiving countries and either with the consent of the prisoner or in his interest”. As a result, the Seventh Congress adopted the Model Agreement, together with the recommendations on the treatment of foreign prisoners.⁵ The transfer and rehabilitation of sentenced foreign national prisoners found cognizance under the European Convention on the Transfer of Sentenced Persons, giving foreigners convicted of a criminal offence the possibility of serving their sentence in their home countries.⁶ Following this, in 1985, the UNODC drafted the UN Model Agreement on the Transfer of Foreign Prisoners. The Preamble of the Model Agreement affirmed that the social resettlement of offenders should be promoted by quickly facilitating the return of persons convicted of crime abroad to their home country to serve their sentence.

Why are Indian Nationals in Foreign Prisons: Several Indian nationals have been known to die in foreign prisons or languish there without legal aid and assistance. Over the last years, questions have been raised in Indian Parliament regarding the number of Indian nationals in foreign prisons, the reasons why they are there and the efforts made by Indian Missions to reach them. The figures are complex and new additions and changes are made officially without explanations barring the very minimum to Parliament.

Despite the enabling legal-procedural framework and 30 bi-lateral agreements and transfer arrangements with countries who are signatories of the Inter-American Convention, the number of Indians in foreign prisons has consistently gone up since 2015.⁷

The Ministry of External Affairs' answer to Parliament in March 2017 identifies the following reasons why Indian nationals are in foreign prisons:

- Violation of immigration rules such as overstay and illegal entry
- Non-possession of valid travel documents
- Economic offences
- Violation of employment contracts
- Working without a valid visa/permit
- Consumption of alcohol in countries that have prohibition
- A few Indians are also in foreign jails for grave offences like drug trafficking, theft, murder etc.
- Various articles seized from them include VOIP set along with SIM cards, fake passports, narcotic drugs, fake currency, boats, GPS, stimulating tablets, foreign currency and gold
- Apart from those lodged in foreign jails, Indian fishermen operating in waters between India and its neighbouring countries like Bangladesh, Pakistan and Sri Lanka are regularly apprehended by these nations for allegedly entering their territory. Most of them are released later along with their boats depending on agreements with these countries. More than 4000 Indian fishermen have been apprehended by these three countries since 2013.

Another reason as suggested by a question in the Parliament as recently as 19 July 2017 concerns specific steps taken by the Indian government on consular access, speedy trials and

⁵ UN Model Agreement on the Transfer of Foreign Prisoners and Recommendations on the Treatment of Foreign Prisoners Adopted by the Seventh Crime Congress, Milan on 26 August-6 September 1985, and endorsed by the General Assembly in resolution 40/32. Refer Annexure AI. p 242.

⁶ An international treaty regulating the extradition and social rehabilitation of imprisoned persons which entered into force on 1 July 1985. It has been ratified by 65 countries, including every country of the Council of Europe except Monaco. It has also been ratified by 19 states outside the Council of Europe, including Australia, Canada, Israel, Japan, South Korea, Mexico, and the United States. The GoI has recently signed the Council of Europe Convention on the Transfer of Sentenced Persons in January 2018. Refer Annexure AC. p 218.

⁷ Refer Annexure V. Table 1: How many Indian Nationals are Lodged in Foreign Prisons and Where p 200. Also refer Annexure AA for the Inter-American Convention on Serving Criminal Sentences Abroad. p 208.

quick judgments. The response of the the MEA in Parliament in July 2017 points to 7448 Indian nationals in foreign jails in 81 countries, and the efforts made by Indian Missions to provide consular access to the detained/arrested Indian national to confirm his Indian nationality and ensure his/her welfare as well as efforts to provide help, advice and guidance ensuring fair and humane treatment in foreign jails, repatriation to India of those who are released and issue of emergency certificates, to request the local governments for grant of amnesty to the arrested Indians and to forward mercy petitions for remission of sentences received from the family members of the Indian prisoners to the foreign office or local authorities.

Yet another reason indicated in the response of the Minister of State in the Ministry of External Affairs in Parliament between 2015 and 2017 reveals that the strict provision of privacy laws in the United States of America, Canada, Australia and many countries in Europe which do not share information about Indian nationals in their prisons constitutes a major problem in facilitating release or return and why, therefore, the numbers are either uncertain or do not come down over the years.

In this context, an UNODC study done in 2010 titled, "Smuggling of Migrants from India to Europe and in particular to UK: A Study on Punjab and Haryana" by K.C. Saha, points out that there is a rising trend in Punjab youth towards irregular migration despite its high cost, and the pattern has now spread to new areas in Punjab, to Haryana, Himachal Pradesh and Jammu & Kashmir. According to this study, one of the main reasons why Indian nationals land up in foreign prisons, is for travelling without valid documents.⁸

On the face of it, India may appear more efficient in getting its own nationals back to its prisons as compared to sending its foreign prisoners back to their home countries. For instance, while ten foreign national prisoners were repatriated in 2015 to their respective countries, a total of forty-six prisoners were already repatriated to Indian prisons at the time of answering this question in 2015.⁹

However, this impression gets easily belied in 2016 when the number of Indians lodged in foreign prisons increased from 6290 in 2015 to 6800 in 2016, provoking a question in the Parliament on whether delays in their release had been noted, the details and reasons thereof, drawing attention to the facilitative role of Indian Missions and local governments' visa processes. The number further increased to 7059 in March 2017 and to 7448 in July 2017 as provided in the MEA's answers to questions raised in Parliament. It is this rising number despite the legislation on transfer of sentenced prisoners, rules, procedural guidelines and treaties which prompts the study. The concern seems vindicated towards the end of the study with the more recent information on growing detentions of Indian nationals in foreign prisons to a total of 7620 in 86 countries as provided by the Minister of State for External Affairs to Parliament on 10 August 2017. This shows that the number of Indian nationals in foreign prisons has gone up by a few hundreds in the span of a mere month. Significantly, only the details of 3646 prisoners out of total 7620 are known to the Indian Missions, and relevant to this study, 2095 of the 3646 prisoners are sentenced.¹⁰ With respect to countries where India has signed treaties and its responsibility is higher, 4935 prisoners were found in 23 of the countries in March 2017. In August 2017 this number had increased to 5269 prisoners in 28 'treaty' countries.¹¹

The Indian Legal Framework: The GoI is guided by the Repatriation of Prisoners Act, 2003 that was enacted by Indian Parliament in 2003 and came into force on 1.1.2004, Repatriation of

8 Saha states that according to the MEA, between 2000 to 2004, more than 20,000 youths from 6 districts (Jalandhar, Nawanshahr, Gurdaspur, Amritsar, Hoshiarpur) of Punjab, mainly from the Doaba region, who have been drawn to irregular migration to countries like USA, Canada, Australia, England, Germany, Italy, Greece, Spain, France, Belgium, Austria, New Zealand, Netherlands, Hong Kong, Dubai, Kuwait and other parts of the United Arab Emirates were held in detention by foreign police authorities and faced deportation for not travelling on valid travel documents. This means, on an average, more than 4,000 Indian nationals migrate irregularly every year which virtually means more than 14 people every day.

9 Refer Annexure W. Table 2: Transfer of Prisoners into and from India. p 201.

10 Refer Annexure X. Table 4: Facts at a Glance: Status of Transfer of Indian Nationals from Foreign Prisons. p 202. Also refer Annexure W. Table 2: Transfer of Prisoners into and from India. p 201.

11 Refer Annexure Y. Table 5: Details of Countries Where Treaties are Signed. p 203. On 7 March 2018 the Minister of State for External Affairs provided updated figures in Parliament on the number of Indian nationals in prisons of foreign countries. According to these figures, there are 7850 Indian nationals in prisons of 78 countries of which 360 were known to have completed their sentence. But no information was provided on the sentence status of remaining 7490 Indian nationals.

Prisoners Rules which were published in the Official Gazette on 9.8.2004 Rules and the Ministry of Home Affairs' Guidelines for the Transfer of Sentenced Persons for the Implementation of Repatriation of Prisoners Act, 2003 issued in 2015. The Act was enacted with the objective to facilitate the transfer of foreign nationals convicted in India to their home countries and convicted prisoners of Indian origin brought to India to serve the remaining part of their sentence nearer home which would facilitate in their social rehabilitation.¹² The Guidelines formulated by the Ministry of Home Affairs are intended for procedural guidance to multiple stakeholders engaged in executing transfer of prisoners to their respective home countries. These lay down eligibility criteria, stages, stakeholders, timelines, coordination and monitoring structures.

Pursuant to the Act coming into force in 2004, India has signed bi-lateral agreements with thirty countries, and has transfer arrangements with signatory countries of the Inter-American Convention on Serving Criminal Sentences Abroad, and recently with the signatories of the Council of Europe's Convention on Transfer of Sentenced Persons.¹³ The treaties are negotiated or guided by a Model Treaty/Draft Agreement referred to as the Indian Standard Draft Agreement was prepared by MHA in consultation with Ministry of External Affairs and Ministry of Law.¹⁴ The Model Agreement is more comprehensive than the Repatriation of Prisoners Act which has broad provisions for the part dealing with transfer into India, leaving it too much open for negotiation with too few safeguards.

Other Frameworks for Transfer: It is important to recognize that other than the Repatriation of Prisoners Act, 2003, there are other arrangements by which transfers take place. Several bilateral and multilateral instruments have been signed for transfer of foreign prisoners. In India, other than under the Repatriation of Prisoners Act which is essentially targeted at sentenced prisoners who can serve the remaining part of their sentence, various other transfer frameworks exist for other categories of prisoners including those who may have finished their sentence. There are transfer agreements specific to immigration and visa policies and their violations. Such important bilateral transfer frameworks are to be seen in the case of Pakistan and Sri Lanka. Illustratively, in the case of Pakistan, there is the Agreement on Consular Access, 2008¹⁵ and India-Pakistan Joint Judicial Committee, 2008.¹⁶ Similarly, the Indo-Sri Lanka transfer framework comprises not only the India-Sri Lanka Prisoner Transfer Agreement, 2010, but also the Agreement on International Maritime Boundary Line (IMBL) in accordance with the international rules of 1974 and 1976, respectively (Palk Strait and Gulf of Mannar); the Indo-Lanka Joint Fisheries Committee: Bilateral mechanisms of Joint Working Group (JWG) between India and Sri Lanka for Cooperation in Fisheries and issues related to early release of fishermen and related matters. Transfer of prisoners may also take place where there may be no bilateral or multi-lateral transfer agreement, mainly through letters of reciprocity.

Conditions & Guidelines for Transfer: As reflected in the Standard Draft Agreement, some basic conditions for transfer are: (i) The person is a national of the receiving State; (ii) The judgment is final and death penalty has not been imposed on the sentenced persons; (iii) No criminal proceedings are pending against the sentenced person in the Sentencing/Transferring State in which his/her presence is required; (iv) The sentenced person has not been convicted for an offence under the military law; (v) At the time of receipt of the request for transfer, the sentenced person still has less than six months to serve, barring some exceptional cases or is undergoing a sentence of life imprisonment; (vi) The acts or omission of which that person was sentenced in the Sentencing State are those which are punishable as a crime in the Receiving State, or would constitute a criminal offence if committed on its territory.¹⁷

12 Upneet Lalli and Praveen Kumari. "Repatriation of Prisoners: Legal Issues and Development in India". RGNUL Review, Volume V, Number II, 2015.

13 Refer Annexure AA and AB for the text of the two Conventions p 208 and p 218.

14 Lalli and Kumari. Above stated. The MEA circulates this model treaty/standard draft to all interested countries through the Indian Missions abroad. This is important, especially in countries where large number of Indian nationals are working, such as in the Arab countries. Refer Annexure C for details of the Standard Draft Agreement.

15 Agreement on Consular Access, 2008 - Consular access must be provided within 90 days of arrest of either country's prisoners. It is intended to aid the verification of the person's nationality and enable necessary steps to repatriate the person to his or her country of origin.

16 India-Pakistan Joint Judicial Committee, 2008: Consists of retired judges from both countries. Its mandate requires it to meet every six months; seek early repatriation of those prisoners in the respective countries who have completed their prison sentences; ensure humane treatment to all the prisoners regarding food, health, special needs of women prisoners, mentally challenged and juvenile prisoners. But this joint judicial committee has not met since 2014.

17 Answer of the Minister of State for External Affairs to question raised in Parliament on 7 March, 2018.

This study looks into the necessity and adequacy of these conditions vis-a- vis international standards on the transfer of sentenced foreign prisoners. It also addresses the harmony between obligations and conditionalities in the Repatriation of Prisoners Act, 2003, on the one hand, and the procedures laid down in the 2015 MHA Guidelines on Transfer of Sentence Prisoners, on the other.

Procedure for Repatriation: The Ministry of Home Affairs (MHA) oversees the entire process of verification that is conducted by the Indian Missions, Ministry of External Affairs (MEA) and state security agencies; sentence adaptation carried out by the Ministry of Law and agencies dealing with drug and custom related offences, the approval of the Home Minister's Office and the co-ordination between the countries required for the issuing of travel documents and warrants and flight arrangements.

While the central agencies like the MHA and MEA have a supervisory role vis-à-vis all other agencies and coordination with foreign country's Ministries, states have a role not merely in prison selection and arrangement of escorts but in nationality verification and significantly, in determining early release, remission, sentence suspension and pardon which are an important, even if currently subdued part of sentence adaptation. Indian Missions have a role to play right from the first point of contact with prisoners for consular access to vetting their applications, verifying their nationality, issuing travel documents and facilitating their transit.

Objectives of the Barrier Analysis: The number of Indian nationals in prison points to both policy and practical barriers being responsible. This report seeks to identify these.

The barrier analysis, therefore, had the following objectives:

- A. Enquire into India's legal obligation framework for voluntary transfers of Indian prisoners from foreign countries and the step-by-step operationalisation of repatriation by the different stakeholders mandated under the given framework
- B. Identify the checkpoints and barriers on paper and on ground (legal barriers and barriers in implementation) that affect transfer efficiency and numbers
- C. Probe the incentive framework for Indian state actors to prioritize this obligation and for Indian prisoners to voluntarily seek return to serve the rest of their sentence in their home state
- D. Compare the practices of selected Indian Missions which are the first port of call for prisoners and have a key role in prisoner transfers to assess what facilitates greater number of transfers from some Indian Missions such as in Sri Lanka and Mauritius as opposed to fewer transfers from UK and Canada
- E. Based on the above, provide recommendations for barrier-removal at policy and practice levels that Government of India can act upon to improve prioritization, timely and speedy return of Indian prisoners.

Advantages of a Barrier Analysis: A barrier analysis is the first step towards a cost-efficiency assessment on repatriation, indicating what interventions may yield regular and timely transfers to India, and additionally, build the preparedness of Indian stakeholders and if required, Indian prisons. An analysis with recommendations can (i) provide the Govt. of India an efficiency audit of its own repatriation processes that will help it to integrate appropriate controls, capacities and co-ordinations between its own agencies that would save their time and resources while fulfilling the international-national obligations on rehabilitation; (ii) identify areas for formulation of more informed Guidelines, SOPs and MoUs; (iii) illuminate the shortfalls in staff strength, coordination, capacity, competency, documentation, and compliance of stakeholders and suggest augmentation areas; (iv) provide an opportunity to instill cross-fertilisation of good policy and practice it shares with countries like Sri Lanka or Mauritius from where returns have been expedited in 2015 in greater numbers; (v) improve overall prison conditions that could motivate voluntary returns, for instance, reducing prison overcrowding or morbidity in states relevant to Indian prisoners in foreign prisons, improving prison budget, infrastructure, technology, appointments, staff-inmate ratio, accountability, training, efficiency.

The study intended to ascertain the process barriers at the stages and procedures laid down in the Repatriation of Prisoners Act, 2003, 2004 Rules, MHA 2015 Guidelines on Transfer of Sentenced Prisoners. The Methodology of the Analysis involving right to information requests, case analysis, stakeholder meetings has been appended as Annexure AD. The Ministry of Home Affairs issued Guidelines for the Transfer of Sentenced Prisoners under the Repatriation of Prisoners Act, 2003, on 10th August 2015. The Guidelines are intended for a range of stakeholders at Centre and state levels. Part A covers the process for repatriation of Indian prisoners imprisoned in foreign jails to India. It is titled “Repatriation of Indian Prisoner Imprisoned in Foreign Jails to India”. Part B covers repatriation of a foreign national from a prison in India to the foreign country. For the purpose of this report which addresses the transfer sentenced Indian prisoners in foreign prisons and barriers therein, we will deal primarily with Part A of the Guidelines that involve the obligations of the Centre, the State and Indian Missions.

- **Application Stage:** Prisoner’s request comes to the MHA through the Indian Mission or the foreign country with all the details of judgment and period of sentence remaining to be served, medical status, proof of nationality, Indian Mission or foreign country sends it to the MHA. Some of the aspects for consideration in the study were - who is eligible to apply; what are the procedures to apply and whether they are convenient; how long does application process take; is there accountability of stakeholders with adequate reporting and monitoring; is the prisoner informed of rights and procedures for transfer and assistance by Indian Missions and whether the assistance is adequate; whether Indian Missions have adequate guidance on reaching Indian nationals in foreign prisons.
- **Identity & Criminality Verification:** A checklist of documents to be verified by the MEA are provided under Annexure II of the 2004 Rules. The states have a role to play in nationality verification and in the verification of criminal records. What are the burdens on state security agencies and their competencies; what documents create the most delays; do they have technology at their aid; which are the agencies involved in the process of criminality verification and what the delay points?
- **Intelligence Processes:** The 2015 MHA Guidelines make an IB report mandatory for approval of repatriation to check the connections with national-international criminal gangs. The queries here were how does the IB prepare its report; how long does it actually take to prepare it; is it a bottleneck area; does its ‘black list’ pose a hurdle in verification and in giving a No Objection Certificate; which cases take more time and why; which get cleared and how?
- **Early Release & Remission:** States have a role to play in deciding/implementing jail remission, early release measures like parole and pardon. Are there bottlenecks here related to information to prisoners in foreign prisons and clarity in their entitlements.
- **Sentence Adaptability:** Transfer of a prisoner has to be preceded by a process of sentence adaptation. After identity verification and confirmation of the nationality by Indian Missions, MEA and state security agencies, the MHA seeks the No Objection certificate (NOC) from the Ministry of Law, the Narcotics Control Board, Customs and other agencies who help to adapt the sentence according to domestic laws. As per the 2015 MHA Guidelines the actors involved and deciding sentence harmonisation are the Ministry of Law, Narcotics Control Board, Customs, and other relevant Ministries. As per the UNODC standards on transfer of sentenced prisoners the sentence harmonisation can be undertaken by administrative or judicial bodies. The study looks into the actual process followed by Gol, how files move and decisions get taken at this stage to identify the legal and time challenges vis-à-vis different offence categories and aggravating factors for the prisoner. Further, the 2004 Rules supported by Annexure III provide the provision and format respectively, for an undertaking by the prisoner that he will not try to lower the sentence in his home country. The study wanted to check if this poses another hard barrier vis-à-vis prisoner consent or amenability.
- **Prisoner’s Consent:** It is not only the condition of prisons in India, the prisoner’s roots and ties in the ‘contracting’ country that could deter the prisoner’s consent, but whether he has received adequate information about repatriation process, sentencing policies, sentence adaptation in life imprisonment cases, early release and remission provisions,

the scope to appeal against his adapted sentence, and the prison he would be sent to. The 'verification' of prisoner's consent by Indian Missions becomes all the more necessary to ensure that all transfer requests are voluntary.

- **Monitoring Committee:** The 2015 Guidelines emphasize on a Monitoring Committee to finalise each case of repatriation and address pendency. This is headed by the Joint Secretary of the Centre-State division of the MHA and is supposed to meet monthly. Other functionaries of the committee are representatives from Ministry of External Affairs (the concerned territorial division of the MEA), Ministry of Law (MoL), Narcotics Control Bureau (NCB) and Customs, the security agencies like the Intelligence Bureau. Does the committee meet as per its mandate; how effective is its oversight; what efficiencies have been brought in through its supervision?
- **A 44 Day Rule:** The 2015 MHA Guidelines under Repatriation of Prisoners Act 2003 specify a 44 day time period for completion of all procedures for repatriation. Is it being followed? Is it practicably possible? How long does it actually take to finalise a case and why? Can the number of checkpoints and number of days be brought down? What are the bottlenecks – is it absence of caseworkers, absence of documents, or lack of departmental target setting? Which are the knotty cases that impede compliance to the 44 day rule? What efforts are undertaken at Central and State government levels in India to meet Gol's own timelines?
- **Permission of the Home Minister:** With NOCs from all agencies, the case is then put up for approval to the Home Minister who is the appropriate competent authority for acceptance or rejection.¹⁸ The consent or rejection is then communicated to the sentencing country. If all parties consent, i.e., the sentencing state, the receiving state, the prisoner, dates are fixed for transfer, flight is arranged and warrant is signed for transfer of the person. The process of approval by the office of the Home Minister that precedes every case of actual transfer, however, does not find any mention in the Guidelines.
- **Post-Approval & Transit Process:** This involves the issuance of warrants, travel documents, escort and flight arrangements, actual transit of the prisoner and handing over to the officer-in-charge of the prison selected in India. This stage and time taken are not accounted for in the Guidelines. The study attempted to put down the various checkpoints and barriers in the transit process.
- **Coordination between Centre-States-Indian Missions:** How do the different agencies work together in policy and practice at the different stages and checkpoints? Are all agencies of the Centre aligned with each other? Is there sufficient transparency? Are intra and inter-agency communication systems in place for timely action and prevention of loss of time? Are communication channels as efficient between Centre and state agencies as they ought to be?

Prisoner Motivation for Transfer to Home Country: Gol received 171 applications from Indian nationals in foreign prisons since the Repatriation of Prisoners Act was legislated in 2003. Only 61 of these cases have translated into actual transfers.¹⁹ The small number of applications received and processed into actual transfers in fifteen years is often attributed firstly, to the free will of the prisoner and secondly, to apparently better conditions of European and American prisons as compared to prison conditions in India. However, both are myths.

Free will is choice under constraint and awareness of all consequences. Can we assume the prisoner to be so aware? The willingness or readiness for transfer is not so much about free will but contingent upon factors like information to prisoner about his rights, opportunities for rehabilitation and process of repatriation; whether the Indian Mission has been able to reach him for legal assistance and apprised him of rights and consequences of his choice. In the absence of any studies done by the Gol on prisoner perception and motivation for transfer from foreign prisons, and being simultaneously aware of the many gaps in the outreach of Indian Missions towards prisoners in these countries, the research cannot comfortably

¹⁸ Lalli & Kumari. *ibid*

¹⁹ For the first time, the Ministry of External Affairs answered the question on total number of applications received from sentenced Indian nationals in foreign prisons and transfers executed by Gol between 2003 and August 2017.

attribute the small number of applications purely to lack of will of Indian nationals to serve their sentence closer home, a preference for better conditions in European and American prisons or desire to resume work upon completion of sentence.

Secondly, it is a myth that the “good prison conditions” in European and Canadian prisons are a magnet for Indian prisoners and a hurdle to repatriation and rehabilitation at home. While it might be true that food and health care in these prison systems might be better than what is available in Indian prisons and might act as a dissuading factor for prisoners with health concerns to return to India, these foreign prisons are not peaceful but marked by high level of violence. Media reports reveal that self-harm and assaults by staff and inmates in European and Canadian prisons have actually gone up in the last few years.²⁰ Support to prison monitoring mechanisms is also experiencing budgetary cuts, reducing the assumed advantages of greater safety of these prisons. Moreover, the cost of maintenance of a prisoner in these countries is far higher than that in Indian prisons making it a push factor from the side of the foreign country to reduce overcrowding of their prisons created by sentenced foreign national prisoners. The latter may be otherwise repatriated to their home countries. These foreign countries would be practically and administratively motivated to remove barriers to foreign national prisoners’ rehabilitation in their home country prisons. On the Indian side, cost of maintaining a prisoner is barely a dent on government resources and cannot be taken as a serious barrier unless the per day expenditure on an Indian prisoner goes up drastically. Over the years, prison overcrowding problems have also been addressed in relevant states like Punjab and Gujarat through new infrastructure and modernization efforts, reducing their chances of being real barriers to transfer of Indian nationals. Therefore, it makes logical sense for the research to direct its attention more towards delays and bottlenecks in process and decision making on transfers.

There is, perhaps, still a case to be made for overall improvement in prison administration in the states from where significant number of Indian prisoners in foreign prisons come from. It cannot at all be ignored that the Indian constitutional framework, prison laws, jurisprudence of the High Courts and Supreme Court, advisories of the Ministry of Home Affairs point to standards for incarceration which need to be upheld through efforts of budget, personnel, technology and training. While state level stakeholders who have had access to and interacted with repatriated prisoners have pointed to Indian nationals often having little objection to being transferred to district prisons closer to their families, this study came across cases where prisoners were insistent upon knowing the details of the prison to which they were being sent to in order to be able to give the undertakings necessary to complete their application process. This marks prison location and condition as a significant indicator for prisoner motivation. According to stakeholders, prison conditions need to improve, not merely for prisoners being transferred from better prisons in foreign countries but for all prisoners. This merits some discussion on prison conditions in the two relevant states, Punjab and Gujarat, that the study has been concerned with and relevant details are furnished in this report.²¹

20 Canada:<https://www.thestar.com/news/canada/2016/12/12/sudden-surge-in-prison-violence-a-problem-right-across-canada-experts-warn.html>.

UK: Latest Ministry of Justice data for England and Wales shows 38% rise in assaults on staff and 24% rise in self-harm incidents. Prison assaults and incidents of self-harm rose more than 70% from 2013 to 2016.

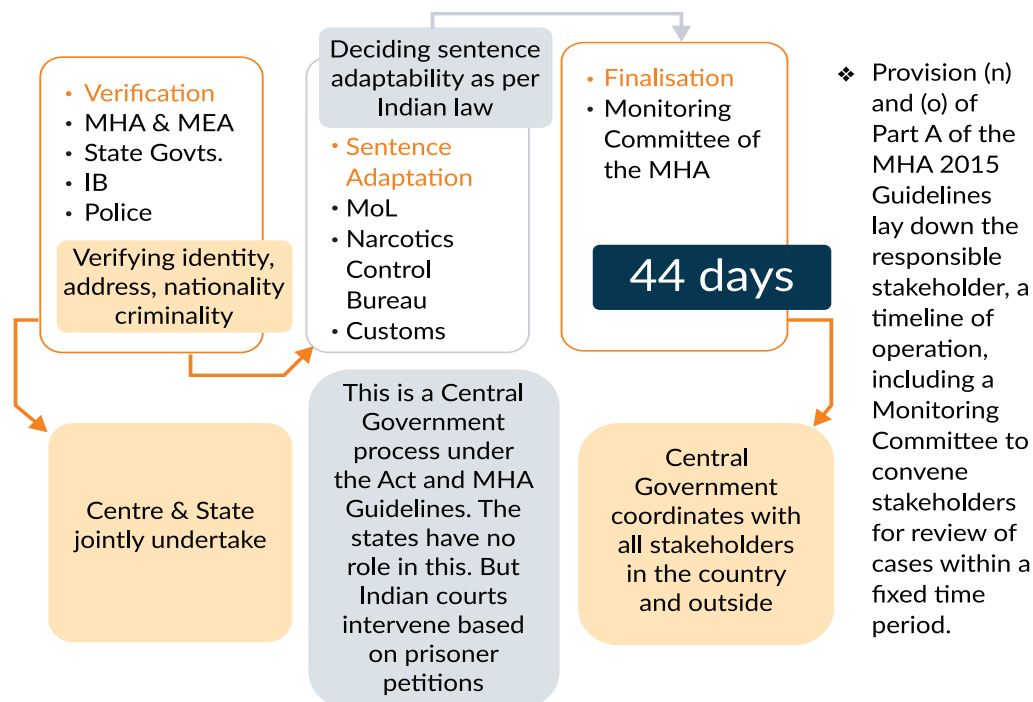
<https://www.theguardian.com/society/2017/apr/27/prison-statistics-reveal-big-rise-in-assaults-on-staff-and-self-harm>.

<https://www.theguardian.com/society/2017/jan/24/prisons-mental-health-death-in-custody>.

21 Refer Annexure Z: 10 Key Facts on Punjab & Gujarat Prisons. p 204.

Key Findings and Recommendations

The Stakeholders & Transfer Process in India: MHA 2015 Guidelines on Transfer of Sentenced Persons



MHA 2015 Guidelines do not mention how the actual physical transfer of the prisoner is to take place following the approvals from both governments and the consent of the prisoner.

How to Read Flowcharts A and B on Transfer of Sentenced Persons

The two flowcharts appearing on **pages 10-11 and 12-13** depict the transfer process for a sentenced Indian prisoner in a foreign country as per the legal framework in India and that of the country where the prisoner is lodged. The UK is taken as an example.

(A) Flowchart on the Transfer Process of Sentenced Indian Nationals into India is based on the Repatriation of Prisoners Act, 2003, Repatriation of Prisoners Rules, 2004, Ministry of Home Affairs Guidelines, 2015, Standard Draft Agreement of GoI and bilateral agreement.

(B) Flowchart on the Voluntary Repatriation of an Indian Offender in UK Prisons is based on the UK Repatriation of Prisoners Act, 1984, UK-India Prisoner Transfer Agreement, 2005, UK Home Dept. Guidance for Criminal Case work staff for repatriation of Foreign National Offenders (FNO), 2014.

Flowchart A is to be read from left to right and Flowchart B from right to left as indicated by the big arrow in the background. They map out the step by step process followed mainly by Government of India and Government of UK stakeholders respectively, from the time an application is moved by the sentenced Indian prisoner in the foreign country.

Each box represents a stage in the transfer process, indicating how a transfer request moves, the stakeholders responsible at each stage, their obligations, and the timeline they are required to adhere to in their performance.

Flowchart A indicates the primary checkpoints and the process to be completed within a 44 day timeline. It shows through the direction of small coloured arrows how the application moves from the sentenced prisoner through local authorities in the foreign country and the Indian Missions to the Ministry of Home Affairs in India which is the nodal agency supervising transfers into India. The transfer request then goes through a process of verification of nationality and criminality at the Centre and the State; followed by sentence adaptability and prison selection. The boxes around the flow chart explain the process as per the legal framework and mark out the points where reports and No Objection Certificates are required from authorities. The Monitoring Committee set up by the MHA is expected to navigate the transfer process and takes its decision on the transfer application. The final approval comes from the Home Minister's office and is followed by selection of escorts, issuing of travel documents, choosing of airlines and ensuring the physical transit of the Indian prisoner.

Flowchart B shows how the Cross-Border Transfer Section of the National Offender Management Office set up by the UK Home Department, supervises and directs the transfer requests of foreign national prisoners as the nodal agency. Each coloured box on the flowchart likewise indicates how a transfer application of a foreign prisoner moves through the offender management system, the stage and stakeholder responsible to complete the process. The text boxes around the flowchart detail specific aspects of the transfer process and draw attention to the legal provisions guiding the stakeholders and expected timelines for completion at the different checkpoints.

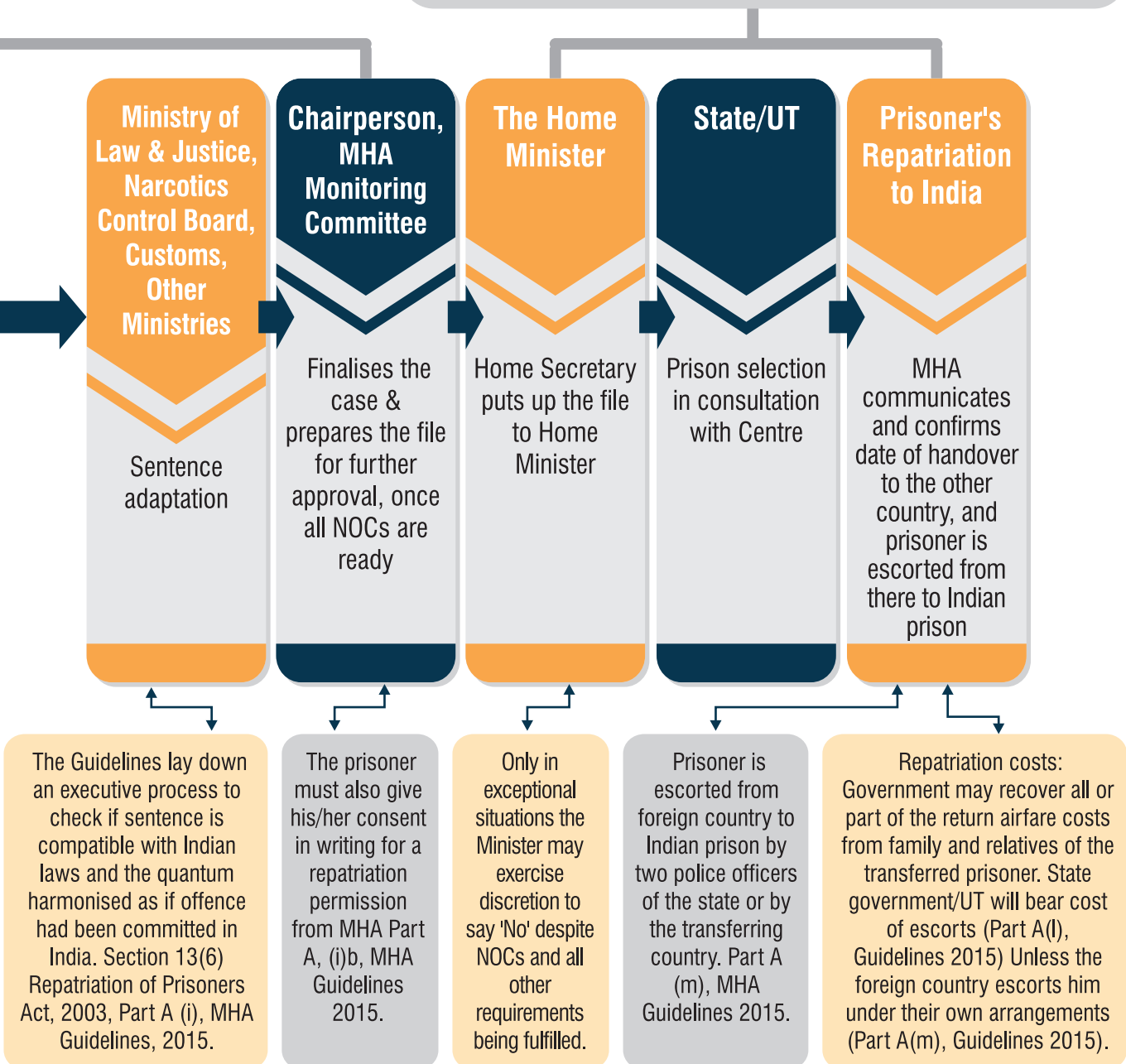
Transfer of Sentenced Indian Prisoners Into India



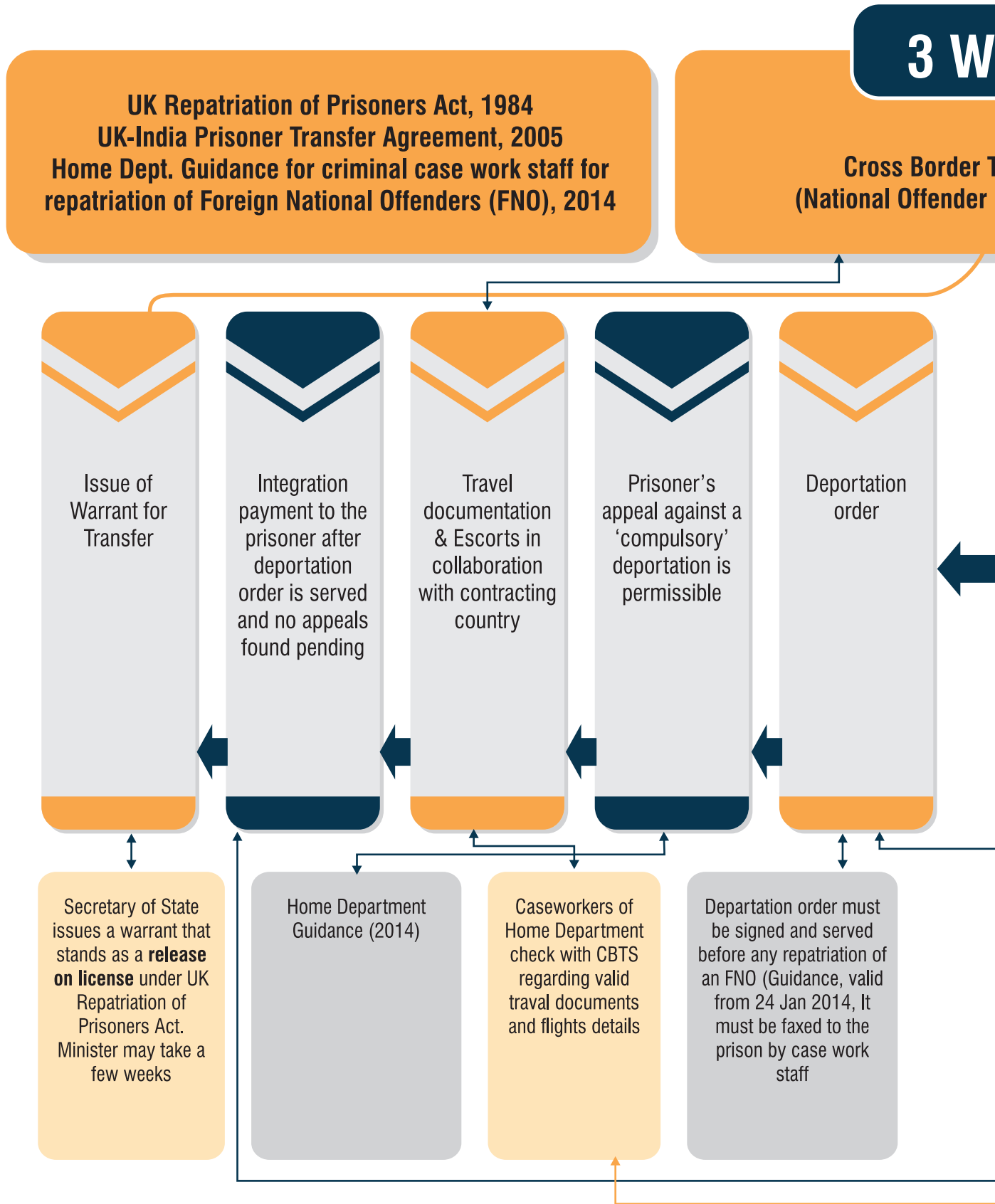
Legal Framework

- ⇔ Repatriation of Prisoners Act, 2003
- ⇔ Repatriation of Prisoners Rules, 2004
- ⇔ Ministry of Home Affairs Guidelines, 2015
- ⇔ Standard Draft Agreement of GoI
- ⇔ Bi-lateral & Other Transfer Agreements

From a Few Weeks to Eight Months or More



Voluntary Repatriation Process of an Indian O

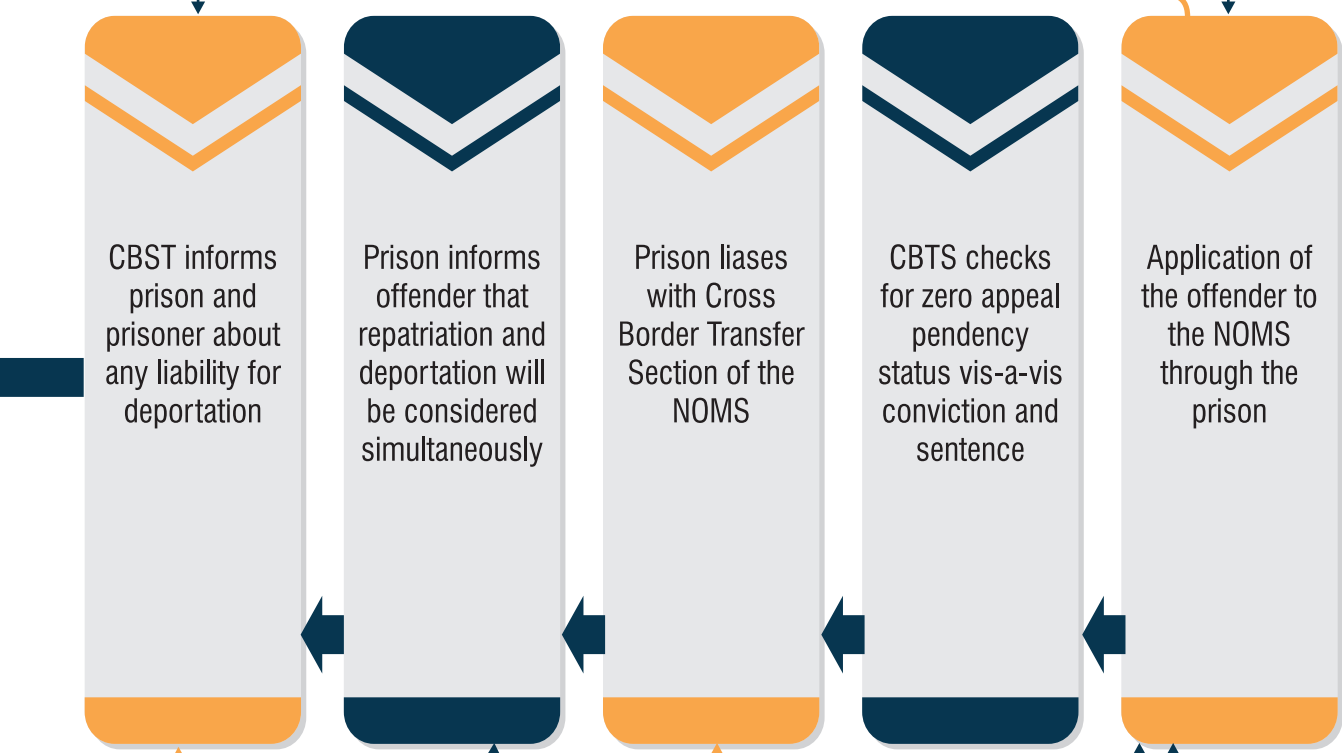


Offender in a Foreign Country: United Kingdom

Weeks

Transfer Section
(Management Office)

CBTS takes 2 weeks to process application of the offender up to the issue of warrant for transfer by the office of the Secretary of State. Cabinet Minister may take further 1 week to sign

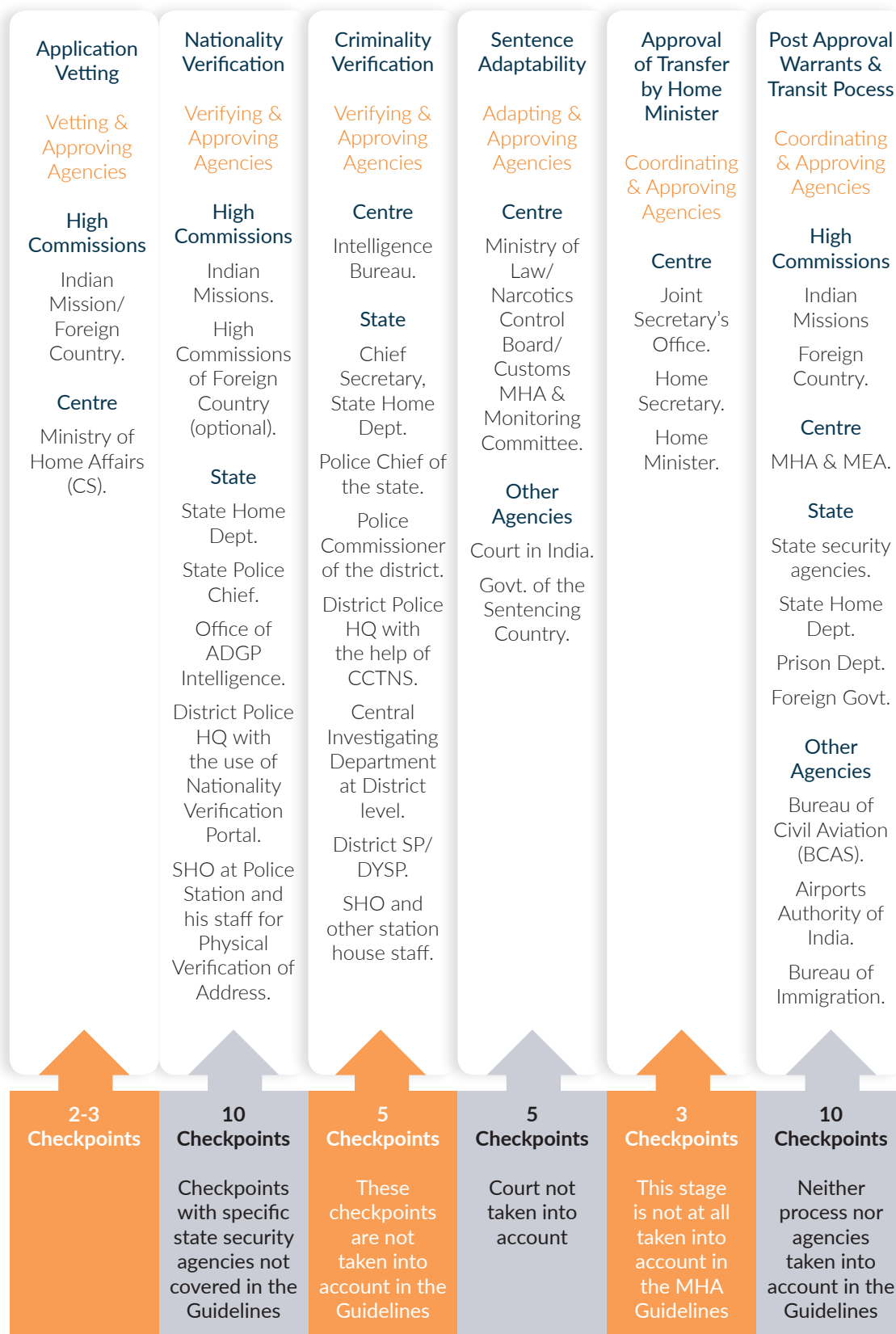


Facilitated Returns Scheme of UK Home Department
The Secretary of State arranges for free transfer. (Article 14 (Cross), UK India Prisoner Transfer Agreement & Guidance, 2014)

Automatic deportation order issued by CBTS/Home Office in case of offence under the UK Borders Act, 2007. Normal deportation orders issued in case of offence under Immigration Act, 1971 or Immigration (European Economic Area) Regulations 2006. (2014 Guidance)

The liability to deportation notice issued by CBTS must be sent to the prisoner's location and informed to him so he may raise 'exceptions' (except in UK Borders Act cases). In case repatriation takes place before deportation order can be issued, due to logistics of flights, caseworker to note that the person cannot be allowed re-entry. (2014 Home Department Guidance)

On Ground: More than 30 Checkpoints used by GoI to Transfer a Sentenced Indian Prisoner to India



Barriers to Transfer of Sentenced Indian Nationals in Foreign Prisons

1. Lack of Prioritisation

- Incompleteness in the provisions on transfers into India in the Repatriation of Prisoners Act, 2003, unlike in the legislation of Kenya, Tanzania or Canada, and lack of any detail in the 2015 MHA Guidelines on TSP with regard to the procedures for the Home Minister's approval and post-approval arrangements for travel documentation, technicalities of airlines and escorts, and consent and communication processes.
- Absence of targets, key performance indicators (KPIs), incentives and inadequate capacities with Gol Ministries, Indian Missions and the states vis-à-vis the reaching and informing of Indian prisoners abroad, and reducing the gap between applications and actual transfers.
- Unavailability of complete and updated data base with Indian Missions on Indian prisoners abroad segregated by gender, domicile, offence and trial status, affecting the reach and intervention by Gol.
- Absence of a portal initiative to tie up all parts and stakeholders in the transfer approval process that would reduce checkpoints and linearity.

2. Eligibility Criteria

- Difficulties posed for various categories of offenders to be transferred into India despite their Indian nationality due to restrictions in the 2015 MHA Guidelines on TSP.
- Discrepancies in the documents sought for transfer create a prolonged pre-application stage.

3. Verification Process

- Bottlenecks in nationality verification processes that take far longer than the ten days specified in the MHA Guidelines.
- Absence of utilisation of the Nationality Status Verification (NSV) Portal of the MEA for verification in transfer request cases and "viewing access" to the MHA.

4. Sentence adaptation

- Absence of a mandatory obligation on Gol to inform Indian prisoners abroad on remission and rehabilitation facilities/schemes upon transfer to Indian prison and post-release support.
- Lack of policy mention on right to appeal adapted sentence or its implementation as provided in Tanzania's Transfer of Prisoners Act, 2004.
- Inadequate procedural guidance on sentence adaptation for the MHA and other stakeholders to ensure a full-proof, fair and timely process with reasoned adaptation orders.

5. Transfer Funds

- Lack of a substantive transfer fund with the MHA.
- Inadequate utilisation to take care of repatriation costs of Indian prisoners.

6. Treaties

- Absence of treaties with countries where significant number of Indians are behind bars such as Nepal, Malaysia, China, Myanmar, Germany, Bhutan, Indonesia.

7. Prison budgets and capacities

- Inadequate budgetary allocation, sanction of personnel, technology with states to assure security, safety and dignity of all prisoners including those transferred.
- Vacancies in sanctioned posts.

Recommendations for Removal of Barriers

Policy Interventions

What the MHA can do

- Develop Mission Mode Projects with relevant states to fast-track repatriation of sentenced prisoners.
- Move legislative bodies for the amendment of Repatriation of Prisoners Act, 2003 to make it comprehensive.
- Revise 2015 MHA Guidelines on TSP or formulate SOPs to fill the stage wise gaps in procedures and protections; ensure predictability of functioning and accountability of stakeholders.
- Make suitable amendments to the Standard Draft Agreement to make it comprehensive for every stage and stakeholder on both sides and ensure equitable safeguards for repatriated prisoners.
- Include specific provisions for the transfer of terminally ill prisoners, juveniles or young offenders into India.
- Align the requirements in the formats for Application, Instructions, Checklist and Undertaking in the Repatriation of Prisoners Rules, 2004 to reduce confusion and burden on the prisoner.
- Revise the criminality verification criteria in the 2015 MHA Guidelines on TSP so that no Indian national is arbitrarily discriminated on that account. Modify the checkpoint to one that facilitates prison selection and rehabilitation.
- Include Sentence Review Reports from the foreign prison in the Application and Checklist formats to assess the prisoner's capacity for rehabilitation.
- Remove the discrepancies in Rules, 2004 concerning the prisoner's undertaking that they will not challenge the adapted sentence. The prisoner should only provide an undertaking that they will not challenge their conviction upon transfer.
- Include Gol's obligations in the Guidelines and SOP to inform sentenced Indian prisoners seeking transfers about their eligibility for parole, remission, pre-mature release and open prison standards in India.
- Prepare a Guidance document on Sentence Calculation having a comparative matrix of country-wise and state-wise provisions for offences and release.
- Mention in the Guidelines and the SOP the requirement for Action Taken Reports for each stage with timelines.
- Improve allocation of resources to the fund for prisoner transfer.

Mission Mode Project (MMP) is an individual project within the National e-Governance Plan (NeGP) of the Ministry of Electronics and Information Technology that focuses on one aspect of electronic governance, such as banking, land records or commercial taxes etc. Within NeGP, "Mission Mode" implies that projects have clearly defined objectives, scopes, and implementation timelines and milestones, as well as measurable outcomes and service levels. These can be Central Government projects, State Government projects or Integrated projects. E-governance projects on Passports and Immigration, visa, foreigners registration and tracking, are covered under MMP. Currently 44 Mission Mode Projects are being managed by Line Ministries and State governments.

Standard Draft Agreement is a Model Treaty prepared by the MHA, MEA and Ministry of Law & Justice. It guides the negotiation on transfer treaties to be signed between Gol and other countries.

What MEA can do

- Develop and sign MoUs with foreign country governments and their police for complete custody data of Indian nationals for better reach of Indian Missions.

What both Ministries can do

- Formulate a comprehensive SOP on the repatriation of Indian nationals from foreign prisons with all checks and balances.
- Sign treaties with the countries where large numbers of Indian nationals are imprisoned.
- Develop a Financial Incentive Scheme for ground level nationality and criminality verification officials in the states to speed up timely and authentic verifications, replicating the Productivity Linked Incentive Scheme (PLIS) model developed in the case of Passport Seva portal.

Productivity Linked Incentive Scheme (PLIS) is being implemented by the MEA to enhance the efficiency, responsive governance and accountability of the Passport Offices in the country. It is an incentive awarded after individual/group performance assessment and applicable to officials of Central Passport Organisations and cadre officials in the jurisdiction of the Regional Passport Offices.

Practical Interventions

What the MHA can do

- Stop the practice of accepting incomplete applications.
- Activate the Monitoring Committee formed under the 2015 MHA Guidelines for TSP. Headed by Joint Secretary (CS), MHA, it should convene monthly for case assessments and action to be taken.
- Develop an advisory or committee system to assist in sentence adaptation and related prisoner appeals.
- Make administrative and diplomatic efforts for reciprocal transfers by expediting repatriation of foreign nationals in Indian prisons to their countries.
- Improve the ratio between receipt of applications and ability to process through better record keeping and monitoring.
- Appoint law officers, case workers or interns with the MHA who can render legal assistance on cases, document and follow-up with the states and central agencies, courts and governments, prisoners and their families.
- Conduct regular training of jail officials to update and orient them regarding treaties signed, obligations of state actors, record keeping, rehabilitation.
- Improve the standards for safety and dignity of all prisoners with better prison management initiatives, budgets and investment in appointments and training.

What the MEA can do

- Incorporate repatriation of sentenced Indian nationals as a topic/agenda of discussion in the Annual Conference for Ambassadors.
- Engage the Indian Missions to gather, computerise and maintain more complete data of all Indian prisoners in foreign countries which includes their gender, domicile status, offence details, case and sentence status, and upgrade e-governance for facilitating their transfers.
- Provide viewing access to its NSV Portal to the MHA on requests concerning repatriation and co-monitoring.

- Popularise the MADAD portal in the states for use by prisoners' families in India and abroad.
- Undertake a study through Indian Missions, or with MEA's India Centre for Migration, on views of sentenced Indian prisoners in foreign countries regarding benefits and barriers to return.
- Undertake an assessment of the strength and capacities with every Indian Mission to provide consular and legal assistance to Indian nationals in prison in general, and sentenced prisoners in particular.
- Appoint Nodal Officers in all Indian Missions to improve outreach, consular access, data and legal assistance to Indians in foreign prisons.
- Direct Indian Missions to use the Indian Community Welfare Fund (ICWF) for the use of transfer of sentenced Indian prisoners.
- Develop and publish on website a ready reckoner for all Indian Missions so they can inform Indian prisoners abroad regarding consular access. Repatriation rights and process to a prison in their home state.
- Create a directory and helpline of NGOs and public spirited Indian lawyers abroad and of pro-bono lawyers of the Gol's Department of Justice to provide free legal aid and other assistance to Indian Missions and Indian prisoners abroad.

Nationality Status Verification (NSV) portal is part of the Immigration, Visa, Foreigners Registration Tracking (IVFRT) portal of the Gol. NSV portal is monitored by the MEA. It is used by the Indian Missions and state intelligence authorities for identity verification of foreigners as well as Indian nationals seeking to enter/re-enter India.

What both Ministries can do

- Ensure annual performance assessment of senior stakeholders of all relevant agencies and departments based on KPIs such as the number of Indian nationals reached in prison, number of cases verified and processed, and number brought back.
- Upgrade to a comprehensive, fail-safe IP protocol model and expand the facilities of the NSV portal technology to accommodate repatriation related nationality verification requests and also cover updates on all stages of repatriation.
- Computerise the entire verification chain in the districts and states to integrate with MEA's NSV portal for optimum use and prioritisation.
- Improve inter-ministerial coordination for the effective use of NSV portal of the MEA and utilisation of the Indian Community Welfare Fund available with Indian Missions for transfers.
- Develop a sensitisation and training module for representatives of the Indian Missions, the MEA, MHA and MoL&J, police officials, officials of the NCB, ensure horizontal and vertical interaction sessions across the board to improve inter-agency cooperation.
- Develop a feedback format for periodic problem assessment by Indian Missions and State Home Departments to capture the grievances of repatriated Indian prisoners as well as foreign national prisoners seeking repatriation.
- Ensure the access of prisoners to MEA's MADAD portal intended for the grievances of Indian nationals in distress abroad.
- Provide scope for a 'citizen tip' on the MADAD portal or on the E-FRRO web application of the MHA as first information from any Indian citizen on an Indian national in custody.
- Disclose proactively and quarterly, on their respective websites, complete data on Indian nationals in foreign prisons, the status of their transfer requests and actual transfers, under priority of the Right to Information Act, 2005 and Guidelines of the Department of Personnel & Technology.

What the MHA, State Home Department, Prison Department & Social Justice Department can do

- Appoint Nodal Officers at the rank of Deputy Inspector General in all state prison departments to improve monitoring and reporting on repatriation data and cases of both sentenced Indian prisoners and foreign national prisoners.
- Bring Superintendents of Police and Police Commissioners, Inspector Generals and Additional Inspector Generals from Police Intelligence on board to prioritise the nationality verification tasks at state level.
- Appoint Prison Welfare Officers and Probation Officers in all states to aid and assist prisoners and correctional administration.
- Develop capacities of the Prison Department and Social Justice Department across states for vocational training and re-integrative opportunities for convicted prisoners both during their sentence as well as post release.
- Link data sets on repatriation of Indian prisoners to government's open data sets in National Crime Records Bureau (NCRB) and NIC's E-Prisons.
- Ensure the formation and functioning of Parole Advisory Board and Sentence Review Board in all states with advisories to/by all states to ensure the eligibility of all repatriated prisoners to be recommended to these boards at the appropriate time.
- Develop infrastructural, technological, security and correctional solutions for the lodging and rehabilitation of all habitual offenders with background in heinous offences transferred to India.
- Appoint and recruit with urgency to fill vacancies and improve staff-inmate ratio and access to medical care in prison.
- Allocate more resources, personnel and technology to improve the monitoring of prisons on priority.

MADAD (<http://www.madad.gov.in/AppConsular/welcomeLink>) is a portal provided by the MEA with facility for grievance registration by overseas Indians in distress. With the tag line "Because You are Us" it provides scope for escalated attention and action. Grievances from those imprisoned abroad and on repatriation constitute two of the several categories of grievances that could be lodged on this portal.

The Indian Community Welfare Fund (ICWF) (<http://www.mea.gov.in/icwf.htm>) is an initiative of the MEA for the Indian Missions to provide assistance and on-site welfare activities for overseas Indian citizens who are in distress, on a means tested basis. Providing the payment of small fines/penalties for the release of Indian nationals in jail and detention centre; payment of penalties in respect of Indian nationals for illegal stay in the host country where prima facie the worker is not at fault; providing air passage to stranded overseas Indians in need; providing initial legal assistance in deserving cases, and improving infrastructure for consular services are some of the service areas of the ICWF.

2. Eligibility for Transfer into India

On Paper

Who is eligible for transfer into India

Current Provision: Section 12 of the Repatriation of Prisoners Act, 2003 deals with the eligibility for transfers into India. It states under Section 12(1): “The Central Government may accept the transfer of a prisoner, who is a citizen of India, from a contracting state wherein he is undergoing any sentence of imprisonment subject to such terms and conditions as may be agreed to between India and the state”. Further under 12(2) it states: “If the Central Government accepts the request for a transfer under sub-section (1) then, notwithstanding anything contained in any other law for the time being in force, it may issue a warrant to detain the prisoner in prison in accordance with the provisions of section 13 in such form as may be prescribed.

In contrast to eligibility provisions for transfers from India dealt with under Section 4 and Section 5 of the Repatriation of Prisoners Act, 2003 which provide specific criteria, these criteria are not elucidated in the case of transfers into India under Section 12. Section 4, RPA, 2003, dealing with eligibility for transfers **from** India, states: “Any prisoner who is a citizen of a contracting state may make an application to the Central Government for transfer of his custody from India to that contracting state”) and Section 5(2) of Repatriation of Prisoner’s Act, 2003 lay down the broad eligibility factors and the exceptions for transfers from India. The provisions enable all sentenced prisoners who have no pending inquiries or appeals, who have not been awarded the death sentence, have not committed an offence under the military law²² and who do not pose a security threat to the sovereignty of the country, to apply for transfer.

This policy gap in the case of transfers **into** India allows far too much room for errors in Guidelines as well as discretion at the time of treaty negotiations.

1. Definition of Prisoner

- **Current Provision** - Section 2(c) - “Prisoner” means a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in contracting States.
- **Amendment** – “Prisoner” means a person undergoing a sentence under an order passed by a criminal court including the courts established under the law for the time being in force in contracting States.
- **Justification** - This definition seems to exclude sentences that are implemented primarily in the community. In contrast, the Inter-American Convention on Serving Criminal Sentences Abroad (available from www.oas.org) has a wider scope for the definition of “sentence”. In the Convention, the term encompasses final judicial decisions “imposing, as a penalty for the commission of a criminal offence, imprisonment or a term of parole, probation, or other form of supervision without imprisonment”. (Article 2, paragraph 3).
- **Amendment** – “Prisoner” also means all mentally disordered or mentally ill persons ordered by a court to undergo sentence for any offence or for their mental condition.
- **Justification** – Section 4(4) of Transfer of Prisoner Act, 2001 in Mauritius takes note of their citizens who may have been detained by the sentencing country due to their mental condition (Refer Annexure). Chapter 25 of the Code of Criminal Procedure in India has a similar provision on dealing with accused persons of unsound mind.

²² The term “military law” in the Repatriation of Prisoners Act, 2003 was introduced as an amendment to the term “martial law” in 2010.

2. Whether persons having less than six months to serve are eligible for transfer into India

- **Current Provision** - No clarifying provision in the Act. Section 12 (1) merely states: "The Central Government may accept the transfer of a prisoner, who is a citizen of India, from a contracting State wherein he is undergoing any sentence of imprisonment subject to such terms and conditions as may be agreed to between India and that State".
- **Amendment:** Addition to Section 12. "In a case where the sentence of imprisonment is determinate, on the day of receipt of the request for transfer - (i) at least six months of the prisoner's sentence remains to be served (whether or not the prisoner has been released on parole or probation); or (ii) a period shorter than six months remains to be served and the Central Government has decided that, in the circumstances, transfer for a shorter period is acceptable".
- **Justification:** The Repatriation of Prisoners Act, 2003 does not mention anything regarding the minimum period of sentence that must be left to serve for a transfer request to be considered. Even without a clause on this, India's bilateral agreements have tended to take six months as the minimum sentence left for a prisoner for transfer requests to be eligible, with some scope for exception. Even though the "at least" 6 months criteria which is maintained in the UN Model Agreement on the Transfer of Foreign Prisoners, 1985²³ as well as in Transfer Acts of several countries and bilateral agreements appears reasonable considering the lengthy processing time and to ensure that the new prison has time to prepare the prisoner for re-integration, there must be explicit provision in the Act to allow transfers at shorter notice with mention of the urgent conditions and cases, as no one should be unreasonably deprived of the chance to be repatriated home. This is taken care of in the Draft Standard Agreement.

This restriction in delineating eligibility for transfer based on the time period of sentence left to be served has been overcome in other countries' repatriation legislations and some bilateral agreements signed by India.

For instance, the Republic of Kenya's Transfer of Prisoner Act, 2004 allows the discretion of the Attorney General to approve repatriation in shorter time frames.²⁴ Similarly, under the India-UK Prisoner Transfer Agreement and Agreement between the Republic of Bangladesh and the Republic of India on the Transfer of Sentenced Prisoners, transfer may be undertaken in exceptional cases even if less than six months remain for the sentence to be completed.²⁵

This provision need not be a discretionary element to be negotiated in each case of bilateral agreement but may be provided in the Repatriation of Prisoners Act, 2003 so it is a mandatory facilitation from both sides and fulfils the promise enshrined in Paragraph 4, Article 12, ICCPR: "No one shall be arbitrarily deprived of the right to enter his own country".

23 Paragraph 4, UN Model Agreement on the Transfer of Foreign Prisoners: At the time of request for a transfer, as a general rule, the prisoner shall have at least six months of the sentence remaining to be served.

24 Section 10 of the Act deals with Transfer to Kenya, Section 10 (1): The conditions for the transfer to Kenya of a prisoner, other than a mentally impaired prisoner, shall be as follows: (c) in a case where the sentence of imprisonment is determinate, on the day of receipt of the request for transfer— (i) at least six months of the prisoner's sentence remains to be served (whether or not the prisoner has been released on parole); or (ii) a period shorter than six months remains to be served and the Attorney-General has decided that, in the circumstances, transfer for a shorter period is acceptable.

25 Article 3(1)e of the UK-India Prisoner Transfer Agreement states one of the eligibility conditions for transfer as: "at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or is undergoing a sentence of life imprisonment". Article 3(2) provides the exceptions to this rule. "In exceptional cases, the transferring and receiving States may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months".

Article 3(2) of the India-Bangladesh Transfer Agreement: "In exceptional cases, the transferring and receiving State may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months".

3. Whether persons whose cases are pending for review may be eligible for transfer to India and any other fact to be considered for transfer

- **Current Provision:** No explicit provision on this is laid down for cases of transfer into India. The Act provides no scope for either rule or exceptions, except what may be approached through bilateral agreements under Section 12.
- **Amendment:** Addition to Section 12: “Upon receiving an application from the prison authorities/Indian Mission that is complete in all respects under Form 1, Annexure I of Rules 2004, the Central Government shall, without delay, forward the application, directing the appropriate central government and state government authorities to verify the nationality, criminality, the appropriate adapted sentence upon transfer, and to identify the suitable prison for detention based on approval of state authorities. Provided the government is satisfied that “(a) no inquiry, trial or any other proceeding is pending against the prisoner, except in exceptional cases agreed to by the two countries where a transfer may be initiated notwithstanding any review pending on the duration of the sentence”; (b) the death penalty, if awarded, has been commuted to a term of imprisonment or to life imprisonment; (c) the prisoner has not been convicted under the military law; (d) transfer of custody of the prisoner from the contracting state shall not be prejudicial to the sovereignty, security or any other interest of India, the prisoner’s family or any victim of the prisoner of any age; it shall pass an order for forwarding the application.
- **Justification:** No one shall be arbitrarily deprived of the right to enter his own country, as laid down under Article 12, paragraph 4, ICCPR. The prisoner can be offered the choice to forego a review in favour of transfer to home country prison.

Kenya’s Transfer of Prisoner Act, 2004 is exemplary in this regard. In the section dealing with the conditions for the transfer to Kenya of a prisoner other than a mentally impaired prisoner, the Act provides scope for exception with regard to review of sentence. It retains the power of executive decision to transfer a prisoner into Kenya even if the prisoner’s case may be under review.²⁶

4. Whether a prisoner whose sentence cannot be adapted in the administering state is eligible for transfer

- **Current Provision:** There is no provision in the Act clarifying the eligibility.
- **Amendment:** New provision 13(7) to read: “In cases where sentence of the prisoner cannot be adapted in the country’s legal jurisdiction, the prisoner may still be considered eligible for transfer provided that the sentence is enforced by the receiving state without any amendment and exactly as conferred by the court of the sentencing state, and that in such cases, the sentencing state alone retains the right to review, remit, commute or pardon the sentence”.

A Proviso to be Added – “Provided that the sentence conferred by the court of a contracting state is not a sentence of death”.

- **Justification:** There is no explicit explanation in the Act on the course to be taken for those prisoners in whose cases dual criminality may not be established and the provision of compatibility as sought through the provision “had that offence been committed in India” mentioned under section 13(6) of the Act fails to apply. As for instance, in cases of marital rape which is not a penal offence in India or the exact equivalent of a manslaughter offence as the interpretation is discretionary in India. Two questions arise here: Will not the denial of repatriation to home state be an arbitrary denial for that national? However, if he is transferred to his home country, will that sentence of detention be binding without a comparable law in the country?

From a careful analysis of international standards we may infer that it need not be

²⁶ Section 10 1(c): In a case where the sentence of imprisonment is determinate, on the day of receipt of the request for transfer a period of six months or less of the prisoner’s sentence remains to be served, whether or not any review affecting the duration of the sentence is pending, and the Attorney-General had decided that, in the circumstances, transfer for a shorter period is acceptable.

interpreted in such cases where sentence adaptation may not be possible that the only option is a rejection of repatriation and the sentencing court/country will refuse to transfer the person. Under the UN Model Agreement on the Transfer of Foreign Prisoners, 1985 (Paragraphs 4&5)²⁷ the administering state has the option to either continue enforcement or convert the sentence and barring changing the nature of the sentence altogether as cautioned under paragraph 5 of the UN Model Agreement, it may adapt the sentence as per its own laws.

And in enforcing, it may adapt the punishment as per its own laws, as follows from the principle of dual criminality. This implies that where it chooses not to adapt or adaptation is not possible, the administering state can still continue to enforce the sentence as it is. However, in such cases, the power to review, remit or commute the sentence must be inviolably with the sentencing country. This will assure both parties that in cases where dual criminality is not ascertainable, the person would still undergo the complete sentence but without having to be denied the right of rehabilitation in the home country. This becomes important, especially if the prisoner is suffering from any illness, has strong family roots in the home country, and poses no risk to the security of the state or safety of any victim of any age, or their own family.

Box No. 2



These restrictions on eligibility theoretically exclude a significant number of prisoners in foreign prisons from being rehabilitated in their home countries. Moreover, they have consequences for the actual number applying for transfer and number of applications moved to the MHA after being screened/vetted by the Indian Missions.

Box No. 3

Provisions A(c) and A(d) of Part A MHA 2015 Guidelines take the liberty of restricting habitual offenders from applying. A(c), MHA Guidelines, 2015 states: “As a rule, permission will not be granted to habitual/repeat offenders or members of any international/national organized crime gangs as the probability of their social rehabilitation is doubtful and their presence in India (even in prisons) can be detrimental to the larger interest of the country. The Mission forwarding the request should prima facie satisfy itself on the basis of its intelligence inputs before forwarding the request for restriction”. This provision implies that habitual/repeat offenders may be considered in only exceptional circumstances though it will not be the rule or norm. The Guidelines, however, are silent on the exceptions.

A(d) of MHA’s 2015 Guidelines on Repatriation is yet another restrictive provision in the Guidelines. This debars serious offenders. It states: “Generally, permission would be denied in cases of persons charged with heinous crimes like multiple murders/serial killings, terrorism, pedophiles, etc.”

A(e) of MHA’s 2015 Guidelines: For ensuring that only applications accompanied by all the relevant information and documents are forwarded by the Indian Mission, a detailed checklist is enclosed as Annexure II.

Furthermore, as overcoming arbitrary prevention to enter one’s home country is a necessary stipulation of international law of transfers of foreign and sentenced prisoners and provided under Article 12, paragraph 4, ICCPR.²⁸

27 Paragraph 4, UN Model Agreement on the Transfer of Foreign Prisoners: The administering State shall either continue enforcement of the sentence or convert the sentence to one prescribed by its law for a corresponding offense. Paragraph 5, UN Model Agreement on the Transfer of Foreign Prisoners: In the case of continued enforcement, the administering State shall be bound by the sentence determined by the sentencing State. It may, however, adapt the sanction to the punishment prescribed by its own law for the offense, but a sanction involving deprivation of liberty shall not be converted to a pecuniary sanction. The administering State shall be bound by the findings of the sentencing State, which has the sole competence for review of the sentence.

28 Paragraph 4, Article 12 of the ICCPR: “No one shall be arbitrarily deprived of the right to enter his own country”, in such cases, the person must serve the sentence but need not have to be deprived of the right to rehabilitation in his home country.

Therefore, the new provision section 13(7) needs to be added after section 13(6) in the Act. A similar provision 6(3) may also be added to accommodate such cases of transfer of foreign nationals from India where sentence may not permit adaptation.

Other international standards impinging upon sentence adaptability need to be incorporated into the 2015 MHA Guidelines on repatriation.

5. Whether Eligibility Criteria in the 2015 MHA Guidelines for the Transfer of Sentenced Persons under the Repatriation of Prisoners Act, 2003 is comprehensive

- **Current Provision:** Provisions A(c), A(d) and A(e) of Part A of MHA 2015 Guidelines introduce the habitual offender and the offender convicted for heinous crimes, and make them “generally” ineligible for transfer, despite no such restriction being placed by the Repatriation of Prisoners Act, 2003 nor Rules, 2004 or even several bilateral agreements.

Definition of Habitual Offender – While restricting this category of offenders from applying, the Guidelines provide no definition whatsoever of the habitual offender. Here, we work under the constraints of purely an Indian legal definition, for no doubt, other countries would have their own definitions but taking them into account would place unnecessary burdens on Indian Missions while enquiring into prisoner background in the different legal contexts.

In India, though all states have a Habitual Offenders Act, strangely all do not define who a habitual offender is. For instance, the Restriction of Habitual Offenders (Punjab) Act, 1918 (Amended in the Punjab Act 25 of 1964) lays down the powers of magistrates to curtail the liberty of such offenders under Section 110 of the CrPC and mentions that Section 90 of CrPC shall be applicable to such persons, but does not define the “habitual offender”.

However, Section 2 of the Punjab Habitual Offenders (Control and Reform) Act, 1952 provides a definition with explanation. Under this Act, every District Magistrate is obliged to maintain a register of habitual offenders. The Superintendent of Police of every district is authorized to make the entry of relevant names into this register.

Section 2(3) of the Act defines Habitual Offender as a person - 1952 defines Habitual offender means a person –

(a) who during any continuous period of five years, whether before or after the commencement of this Act, has been convicted and sentenced to imprisonment more than twice on account of any one or more of the offences mentioned in the Schedule to this Act committed on different occasions and not constituting parts of the same transaction; and

(b) who as a result of such convictions suffered imprisonment at least for a total period of twelve months.

Explanation 1: A conviction which has been set aside in appeal or revision and any imprisonment suffered therewith shall not be taken into account for the above purpose.

Explanation 2: In computing the period of five years, any periods spent in jail either under a sentence of imprisonment or under detention shall not be taken into account.

Part A(d), MHA Guidelines, 2015 blurs the distinction between offenders who have committed crimes against the state and those who have committed crimes against the person. The Guidelines club together terrorism offenders with persons charged with heinous crimes like multiple murders, serial killings, child sexual abuse.

By the definition of the “habitual offender” provided in the Habitual Offenders Act, Punjab, the verification of their criminal background, be it by security agencies in both countries and Indian Missions, would certainly pose a considerable challenge. For the Indian Missions, it is likely to compel more coordination work with the foreign country’s prison and home department in the vetting process as well as with the state police authorities in India who undertake the verification.

The rationale behind restrictions on the transfer of habitual and repeat offenders is uncertain when India already houses such serious offenders in its prisons, many of whom are in its central prisons and special security jails, though risk containment is always a challenge. Whether or not these restrictions are intended at controlling/managing Indian prison demography and crime control as India presently lacks specialized prisons for “serial killers”, “pedophiles”, etc., these restrictions draw attention to the following changes - (i) that there is a serious need for rehabilitative programmes in both sentencing countries and in India for these categories of offenders as their eventual release into society would cause crime management problems and also because they have a right to be rehabilitated; (ii) that there needs to be concerted strengthening of post-release supervision measures for effective implementation of the Repatriation Act.

Barriers

- In preventing habitual offenders and serious offenders involved in heinous crimes from being rehabilitated in their home state prisons and from having access to their families, the Guidelines fall foul of Article 14, the right to equality before law and equal protection of the law, Article 21, the right to life with dignity, the pronouncements of the Supreme Court in *T.K. Gopal Vs. State of Karnataka, 2000* and the facilitative provisions of Section 12 of the Repatriation of Prisoners Act, 2003, as well as the corresponding provisions for transfer agreements signed by India with several countries. Moreover, there needs to be a separation between offences against the state and offences against the individual.
- *T.K. Gopal v. State of Karnataka, 5 May, 2000*: The Supreme Court advocated a therapeutic approach in dealing with the criminal tendencies of prisoners. It pointed out that there could be several factors that lead a prisoner to commit a crime but nevertheless a prisoner is required to be treated as a human being entitled to all the basic human rights, human dignity and human sympathy.

No information provided by the MHA on grounds of information not being maintained in the formats used in the RTI request

On Ground

CHRI had filed RTIs to the MHA, Indian Missions, the MEA and to Home Departments in Gujarat and Punjab. One of the query areas concerned the number of applications received by the MHA from different types of offenders and numbers accepted, rejected and pending at different stages in order to ascertain whether the criteria placed in the guidelines were being seriously brought into use.²⁹ The lack of substantive information from the department prevents an understanding of the actual play of eligibility factors.

Recommendations for the Removal of Barriers Related to Eligibility for Transfer into India in the MHA Guidelines:

- No one may be excluded from applying. There is a need to recognize that all applications of Indian nationals must be considered. Criminality verification of the offender by IB and CID could be undertaken after the transfer of the Indian prisoner as offence background ought not to be an eliminating factor for consideration of transfer. However, for enabling their eventual complete rehabilitation in the community, an assessment of the scope for rehabilitation may be undertaken by the administering state by seeking certain certification from the foreign country prison where the Indian national is incarcerated, not to debar but to further the agenda of post-transfer rehabilitation tasks that will fall on prison administration.

Recommended Modification to Point 7 of Checklist, Annexure II, Rules 2004

- Current Provision: A certified confirmation that no other case is pending in any other court in the country of incarceration - (this would be done through the jail authorities and home department).
- Amendment: A certified confirmation that no other case is pending in any other court in the country of incarceration - (this would be done through the Indian Missions in cooperation with security agencies of the sentencing country, and in India, in cooperation with the IB at the Centre and CID at the state level). In addition, a certified confirmation may be provided from the jail authorities of the sentencing country about the conduct,

²⁹ Refer the full RTI in Annexure Q, p 188.

sentence review report and incentives and earned privileges (IEP) of the prisoner to ascertain capacity for rehabilitation and guide future development.

- Justification: The checklist used for transfers from India for foreign national prisoners in Indian prisons currently doubles up for transfers into India as well, as mentioned under the MHA Guidelines. There is a need (i) to make the specification appropriate to transfers of sentenced Indian nationals into India; (ii) to incorporate provisions that would enable the discernment of capacities for rehabilitation post transfer and to ensure that no Indian national is unnecessarily prevented from entering their home country by a rejection of their transfer request in an arbitrary manner.

Recommendation: In the Repatriation of Prisoners Act, 2003 & the 2015 MHA Guidelines on Repatriation

Use of Empowering Provisions in the 2003 Act for its Amendment:

- Section 16 (1) of the Repatriation of Prisoners Act, 2003 is addressed as the Power to Remove Difficulties. It states: "If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary for removing the difficulty." As it is an enabler to remove hurdles in the implementation of the Act, Section 16(1) can be drawn upon to aid the removal of the restrictions on eligibility for transfer and rehabilitation.
- Section 3(3) of the Repatriation of Prisoners Act, 2003 is addressed as Application of the Act and states: "If the Central Government is of the opinion that, with respect to a country or place outside India, provisions of this Act require to be modified to give effect to a treaty in relation to such country, it may, by notification in the Official Gazette, direct that the application of this Act to such country shall be subject to such conditions, exceptions and modifications specified in the notification."

3. Application Process

The transfer request is usually initiated by the Indian prisoner in foreign country. It may also be initiated by a close relative of the sentenced prisoner. The request is made in the form of an application format provided and is processed either through the Indian Mission or prison authorities of the foreign country. The application is forwarded to the Government of India, specifically, the Ministry of Home Affairs, through either of these agencies for verification and approval. The forwarding agency, very often the Indian Missions, has the responsibility to vet the application and check that it complies with all the documentation and detail specified under the Repatriation of Prisoners Rules, 2004 and the 2015 Guidelines of the Ministry of Home Affairs on the transfer of sentenced persons. The Ministry of Home Affairs processes the application only after it has received the entire list of records and undertakings of a confirmed Indian national.

On Paper

- **Requisite Documentation for a Valid Application:** The application procedure and documents required for repatriation requests are not mentioned under Section 12 of the Act dealing with transfer into India but finds mention in the Guidelines under provision A (a) and A (b) and A (e). There are no separate application formats and checklists specified under Section 12 dealing with transfers into India. As a result, formats specified under Section 4 of the Act dealing with transfers from India as provided under Rule 3 of the Repatriation of Prisoners Rules, 2004 are currently doubling up for transfers into India. Part A(b) of MHA Guidelines states that the same Checklist specified in Annexure II under Rule 3 may be referred for documents to be sent with repatriation requests.
- **Receiving the Application:** A(a), MHA Guidelines 2015 states that the prisoner may submit application for repatriation to the prison authorities or Indian Mission in that country giving all details in the application format provided. Form 1 of Rule 3 in the Repatriation of Prisoners Rules, 2004, provided as Annexure I comprises a set of four instructions. Point 3 of the Instructions mentions the documents that are to be attached with the application. These are: (a) A copy of the judgment passed against the prisoner; (b) Document indicating that the prisoner is a citizen of the contracting state.

A(e), MHA Guidelines 2015 mandates that only applications accompanied by all the relevant information and documents are to be forwarded by the Indian Mission guided by a detailed checklist enclosed as Annexure II. Annexure II Checklist also includes Annexure III, an undertaking by the prisoner that he will not challenge his adapted sentence. This must also be included in the application.
- **Forwarding of the Request:** A(b), MHA Guidelines, 2015 lays down the requirements for a complete application that Indian Mission should forward to it. It states: “The request for repatriation of a prisoner should be forwarded by the Indian Mission accompanied with all necessary documentary evidence to establish the identity of the person concerned like passport, photographs, fingerprints, etc., a copy of the judgment (in English) detailing the offence for which the prisoner was imprisoned, including the details of number of years for which convicted, sentence undergone, and sentence pending, and is undergoing the sentence in the foreign country. The Indian Mission in the country where the prisoner is incarcerated should ensure that complete and correct details are collected and provided to the Ministry of Home Affairs. Till all the aforementioned details are received the case should not be taken up for processing at all in the Ministry”. The Guidelines add a new requirement along with reiteration of documents specified in the Rules which is that of fingerprints.
- **Vetting of Applications:** A(c), MHA Guidelines, 2015 is a restrictive provision and further defines the vetting role of the Indian Mission. A(c) deals with denial of permission to habitual/repeat offenders and requires the Mission forwarding the request to prima facie satisfy itself on the basis of its intelligence inputs before forwarding the request for

repatriation that they are not from habitual or repeat offenders. A(e), MHA Guidelines, 2015 provides for “Checklist of documents” (enclosed as Annexure II) to procedurally guide the Indian Missions in their vetting of applications so that they may forward only those applications that are complete in all relevant respects.

- **Transfer of Records:** Section 10 of the Repatriation of Prisoners Act, 2003 states, “Where a prisoner is or is to be transferred to a contracting State under the provisions of this Act, the Central Government may requisition the records of any proceeding, including judicial proceedings relating to that prisoner from any court or office, and may direct that such records shall be sent to the Government of the contracting State”.
- **When does Processing of Application begin by the GoI** - Part A(b) of the MHA Guidelines states: “Till all the aforementioned details are received the case should not be taken up for processing at all in the Ministry”.

On Ground

CHRI had filed RTI requests to the MHA (CS Division), MEA (CPV Division) and to Indian Missions and approached states and high commissions of foreign countries to seek information on the number of Indian prisoners eligible for repatriation, application processing, time taken, number of requests received, verified, approved, rejected or pending. The MHA and MEA chose not to provide the information citing the use of certain formats in the RTI request as their ground for refusal. However, discussions with stakeholders and answers to a question raised in the Parliament in August 2017 provides some information in this regard:

1. According to the answer of the Minister of State in the Ministry of External Affairs in August 2017, after the enactment of the Repatriation of Prisoners Act, 2003, 170 applications for repatriation had been received and 61 Indian prisoners, had been repatriated from foreign prisons. By March 2018, only two more transfers had been effected.
2. At the time of the research, the MHA had about 50 transfer applications to process. At any given point in time it is able to process seven to eight applications only. According to stakeholders, the ratio between receipt of applications and ability to process them needs to improve dramatically.

Analysis of Prisoners’ Applications

Though substantive information was not received on the last ten cases dealt with by the MHA and MEA, case documents were received from other sources. A total number of eight cases were received from Indian Missions, High Commissions and the states and analysed in this study to gauge the timeline taken in a case to reach its final stage of approval on paper and also to identify hiccups in communication and information flow that could be eased.

Relevant cases exhibit the following problems with regard to applications

- **Incomplete applications:** Applications received by the MHA from foreign country and Indian Missions often arrive in incomplete form. They will not have the gaze of the MHA till they are complete.
- **Lengthy time for a “Valid Application” Status:** The time taken by Indian Missions/foreign prisons to complete the first stage of “vetted, verified and valid” applications is often very long. The full body of documents for a valid application is sometimes obtained after a delay of 1-2 years.
- **Discrepancy between Specification Documents:** There is discrepancy between the prisoner records required under Form 1, Checklist (Annexure II) and Annexure III on the one hand, and the list of documents attached with the application sent from the foreign prison or Indian Mission. (Refer Flowchart titled Barrier in Transfer of Records in the Application Stage on page _____)

Case 1: Case of X: Delay of One year (Name not Disclosed)

- **Date of Repatriation:** Repatriated from UK on 26 September to Uttarakhand
- **Records sought by Gol and advice for prisoner:**
 1. Form 1 documents with recent photograph and an undertaking from the applicant as per proforma already sent;
 2. applicant's view whether he or his relatives are ready to bear the cost of transportation and an undertaking that he will not agitate the adapted sentence;
 3. he should be made aware of the status of life imprisonment/current status in India;
 4. the prisoner's undertaking that he will not challenge the sentence. This undertaking given by the prisoner is a required document under the Checklist (Annexure II);
 5. no appeals pending.
- **Time taken to complete all the documentation for the Application & Confirmation of Nationality:** One year
- **Additional documents:** Written confirmation from prisoner that he is aware of the status of life sentence in India/contracting country is a document that should be added to the Checklist.

Case 2: Case of Y: Delay of Two years (Name not Disclosed)

- Filed for repatriation from UK to Punjab on 25 July 2016 and whose request is not decided yet.
- Records provided: The NOMS, UK, provided Indian Mission/MHA with 10 Records at the time of Application –
 1. Request for repatriation from Y (Form 1);
 2. Order for imprisonment;
 3. Indictment;
 4. Court record;
 5. Sentence Calculation Sheet;
 6. Case Summary;
 7. Relevant British law;
 8. Medical Report;
 9. Conduct Report;
 10. Document concerning “no appeals against the judgment” status.
- Delay in Producing the Undertaking: However, the list of 10 records provided by NOMS does not include the Undertaking of the prisoner that he will not challenge the conviction. The undertaking is provided to Gol after a long hiatus.
- Time taken to complete all the documentation: The dates reveal a delay of two years from the time of initial application.
- Additional Documents: All documents provided do not match the specification in the checklist. Moreover, the new and useful documents are provided by the foreign prison. One, the conduct certificate, which is essentially the IEP (Incentives & Earned Privileges) statement from the prison indicating remission earned due to good conduct. Two, a sentence review report, which indicates the prisoner's capacity for rehabilitation. The ask for these documents should be standardized for countries who can provide them.

Case analysis reveals that the major reasons behind delay in completing the documentation by the foreign country and Indian Missions are:

- **(1) Discrepancy between the application forms, checklists and instructions provided under Rule 3 of Rules 2004** (Refer Flowchart above). This leads to confusion, increased communication in the form of reminders, follow-up correspondence. It appears from

Barrier in Transfer of Records in the Application Stage

Discrepancy between Form 1 Application, Form 1 Instructions, Checklist in Rules 2004 and 2015 MHA Guidelines

Form 1 Application/ Consent Request Annexure I, Rules 2004	Form 1, Instruction Number 3, Annexure I, Rules 2004	Checklist Annexure II, Rules 2004	Part A(b) & A(e) MHA Guidelines 2015
<p>Rule 3. Form of application: An application under section 4 of the Act shall be made by a prisoner for his transfer on a plain paper and in Form 1 appended to these rules and in accordance with the procedure and instructions set out in that form.</p> <p>Form 1 Sent to JS(CS) (particulars are to be furnished in respect of the sentenced person):</p> <p>I request that I may be transferred to serve remaining period of my sentence in a prison situated in _____, the _____, the country of my nationality (name of the contracting State).</p> <p>I hereby furnish the following information for consideration of my application:-</p> <ol style="list-style-type: none"> 1. Name in BLOCK LETTERS and nationality 2. Name of father/ husband 3. Full address in the contracting State 4. Date of birth/age 5. Offence(s) under which convicted 6. Name of the Court which convicted 7. Date of judgment 8. The nature, duration and date of commencement of the sentence 9. Name of the prison, where undergoing sentence. 	<p>Documents needed</p> <p>3. Following documents may be attached with the application:</p> <ol style="list-style-type: none"> (a) A copy of the judgment passed against the prisoner; (b) Document indicating that the prisoner is a citizen of the contracting State. 	<p>Checklist of documents to be furnished along with the repatriation request of the prisoner</p> <ol style="list-style-type: none"> 1. Signed consent request for repatriation is given in Form 1 of Repatriation of Prisoner Rules, 2004 to be signed by the prisoner or on his behalf. 2. Copy of judgment, translated in English if in any other language. This should also be accompanied by a summary statement of the conviction and the offences for which convicted under the relevant Jaws of the country in which convicted. 3. Copies of identification documents like passport, etc. 4. (a) Nominal roll from the jail lodged in (b) presently routed through the jail authorities listing out (i) the start date of conviction/sentence (ii) period undergone and (iii) the balance remaining as on date of application. 5. A record of his health and mental condition (Certificate from a Medical Doctor). 6 (i) A recent photograph in profile and (ii) front view with other details. 7. A certified confirmation that no other case is pending in any other court in the country of incarceration (this would be done through the jail authorities and home department). 8. A confirmation that no appeal is pending against his present conviction in any court of law/tribunal. 9. An undertaking (as per Annexure III) by the prisoner that he/she will not challenge the conviction of the court once repatriated to his own country by way of an attempt to get a lower sentence as the repatriation process is not intended to subvert the judicial process for getting lesser sentences in own countries. 10. Whether the prisoner, or his relatives etc. are ready to bear his cost of transportation. 	<p>A(b) Forwarding of the request: The request for repatriation of a prisoner should be forwarded by the Indian Mission accompanied with all necessary documentary evidence to establish the identity of the person concerned like</p> <ul style="list-style-type: none"> - passport, photographs, fingerprints, etc. - A copy of the judgment (in English) detailing the offence for which the prisoner was imprisoned, - including the details of number of years for which convicted, (sentence undergone, and sentence pending), and is undergoing the sentence in the foreign country. <p>The Indian Mission in the country where the prisoner is incarcerated should ensure that complete and correct details are collected and provided to the Ministry of Home Affairs.</p> <p>Till all the aforementioned details are received the case should not be taken up for processing at all in the Ministry.</p> <p>A(e): For ensuring that only applications accompanied by all the relevant information and documents are forwarded by the Indian Mission, a detailed check list is enclosed as Annexure II.</p>

the Instructions attached with Application Form 1 that only two documents are being sought to be attached with the application: (a) A copy of the judgment passed against the prisoner;

(b) Document indicating that the prisoner is a citizen of the contracting state.

- This is a mismatch. The list of documents under point 3 of Instructions in Form 1 ought to match with the Checklist of documents required for processing a repatriation request provided in Rules, 2004 as Annexure II. However, right now it falls short.
- The 2015 MHA Guidelines have also included new requirements not earlier present in the Checklist such as 'fingerprints'. But the Checklist has not been changed to include this. Synchronisation and parity are necessary between these documents.
- **2. Inadequate screening (either manual or technologically), by foreign country and/or by Indian Missions.** As a result, a complete set of documents are not provided to Gol at the first instance.
- **3. Lack of a prompt reminder from the Indian side to avoid such a long period of delay.** Had there been timely monitoring, the prisoner/prisoner's family could have been spared the hardship and pain of such delay considering that they had otherwise taken a great deal of effort to provide numerous authenticated identity documents.

Policy Barriers before Indian Missions in Fulfilling their Mandate & their Removal

Specifications for Application & Documents Required for Repatriation Request to India:

1. Whether Instruction List under Form 1 Consent Letter/Repatriation Request of Prisoner, Rules 2004 fulfils adequacy of specification

- **Current Provision:** Point 3 of Instructions under Form 1: "Following documents may be attached with the application; (a) A copy of the judgment passed against the prisoners; (b) Document indicating that the prisoner is a citizen of the contracting State".
- **Amendment:** "Following documents may be attached with the application:
 - (a) All documents mentioned in Checklist I, Annexure II of Rules 2004
 - (b) Undertaking of the prisoner as specified under Annexure III.
 - (c) Documents indicating that the prisoner is a citizen of the contracting State".
- **Justification:** Point 3 of Instructions under Form 1 is incomplete in its specification as compared to Annexure II requirements in the Rules.

2. Whether Checklist, Annexure II, Rules 2004 is comprehensive and complete in specification

- **Current Provision:** Point 3 of Checklist: Copies of identification documents like passport, etc.
- **Amendment:** Copies of identification documents from the prisoner or person representing the prisoner like passport number, voter identity card details, ration card details, permanent rural address, name, telephone number, address of Sarpanch and Panchayat member, two respectable people/reputed/well-known persons of the area, school details and qualification, occupational details before leaving India, name and address of the employer in India, name and address of doctor, name of town of the travel agent, supported by affidavits and character certificates.
- **Justification:** The communication with a foreign country in certain cases shows that various documents are being sought for nationality verification and not only passport details. The use of the term "etc." is troubling as any document can suddenly be asked for under a catch-all term like that. A specification document must be specific. The above set of documents have been furnished in the case of one of the prisoners

The Gol's Standard Draft Agreement

Article 1(h) seeks from the transferring state a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence but does not place a similar obligation on the receiving state to mandatorily furnish the prisoner information on the application of remissions in own country.

Council of Europe, Committee of Ministers, Recommendation CM/Rec (2012)12 of the Committee of Ministers to Member states concerning Foreign Prisoners

35.7. Where foreign prisoners are to be transferred to another State to serve the remainder of their sentence, the authorities of the receiving State shall provide the prisoners with information on conditions of imprisonment, prison regimes and possibilities for release.

and submitted on 25 & 26 August 2015 and these took two years from the date of application for the prisoner/prisoner's family to compile and have the foreign country or Indian Mission presenting it to Gol. Synchronising the documents will prevent any unnecessary disadvantages to the prisoner.

- **Current Provision:** Point 6 of the Checklist, Annexure II: (i) A recent photograph in profile and (ii) front view with other details
- **Amendment:** (i) A recent photograph in profile and (ii) front view with other details; (iii) the fingerprints
- **Justification:** MHA Guidelines Part A(b) on Forwarding the Application specifies that fingerprints of the prisoner must be provided. This should be integrated into the Checklist so that Checklist is comprehensive. Also, as A(e) of the Guidelines mentions that Annexure II Checklist be used by Indian Missions and foreign country offices as the main reference to complete repatriation request documentation, this Checklist must be complete in all respects and must be the one and only guideline that specifies all documents required for a valid application.

3. Whether documents that Gol should provide to a prisoner at the time of preliminary enquiry regarding transfer in the pre-application stage are specified:

- **Current Provision: None**
- **Amendment/Inclusion in the Guidelines:** Gol, as the receiving state, to provide the sentencing state with the following documents to facilitate the consent of the contracting/transferring state:
 - confirmation of nationality;
 - copy of the relevant law establishing dual criminality;
 - confirmation of sentence enforcement;
 - Nature and duration of the sentence decided following adaptation which the person would need to serve;
 - Arrangements to remission in India and possible conditional release;
 - Status of life sentence in India, both determinate and indeterminate and provisions for early release.
- **Justification:** Both countries have obligations to share legal provisions, status, consequences in a clear and timely manner so that the prisoner's right to information-based consent for transfer is fulfilled. The UN Model Agreement on the Transfer of Foreign Prisoners, 1985 and the Repatriation Acts of Tanzania, Kenya, Canada, and the Inter-American Convention address this and indicate good policy here.

Box No. 4

Recommendations for Removal of Barriers in the Application Stage

Synchronisation of all specification documents required for transfer into India: The most important thing would be to synchronize the documents sought under Form I (Annexure I), Instructions under Form 1, and those under the Checklist of documents to be furnished with the repatriation request of the prisoner in Annexure II to avoid any confusions on the part of screening/vetting/ initiating authorities like Indian Missions and foreign prisons. (a) Checklist should include fingerprints. (b) Checklist could also include another document pertaining to the "remission earned by prisoner in the prison of sentencing country" and sentence review report (c) Point 3 of the Instructions should include all documentation required under the Checklist. The parity between Form I requirements, its Instructions, Checklist in Annexure II and Part A(b) of MHA Guidelines as well as other documents being provided voluntarily by the foreign country, is absolutely vital.

Technological Check: Develop an inbuilt technological check which is presently missing to prevent this kind of unnecessary pendency and consequent woe to the prisoners who appear to have gone to great lengths to procure all necessary identity proofs and affidavits.

Documents and information to be provided by contracting country: A checklist should also be elucidated in the Rules 2004 which must include information to the prisoner from the receiving/contracting state about the legal consequences of transfer - laws on determinate and indeterminate life sentences and early release; jail remission and other remission by the State; and assurance to the foreign country of confirmation of sentence enforcement.

Checklist (Annexure II) in Form 1 to be made more comprehensive

Complete Checklist with Form 1 must be complied with by contracting state in a singular and timebound manner.

Consent Letter/Repatriation Request under Form 1 (Annexure I) and Checklist (Annexure II) must be updated to be more comprehensive as well.

A checklist of documents that Gol must provide to the prisoner or to the foreign prison is needed so it facilitates their consent.

All documents/records to be uploaded at one time on an online system – a system that ensures that only complete applications are received. Communication or records should come through only when all requirements have been complied with.

If the Checklist, Annexure II is the main specifying document, the Instructions can just indicate the Checklist (Annexure II) and Annexure III. Point 3 of Instructions to be deleted.

In the interim period, the monitoring system over Indian Missions and the application and pre-application process should be strengthened so that the status of applications received by Indian Missions is periodically reviewed and there is speedy gathering of missing documents.

New procedures and timelines must be categorically elucidated with a modification of the 2015 Guidelines and a separate SOP for Indian Missions with regard to the transfer of sentenced Indian prisoners. The SOP could be prepared by the MEA in collaboration with MHA.

Bilateral agreements need to outline clear timelines for transfer of records. The model bilateral agreement that Gol uses to facilitate the signing of treaties must incorporate suggestive timelines and outer limits.

The Guidelines and Standard Draft Agreement must include information to the prisoner on early release, remission and sentence suspension.

Clarity on procedures for transfer of records is needed with delineation of duty-holders and timelines and monitoring system. In particular, the SOP for Indian Missions must include these aspects.

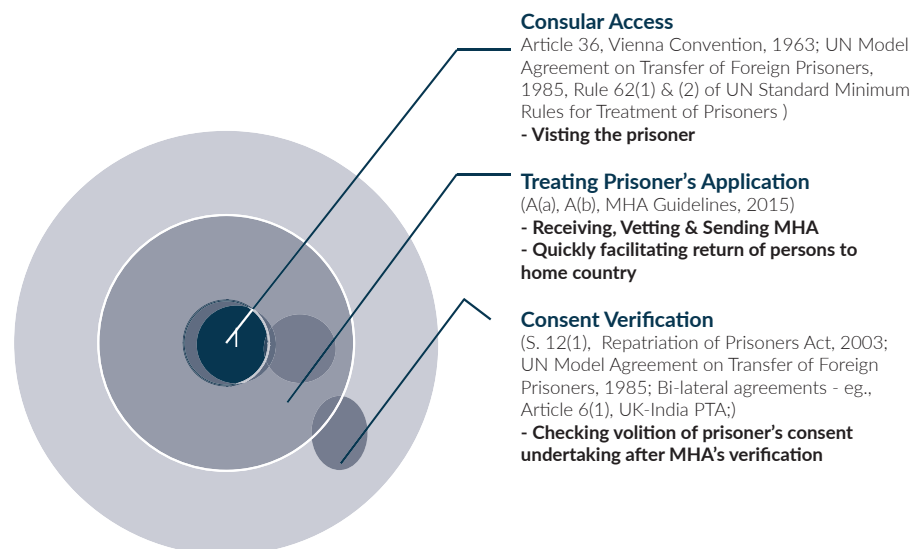
4. The Role of Indian Missions

This chapter assesses the adequacy of the Repatriation of Prisoners Act, 2003 and 2015 MHA Guidelines and response of the Indian Missions to the right to information request filed by CHRI with regard to their implementation. The first part deals with policy gaps with regard to role of Indian Missions and the second part with transfers on ground and other performance aspects.

The RTI request was sent to four Indian High Commissions – Sri Lanka, Mauritius, UK and Canada to assess the reasons for differentials in successful transfers and barriers faced by them.³⁰ The chapter provides a comparative perspective on their responses vis-a-vis the number of Indian nationals seeking transfers, number already repatriated, number of requests accepted, rejected or pending with the Mission or the GoI, and the capacities with them to reach/access the prisoners, legally assist them and facilitate their transfer back to India.

All the above countries have respective legislations on repatriation and India has signed Prisoner Transfer Agreements with all of them other than Canada though other transfer arrangements do exist as per information on the MEA website.

On Ground



The Indian Missions have a primary role in ensuring that the rehabilitation needs of sentenced Indian prisoners in foreign countries are addressed, that they have the required legal assistance for their appeals and their applications to the Indian government are timely received, scrutinized and sent to the MHA. The Repatriation of Prisoners Act, 2003 is silent on the role and reporting of the Indian Missions regarding prisoner transfers. As a corollary to their role already elucidated under Article 36 of the Vienna Convention on Consular Relations (1963) and to take forward the duties implicit in Section 12 of the RPA Act, the MHA's 2015 Guidelines define their role vis-à-vis the sentenced Indian prisoner in a foreign country. The specific provisions in the MHA Guidelines in this regard are A(a), A(b), A(c) and A(e) of Part A.

The Model Agreement on Transfer of Foreign Prisoners, 1985, UN Standard Minimum Rules for the Treatment of Prisoners, 2015, and bilateral transfer agreements signed by India help us to infer, directly and indirectly, the role of the Indian Missions.

Punjab High Court order on role of Indian Missions in reaching Indian nationals in foreign prisons through consular visits and legal aid and assistance

In 2010 three writ petitions raised the issue of the duties and responsibility of the Indian Missions abroad, particularly countries like the UAE, to look after the interests of Indian

³⁰ Refer Annexure P, RTI to Four Indian Missions. p 186.

citizens who are there in large numbers and have been detained in foreign jails for their alleged involvement in different kinds of offences were jointly heard by the Punjab & Haryana High Court. One of the petitioners also sought the permission from the court to provide legal aid to such persons in foreign country jails and to have access to the prisons to get the details of Indian prisoners which Indian Missions were unable to obtain. The petition pointed to the following:

- Over 1 lac persons from the states of Punjab and Haryana languishing in different foreign jails.
- Most of them are languishing in prisons without consular access.
- Many of them have been forced to overstay their sentence due to want of valid travel documents which can only be issued by the Indian Missions in those countries.
- In many cases, however, the Indian Missions are not aware of the detention of Indian citizens, as in the UAE, as a result of which travel documents do not get issued.
- Due to dearth of information of the names and particulars of Indian citizens who are languishing in foreign jails the concerned Indian Missions have not been able to look after such citizens and ensure that their health, safety, etc. is adequately protected.
- Adequate legal aid and assistance is not being provided by the Indian Missions who also do not have complete details of the Indian nationals in the various jails in UAE thereby jeopardizing the welfare and interests of the Indian nationals in custody in the foreign jails.

Common replies were filed by the Ministry of External Affairs (MEA) to the three petitioners stating that Indian Missions in Abu Dhabi and Dubai were easily accessible to Indian citizens; all Missions had Nodal officers for emergencies; they verified the nationality of the person and provided all possible assistance to Indian prisoners in coordination with the foreign countries; they provided assistance for repatriation of Indian prisoners as well as assistance for boarding, lodging, emergency medical care, travel documents and legal assistance. However, strict privacy laws in certain countries like USA, Canada and Western European countries were a hindrance.

The High Court of Punjab & Haryana enquired into the weekly visits by embassies and capacities of Indian Missions in Dubai and the UAE in 2011 and directed weekly visits of the Indian Missions in the different emirates of the UAE and the appointment of Nodal Officers by all Indian Missions. However, the court maintained that rights to have access into the prisons of foreign countries depended on the foreign countries' laws and their diplomatic relations with Gol.³¹

Detention of Foreign Nationals in the Prisons of UK, Canada, Sri Lanka, Mauritius & Prisoner Transfer Framework

The World Prison Statistics: In some countries, the proportion of non-nationals in prison is much more than nationals. As per the World Prison Brief, 2015, it was highest in UAE with 92.2%, 73% in Switzerland, while Greece had 60.4% foreigners in prisons. In countries like Netherlands the prisons have detainees and convicts from more than 100 countries.³² The proportion of foreign national prisoners in UK prisons is higher than that in other countries. Indian prisoners are among the top 10 foreign national prisoners in UK prisons. At the end of March 2016 there were 9971 foreign nationals within the UK prison population constituting 12% of the UK prison population. Indians are seventh largest in proportion, constituting 3.7% (373) of the total number of FNOs.

³¹ Lawyers from Human Rights International Vs Union of India, Civil Writ Petition No. 7778/2010, Punjab & Haryana Court.

³² Upneet Lalli and Praveen Kumari. "Repatriation of Prisoners: Legal Issues and Development in India". RGNUL Review, Volume V, Number II, 2015.

The proportion of foreign nationals in UK, Canada, Sri Lanka and Mauritius - World Prison Statistics 2016

Country	Total Prison Population (including pre-trial detainees and remand prisoners)	Source	Foreign Prisoners (% of total prison population)
UK	85 863 (at 30.6.2017)	Ministry of Justice - including 816 persons in Immigration Removal Centres but not including juveniles in Secure Training Centres and Local Authority Secure Children's Homes, of whom there were 262 at 30.6.2016	11.9% (30.6.2016 - of which the nationality of 0.3% was unknown)
Canada	40 663 (average for year to 31.3.2015)	Statistics Canada - comprising 39,623 adult prisoners and 1,040 persons under 18 in youth custody)	Not provided
Sri Lanka	16 990 (at April 2017)	Via Sunday Times, Sri Lanka	1.4% (mid 2016)
Mauritius	2 336 (at 27.6.2017)	National Prison Administration	6.4% (31.8.2012)
India	419 623 at 31.12.2015	National Crime Records Bureau	1.5% (31.12.2015)

Box No. 5

Legal Framework for Prisoner Transfer

All the above countries have legislated their Repatriation Acts. UK has legislated the "Repatriation of Prisoners Act, 1984". UK and India signed the "Prisoner Transfer Agreement" (PTA) in 2005. Additionally, UK has formulated "Guidelines for Criminal Casework on Repatriation for Foreign National Offenders" in 2014.

Indian prisoners have been repatriated from Sri Lanka since the Indo-Sri Lanka Accord in 1987 and through the Sri Lanka-India Prisoner Transfer Agreement of 2010 for sentenced Indian prisoners.

The Mauritius-India Prisoner Transfer Agreement signed in 2014 is the main legal framework determining transfers between the two countries.

While we have signed bilateral agreements with UK, Sri Lanka, Mauritius, we have not done so with Canada. However, Canada is covered under the Inter-American transfer agreement signed by GOI.

Policy Barriers Regarding The Role Of Indian Missions & Their Removal

1. Whether the role of Indian Missions is categorically mentioned and guidance adequate in the Act, Rules & Guidelines

- **Current Provision:** None in the Act though there is mention of the use of diplomatic channel in forwarding of applications by one government to the other under Rule 4 of Rules, 2004.

Rule 4: Means of forwarding the application - The application of the prisoner along with other informations as required under sub-section (1) of section 6, shall be forwarded by the Central Government to the Government of the contracting State either directly or through the diplomatic channel. Under Rule 2(c) of Definitions, "diplomatic channel" means through the missions of the respective countries.

- **Amendment:** A new section 12(3) to be added: "In the case of prisoners from India in prisons of a contracting state, Indian Missions will be responsible for providing weekly and need- based consular access in prisons, and will receive applications in the country where the prisoner is incarcerated. They will inform the prisoner regarding the repatriation opportunities and forward their applications to the Central Government/MHA, as soon as possible, after checking nationality and all particulars as required under Form 1, Annexure I, Annexure II& Annexure III of Rules 2004. They shall be responsible for verifying the voluntary consent of prisoners applied for

transfer. They shall provide travel documents and unless otherwise specified in the bilateral prisoner transfer agreement between India and the contracting state, they shall take care of the costs of travel of the prisoner from the ICWF Fund or any other fund at their disposal”.

2. Whether the Act or Guidelines are clear on when exactly the Indian Missions ought to reach the prisoner?

- **Current Provision:** No provision in the Act or Guidelines
- **Amendment to Guidelines:** “Indian Missions must reach the prisoner as soon as they are informed about an Indian national coming into conflict with law or as soon as they enter prison. There will be nodal officers appointed at each Mission who shall visit prisons every week to assess the requirements for legal assistance and transfer needs of sentenced prisoners and those appearing to be Indian nationals but without identity documents. Though the 2015 MHA Guidelines bring Indian Missions into mention in Part A on transfers of sentenced prisoners into India, the provisions are inadequate as they do not clarify when exactly the role of Indian Missions is to begin with a prisoner seeking transfer, the time frame for completing the verification of applications, or their powers and obligations to furnish travel documents timely or to verify the consent of a prisoner as required under the UN Model Agreement on the Transfer of Sentenced Prisoners, 1985”.

3. Whether there are Guidelines to ensure capacities, monitoring and performance assessment and adequate reporting by Indian Mission heads and staff on effective repatriation

- **Current Provision:** None
- **Amendment:** A nodal officer shall be appointed in each Indian Mission from amongst existing staff for overseeing repatriation needs of Indian nationals in foreign prisons and there shall be a system of monthly reporting by the nodal officer to the Ambassador of the Indian Mission who shall communicate progress and action taken on cases to appropriate MHA and MEA officials. Monthly reporting should be in the format provided under Rules 2004.
- **Justification for 1, 2, 3:** The MHA Guidelines are noticeable in their silence on timelines for the Indian Missions while a critical role has been assigned to them which is that of receiving applications, verifying them and sending the MHA. An implied role of Indian Missions is in scrutinizing and applying the criteria for a valid application. The silence of the MHA 2015 Guidelines with regard to the early role of Indian Missions in reaching, identifying and seeking prisoner applications leaves Indian Missions without direction and accountability. The lack of adequate guidance with respect to timelines on reaching the sentenced Indian prisoner in the foreign country, informing the prisoner of his/her rights to repatriation, providing legal assistance to the prisoner seeking transfer, or vetting and moving the transfer application, and finally, verifying the consent of the prisoner as is the requirement under international conventions and laws, constitutes a policy barrier in the way of a speedy application process. This gap needs to be filled with SOPs for Indian Missions.

The responsibility of consular authorities with regard to their rehabilitative role for persons behind bars is emphasized in the following international laws:

- Article 36 of the Vienna Convention on Consular Relations, 1963 (VCCR).³³ Local laws and regulations must give “full effect” to the rights enshrined in Article 36.
- Paragraph 1, Preamble, UN Model Agreement on the Transfer of Foreign Prisoner, 1985 (Adopted by the Seventh United Nations Conference on the Prevention of Crime and the

³³ Article 36 of the Vienna Convention on Consular Relations, 1963: Local authorities must notify all detained foreigners “without delay” of their right to have their consulate informed of their detention. At the request of the national, the authorities must then notify the consulate without delay, facilitate unfettered consular communication and grant consular access to the detainee. Consuls are empowered to arrange for their nationals’ legal representation and to provide a wide range of humanitarian and other assistance, with the consent of the detainee.

Treatment of Offenders).³⁴

- Paragraph 4, Recommendations on the Treatment of Foreign National Prisoners, UN Model Agreement on the Transfer of Foreign Prisoner, 1985.³⁵
- Rule 62, UN Standard Minimum Rules for Treatment of Prisoners (Mandela Rules) 2015.³⁶
- Recommendation 35.6 under Recommendation VI. Preparation for Release, Recommendation CM/Rec (2012)12 of the Committee of Ministers to member states concerning foreign prisoners, Council of Europe, Committee of Ministers.³⁷
- Paragraphs 35.1 – 35.7 Council of Europe, Committee of Ministers (Recommendation CM/Rec (2012)12 of the Committee of Ministers to member states concerning foreign prisoners).³⁸
- Paragraphs 37.1 and 37.2 Council of Europe, Committee of Ministers: Recommendation CM/Rec (2012)12 of the Committee of Ministers to member states concerning foreign prisoners.³⁹

4. Whether Rules or Guidelines exist for Indian Missions to overcome conflict between privacy laws of foreign countries and their existing obligations under the Vienna Convention

- **Current Provision:** None in Act or Guidelines
- **Amendment:** Indian Missions to operate as per SOPs formulated by MEA/MHA with regard to privacy and data protection laws in the host country or according to MOUs signed by MEA with foreign countries.
- **Justification:** As reported by the Indian government in Parliament, privacy laws have been identified as barriers by Indian Missions in accessing prisoners. Privacy laws of foreign countries like UK, Canada and Australia constitute a key reason. Canada has very strict laws. Its two main laws are the Privacy Act, which covers the personal information-handling practices of federal government departments and agencies, and the Personal Information Protection and Electronic Documents Act (PIPEDA), the federal private-sector privacy law. UK has no privacy law recognized in tort. However, the UK Human Rights Act has recently introduced a privacy provision in section 12. These domestic laws which are premised on 'consent' of the prisoner to share his personal details and condition, appear to be creating a conflict with the obligations placed on Indian Missions under the Vienna Convention to identify and reach any national arrested/detained and assess their need for legal assistance or for transfer. MoUs with the respective countries and SOPs with Indian stakeholders have been found effective for providing role clarity and improving role performance as well as obtaining information about Indian prisoners.

5. Whether provisions for Cost of Transfer and the responsibility of Indian Missions are adequately covered in the Act and Guidelines

- **Current Provision:** There is no provision in the 2003 Act on who shall bear the costs of prisoner transfer in cases of transfers from or into India.

³⁴ The social resettlement of offenders should be promoted by quickly facilitating the return of persons convicted of crime abroad to their home country to serve their sentence.

³⁵ Foreign prisoners should be informed, in a language they understand, of the prison regime and regulations as well as their right to request contact with consular authorities. Proper assistance should be given in dealings with medical or programme staff and concerning such matters as complaints, special diets and religious representation and counseling.

³⁶ Rule 62.1. Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong. 62. 2. Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

³⁷ Where foreign prisoners may be transferred to another State, they shall be assisted in seeking independent advice about the consequences of such a transfer.

³⁸ VI. Preparation for release: 35.1. Preparation for release of foreign prisoners shall start in good time and in a manner that facilitates their reintegration into society.

³⁹ VII. Release from prison: 37.1. In order to assist foreign prisoners to return to society after release, practical measures shall be taken to provide appropriate documents and identification papers and assistance with travel. 37.2. Where foreign prisoners will return to a country with which they have links and, if the prisoner consents, the consular representatives shall assist them where possible in this regard.

- **Amendment:** New provision to be added: “Unless the sentencing country agrees to escort the prisoner back to India under their own arrangements or the bilateral agreement between the two states mentions otherwise, any costs incurred in the application of this Act shall be borne by the administering State, except costs incurred exclusively in the territory of the sentencing State. Specific to the airfare of the prisoner, the costs of transfer will be taken care of by the administering state in cases where the prisoner moves his own application, where the prisoner’s family may be unable to meet the cost of transfer, and in cases where the state in which the prisoner is lodged is not ready to take care of the cost of transfer. The government of the administering state may decide on specific kinds of cases where the recovery of ‘reasonable’ costs incurred in transferring the prisoner may be attempted. But under no circumstances shall costs be recovered, either immediately or at a future time, from any sentenced prisoner whose means are not sufficient to meet the expenses.”
- **Justification:** India is obliged under international laws of transfer and this legislation to bring Indian prisoners with voluntary requests back from foreign countries and to transfer foreign nationals to their home countries. It is the administering state’s duty to take care of the cost or have arrangements with contracting states to do so. However, Point 10 of the 2004 Rules mentions a detailed checklist (Annexure II - Checklist of documents to be furnished along with the repatriation request of the prisoner), and expects the prisoner’s application to mention “Whether the prisoner, or his relatives etc. are ready to bear his cost of transportation”. The transfer of cost to the prisoner, his family and friends, or to the host country is detrimental to the chances of transfer and staggers the pace of rehabilitation of Indian nationals most of whom in prison are poor and in places where contracting state is not bound by their domestic laws or bilateral agreement to take on the costs.

Part A(i) and (m) of the MHA 2015 Guidelines also discuss recovery of the cost of transfer, including the airfare, from relatives/friend of the prisoner staying in India or those requesting the transfer into India (A(l) and A(m)). A(l) and (m) taken together show that the Guidelines have omitted to mention obligations for costs of transfer in the case where the prisoner moves his own applications, where the family may be unable to meet the cost of transfer, and in cases where the state in which the prisoner is lodged is not ready to take care of the cost of transfer. This requires amendment.

Moreover, GOI has a fund at its disposal – the Indian Community Welfare Fund (ICWF) - set up since 2009 by the Ministry of Overseas Indian Affairs for distressed Indian nationals in foreign countries, and utilized by the Indian Missions for prisoners. The fund currently mentions a maximum of 2500 USD per prisoner for paying of fines or penalties only. This may be expanded to travel assistance as well. The Indian Missions are under obligation to use this fund and must not let it go unutilized as they have in the past (C&AG Report, 2013). The Guidelines may mention this obligation and the percentage of the fund which will be diverted by Indian Missions for transfers for persons behind bars.

The following international laws and legislations on repatriation are significant in demonstrating standards in this regard:

- **The Council of Europe, Convention on the Transfer of Sentenced Prisoners, 21.3.1983** lays down the principle of the costs being borne by the administering state.⁴⁰ Paragraph 6, UN Model Agreement on the Transfer of Foreign Prisoner, 1985.⁴¹
- **The Transfer of Prisoner’s Act, 2004 of Tanzania, lays down a principle of cost sharing with regard to costs of transfer.**⁴²
- **Section 18(4), Tanzania, The Transfer of Prisoner’s Act, 2004:** Though the government of Tanzania considers these expenses for a citizen of Tanzania as a civil debt owed to the state, this section points out that it would be unreasonable for the Minister to exercise his power to recover costs in cases where the prisoner cannot meet the expenses either immediately or in future.

⁴⁰ Article 17(5) on Language & Costs states, “Any costs incurred in the application of this Convention shall be borne by the administering State, except costs incurred exclusively in the territory of the sentencing State”.

⁴¹ Costs incurred as a result of a transfer shall be borne by the administering State, unless otherwise decided by both States. Both the sentencing and administering States shall be competent to grant pardon and amnesty.

⁴² Section 18 of the Act states: The cost of transfer of a sentenced prisoner shall be borne out by Tanzania and the designated country in such proportion as may be agreed upon by them.

- **Section 37, Republic of Kenya’s Transfer of Prisoners Act, 2015** lays down the principle of recovery of costs and expenses of transfer in the Act itself.⁴³

Transfers and Performance

On Ground

In order to find out the total number of applications received from sentenced Indian prisoners by the Indian Commissions in UK, Canada, Sri Lanka and Mauritius and their offence and domicile details; the number of applications forwarded by them to the Ministry of Home Affairs and their status and pendency; and the numbers repatriated since the legislation of the repatriation Act in 2003 a’nd the number more recently repatriated between 1st March 2014 to 1st March 2017, RTI requests were filed to:

1. Indian High Commissions in the above countries
2. Ministry of Home Affairs (CS Division)
3. State Home Departments of Punjab and Gujarat

The MHA did not provide any substantive response regarding the number of applications from sentenced Indian prisoners in foreign prisons in general, or specifically from the countries selected for study, and the status of their applications.⁴⁴

All the four Indian Missions responded to the RTI request. Except for the High Commission of Canada which did not have the details of Indian prisoners or their transfer needs, the other High Commissions of UK, Sri Lanka and Mauritius provided substantive though partial responses. The responses of the four Indian Missions to the queries placed are categorized in the table below and their specificities elaborated in the chapter.

The RTI requests to Home Departments of Punjab and Gujarat were forwarded to the respective prison departments. Punjab Prison Department forwarded the RTI to all its prisons. However as only two prisons replied saying no Indian nationals had been repatriated to those jails, consolidated information on number, the prison where the repatriated person was now located and country from where transferred along with their offence details was provided by the office of the ADGP Prisons. Gujarat Prison Department provided a consolidated response to the RTI request on the number of repatriated prisoners, where they had been sentenced, and where they were lodged but the response was partial in nature.

Response of the Gujarat Prison Department⁴⁵

The Gujarat Prison Department said that the Home Department had sought information from the former on the suitability of the following prisoners and whether they were suitable to be lodged in their prisons considering the seriousness of their offences and the rules that would apply to them if they were to be so lodged. Response of the Gujarat Prison Department declared that the information had been provided to the Gujarat Government but the details of approval were not disclosed in the response.

Below are the details of the applications under consideration by the Government of Gujarat in May 2017 arranged by the year in which received, the country from where received and the names of prisoners who applied for transfer.⁴⁶

Sr. No.	Year	Country	Name of Prisoner
1.	2014	UK	Patel
2.	2015	UK	Ramanlal
3.	2015	Thailand	Jadav
4.	2015	Thailand	Umarbhai
5.	2015	Thailand	Niranjan

43 “The terms agreed under this Act for the transfer of a prisoner may, if the Attorney-General considers it appropriate, include terms relating to the recovery of the costs and expenses reasonably incurred in transferring the prisoner”.

44 Refer Annexure Q: RTI to the MHA (CS) General Information on repatriated Prisoners. Queries 2, 5, 6 deal with the applications received from the Indian High Commissions in the countries. p 188.

45 Refer Annexure T: RTI sample filed to the Home Departments of Punjab and Gujarat. p 195.

46 The full names of prisoners have not been disclosed.

Information from Punjab Prison Department

- Details of all sentenced Indian prisoners repatriated from foreign countries to Punjab prisons between 1st March 2003-1st March 2017: Five Indian nationals have been repatriated from UK prisons in this period. All are sentenced in murder cases.

Name of Jail		Name of Prisoner/ Case Number ⁴⁷	Country from where repatriated	Offence as per penal provisions of the sentencing country	Offence corresponding in IPC or other Indian Law	Date when entered prison in Punjab	Name of Prison in Punjab where detained	Date of Release
Sr. No.	Central Jails							
6	Jalandhar at Kapurthala	A. Singh	U.K.	-	302, Indian Penal Code (IPC) Life Imprisonment Indian Law	06.12.2007	Central Jail, Jalandhar	Undergoing Sentence
		B. Singh	U.K.	-	302, Indian Penal Code (IPC) Life Imprisonment Indian Law	05.05.2015	Central Jail, Jalandhar	Undergoing Sentence
		C. Singh	U.K.	-	302, Indian Penal Code (IPC) Life Imprisonment Indian Law	22.11.2016	Central Jail, Jalandhar	Undergoing Sentence
	District Jails							
11	Distt Jail Nabha	D. Singh	United Kingdom	Murder of his wife	302 IPC Life Imprisonment Indian Law	22.08.13	Maximum Security Jail, Nabha	17.03.17
		E. Singh	United Kingdom	Murder contrary to Common Law	302 IPC Life Imprisonment Indian Law	13.05.15	Maximum Security Jail, Nabha	In custody

⁴⁷ The real or full names of prisoners have not been disclosed.

Information Received from Four Indian Missions: Snapshot⁴⁸

Information Sought	UK	Canada	Sri Lanka	Mauritius
All guidelines/circulars/orders issued by the Government of India addressing the role and duties of the Indian Missions	Takes inputs from MEA	Nothing beyond what MHA already has in public domain	No information held	MHA Guidelines and bilateral agreement shared
Any form and format created by the Indian Mission for sentenced Indian prisoners to procedurally avail the benefits of the 2003 Act, the 2004 Rules and 2015 Guidelines	No format created	Not created any	No information held	Not created any. Deals with the case as per instructions of the MHA, Govt. of India
Any information or awareness materials created for sentenced Indian prisoners to timely avail repatriation benefits	Letter circulated by Mission to Indian prisoners, provided	Not created any	Through personal meetings at the prison itself.	Through periodic visits to prisons for and meetings and soft reading materials
Details of all services and funds provided by the Indian Mission for the benefit of Indian prisoners, both undertrials and convicts	Not aware of any fund	Information provided on services and funds	Information provided on services and funds	Information provided on services and funds
Details of number of staff dedicated to servicing prisoner awareness and prisoner applications and their designations	Information provided	Information provided	Information provided	Information provided
Total number of visits made by consular and other officers to the sentenced Indian prisoners and the purpose of their visit	Information provided	Information provided	Information provided	Information provided
Details of all applications for voluntary transfer from sentenced Indian prisoners	Information provided	Nil	Information provided in format. No mention about type of offenders.	Information provided. Answer not provided in format. No mention about type of offenders. Details of communication shared on the repatriation of two prisoners between 2014-2015 but before the issuance of MHA Guidelines
Information on the total number of first time offenders and repeat offenders who applied for voluntary transfer and found eligible	No details of first time or repeat offenders maintained	Nil	Nil	Not provided
Details of the last two successful cases of repatriation accepted by the MHA	MHA to reply	Not received, not forwarded.	Provided partially	Communication details in the last two cases provided. No Form 1 details provided
Details of the last two unsuccessful cases that were rejected by the MHA	MHA to reply	Not received, not forwarded.	Provided partially	No rejection

48 Refer Annexure P: RTI to Four Indian Missions. p 186.

Information Sought	UK	Canada	Sri Lanka	Mauritius
Details of last ten applications for voluntary transfers from sentenced Indian prisoners	List of cases provided but no application	Nil	All applications were received only after Mission officials educated them about the provision. No voluntary transfer request was received.	Not shared
Details of applications and consent verifications pending with the Indian Mission	Nil	Nil	Nil	
(i) Total number of pending applications and the reasons thereof				No pendency with High Commission. Approval of 5 cases awaited from GOI.
(ii) Total number of pending consent verifications and the reasons thereof				
Record of reasons for rejection of all applications	MHA to reply	Not applicable	Nil. No information is available	No rejection received from the Ministry of Home Affairs, New Delhi.

On Ground

Response of Indian High Commission, Mauritius

- **Numbers Repatriated:** Since 2003, 24 sentenced prisoners in Mauritius applied out of which 19 have been transferred/released
- **Outreach & Facilities:** No forms/formats created for Indian prisoners vis-a-vis transfers. The Mission does not provide any fund to sentenced prisoners or undertrials. The Mission provides Indian prisoners telephone calling cards for them to remain in contact with the family members in India. Mission also presents them some reading materials during consular visits.
- **Funds:** The Mission does not provide any fund to sentenced prisoners/under trials. Only consular visits are made at regular intervals to ensure their well being and address any grievance with the jail authorities.
- **Staffing:** There is no provision of staff exclusively dedicated to servicing sentenced prisoner/under trials. The existing Consular Officers of the Mission perform the function related to sentenced Indian prisoners/under trials.
- **Consular Access:** Consular visits are made at regular intervals to ensure their well being. Consular officers visit 5 times a week for ascertaining the welfare of prisoners and their transfer to India. Consular officers hold meetings with the sentenced Indian prisoners and make them aware of the procedure related to their transfer to India in accordance with the agreement made between the two countries.
- **Cases Decided & Under Process:** 5 cases under process with GOI for transfer. MEA says 6 persons remain. No case pending with Indian High Commission in Mauritius for verification. No rejections received from MHA since 2015

Information on Eligibility, Applications and Transfers as on 31 March 2017

Source: Provided on request by British High Commission

- 355 sentenced Indian nationals in UK prisons
- 131 eligible for repatriation
- 12 extant applications
- Offences – Murder (11); Attempted Rape(1)
- Longest outstanding application-submitted in 22.08.2011, and another application recently withdrawn for delay
- 8 Indian prisoners transferred since 2010 (including 6 since 2015)

Details of Indian Nationals in UK Prisons in August 2017

Source: Answer of the Minister of State, Ministry of External Affairs in Parliament on 10 August 2017
376 Indian nationals in UK prisons

- Total Number of Sentenced Prisoners: 376
- Total Number of Undertrial Prisoners: Details not provided by Indian Missions
- Offence Details: Not provided by Indian Missions to GOI
- Domicile Details: Not provided by Indian Missions to GOI

- The last ten applications are not shared. Partial case details are shared in only two successful cases of repatriation. No details of unsuccessful or pending cases are shared. Partial Form 1 application shared in only one case.
- Transfer Case 2017: Case of Shri I who was transferred to India on 2.02.2017. No details of timelines of transfer processing are provided.
- Transfer Case 2015: Case of Shri R where transfer was successfully carried out on 21.01.2015. Transfer details have been provided through two communications (one from MOFA to Indian High Commission, and another from High Commission to MHA) but no Form 1 details have been shared so date of application cannot be ascertained to evaluate total time taken to process the same.
- Date of application for transfer was not shared in either of the two cases or their process documents that have been provided. This prevents effective calculation of time taken to process.

Response of Indian High Commission, United Kingdom

List of Transfer of Sentenced Prisoners (2007-2014) & Information on Consular Services

	Number of Sentenced Persons	Information on Consular Services
Transferred	6 2008: 2; 2009: 1 2010: 1; 2012: 1 2013: 1	The Mission sought the identity details of the prisoners as it had no information about their particulars.
Refused by India	2 2007: 1 2011: 1	The Mission stated that consular visits are possible only if the detainee desires.
Withdrawn	1 2011: 1	Only 5 visits undertaken to different prisons on request from prisoners between Mar 2016- 2017.
Awaiting MHA response	10 Since 2009: 3 Since 2011: 6 2013: 1	No case information provided for 2015-2017. But details of 'withdrawn' and 'pending' cases provided are incorrect.
Pending with UK Govt	2 Since 2011: 1 Since 2014: 1	The withdrawal of application is not by the prisoner as mentioned in the RTI response of the Indian Mission. Prisoner already transferred to India is incorrect shown as case pending with UK authority.

Offence Details of Sentenced Indian Prisoners in UK as on 31/03/ 2017

The RTI filed to Indian Missions also sought information on applications filed by different categories of offenders. However, it appears that the Indian Missions do not maintain the data on first time and repeat offenders.

In the absence of offence data, High Commissions of the respective countries were requested for the details. The British High Commission shared the number and offence background of the sentenced Indian prisoners in UK prisons as on 31 March 2017. The same is furnished below.

Possession of weapon	2
Manslaughter	3
Criminal Damage (including arson)	5
Public Order Offences	9
Drug Offences	12
Robbery or Theft	19
Fraud	24
Murder	35
Violence against the Person	42
Offence not Recorded	53
Sexual Offences	60
Miscellaneous Crimes Against Society (including facilitation of illegal immigration)	91

Response of Indian High Commission, Sri Lanka: Transfer of sentenced Indian nationals from Sri Lankan prisons to Indian prisons since 2010

Information on Transferred Sentenced Prisoners (2010-2017)

Year (2010-2017)	Total number of sentenced Indian prisoners in Sri Lankan prisons	Total number of applications received	Total no. of applications found eligible as per criteria laid down by both Indian and Sri Lankan govt.	Total no. of applications sent to the Indian MHA	Total no. of applications accepted for transfer by the Govt. of India	Total no. of applications rejected	Total no. of cases pending as on 1 March 2017
2010	37	Nil	Nil	Nil	Nil	Nil	03 who are in the process to be transferred shortly
2011	37	Nil	Nil	Nil		Nil	
2012	36	31	31	31 (04 released & 1 died)	04 released & 1 died	Nil	
2013	31	31	31	31	29	2	
2014-2017	04	04	04	04	01	Nil	

Discordant information from Indian High Commission & MEA

IHC: 4 prisoners remain to be transferred
MEA: 31 prisoners remain to be transferred

MEA's Public Statement on 3rd April 2017: 2 prisoners transferred today 31 Indians remain in Sri Lankan prisons. Formalities for 20 of these prisoners have been completed for transfer. Formalities for remaining 11 eligible prisoners will be initiated soon.

Response of Indian High Commission in Canada

Information regarding Transfers and Consular Services for Indian Nationals in Prison

Canada's Privacy Laws:

1. Privacy Act which covers the personal information-handling practices of federal government departments and agencies.

2. Personal Information Protection and Electronic Documents Act (PIPEDA), the federal private sector privacy law.

Query 1,2 & 3	No further guidelines prepared No forms, formats, information or awareness material created for sentenced Indian prisoners
Query 4	Consular services are provided and ICWF may be utilized for Indian nationals if so demanded by them
Query 5	Our Consular Section attends to such issues on a need basis. Consular Section of HCI Ottawa comprises Counsellor (Consular), Attache(Consular) and JSA Consular.
Query 6	Nil. The visits can be made only if a prisoner requests Canadian Authorities to inform Indian High Commission. The details of the prisoners are not shared by the Canadian Authorities with the Indian High Commission under their privacy laws.
Query 7-10	Nil Q 8 (i) & (ii) No requests for repatriation were forwarded to MHA since no such application was received by HCI Ottawa.
Query 11	No such application was received by HCI Ottawa, hence question of rejection by MHA does not arise'
Please refer Annexure P for details of the queries made in the RTI request. p 186.	

RTI Query 4: Details of all services and funds⁴⁹ provided by the Indian Missions for the benefit of Indian prisoners in Canada, UK, Sri Lanka, Mauritius

Query 4	UK	Canada	Sri Lanka	Mauritius
	The Mission has no information about services and funds intended for the benefit of Indian prisoners.	Consular services are provided and ICWF may be utilized for Indian national, if so demanded by them	Mission keeps record of all Indians arrested in Sri Lanka (both undertrials and convicts) and gives them consular access immediately at the prison itself. Mission also helps the accused to obtain initial legal assistance wherever required, as per provisions of Indian Community Welfare Fund (ICWF) Rules.	The Mission does not provide any fund to sentenced prisoner/undertrials. Only consular visits are made at regular intervals to ensure their well-being and address any grievance with the jail authorities. The Mission provides Indian prisoners telephone calling cards for them to remain in contact with the family members in India. Mission also presents them some reading materials during consular visits.

49 Refer Annexure AA: Fact Sheet on the Indian Community Welfare Fund (ICWF). p 206.

RTI Query 5: Staff Strength of Indian Missions to Reach Prisoners

Query 5	UK	Canada	Sri Lanka	Mauritius
Details of number of staff dedicated to servicing prisoner awareness and prisoner applications and their designations as on 1 st March 2017.	There is no dedicated staff to servicing prisoner awareness. However, Consular Wing of this Mission, which comprises of a First Secretary, one Assistant Consular Officer and one local staff who looks after the issue of prisoners.	Our Consular Section attends to such issues on a need basis. Consular Section of HCI Ottawa comprises Counsellor (Consular), Attache(Consular) and JSA Consul	Designated Mission officials are dedicated to attend the Indian nationals in various Sri Lankan jails periodically and to give consular services to them	As far as High Commission of India is concerned, there is no provision of staff exclusively dedicated to servicing sentenced prisoner/under trials. The existing Consular Officers of the Mission perform the function related to sentenced Indian prisoners/under trials.

RTI Query 6: Consular Visits to Sentenced Indian Prisoners

Query 6	UK	Canada	Sri Lanka	Mauritius
Total number of visits made by consular and other officers to the sentenced Indian prisoners and the purpose of their visit from 1st March 2016 to 1st March 2017	5 visits made.	Nil. The visits can be made only if a prisoner requests Canadian Authorities to inform Indian High Commission. The details of the prisoners are not shared by the Canadian Authorities with the Indian High Commission under their privacy laws.	Officials of the Consular Section of the Mission visit each prison at least once every month. The visit also takes place in case of any need otherwise.	Consular Officers visited 5 times during the period for ascertaining the welfare of prisoners and transfer of a prisoner from Mauritian prison to India.

Recommendations

The absence of both statutory mention and delineation of time-bound responsibilities, empowerment through staff and funds opens up a big chasm for inconsistencies in welfare to Indian prisoners and neglect to this field. Indian Missions are a primary agency and often the first point of contact from the prisoner's country in facilitating legal assistance in the foreign country, as well as transfer and rehabilitation. The lack of reporting provisions for Indian Missions in the Repatriation of Prisoners Act, 2003, Rules and MHA Guidelines thwart time-bound action, effective monitoring and accountability. It is a severe lapse not to mention this stakeholder and its duties in the Act, leaving the obligations under the Vienna Convention and those implied in the Act to a discretionary and unregulated function. The Act and Rules need to be amended to restore the rehabilitative role of the Indian Missions to a statutory one. The introduction of sensitization, reporting, monitoring systems and KPIs in this area can improve prioritization to the needs of sentenced Indian prisoners and better implementation of the Repatriation of Prisoners Act, 2003.

- The inclusion of reporting and monitoring formats in the Rules 2004 is vital for Indian Missions. This will facilitate assessments based on targets, time taken and numbers repatriated. Informed targets can be set by the Indian Missions based on base line research on number of Indian prisoners in the relevant country eligible and consenting to repatriation and their communication and cost needs.

Though MHA Guidelines specify a Monitoring Committee headed by the Joint Secretary (CS), to oversee repatriation of sentenced Indian prisoners, the Committee does not seek monthly reports from the functionaries of the Indian Missions. An activation of both the Committee as well as making Indian Mission representatives a part of the mandated monthly meetings using the aids of technology would effect more accountability and timeliness.

- SOP is required for Indian Missions with specification for weekly visits to prisons, with time-bound reporting and monitoring requirements for each responsibility to be performed by the different functionaries of the Indian Missions. The inclusion of reporting and monitoring formats in the Rules 2004 is vital for the use of Indian Missions. SOPs have been known to provide clarity to duty holders and enhance compliance, performance and accountability. These procedures and timelines require categorical elucidation either with a modification of the 2015 Guidelines or a separate SOP for Indian Missions with regard to the transfer of sentenced Indian prisoners. The SOP could be prepared by the MEA in collaboration with MHA.
- Nodal officers accountable to the Ambassador need to be appointed in the Missions and assigned the responsibilities of case monitoring. Currently, Indian Missions do not have dedicated staff strength to reach out timely to Indian prisoners. This needs to be immediately overcome through the appointment of designated officers for each Mission by the MEA which will help targetted approach towards awareness building on transfers. Additionally, KPIs could be included for Ambassadors and Mission officials to improve monitoring and prioritization.
- Awareness building of the Mission Officials regarding Services and Facilities for Indian Prisoners needs to be prioritized. Indian Missions are not equally aware of the Indian Community Welfare Fund (ICWF) or other facilities such as the MADAD portal developed by the MEA for grievance redressal. This can be used by prisoners for consular access and repatriation grievances. This lack of awareness affects purposive reach of the Indian Missions and the impact they have. IHC, Sri Lanka is most aware of these benefits, makes weekly visits and has been able to transfer more prisoners while IHC, UK is least impactful. This the barrier can be overcome by the MEA through awareness modules for the Indian Missions. Additionally, the Madad portal of the MEA should be popularized among the Indian High Commissions by the MEA.
- The MEA's Annual Conference for Ambassadors could be used to prioritize the problem of consular service and repatriation.
- The MEA should prioritise the development of awareness literature for Indian prisoners in foreign countries with a focus on their right to transfer and related benefits.
- MEA to earmark resources in the ICWF Fund to ensure that Indian Missions use the fund to cover cost of tickets of sentenced Indian prisoners and no delay is caused due to the differentials in economic background of prisoners. The ICWF Guidelines need to be modified to accommodate this cost beyond taking care of small fines, penalties and emergency travel for stranded Indians. Costs should preferably be borne out of this fund without a means test as all persons behind bars should be seen as indigent and automatically eligible for state assistance. This will also reduce the time and anxiety of many underprivileged families to arrange funds or to figure out the process of buying tickets if they have to. In cases where prisoner/families have to buy tickets after the sending country has approved dates, the coordination would be more protracted and time consuming. The case documents show that one of the first requirements that Gol seeks to know from the foreign country/prisoner is whether the prisoner can take care of the costs of his transfer. If the fund would take care of this cost, an important checkpoint

would be reduced and time saved. The Rules 2004 and provisions in MHA Guidelines must change in this regard.

- MEA and Indian Missions need MoUs with foreign countries to negotiate around the privacy laws so Indian Missions can get easier access to Indian nationals in conflict with law. It is vital that through diplomatic channels Gol has MoUs with relevant countries to establish access to prisoners to provide communication and information based on which the prisoner may decide on the level of contact they require with the consulate or any assistance for repatriation.
- A module on repatriation for Indian Foreign Service (IFS) officers must be considered for integration into the IFS induction/orientation course for sensitization.
- A Grievance Redressal System for sentenced Indian prisoners in foreign prisons and their family members and lawyers is essential. The MADAD portal of the MEA has scope for grievances from Indian students and from those having consular-related grievances. Though there is mention of a prisoner module being available on the MADAD portal, the portal does not provide the node for specific access by them or categorical evidence of how it is used by prisoners or for their benefit. The portal mentions the number of grievances received but there is no categorization of the number and nature of grievances received from prisoners or their families and the numbers dealt with. This should be provided.
- An audit/assessment of the MADAD portal would enable an understanding of prisoners' grievances. Providing specific access points to prisoners and their families or lawyers, and ensuring its popularisation by the Indian Missions with Indian prisoners in foreign jails would be vital. Similarly, the MEA should be able to popularize it with the stakeholders at the states and the media. It would be useful to provide a link between the MADAD portal and the Nationality Verification Portal for Indian Missions and the states would be useful.
- MEA to earmark resources for research on prisoners' needs and perceptions of barriers to transfer from foreign country prisons.
- Every Indian Mission must have a panel of legal aid lawyers. Indian Missions must make efforts to reach out to Indian lawyers in respective foreign countries who can easily provide pro bono legal aid and assistance to Indian nationals in prison to fill the gaps in legal assistance.

5. Nationality & Criminality Verification

Section 12 of the Repatriation of Prisoners Act, 2003, cites being an Indian citizen/ national as the main criteria for transfer, this makes nationality verification a crucial and unavoidable step in the repatriation process. It states, “The Central Government may accept the transfer of a prisoner, who is a citizen of India, from a contracting state wherein he is undergoing any sentence of imprisonment subject to such terms and conditions as may be agreed to between Indian and the state”. The procedures for verification are laid down in the 2015 MHA Guidelines for implementation of Repatriation of Prisoners Act, 2003. The key stakeholders according to these provisions are the Indian Missions, the MEA and the state security agencies at the state level which includes the local police and the CID, with overall supervision by the MHA.

On Paper

- Provision A(f) of MHA Guidelines states, “Upon receipt of a request and related documents from the prisoner claiming to be an Indian national imprisoned in the foreign country who seeks repatriation, first nationality of the prisoner will be verified. In case the prisoner has produced details of Indian passport issued to him/her in the past by the Government of India, the correctness of such details will be verified with the Chief Passport Officer, MEA for the purpose of nationality verification. In case the passport details are found to be correct, the prisoner will be considered to be an Indian national and no further verification from the State Government will be required. However, in case there is any ambiguity in establishing Indian nationality through this process, the case will be referred to the respective state Government / UT Administration for verification.
- A(b), MHA Guidelines 2015 lays down the requirements for a complete application that Indian mission should forward to it. It states, “The request for repatriation of a prisoner should be forwarded by the Indian Mission accompanied with all necessary documentary evidence to establish the identity of the person concerned like passport, photographs, fingerprints, etc., a copy of the judgment (in English) detailing the offence for which the prisoner was imprisoned, including the details of number of years for which convicted, sentence undergone, and sentence pending, and is undergoing the sentence in the foreign country. The Indian Mission in the country where the prisoner is incarcerated should ensure that complete and correct details are collected and provided to the Ministry of Home Affairs. Till all the aforementioned details are received the case should not be taken up for processing at all in the Ministry”.
- Provision A(n) of MHA Guidelines which specifies the time line for each activity undertaken by the respective stakeholders for expeditious processing of cases after receiving of request with all documentation from or on behalf of the prisoner, lays down a timeline of 10 days for nationality verification by MHA/MEA/ State Govt.

On Ground

- Online system of a Nationality Verification Portal has been created for Indian Missions to verify the nationality. The particulars of the Verification Form prepared by the MEA, “Performa for Verification of Nationality Status and Antecedents” are required to be provided/uploaded by the Indian Mission.
- Once uploaded on the portal or emailed, the details are required to be verified by the MEA and state security agencies. The form requires passport details, full name of person, name of parents, DOB, present and permanent address, occupation, date of losing passport, details of travel agent who helped the applicant to go abroad.
- MEA (Office of the Chief Passport Officer) checks whether the passport is genuine or not. Generally, name, date of birth and parents name is quite sufficient to verify and avoid

duplication. However, the MEA (CPV) division did not respond with information to CHRI's RTI query on status of verifications completed and those pending.

- The general understanding and also as mentioned under provision A(f) of the MHA Guidelines, 2015, is that only where passport details are not available or there is ambiguity, field verification has to be sought by the MHA from local police and intelligence. However, even if passport details are present, the Sr. 14 of MEA verification form (Refer Annexure 'O') requires that security agencies re-confirm address through physical verification and get confirmation from friends and relatives about antecedents.⁵⁰
- A police verification is mandatory if the prisoner does not have a passport.
- Time taken: Generally, not more than a week. Maximum delay could go up to a month according to stakeholders.
- If there is delay, families of Indians in distress abroad can also file grievance on the MEA's MADAD portal developed for the use of Indians abroad at madad.go.in. They can place grievances online without travelling physically.

Policy Barriers

- The MHA Guidelines must make explicit mention of the Nationality Verification Portal of the MEA and its functioning must be explicated for stakeholders. The silence encourages compartmentalized functioning of agencies whose functions are related.
- While it may appear from Provision (f) of MHA Guidelines that the nationality verification process starts after the receipt of the application, in practice the verification process has in fact been completed in the pre-application stage to obtain the 'completed' set of documents as required by the MHA to initiate processing of an application. The completed set of documents requires identity/nationality of the applicant to be 'established'. This becomes clearer when we read provision A(b) of the MHA Guidelines. In effect, provision A(b) when read vis-à-vis A(f) and A(n) shows discrepancy. While A(b) indicates that the Indian Mission must complete the verification through various central and state government authorities even before it submits an application to the GOI, A(f) and A(n) call for the verification after the application is received. Provision A(b) is essentially a pre-application process and not a post-application one as it is made out to be under provision A(f) and A(n). So, if the nationality is already 'established' when the application is received by MHA as the MHA categorically does not act till all documentation is presented to it in a completed order, there should be no requirement for further nationality verification by MEA and state authorities after application is received as the Guidelines currently prescribe under provision A(f) as this amounts to duplication. The MHA Guidelines point to an elaborate process of nationality verification by the MEA and security agencies at centre and state levels after the receipt of the application. This duplication must be removed from the Guidelines.
- Duplicating means we are going through the same set of checkpoints twice at the risk of wasting the time of the state security agencies or creating an invisible 'buffer' time period that can well be avoided. Presently, in spite of the buffer time, we are still unable to meet the 44 day timeline requirement. This duplication of verification processes prevents speedy expediting of cases. At the same time, after MHA receives a completed set, the same process of nationality verification undertaken in the pre-application stage would have to be undertaken all over again if we go by the process set in the Guidelines.

⁵⁰ Though CHRI filed an RTI query and a First Appeal to the MHA (CS), no substantive information was received from the Ministry on all the sentenced Indian prisoners since 2003, whose nationality has been verified to be Indian, could not be verified, and whose verifications are pending.

Implementation Barriers

- MHA does not have access to view the activity on the Nationality Verification Portal of the MEA, preventing it from monitoring, troubleshooting, getting timely status or preventing delays.
- Though Guidelines mention that further verifications will be done by states only if passport details being verified by MEA do not match, virtually for every case the state authorities are being enlisted to do the physical verification of the address. Either this aspect of provision A(f) should be strictly and more discerningly enforced or else average time taken for physical verification in each case should be accommodated into the Guidelines' specifications.
- Case details received through RTI responses from Indian Missions and the states reveal considerable delays in the verification process. Though it cannot be discerned whether the delay is with the Centre or the States the extent of delay, sometimes four years in some cases and nine years in others, is clear. Even if GoI may not explicitly reject the cases, the delays tantamount to de-facto rejection (Refer Box 6).
- MEA does not maintain statistical information on the number of verifications received, verifications done or time taken in each case. This could be because of existing workload or inadequate monitoring. It prevents efficient tracking and impact analysis.
- Efficiency of the person dealing with the case is a factor contributing to overall speed or slowness of the process. If person is capable, approval can happen in one go, if not, 2-4 months processing time may be taken up.
- In case of doubt by MEA, the Regional Passport Offices are contacted. RPOs are overburdened and responses from RPOs are slow.
- Sometimes verification is slower due to events in the foreign country. For instance, during elections in relevant foreign country, verification can take up to 3 months as there can be considerable delay in receiving details and documents required for verification.
- Some Indian nationals may have lost or destroyed their passport/travel documents, changed their names. Their identity verification may take longer than in other cases.
- Since passports and passport related information are maintained for ten years only by RPOs after which the information has to be renewed and reverified, identity verification may be required to be done all over again.
- Physical verification is mandatory because passports could have been obtained through corruption and bribery and without proper verification. MEA does not rely much on verification processes of the states.

Box No. 6

Delays in Verification by the Chain of Indian Stakeholders

Case 1: Lengthy Gap between application and NOC from state

- Date of Prisoner's Application for Transfer: 18.12.12
- Date of no objection certificate (NOC) given by the state government: Around 20th of April 2017
- This shows that the time taken in verification by the chain of Indian stakeholders can spill over to about 4 years, 4 months and 2 days, despite numerous identity documents provided by the prisoner.

Case 2: Problem of 'Not Deciding'

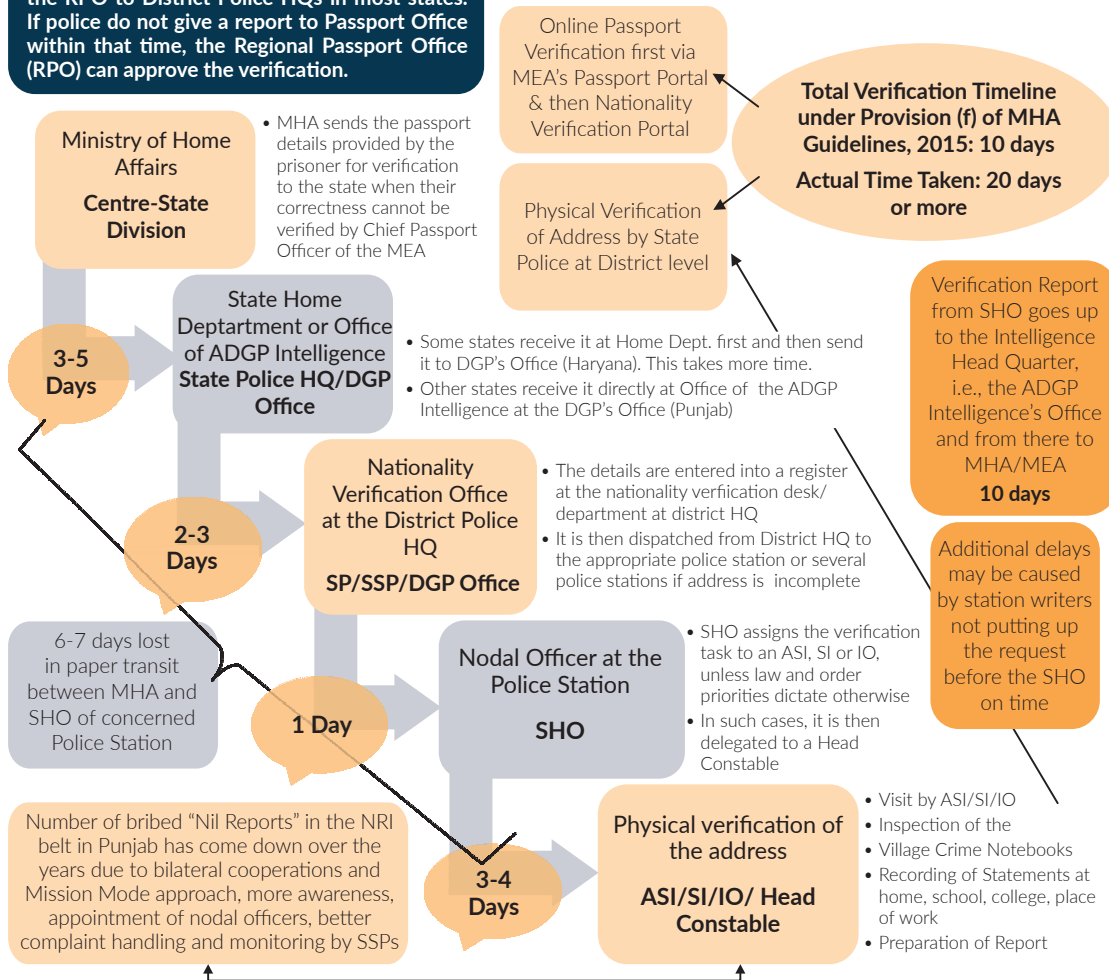
- Date of Application for Transfer: 14.06.12
- Date of No objection given by the state government: Around 20. 04. 2017
- Time taken to process application thus far by Indian authorities: 4 years, 10 months, 6 days
- Current status of Case: Now withdrawn by the prisoner for delay

Case 3: Verification time period exceeds the sentence period

- Date of judgment/Sentence: 27.06.2014
- Period of Sentence: 2 years, 4 months (as mentioned in the application)
- Date of Application for Transfer: Not available
- Date when MHA sent it to the state: Not available
- Date of No objection certificate given by the state government/prison department): Around 20. 04. 2017
- This person has completed his sentence and his continued detention is illegal in the foreign country as he is now an overstayer. He is no longer eligible for repatriation and can only be deported.

MHA Guidelines not practical enough: The Passport Act, 1967 provides a 21 day time period for verification. A software connects the RPO to District Police HQs in most states. If police do not give a report to Passport Office within that time, the Regional Passport Office (RPO) can approve the verification.

NATIONALITY VERIFICATION AT STATE LEVEL: ON GROUND PROCESS & BARRIERS



- MEA Portal is active at state level. Almost 85% of verification requests is managed through the portal. State intelligence wing gets typed data that has been entered by the Indian Mission.
- Some High Commissions and Indian Missions do send directly to the state by email instead of uploading on the MEA portal because the portal cannot take the burden or has technological issues and cannot take more than a marginal percentage of their requests. Eg., Indian Mission in UK or British High Commission in India
- Some Missions are still using the old postal system to send case details for verification.
- When the portal does not work the form is downloaded on to a pen drive. Three sets of hard copies for authenticated communicated are printed - one for office copy; one for CID unit; one physically dispatched to SSP office.
- District police and CID investigate separately and prepare separate reports. Both reports are sent to the Intelligence HQ which finalizes and sends the MEA/MHA.
- The Prison Department may support the verification process by checking its prison entry and parole records.

Recommendations

- MEA must provide 'viewing access' to MHA to its Nationality Verification Portal for co-supervision.
- Better integration of the MEA's Nationality Verification Portal and use by the security agencies at state level and further modernization of the portal supported by training of users.
- Indian Missions must be motivated to use the form provided by the MEA for verification enquiry.
- MEA's Nationality Verification Portal to be strengthened at all levels – (i) device; (ii) browser; (iii) broadband and (iv) office systems which are key elements affecting network performance.
- Greater investment in computerisation of communication, dongles, digital signatures for access, as done in case of online verification of passport, or the Saanjh community policing project in Punjab, can reduce efficiency-loss of 7 days to just 1 day and help meet timeline of 10 days stipulated for nationality verification in the MHA Guidelines.
- SOP on nationality verification by state agencies will ensure effective allotment, fixing of responsibilities, prevent run-off in person hours and ensure better implementation of MHA Guidelines.
- Performance appraisal and KPI of police station staff could be revised to include number of "completed" verification cases into their assessment points to fast-track verification.
- Urgent prioritization by verification stakeholders and KPI & incentive-based monitoring by key state actors, MHA and MEA needed.
- Simultaneity in verification processes required between the agencies.

Criminality Verification

The MHA Guidelines 2015 specifies criminality verification at two levels, by both central and state security agencies – a report from the Intelligence Bureau at central government level and by reports from state level security agencies like the CID.

A. Centre: The IB Report

On Paper

- Provision (j) of the MHA Guidelines, 2015 refers to obtaining the IB Report on the possible connections of the prisoner with any International/National gangs of organized crime.
- Provision (n) of the Guidelines specifies 10 days for Comments from Security Agencies to reach MHA
- IB keeps a watch on all anti-national activity which can result in harm to India. It does not have a mandate to investigate IPC offences which are verified by CBI or state police. It deals only with those offences that pertain to security threat-terrorism or funding of terrorism and only in those cases where an FIR has been registered. It is not governed by the rules of evidence as prescribed by the Indian Evidence Act, it does not have police powers. It has no power to prosecute and, therefore, it has no interaction with courts. At the same time, it has at its disposal agents who can obtain human intelligence, it has electronic devices for intelligence collection, and other primary and secondary sources, through which information is collected which might be of interest to India. Its job is to sift through all this matter and then identify that which is of relevance for maintaining the security of India.

On Ground

- IB receives the cases from the MHA.
- IB is asked to expedite the verification.
- IB checks its centralized data base.
- The IB has a negative list/black list/suspect list against which this corroboration is done.
- IB has a better data base than the state police and therefore it may well complete its verification within 10 days, maximum 2 weeks.
- IB may also request its state intelligence wings to verify if required.
- Verification may be done simultaneously by IB and state security agencies.

Contrary to popular perception, the reporting by the IB does not take a long time. There are three main reasons for this:

- Firstly, its negative or black list has been pared down over the years. So, if the applicant does not figure on this list for any terrorism offence, there would be no reason for IB to object.
- Secondly, the centralized data base of the IB makes for quick verification. It can complete its verification within 10- 15 days on its own or with the assistance of its state level branches.
- Thirdly, IB would not roadblock an applicant even if they were a terrorism suspect as it might be a preferable option to have the person here in India for interrogation rather than abroad.

B. State: The Character & Antecedent Report of the CID

On Paper

- Provision (g) of the MHA Guidelines, 2015 provides for state-level verification of the criminal records. It states: "The State Government concerned will be advised to ascertain that the said prisoner has no other criminal record in India". The MHA Guidelines does not mention the role of the CID specifically, but at the state level, the task of character and antecedent verification is undertaken by the CID, partly in collaboration with the state/district police. (In certain states like Tamil Nadu this is undertaken by the state chapter IB)

On Ground

- In Tamil Nadu the Chief Secretary, Home, who holds the police portfolio receives the representation from the Centre. From the Chief Secretary, Home, the representation goes to the DG Police. The Police Chief's office then sends it to the appropriate district police HQ. The verification is done at the district level by checking the data/records available on the CCTNS network. The CCTNS is a 2004 endeavour to have a national data base of all criminals and crimes drawn upon police station data. The police station is the nodal unit fo this data base. If the name and address are typed then data will show up on antecedents. CCTNS is also used for passport verification. Identification marks including fingerprints can be checked for confirmed identity.
- In Punjab, the district police HQ sends one of three sets of every case uploaded by the Indian Mission on the MEA Verification portal or it is sent by email by the latter to the CID.
- The CID may refer the information available on the CCTNS.
- The CID also undertakes a physical paper investigation to check the fitness for airport entry: it checks court records; district police records; offence registers; proof of identity or residence documents such as ration card, election commission voter identity card, water bills, electricity bills, telephone bills, running bank account, passport.

- Efforts are also made to get a similar report from his/her place of permanent residence. It is also verified whether the individual is indeed the person whose photograph has been affixed on the PVR (police verification report) application form.
- The CID Report is either a “No Objection” or “Adverse” report. It states whether or not the individual has come to any adverse notice due to his/her general conduct. It is specifically verified whether or not he/she has been involved in any criminal case and if there is any criminal case pending against him/her in the court of law as per district police records.

Implementation Barriers & Removal

- Currently MHA cannot monitor the activity or cases on the Nationality Status Verification Portal. MEA must provide “viewing access” to MHA to its Nationality Status Verification Portal for effective monitoring and co-supervision.
- There is overall deficit in the information about Indian prisoners abroad – numbers, period of imprisonment, sentence, offence details and criminality background. This often comes in the way of speedy treatment of applications. MoUs may be signed by Gol with those countries where large number of Indian nationals are in prison to get the aid and assistance of their Police Headquarters in obtaining all offence and background particulars of Indian prisoners. This information could be placed on the MEA’s Nationality Verification Portal or any other portal of the MHA for all stakeholders, particularly Indian Missions and those in the states, to access, strategise and prepare for possible transfers. This data base would reduce the time taken to get an application into a valid application status.
- A prisoner statistics and record management desk needed at the MHA to follow-up with Indian Missions, with foreign country office/desk dealing with prisoner transfers. Additionally, the documents of the prisoner may also be uploaded on the nationality verification portal directly by the Indian Missions for the use of MEA, MHA, states, or even by the NIC/e-prisons portal. An effective monitoring or automated IP reminder/alert system connecting MHA with foreign prison or their prisoner record management desk which is responsible for documentation and communication is recommended.
- Step by step verification is not conducive to efficiency. A portal that makes the different verifications and their results simultaneous and online would be very conducive to efficiency. A Fail Safe IP Protocol could be integrated into the Nationality Status Verification Portal of the MEA that triggers a simultaneous process of verification so that nationality and criminality verifications take place in the state and at the centre within the same time period. This would be time saving and work towards reducing the burden of monitoring a chaotic process. The Verification & Approval process for transfer under MHA Guidelines needs to transit to Failsafe Model.
- States may be taking longer because of work overload at various offices down to the police station and consequent lower prioritization. Sometimes records have to be checked in all districts if address provided is incomplete and so it may go to all police chiefs at district level. Moreover, police stations are burdened due to short staffing and greater emphasis on law and order. To improve prioritization, KPIs need to be factored in for functionaries so there is timely action and monitoring. The introduction of KPIs for duty-holders will enhance prioritisation. To support this, a Productivity Linked Incentive Scheme (PLIS) could also be developed as it has been in the case of Passport Issuance by MEA for certain category of passport officials. (Refer Annexure N). The monetary incentives should percolate down to the police staff actually carrying out the verification process.
- The Monitoring Committee under the Guidelines should be activated as that will definitely uplift the prioritization to the work and shorten time period between the stages.

6. Sentence to be Served under Transfer & Sentence Adaptability

Repatriation treaties and agreements between countries for the international exchange of prisoners have elected to follow either a 'continued enforcement' procedure or a 'conversion of sentence' procedure.

Continued enforcement: Under the continued enforcement procedure the maximum sentence to be served following transfer would be the portion of the original sentence imposed which remained unserved after deduction of any remissions earned in the foreign country before the date of transfer. The length of the actual sentence could be further reduced if any remission is available in the home country that could then be earned.

Conversion of sentence: Countries choosing this procedure agree for the transferred prisoner to be re-sentenced by an appropriate court in the home country so that the sentence to be served is seen to be equivalent to one that would have been imposed if the offence had been committed in the home country.

How is “sentence to be served” calculated?

The part of the sentence the person will have to serve once transferred is called the “balance to serve” (Fair Trial International Briefing). The balance to serve is calculated by deducting the following from the total original sentence: 1. The time already served, including the time spent on remand; and 2. Any remission gained for good behaviour.

While both systems of continued enforcement and conversion have their advantages and disadvantages for the prisoner, the former system with agreed modifications has been a preferred model for contracting states. It builds better confidence in the integrity of the transfer scheme as there is little chance of the prisoner being released immediately in the home country as might happen in certain circumstances. The disadvantages of the continued enforcement system could be neutralized through wide use of remissions and pardons in the receiving home country.

As per international standards under the UN Model Agreement on the Transfer of Foreign Prisoner, 1985, the sentence harmonization can be undertaken by administrative or judicial bodies or both.⁵¹ A clear restriction under the international law is the conversion by the receiving/administering country of a sentence involving imprisonment to one of mere fines. The system of continued enforcement (with or without remission) has been seen by most contracting countries as keeping better confidence between them, while also taking care of the prisoner's benefits through sentence reduction in the form of remission and early release. Having said that, the actual benefit to the prisoner would depend on the nature and force of the laws of remission in place in the foreign country as well as the home country.

How is sentence adaptation conducted for transferred Indian prisoners?

On Paper

Specifically, India's Repatriation of Prisoners Act, Rules, and Guidelines on Transfer of Sentenced Persons make mention of 'sentence adaptation', which is a variation of enforcement model as no 're-sentencing' is undertaken by the courts.

⁵¹ According to the UN Model Agreement on the Transfer of Foreign Prisoners, 1985, the administering State shall either continue enforcement of the sentence or convert the sentence to one prescribed by its law for a corresponding offense. In the case of continued enforcement, the administering State shall be bound by the sentence determined by the sentencing State. It may, however, adapt the sanction to the punishment prescribed by its own law for the offense, but a sanction involving deprivation of liberty shall not be converted to a pecuniary sanction. The administering State shall be bound by the findings of the sentencing State, which has the sole competence for review of the sentence. Both the sentencing and administering States shall be competent to grant pardon and amnesty.

India follows a system where sentence of transferring country will be enforced with adaption to the existing domestic law concerning the same offence. Below outlined is the legal framework outlining the role of the executive in sentence adaptation under the Repatriation of Prisoners Act, 2003, Rules, 2004, the MHA Guidelines, 2015 and the Prisoner Transfer Agreements.

○ **Role of the Executive**

Role under Repatriation of Prisoners Act, 2003 and Rules, 2004:

Section 13(6) of Repatriation of Prisoners Act, 2003 provides the broad framework for deciding the powers, obligations, restrictions and benefits under the Act in India with regard to Indian prisoners transferred from a foreign country to Indian prisons. The bilateral agreements signed with UK, Mauritius and other countries reflect this to a large extent. Section 13(6) states, "If the sentence of imprisonment passed against the prisoner in the contracting state is incompatible with the Indian law as to its nature, duration or both, the Central Government may, by order, adapt the sentence of such punishment as to the nature, duration or both, as the case may be, as is compatible to the sentence of imprisonment provided for a similar offence had that offence been committed in India".

The proviso to Section 13(6) states, "Provided that the sentence so adapted shall, as far as possible, correspond with the sentence imposed by the judgment of the contracting state to the prisoner and such adapted sentence shall not aggravate the punishment by its nature, duration or both in relating to the sentence imposed in the contracting state".

Section 13(5) of the Repatriation Act says that the imprisonment of an inbound prisoner is deemed to be imprisonment under a sentence of a court competent to pass such a sentence of imprisonment in India. This is the first of two sections that bring to bear the provisions of an Indian law corresponding to that under which the prisoner was convicted abroad.

Role under MHA Guidelines, 2015

Part A (i), MHA 2015 Guidelines states that the Ministry of Law, Narcotics Control Bureau, Customs and other Ministries decide sentence adaption. The Act, Rules and Guidelines are silent on the role of the courts in sentence adaption for transferred Indian prisoners unlike the repatriation legislations of some other countries. For example, Part II, section 6, paragraph 2, of the Transfer of Prisoners Act, 2004, of the United Republic of Tanzania, provides that "a prisoner or his representative who is aggrieved by the decision of the Minister may appeal to a court". On the contrary, with regard to prisoners' right to appeal, the Act in India seeks an undertaking from the prisoners that they will not challenge the adapted sentence.

A(i), MHA Guidelines, 2015 on Sentence adaptability mentions, "In view of the provisions of the agreement that the sentence awarded to the prisoner has to be adapted to a punishment or measure as is prescribed by the Indian law for a similar offence, a reference may be made to the Ministry of Law / Narcotics Control Bureau/Customs and other concerned Ministries, based on the offence convicted for, seeking their comments as to the maximum quantum of sentence which the prisoner is liable to serve in India had that offence been committed in India and whether the sentence would require to be adapted in conformity with Indian law. If so, what is the adaptation that would be required".

The Guidelines further point out the following:

- In case the prisoner was convicted on the charge of drug trafficking, a reference would be made to the Narcotics Control Bureau (NCB) seeking their comments on the proposed repatriation with specific comments as to the probability of the prisoner indulging in similar offences on his release as also the track record of the prisoner as per their database. The NCB may also be asked regarding the quantum of the sentence if similar crimes had been committed in India by the prisoner.

- Before granting permission for repatriation, the prisoner should be informed about the total quantum of sentence they will have to undergo in India and repatriation should be allowed only if the prisoner gives their consent in writing.

Point 9 of Annexure II of Repatriation of Prisoners Rules 2004 refers to a Checklist of documents to be furnished along with repatriation request of the prisoner. This undertaking is provided to the MHA at the time of making the transfer request. It stands for the assurance by the prisoner that he/she will not challenge the conviction of the court once repatriated to the prisoner's own country by way of an attempt to get a lower sentence. This is to safeguard the integrity of the repatriation process that is not intended to subvert the judicial process for getting lesser sentences in own countries. Annexure III, Repatriation of Prisoners Rules, 2004 provides the format for the same undertaking.

Role under Prisoner Transfer Agreements

Article 8 of the India-UK Prisoner Transfer Agreement states, (1) The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State; (2) If, however, the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that State may, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall however not aggravate, by its nature or duration, the sentence imposed in the transferring State.

Article 2(1) of the UK-India Prisoner Transfer Agreement states, "A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. To that end, he may express to the transferring State or the receiving State his willingness to be transferred under this Agreement".

Article 8 of the Republics of India and Mauritius Agreement is also similar. It says, if the nature or duration, or both, of a sentence passed in the transferring State was incompatible with the law of the receiving State, then the receiving state, though bound by the legal language and details of the sentence delivered in the transferring state, could adapt that sentence to bring into conformity with its own domestic law. That Article entrusts the receiving State with the responsibility of harmonizing domestic law and the sentence handed down by the transferring State.

Role under Council of Europe Recommendations

The Council of Europe recommendations (1986), go further and suggest that if the sentence imposed was longer than or different in nature from the sentence which could be imposed for the same offence in the home country, it would be adapted to the nearest equivalent sentence which was available under the law in the home country without being longer (or more severe) than the original sentence. This recommendation seems to lie somewhere between part continuation and part conversion.

○ Role of the Judiciary

Judicial supervision does prevail over sentence adaptation enabled by the provisions of the Constitution, Criminal Procedure Code and Indian Penal Code.

Though the role of the courts or prisoner's right to appeal to a court of law against executive sentence adaption is not specifically mentioned in the Repatriation of Prisoners Act, 2003 or in several transfer agreements signed by India, some amount of judicial control over the process is nevertheless established. Most transferred Indian prisoners are known to appeal.

Transferred Indian prisoners have taken recourse to writs under Article 32 and Article 226 of the Indian Constitution to contest their adapted sentence. This right to appeal also signifies the hope of the prisoner. Therefore, any provisions in the national legislation on repatriation, rules or guidelines that indicate to an executive process 'contained within' must be read alongside the constitutional rights of prisoners to seek remedies from the Supreme Court and the High Courts.

Article 32 of the Indian Constitution enshrines remedies for enforcement of rights conferred by Part III of the Constitution. Article 32(1) guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights. Article 32(2) states that the Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part. The courts in arbitrating cases of sentence adaption of transferred Indian prisoners have accommodated the terms specified in Section 13(6) of the Repatriation of Prisoners Act, 2003.

Article 226 of the Indian Constitution lays down the power of High Courts to issue certain writs. (1) Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

Powers under CrPC and IPC

The courts are also empowered under the Criminal Procedure Code to deal with cases where offence has been committed outside India as if it had been committed within India. This is referred to as dual criminality – dealing with offences committed outside your jurisdiction as if they had parity in the local jurisdiction.

Section 188, CrPC, India: Offence committed outside India: When an offence is committed outside India – (a) by a citizen of India, whether on the high seas or elsewhere; or (b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Section 3, IPC: Punishment of offences committed beyond, but which by law may be tried within, India – Any person liable by any Indian law to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code or any act committed beyond [India] in the same manner as if such act had been committed within [India].

Section 4, IPC: Extension of Code to extra-territorial offences: The provisions of this Code apply also to any offence committed by – [1] any citizen of India in any place without and beyond India; (2) any person on any ship or aircraft registered in India wherever it may be.] [(3) any person in any place without and beyond India committing offence targeting a computer resource located in India.]

Section 428 of the Criminal Procedure Code of India lays down that the period of detention undergone by the accused is to be set off against the sentence of imprisonment. “Where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him. Provided that in cases referred to in section 433A, such period of detention shall be set off against the period of fourteen years referred to in that section”. 433A pertains to power of state to grant remission. However, Section 428 will not apply in cases of life sentence where it is for indeterminate period. Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

Article 226, Indian Constitution: 1) Notwithstanding anything in Article 32, every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories, directions orders or writs.... for the enforcement of any of the rights conferred by Part III and for any other purpose.

Article 9, International Covenant on Civil and Political Rights (ICCPR): 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

On Ground

○ Implementation by Courts

Despite the precedence in *Prem Kishore Raj vs The Department of Home*, 2013 where the court allowed the petitioner to take benefit of the changes in the laws of the sentencing country as well as transferred country, the court in *Eric Vincent Amanna* gave a reverse verdict and rejected any benefit from the amendments to the drug offence laws as being consonant with the Repatriation of Prisoners Act, 2003. This shows a certain ambiguity in the interpretation of Section 13(6) of Repatriation of Prisoners Act, 2003, and unclarity in the field of harmonization of sentences by the courts.

Ellen Vincent Amanna vs The State of Maharashtra And Ors on 15 February, 2016: The court rejected Eric's claim to the benefits of amendments to section 21 of the NDPS Act⁵² in force in India at the time of his repatriation, though not in force at the time of his conviction. Its rejection was based on an interpretation of section 13(6) of the Repatriation of Prisoners Act, 2003. The court stated that to grant him benefit under that law would not be compatible with the purport of sub-section 6 of section 13 of the Repatriation of Prisoners Act, 2003, which specifically laid down that the adaptation of the sentence has to be compatible with the sentence of imprisonment provided for a similar offence as if that offence had been committed in India.

Mr. Prem Kishore Raj vs The Department of Home, 14 October, 2013: The court arbitered on the maximum sentence to be given to Mr. Raj under the Indian law, in this case the NDPS Act, 1985 while he was serving a mandatory sentence of 45 years under the Dangerous Drugs Act of Mauritius. It read Section 11 and 13 (6) of the Repatriation of Prisoners Act, 2003 together to determine what was expected of sentence adaptation. Court directed Raj to make a fresh representation to the Union of India in both the Home Ministry and in the Ministry of Law & Justice for the adaptation of his sentence to one prescribed in domestic law under Section 13(6) of the Repatriation of Prisoners Act, 2003. On 29th June 2013 that application was decided by the 4th Respondent, the Home Ministry. His sentence was computed to be 20 years. The court then arbitered if this was the correct proportionality. The court decided that Raj should not have got more than 10 years under the amended provisions of section 21 of NDPS Act of which section 21(b) and not 21(c) was applicable in his case. Moreover, during this while, the criminal procedure code of Mauritius also underwent a change in 2007 with mandatory sentences being seen as unconstitutional. This resulted in a reading down of Raj's sentence and a presidential pardon and release by the Mauritian government. The court decided, that, in either case, through sentence adaptation or through remission and presidential pardon, Raj had served more jail time than could have been awarded to him under Section 21(b) of the NDPS Act and that his continued imprisonment was not required in any other case.

Philibert and 6 others v The State of Mauritius, 2007: Disagreeing with a previous decision in 2006, the Mauritian Supreme Court in *Philibert v The State* decided that a given mandatory sentence might, in a given case, be unconstitutional for violating the doctrine of proportionality. Following *Philibert*, sentences of penal servitude for life pronounced before the 2007 amendment in many drug-related cases were read down by the Supreme Court to mean prison terms of 15 years.

Roger F.P. de Boucherville v The State of Mauritius, The court of appeal of Mauritius, 2007: With the abolition of death penalty, the court provided that – (i) ...where under any enactment a court was empowered to impose a sentence of death it should instead of the death sentence impose a sentence of penal servitude for life; (ii) ...where any person had been sentenced to death, and the sentence had not, at the commencement of the Act, been

⁵² Amendments to section 21 of the NDPS Act brought in 'graded sentences' under section 21 (b) and (c).

executed, that person should be deemed to have been sentenced to penal servitude for life and should undergo that sentence; (iii) a person sentenced to 45 years' penal servitude under this provision would, if entitled to remission of one third of the sentence, be entitled to release after 30 years.

○ **Executive Implementation**

The Ministry of Home Affairs is the key executive authority to adapt sentences. It consults the Ministry of Law & Justice in this process and for specific cases involving drug related offences, it consults the Narcotics Control Bureau that comes under its own Ministry.

Ministry of Home Affairs

The MHA does not get the required guidance from the Ministry of Law & Justice on how to deal with requests from prisoner/ prisoners' families to appeal their adapted sentence.

In the absence of sentence adaptation guidelines or SOP, MHA receives very limited guidance from Narcotics Control Board in drug offence cases. This is largely based on quantum of contraband involved.

Ministry of Law & Justice

The Department of Legal Affairs in the Ministry of Law is responsible for the adaptation of sentences. However, it is burdened by its primary mandate of legislative initiatives like laws and amendments and the responsibility of sentence adaptation in criminal cases is not a clearly defined or prioritized area in its current list of business. The fourth and seventh task items of the Department of Legal Affairs as per the Gol's Allocation of Business Rules, 1961 deal with reciprocal arrangements with foreign countries or treaties and agreements with them but are largely in relation to civil matters and do not include sentence adaptation. <http://legalaffairs.gov.in/About-us/About-the-department>

Awareness of MHA Guidelines is missing on the ground. There is inadequate familiarity with the requirements of MHA Guidelines 2015 on Repatriation of Prisoners Act.

No SOPs on sentence adaptation prepared by the Ministry of Law to take forward the 2015 MHA Guidelines.

In contrast to time specified in the Guidelines, the Department of Legal Affairs considers it a very time-consuming process to decide dual criminality which may even take up to a year for coordination between officials in the two countries.

No record keeping on cases pertaining to sentence adaptation are maintained. Only file notings are done and files sent back to MHA.

○ **Barrier to Sentence Adaptation: Absence of Structured Sentencing Guidelines in India**

India does not have structured sentencing guidelines issued either by the legislature or the judiciary. This will create difficulties for sentence adaptation not only in drug offences but also in offences like murder and manslaughter (causing death by negligence or culpable homicide not amounting to murder). The punishment for murder under India's Penal Code is life imprisonment or death and the person is also liable to a fine. Guidance on the application of the death sentence was provided by the Supreme Court of India in *Jagmohan Singh v. State of Uttar Pradesh*, where the Court enunciated an approach of balancing mitigating and aggravating factors of the crime when deciding on the imposition of capital punishment. But *Jagmohan Singh v. State of Uttar Pradesh* was called into question in the Supreme Court judgment in *Bachan Singh v. State of Punjab* which is now supposed to provide the yardstick. The Court emphasized that since an amendment was made to India's Code of Criminal Procedure, the rule has changed from death sentence so that "the offence of murder shall be punished with the sentence of life imprisonment. The court can depart from that rule and impose the sentence of death only if there are special reasons for doing so." The Court also emphasized that due consideration should not only be given to the circumstances of the crime but to the criminal also.

However, more recently the Court in *Sangeet & Anr. v. State of Haryana*, noted that the approach in *Bachan* has not been fully adopted subsequently, that “primacy still seems to be given to the nature of the crime,” and that the “circumstances of the criminal, referred to in *Bachan Singh* appear to have taken a bit of a back seat in the sentencing process.” Put another way, while both aggravating and mitigating circumstances need to be taken into account in sentencing in order to accommodate the concerns for both deterrence and correction, the implementation of judgments on murder show that correction or the circumstances of the criminal are not integrated well into the sentencing process.

The absence of structured sentencing guidelines will pose problems during sentence adaptation as there will not be a ready measure. There is a need to work towards an SOP on sentence adaptation which will take into account these difficulties in current sentencing on life imprisonment in India.

II. Remission

There are two modalities for calculating remission in India. One is under the Prison Manuals of the State and is administered by prison authorities. The other is pre-mature release policy administered through state notifications for the exercise of powers provided to the state under section 432 CrPC, and under

Article 161 of the Constitution, to the Governor, for pardon, reprieve, sentence suspension and remission.

Neither India’s Repatriation Act, 2003 nor the MHA Guidelines of 2015 elucidate how sentence adaptation will be carried out through remission and the principle of calculation for both the sentenced Indian prisoner transferred from a foreign country and the foreign national transferred out of India’s prison. Amendments in the Act and modifications in the Guidelines in line with existing laws will create an environment for informed consent, transparency, fairness and accountability. It will motivate the prisoner and clarify to state actors that transferred prisoners need not forego remission and early release benefits and have equivalent rights vis-à-vis prisoners sentenced in India in this regard.

II a. How is Jail Remission decided for transferred Indian Prisoners?

On Paper

India

Neither India’s Repatriation Act, 2003 nor the MHA Guidelines of 2015 elucidate how sentence adaptation will be carried out through remission and the principle of calculation for both the sentenced Indian prisoner transferred from a foreign country and the foreign national transferred out of India’s prison. Amendments in the Act and modifications in the Guidelines in line with existing laws will create an environment for informed consent, transparency, fairness and accountability. It will motivate the prisoner and clarify to state actors that transferred prisoners need not forego remission and early release benefits and have equivalent rights vis-à-vis prisoners sentenced in India in this regard.

The Model Prison Manual, 2016 India lays down the rules for granting of remission by prison authorities alone. They specify the purpose, the eligibility for remission, the types of remission that prison authorities can give and the provision for a Remission Committee for each jail and its functions and procedures. Provision 18.07 considers all prisoners eligible for ordinary remission who have substantive sentences of two months and more; prisoners are sentenced to simple imprisonment for two months or more, who volunteer to work (prison authorities are responsible to provide work to all eligible prisoners failing which eligible prisoners should get their normal entitlement); prisoners employed on prison maintenance services requiring them to work on Sundays and holidays; prisoners admitted for less than one month in hospital for treatment or convalescence after an ailment or injury not caused willfully, and those admitted for more than one month to be entitled to remission for good conduct only.

However the Model Prison Manual, 2016 makes no categorical mention of transferred

prisoners from foreign prisons being either eligible, non-eligible or differently eligible in how remission would be calculated for them vis-à-vis others. However, a single provision in the Miscellaneous section 18.22 states that in the case of a prisoner, transferred from one prison to another while undergoing imprisonment, the period spent by him in the first prison, excluding the period spent as an undertrial prisoner, shall be calculated along with the period spent by him in the second prison.

Provision 18.08 draws attention to prisoners convicted of offences related to rioting, murder, assault, abduction, obstructing government officials from duty, unnatural offences as defined under the IPC, and offences committed inside prison as not eligible for ordinary remission. However, 18.20 states that remission will also be calculated for life sentence convicts though the remission earned will only benefit them at the time the Sentence Review Board considers their case for premature release. The remission earned aids the Board to determine their conduct. For life sentence convicts, remission is calculated taking the sentence to be an imprisonment for 20 years (as per logic given in Section 57 of the Indian Penal Code⁵³). Provision 18.09 points to the maximum ordinary good conduct remission a prisoner can earn for a year which is 30 days. In addition, he/she may earn a maximum of another 30 days as special remission which is for meritorious work.

On Ground

Some state stakeholders infer from the absence of explicit rules that only the sentencing country can provide remission or pardon to transferred prisoners. Other state actors seem to be using their own discretion in implementing Parole & Furlough Rules under the Jail Manual (Gujarat), or the Good Conduct & Temporary Release Act (Punjab), even the Inter-State Transfer Act (Punjab) for reference & guidance in the absence of explicit rules for Indian prisoners transferred from foreign countries.

Gujarat: Gujarat Prison Department continues to follow the Bombay Jail Manual, 1959 Furlough and Parole Rules, and the Supreme Court orders with regard to suspension of sentence for prisoners. As per Gujarat Jail Rules, and if foreign country does not object, such prisoners would enjoy parole, furlough and remission benefits as other prisoners who have offended in the country. As per jail rules, in offences involving more than 20 years sentence, convicted prisoners can start earning remission after completing 14 years.

Punjab: Though no guidelines or circulars have been issued by Punjab Home Department for Punjab Prison Department pertaining to remission for repatriated Indian prisoners by prison authorities, these prisoners are demonstrably allowed to enjoy parole and jail remission in Punjab prisons. Between 2014-2017, all five repatriated Indian prisoners transferred from UK, two lodged in Nabha New District Jail and three in Jalandhar Central Jail in Kapurthala, have received parole. Eg., Harveer Singh and Jaskiranjeet Singh Bal repatriated to Nabha New District Jail from UK and M. Singh, G. Singh and J. Singh Dosanj who are lodged in Jalandhar Central Jail. The three prisoners in Jalandhar Central Jail have benefited from jail remission.

Haryana: In Haryana, repatriated prisoners do not benefit from executive pardons granted on special days like Independence Day/Republic Day but they enjoy parole and jail remission as per state rules.

Bridging Remission and Sentencing Information Between India and United Kingdom

UK, like India, follows a sentence enforcement model. It is one of the few countries which counts from the date of transfer rather than initial detention when calculating how early release provisions should apply to the sentence of a repatriated prisoner.⁵⁴ The calculation of remission being contingent upon date and time of transfer, this tantamounts to arbitrary punishment, as the transferred prisoner has little control over the application and overall transfer process. This system means that when a repatriated prisoner is released on licence

⁵³ Section 57, Indian Penal Code – Fractions of terms of punishment. In calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years.

⁵⁴ Germany, Austria and the Netherlands, for example, all count from the date of arrest. Making the Repatriation of Prisoners Fairer, Fair Trial International, 2011.

will depend on when they were transferred. By this law, transferred UK prisoners will end up spending more years in prison as compared to someone who received the same sentence but was convicted in the UK. It will also mean more resources to be spent by the state.

Further, only those serving determinate sentences can benefit from remission laws. In states where life sentence means life, prisoners serving life sentences cannot benefit from remission, as in the case of UK. In India, the dust has just died down on this debate with the Supreme Court order on keeping life sentence indeterminate for a small section of life sentence cases, particularly those that are CBI investigated. For other life sentence cases, sentence will be calculated as 14 years and remission will apply accordingly though it will not result in automatic release. It will have to be brought before a Sentence Review Board.

Rule 59 of the UK Prison Rules 2007 as amended, entitle the vast majority of prisoners serving sentences to remission at a rate of one quarter. In practice, this means that a person sentenced to 4 years' imprisonment will be expected to serve 3 years in custody.

S.244, UK Criminal Justice Act 2003 mentions the stage of sentence at which an offender may be released. Most prisoners convicted in the UK are released on licence at the halfway stage of their sentence. This is calculated by taking into account the whole of the prisoner's sentence, e.g. if a person is sentenced in the UK to 10 years' imprisonment then they will normally be released on licence at the halfway point (i.e. after five years). Once the prisoner is released they will remain on licence until the end of the sentence. By contrast, repatriated prisoners serving determinate sentences are released at the halfway stage of their "balance to serve" (the sentence which remains to be served at the time of the transfer), not at the halfway stage of their total sentence.

S.119, Legal Aid, Sentencing and Punishment of Offenders Act, UK, 2012 additionally, makes amendments in the Crime (Sentences) Act 1997 that give the Secretary of State powers with regard to removal of prisoners from the United Kingdom based on their sentence served irrespective of the decision of the Parole Board. Section 119 applies in relation to any person who, on the day on which this Act is passed, has served the relevant part of the sentence (as well as in relation to any person who, on that date, has not served that part). It calls for inclusion of 32A to section 32 of the Crime (Sentences) Act 1997, "Persons liable to removal from the United Kingdom". 32A (1) of the Crime (Sentences) Act 1997 states, "Where P – (a) is a life prisoner in respect of whom a minimum term order has been made, and (b) is liable to removal from the United Kingdom, the Secretary of State may remove P from prison under this section at any time after P has served the relevant part of the sentence (whether or not the Parole Board has directed P's release under section 28)".

While the remission structure in the UK is undoubtedly a demotivation for UK prisoners in foreign prisons to appeal their sentence as that might further delay their date of transfer, it appears not to disadvantage the foreign prisoner convicted under UK laws as the foreign prisoner would also benefit at the halfway stage of their total sentence. In case the remission laws apply differently to foreign national prisoners there would be a need to bring equal treatment and equivalence in the early release measures for transferred prisoners vis-à-vis others so that it may apply to their total sentence and also by emphasizing on an early application process.

II b. Remission through Pardon, Amnesty or Commutation, and Review of Judgment

On Paper

- While the remission powers of the state are acknowledged in the Act with regard to foreign nationals sentenced in India, the transfer to India section is silent on these powers. Section 11 of Repatriation of Prisoners Act, 2003 states, "The repatriation of a prisoner from India to a contracting State is not to affect the power of the court that passed the

judgment to review its judgment, nor the power of the Central or State Government to suspend, remit or commute the sentence in accordance with law. In other words, the transferring State alone is competent to decide applications for review and to grant pardons, amnesty or commutation”.

- The bilateral agreements entered into other states may vary, however, in respect of particular provisions within their national legislations on repatriation. This is witnessed in the different procedures to determine whether a transferred prisoner can be pardoned or granted early release in the form of parole, conditional release or remission. The UK-India Prisoner Transfer Agreement follows a multilateral model, allowing **either state** to make such decisions to grant pardon, amnesty or commutation though India’s national legislation in this regard retains the power only on the side of the sentencing state.
- Article 10, UK-India Prison Transfer Agreement: Pardon, amnesty or commutation, and review of Judgment states, 1. The transferring State alone shall decide on any application for the review of the judgment. 2. Either of the contracting states may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.
- Article 161 of the Indian Constitution lays down the power of Governor to grant pardons, etc, and to suspend, remit or commute sentences in certain cases: The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.
- Section 432 of the Code of Criminal Procedure, 1973 discusses the power of the government to suspend or remit sentences. It states, (1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.
- Section 433A of the Code of Criminal Procedure, 1973 points out the restriction on powers of remission or commutation in certain cases: Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.]

On Ground

The actual effect of remission policies may be inferred from judgments of the Supreme Court which may have tried to both define and lay down the limits of state powers, and the actual enjoyment of remission by prisoners based on sentencing and remission guidelines laid down under state policies.

- Union of India vs Sriharan, Murugan and Others on 23 September, 2015: By this modified order of 23.07.2015, a Constitutional Bench of the Supreme Court removed restraints on the state governments to exercise their power of remission to life convicts. The Supreme Court had applied restraints on all state governments through a prior order on 09.07.2014 following the state of Tamil Nadu’s release of the life sentenced convicts in Rajiv Gandhi’s assassination case. It reactivated the remission and commutation powers of all the state governments to exercise their powers of remission and commutation, except in cases (i) where life sentence has been awarded specifying that - (a) the convict shall undergo life sentence till the end of his life without remission or commutation; (b) the convict shall not be released by granting remission or commutation till he completes a fixed term such as 20 years or 25 years or like; (ii) where no application for remission or commutation was preferred, or considered suo motu by the concerned State Governments/authorities; (iii) where the investigation was conducted by any Central Investigation Agency like C.B.I.; (iv) where the life sentence is under any central law or under section 376 of IPC or any other similar offence.”

- It arbitered on the following: As to whether the imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code means till the end of convict's life with or without any scope for remission? (ii) Whether a special category of sentence instead of death for a term exceeding 14 years can be made by putting that category beyond grant of remission? (iii) Whether the power under Sections 432 and 433 Code of Criminal Procedure by Appropriate Government would be available even after the Constitutional power under Articles 72 and 161 by the President and the Governor is exercised as well as the power exercised by this Court under Article 32? (iv) Whether State or the Central Government have the primacy under Section 432(7) of Code of Criminal Procedure? (v) Whether there can be two Appropriate Governments under Section 432(7)? (vi) Whether power under Section 432(1) can be exercised suo motu without following the procedure prescribed under section 432(2)? (vii) Whether the expression "Consultation" stipulated in 435(1) really means "Concurrence"?

Implementation on Ground: Punjab

(Source: Punjab Prison Department & Punjab Home Department)

- Pardon, Review, Remission, Suspension: With regard to pardon, review of sentence, sentence remission or sentence suspension by the GoI between 2003 and 2017, not a single transferred sentenced Indian prisoner in Punjab has benefited. However, the state government has taken some recent measures to expedite pardons and suspension of sentence for elderly and ill prisoners.
- Remissions Guidelines: Guidelines or circulars have been issued by Punjab Home Department for Punjab Prison Department pertaining to remission by Governor or Chief Minister.
- Appeals: There are as many as 2140 appeals (from four jails) made by sentenced prisoners in Punjab offended in India between 2014-2017 but a few are from sentenced Indian prisoners transferred from foreign prisons. Appeals are mainly because of not being considered eligible for remission under state policies.

Process Barriers on Ground

- Remission and early release are an area of enquiry and interest for prisoners who want to return to India. In the case of Prisoner X now repatriated from UK to Uttarakhand, the communication shows that the prisoner in his initial application in mid-2015 was interested to get more information regarding the transfer and the status of life imprisonment in India. He first wanted to know about the legal consequences of transfer which includes sentence he is going to serve, arrangements to remission in India and possible conditional release given in a comprehensible manner to him before he and the foreign country could consent to a transfer.

There is a need to streamline the repatriation requests and make them more information-based and consent-based. This would be possible if remission and early release processes were made more transparent and communicated in an integrated manner in the Act, Guidelines, the prisoner transfer agreements as well as in GoI's first/initial communication to the prisoner or the foreign country.

- There is considerable delay in providing the prisoner's undertaking that he will not challenge his adapted sentence as he cannot give such an undertaking prior to knowing the adapted sentence. As revealed from cases, sometimes the prisoner wants to know first which prison he is being sent to before giving this undertaking. This results in delay in completing the process of application as the prison selection comes much later in the process of approval under the MHA Guidelines.

If the scope to appeal the sentence is accommodated in future, then it might be worth re-considering the requirement of the prisoner's undertaking as it would be proved quite redundant. There is a need to reassess the requirement of the prisoner's undertaking, particularly, if the adapted sentence can be appealed before the executive, with future amendments to the Act. At the same time, furnishing details of improvements in Indian

prison conditions and benefits of remission and early release right from the specification moment would be helpful to get the voluntary consent of the prisoner.

Policy Barriers & Their Removal: Amendments To The Repatriation Of Prisoners Act, 2003 & 2015 MHA Guidelines

Amendments to Repatriation of Prisoners Act 2003

A clarity is required in India's Repatriation Act and Guidelines how the benefit of remission and parole under Indian laws will apply to Indian prisoners transferred from foreign countries and how they can also claim, if any, the remission they might have earned by the term served in the foreign prison concerned. Consent to transfer would be easily facilitated by ensuring that early release calculations in both transferring and receiving country are applied to the whole sentence of transferred prisoners rather than the balance to serve post transfer. These changes must reflect in bilateral agreements that India signs, taking care for equivalence in the rules that would apply to transferred prisoners convicted in foreign countries and to foreign prisoners convicted in India. This would bring enforcement of sentence in line with the general law. Such an amendment is perfectly compatible with international law concerning repatriation. Article 17(1) of the Framework Decision on the Mutual Recognition of Custodial Sentences states, "The authorities of the executing State alone shall [...] be competent to decide on the procedures for enforcement and to determine all the measures relating thereto, including the grounds for early or conditional release."

Provided below are recommendations for amendments to the Repatriation of Prisoners Act, 2003, in this regard taking cognizance of international law and good policy/practice in other countries.

1. Whether procedures for and safeguards in sentence adaptation of prisoner transferred to India are addressed

- **Current Provision:** No such provision exists for provision. The Guidelines mention the stakeholders and the time they will take in adapting sentence but lay down no procedures in either case – where sentence can be adapted and where sentence cannot be adapted.
- **Amendment: A second proviso to be added to Section 13(6) of the Act:** "Provided that the sentence so adapted takes into account early release measures such as of remission, parole, probation, as is available under the Indian law for Indian prisoners offending in the country, and the sentence so adapted is informed to the prisoner for his consent before the transfer, and the whole process undertaken by agencies is fair and timely and open to appeal in both the states. In case of an indeterminate period of sentence, the sentence to be adapted as close to the terms of law in the administering country, provided that the sentence of the transferred prisoner is not thereby aggravated".
- **Justification: Notwithstanding Section 13(6) of Repatriation of Prisoners Act, 2003** which provides the broad framework for deciding the powers, obligations, restrictions and benefits under the Act with regard to Indian prisoners transferred from a foreign country to Indian prisons, the current provisions on sentence adaptation do not address the procedures for sentence adaptation completely. While taking into account one of the fundamental principles in international transfer of foreign prisoners that of enforcement of sentence through adaptation, also enshrined in the UN Model Agreement for Transfer of Foreign Prisoners, 1985 (paragraph 4&5), there are serious omissions on what the procedures of continued sentence enforcement should be: (a) how would continued enforcement be administered differentially in nature and duration in the case of determinate and indeterminate life sentences; (b) what would be procedures when sentence cannot be adapted in cases where the offence in the sentencing

country is not an offence in the contracting country; (c) whether and how a set of important calculations around early release measures such as remission or parole in both the transferring and receiving country would be undertaken; (d) whether prisoners may appeal their adapted sentence.

These omissions create a hotbed for delay and confusion amongst administering state authorities resulting in short changing prisoners of their benefits. The 2015 MHA Guidelines may have delineated the specific agencies to be responsible for sentence adaptation under Part Ai(a) and (b) and provided a timeline for their work, however impractical, but leave a lot of guidance unprovided for how different kinds of sentences and early release benefits are to be adjudicated for sentence adaptation.

In contrast, Sections 32 and 33 of Republic of Kenya's Transfer of Prisoners Act, 2015 give specific directions to agencies on how sentence enforcement (through both adaptation and conversion) may be carried out for indeterminate and determinate sentences. The principle followed in Kenya in the case of indeterminate sentences is to let the prisoner serve the sentence as per the law in the country of transfer as long as the sentence is not more severe.⁵⁵

Therefore, in the light of such provisions, it is vital to provide the clarity of procedures, benefits and safeguards in the Act itself under Section 13(6) or a new provision. Additionally, it would be appropriate for the Central Government to incorporate these provisions on sentence calculation for repatriated Indian nationals into the Model Prison Manual and for state governments to incorporate provision for transferred Indian nationals into jail rules. A handbook on sentence calculation for jail officials in this regard would be very capacitating.

2. Rights of prisoners transferred to India to appeal adapted sentences

- **Current Provision: No such provision exists.**
- **Amendment:** A new sub section to be added under Section 13 and to read thus: "A prisoner or his representative who is aggrieved by the decision of the executive in the adaptation of his sentence may appeal to a court"
- **Justification:** Section 13 of the Act discusses the executive powers to adapt sentence under S13(6) but omits the right of the prisoner seeking transfer into India to appeal to either the executive or the judiciary following the results of their adapted sentence, in case the sentence is aggravated or inappropriate. The powers and role of the executive or the courts, with regard to determining

⁵⁵ Section 32. Sentence enforcement in Kenya – The Attorney-General may direct a sentence of imprisonment imposed on a prisoner by a court of a sentencing country to be enforced on transfer of the prisoner to Kenya under this Act by means of— (a) the continued enforcement method; or (b) the converted enforcement method.

Section 32. Duration and nature of enforced sentence (1) The sentence of imprisonment to be enforced under section 31 may not be more severe, in legal nature or duration, than the sentence of imprisonment imposed by the sentencing country. (2) Without prejudice to subsection (1)— (a) if the sentence of imprisonment imposed by the transfer country is for a determinate period, the sentence of imprisonment to be enforced under this Act may not be for a longer duration than that sentence; (b) if the sentence of imprisonment imposed by the sentencing country is for an indeterminate period, the sentence of imprisonment to be enforced under this Act shall, as far as practicable, be subject to similar terms affecting the duration of the sentence as those imposed in the transfer country; and (c) the sentence of imprisonment to be enforced under this Act may not be of a kind that involved a more severe form of deprivation of liberty than the sentence of imprisonment imposed by the sentencing country.

Section 33, Republic of Kenya's Transfer of Prisoners Act, 2015 – Directions concerning enforcement of sentence (1) In ordering that a sentence of imprisonment be enforced by the continued enforcement method or the converted enforcement method, the Attorney-General may, subject to section 32, give such directions as the Attorney- General may consider appropriate as to the duration and legal nature of the sentence of imprisonment as it is to be enforced under this Act. (2) Without prejudice to the generality of subsection (1), directions may be made— (a) as to the entitlement of the prisoner to be released on parole following the transfer; and (b) if the prisoner is a mentally impaired prisoner, as to any review to be undertaken of the mental condition of the prisoner and treatment to be provided to the prisoner following the transfer. (3) For the purpose of forming an opinion or exercising a discretion under this section, the Attorney-General shall have regard to such factors as the Attorney General may consider relevant, including— (a) any submissions made by the sentencing country; (b) the sentence of imprisonment that might have been imposed if the acts and omissions constituting the offence had been committed in Kenya; and (c) any limitations or requirement that in relation to the way in which a sentence of imprisonment imposed by the sentencing country may be enforced in Kenya arising from any agreement to which Kenya and the sentencing country are parties.

both dual criminality and appeals against a sentence at the time of sentence adaptation, finds no direct or explicit mention despite empowering provisions in the Indian Constitution (Article 32 and Article 226 of the Indian Constitution), Criminal Procedure Code (Section 188) and the IPC (Section 3 & 4). Neither the Act nor the Guidelines discuss the transferred prisoner's right to appeal. This requires suitable amendment.

Audi alterem partem is a principle of natural justice that ensures against rule of bias and arbitrary administrative action. Wherever an administration action inflicts a civil consequence, principles of natural justice have to be followed. Right to fair hearing is a code of procedure and hence covers every stage through which administrative decision-making passes. Prisoners must have the right of fair hearing against bias, negligence, arbitrary judgment of the executive. This right is already recognized under the repatriation laws in Tanzania.

Section 6 of the Transfer of Prisoners Act, 2004, of the United Republic of Tanzania provides that "a prisoner or his representative who is aggrieved by the decision of the Minister may appeal to a court". The 2003 Act may be amended accordingly. An explanatory provision in this regard may also be added to the MHA 2015 Guidelines.

The only restriction with regard to adapted sentence in continued enforcement cases is already specified under Paragraph 5, UN Model Agreement on the Transfer of Foreign Prisoners that a sentence involving deprivation of liberty cannot be converted into a pecuniary offence.⁵⁶

3. Whether a prisoner whose sentence cannot be adapted in the administering state is eligible for transfer

- **Current Provision:** There is no provision in the Act clarifying the eligibility.
- **Amendment: New provision 13(7) to read:** "In cases where sentence of the prisoner cannot be adapted in the country's legal jurisdiction, the prisoner may still be considered eligible for transfer provided that the sentence is enforced by the receiving state without any amendment and exactly as conferred by the court of the sentencing state, and that in such cases, the sentencing state alone retains the right to review, remit, commute or pardon the sentence".
- A proviso to be added – "Provided that the sentence conferred by the court of a contracting state is not a sentence of death".
- **Justification:** There is no explicit explanation in the Act on the course to be taken for those prisoners in whose cases dual criminality may not be established and the provision of compatibility as sought through the provision "had that offence been committed in India" mentioned under section 13(6) of the Act fails to apply. As for instance, in cases of marital rape which is not a penal offence in India or the exact equivalent of a manslaughter offence as the interpretation is discretionary in India. Two questions arise here: Will not the denial of repatriation to home state be an arbitrary denial for that national? However, if he is transferred to his home country, will that sentence of detention be binding without a comparable law in the country?

It need not be interpreted that in such cases where sentence adaptation may not be possible the only option is a rejection of repatriation and the sentencing court/country will refuse to transfer the person. If international law is read carefully we see that under the UN Model Agreement on the Transfer of Foreign Prisoners, 1985 (Paragraphs 4&5)⁵⁷ the administering state has the option to either continue enforcement or convert the sentence and barring changing the

⁵⁶ Paragraph 5, UN Model Agreement on the Transfer of Foreign Prisoners: In the case of continued enforcement, the administering State shall be bound by the sentence determined by the sentencing State. It may, however, adapt the sanction to the punishment prescribed by its own law for the offense, but a sanction involving deprivation of liberty shall not be converted to a pecuniary sanction. The administering State shall be bound by the findings of the sentencing State, which has the sole competence for review of the sentence.

⁵⁷ Paragraph 4, UN Model Agreement on the Transfer of Foreign Prisoners: The administering State shall either continue enforcement of the sentence or convert the sentence to one prescribed by its law for a corresponding offense.

nature of the sentence altogether as cautioned under paragraph 5 of the UN Model Agreement, it may adapt the sentence as per its own laws.

And in enforcing, it may adapt the punishment as per its own laws, as follows from the principle of dual criminality. This implies that where it chooses not to adapt or adaptation is not possible, the administering state can still continue to enforce the sentence as it is. However, in such cases, the power to review, remit or commute the sentence must be inviolably with the sentencing country. This will assure both parties that in cases where dual criminality is not ascertainable, the person would still undergo the complete sentence but without having to be denied the right of rehabilitation in home country. This becomes important, especially if the prisoner is suffering from any illness, has strong family roots in the home country, and poses no risk to the security of the state or safety of any victim of any age, or their own family.

Furthermore, as overcoming arbitrary prevention to enter one's home country is a necessary stipulation of international law of transfers of foreign and sentenced prisoners and provided under Paragraph 4, Article 12 of the ICCPR.⁵⁸

Therefore, the new provision section 13(7) needs to be added after section 13(6) in the Act. A similar provision 6(3) may also be added to accommodate such cases of transfer of foreign nationals from India where sentence may not permit adaptation.

4. Whether early release, parole, remission, statutory release for prisoners transferred into India are addressed:

- **Current Provision: No provision in the Act.**
- **Amendment: A new provision to be added after Section 13 of the Act:** "A prisoner transferred to India to be eligible for remission, parole, probation and statutory release provisions in the same manner as a prisoner who has offended in the country and is serving sentence without any discrimination of nature or duration. Remission earned in sentencing country and remission earned in the country of transfer to be deducted from sentence while calculating sentence remaining to be served. A transferred prisoner already serving parole at the time of transfer shall continue to be on parole under supervision".
- **Justification:** Early release and statutory release provisions are designed to assist inmates in making the transition to law-abiding behaviour upon their return into the community in the latter portion of their sentence. Statutory release is also intended to provide to prisoners on statutory release the same degree of control and assistance as to those released on parole. The UN Model Agreement on the Transfer of Foreign Prisoner, 1985 specifically entitles foreign national prisoners to alternatives to imprisonment. Being a rehabilitative Act, it is important that these benefits are categorically extended to transferred prisoners so that transfer of the prisoner to be closer to their families is indeed made meaningful.

However, the Act has no provision for early release benefits for repatriated Indian prisoners, except under section 12 of the Act which may allow and dis-allow any right or restriction based on the bilateral agreements carved out. Section 11 of the Repatriation of Prisoners Act, 2003 deals with the powers of the court and the power of the Central Government and State government to suspend, remit, or commute the sentence in accordance with any law for the time being in force, it does so only for foreign national prisoners in India. But here also, it preserves the right of the sentencing court and its government to pardon, review, remit, commute, suspend the sentence. There are primarily four omissions in the Act with regard to early release which prevent a state of preparedness that Indian prisons and supervisory authorities must have with regard to transferred

⁵⁸ Paragraph 4, Article 12 of the ICCPR: "No one shall be arbitrarily deprived of the right to enter his own country", in such cases, the person must serve the sentence but need not have to be deprived of the right to rehabilitation in his home country.

prisoners, and a lack of which results in the prisoner being shortchanged. These omissions are reflected in the 2015 MHA Guidelines as well as in the Standard Agreement rather than being filled up.

- **The omissions are:** (1) The Act has no explicit provision that make parole, remission or pardon an obtainable benefit for prisoners transferred to India; (2) the Act provides no scope for this power to grant early release to be mutually shared and made equivalent by both transferring and receiving country; (3) the Act makes no mention of powers in this regard already bestowed on executive authorities and the courts by the Constitution or the criminal procedure code; and (4) the Act does not outline 'procedures for calculation' of remission and parole, either for determinate or indeterminate sentence, or the pathway to seek pardon, procedures for review, suspension of sentence from either government as other legislations have preferred to do such as the Transfer of Prisoners Act, 2004, of the United Republic of Tanzania⁵⁹ or the International Transfer of Offenders Act, Canada, 2004.⁶⁰ Section 10.(1) of the Transfer of Prisoners Act, 2004, of

59 Section 10. (1), 10. (2), The Transfer of Prisoners Act, 2004, of the United Republic of Tanzania deal with the provisions for remission in both countries. Section 12. (1) of the Act specifies that time spent on parole will count towards completion of sentence.

Section 10. (1). The Transfer of Prisoners Act, 2004, of the United Republic of Tanzania. "A transferred prisoner sentenced to a term of imprisonment shall -

(a) be credited with any remission of that term to which he had become entitled at the date of his transfer in accordance with the law relating to remission of prison sentences in the designated country; and

(b) be credited to earn remission of the remaining term of imprisonment as if he has been sentenced to a term of imprisonment of the same length by a court in Tanzania.

10.(2) Any remission of imprisonment referred to in paragraph (a) of subsection (1) shall be liable to forfeiture for a disciplinary offence as if it were remission earned by virtue of paragraph (b) of subsection(1).

Section 12. (1) The Transfer of Prisoners Act, 2004, of the United Republic of Tanzania. "Where a prisoner has, before transfer been released on parole in the designated country and that parole was subsequently revoked, the time spent on parole shall count towards the completion of sentence in Tanzania.

12. (2) A transferred prisoner, who is, at the date of his transfer on parole in the designated country in which he was convicted and sentenced, shall upon transfer to Tanzania, be treated as a person on parole, notwithstanding that such a prisoner may not be eligible for parole under the law relating to parole in Tanzania.

12. (3) A breach of any condition of parole or of a conditional pardon shall render the offender liable to the same consequences as if he had been granted respite, or had been conditionally pardoned, in accordance with the laws of Tanzania".

60 Section 22 (1) of the International Transfer of Offenders Act, Canada, 2004 under 'Credit towards completion of sentence' lays down the transferred prisoner's right to earn remission in the country where he was sentenced and for it to be calculated towards completion of sentence. "The length of a Canadian offender's sentence equals the length of the sentence imposed by the foreign entity minus any time that was, before their transfer, recognized by the foreign entity as a reduction, other than time spent in confinement after the sentence was imposed". Additionally, Section 22 (2) International Transfer of Offenders Act, Canada, 2004, under 'Credit for time spent in confinement', states, "The time that a Canadian offender spent in confinement, after the sentence was imposed and before their transfer, is subtracted from the length of the sentence determined in accordance with subsection (1). The resulting period constitutes the period that the offender is to serve on the sentence.

Section 23, International Transfer of Offenders Act, Canada, 2004 outlines 'Eligibility for parole': "Subject to sections 19 and 24, a Canadian offender who is transferred to Canada is eligible for full parole on the day on which they have served, commencing on the day on which they commenced serving their sentence, the lesser of seven years and one third of the length of the sentence as determined under subsection 22(1).

Section 24: Eligibility for parole – murder: "24 (1) Subject to subsections 17(2) and 19(1), if a Canadian offender was sentenced to imprisonment for life for an offence that, if it had been committed in Canada, would have constituted murder within the meaning of the Criminal Code, their full parole ineligibility period is 10 years. If, in the Minister's opinion, the documents supplied by the foreign entity show that the circumstances in which the offence was committed were such that, if it had been committed in Canada after July 26, 1976, it would have been first degree murder within the meaning of section 231 of that Act, the full parole ineligibility period is (a) 15 years, if the offence was committed before the day on which paragraph 745.6(1)(a.1) of the Criminal Code comes into force; or (b) 25 years, if the offence was committed on or after that day. (2) Multiple murders - Subject to subsection (3), if a Canadian offender who was subject to a sentence of imprisonment for life for a conviction for murder, or an offence that, if it had been committed in Canada, would have constituted murder, within the meaning of the Criminal Code, received an additional sentence of imprisonment for life – imposed by the foreign entity for a conviction for an offence that, if it had been committed in Canada, would have constituted murder within the meaning of that Act – the full parole ineligibility period in respect of the additional sentence is established under section 745 of that Act. (3) Exception – second degree murder Exception : If the additional sentence referred to in subsection (2) is in respect of a conviction for an offence that, if it had been committed in Canada, would have constituted second degree murder within the meaning of section 231 of the Criminal Code – and if the offence was committed before all of the Canadian offender's convictions for murder, or for offences that, if they had been committed in Canada, would have constituted murder, within the meaning of that Act – the full parole ineligibility period in respect of the additional sentence is 10 years. (4) Credit for time spent in custody: In calculating the period of imprisonment for the purpose of this section, the time served by an offender includes any time spent in custody between the day on which they were arrested and taken into custody for the offence for which they were sentenced and the day on which the sentence was imposed.

Section 25 - Temporary absence and day parole – persons convicted of murder: Subject to section 746.1 of the

the United Republic of Tanzania provides a clear and categorical guideline on the remission that could be earned by the transferred prisoner in both countries – country where he was sentenced and country to which he will be transferred to serve the remaining sentence; and under its Section 12.(2), the Act entitles a transferred prisoner granted parole in contracting state be seen to be on parole in the country to which he is transferred.

Under the International Transfer of Offenders Act, Canada, 2004, transferred offenders are eligible to various types of conditional release such as temporary absence, day parole and full parole. All these benefits are outlined for prisoners transferred to Canada from other countries where they have offended. The Act also clarifies that for a transferred Canadian prisoner if the date of eligibility arrives before the transfer, the person will be considered eligible on the day of transfer but in effect, only 6 months after transfer when the Parole Board of Canada will review his case. Even while this means that, in effect, the transferred prisoner, who is not really in control of the day of transfer stands to be delayed by six months in the consideration of parole vis-à-vis his counterpart who is not a transferred prisoner and parole benefits need to be made equivalent, at least his eligibility for parole stands recognized in the transfer laws. In contrast, the Tanzanian Act considers a transferred prisoner granted parole in sentencing country to be eligible for parole in transferred country irrespective of the provisions of parole in that country. Pursuant to section 27 of the International Transfer of Offenders Act, Canada, 2004, if these dates are prior the date of transfer, the transfer date is deemed to be the eligibility date. Also, according to section 28 of the International Transfer of Offenders Act, the Parole Board of Canada is not required to review the case of an offender until six months after the transfer. However, eligibility does not mean automatic release; it means the date on which an inmate has completed serving the portion of the term of imprisonment required to be served by that inmate before temporary absence, day parole, or full parole, as the case may be, may be granted or authorised.

Similarly, where a Canadian offender transferred to Canada is detained in a penitentiary, section 26 of the International Transfer of Offenders Act provides for the offender to be released on statutory release on the day on which the offender has served, commencing on the day of their transfer, two thirds of the period determined in accordance with subsection 22(2) – typically this corresponds to two-thirds of the time remaining to be served on the sentence after the transfer of the offender.

India's repatriation legislation, MHA Guidelines and Draft Standard Agreement require amendment to meet the standards in the Tanzanian model of international transfers of sentenced persons.

Supporting provisions in other international legal frameworks: Paragraph 3, Recommendations on the Treatment of Foreign National Prisoners, UN Model

Criminal Code, (a) a Canadian offender who is transferred to Canada – and was sentenced to imprisonment for life for an offence that, if it had been committed in Canada, would have constituted murder within the meaning of that Act – is eligible for day parole in accordance with the Corrections and Conditional Release Act and for an absence without escort in accordance with the Corrections and Conditional Release Act or the Prisons and Reformatories Act; and (b) their absence with escort may be authorized in accordance with the Corrections and Conditional Release Act or the Prisons and Reformatories Act.

Section 26. Statutory release – penitentiary: 26 (1) If a Canadian offender is detained in a penitentiary, they are entitled to be released on statutory release on the day on which they have served, commencing on the day of their transfer, two thirds of the period determined in accordance with subsection 22(2).

Section 26(2). Release – prison: If a Canadian offender is detained in a prison, they are entitled to be released on the day on which they have served, commencing on the day of their transfer, the period determined in accordance with subsection 22(2) less the amount of any remission earned under the Prisons and Reformatories Act on that period.

Section 27. If eligible for parole, etc., before transfer: If, under the Corrections and Conditional Release Act or the Criminal Code, the day on which a Canadian offender is eligible for a temporary absence, day parole or full parole is before the day of their transfer, the day of their transfer is deemed to be their day of eligibility.

Section 28. Review by Board: Despite sections 122 and 123 of the Corrections and Conditional Release Act, the Parole Board of Canada is not required to review the case of a Canadian offender until six months after the day of their transfer.

Agreement on the Transfer of Foreign Prisoner, 1985;⁶¹ 13, Council of Europe, Committee of Ministers, Recommendation No. R (84) 12 Concerning Foreign Prisoners;⁶² Paragraphs 35.1 – 35.7, Council of Europe, Committee of Ministers (Recommendation CM/Rec (2012)12 of the Committee of Ministers to member states concerning foreign prisoners) deal with preparation of release;⁶³ Paragraphs 36.1 – 36.2 Council of Europe, Committee of Ministers (Recommendation CM/Rec (2012)12 of the Committee of Ministers to member states concerning foreign prisoners) deal with the consideration for early release;⁶⁴ and Paragraphs 35.1 – 35.3, Recommendation VI. (Preparation for Release), Recommendation CM/Rec (2012)12 of the Committee of Ministers to member states concerning foreign prisoners, Council of Europe, Committee of Ministers.⁶⁵

5. Whether the powers of the judiciary and executive to suspend, remit grant pardon, mercy to a prisoner transferred to India are addressed:

- **Current Provision:** No provision in the Act or MHA Guidelines.
- **Amendment:** A new section or sub section under section 12 of the Act to be included stating,

“The transfer of a prisoner into India from a contracting state shall not affect the power of the court which passed the judgment, or the power of the contracting government to pardon or remit a sentence. However, nothing in this Act shall limit the constitutional powers of the President in the receiving country to grant pardon or mercy to a prisoner transferred into India”.

- **Justification:** While Section 11 of the Repatriation of Prisoners Act deals with the powers of the court and the power of the Central Government and State government to suspend, remit, or commute the sentence in accordance with any law for the time being in force, in the case of a transfer of a prisoner from India, the Act fails to give recognition to similar powers of the courts and government in the case of transfers of Indian nationals from foreign countries.

Article 12, Council of Europe, Convention on the Transfer of Sentenced Prisoners, 21.3.1983 deals with ‘Pardon, amnesty, commutation’ and states, “Each party may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws”.

Therefore, it need not be seen as mandatory that in international transfer of prisoners the sentencing country shall hold singular prerogative to pardon or commute the sentence. In fact, several country legislations include and make explicit mention of the constitutionally conferred powers of executive and judiciary which cannot be limited. Illustratively, The Transfer of Prisoners Act,

61 Foreign prisoners should in principle be eligible for measures alternative to imprisonment, as well as for prison leave and other authorized exits from prison.

62 Foreign prisoners, who in practice do not enjoy all the facilities accorded to nationals and whose conditions of detention are generally more difficult, should be treated in such a manner as to counterbalance, so far as may be possible, these disadvantages.

63 Council of Europe, Committee of Ministers, Recommendation CM/Rec (2012)12. Preparation for release: 35.2. In order to facilitate the reintegration of foreign prisoners into society: a. their legal status and their situation after release shall be determined as early as possible during their sentence; b. where appropriate, prison leave and other forms of temporary release shall be granted to them; and c. they shall be assisted in making or re-establishing contact with family, friends and relevant support agencies. 35.3. Where foreign prisoners are to remain in the State in which they were held after release, they shall be provided with support and care by prison, probation or other agencies which specialise in assisting prisoners.

64 36.1. Foreign prisoners, like other prisoners, shall be considered for early release as soon as they are eligible and shall not be discriminated against in this respect. 36.2. In particular, steps shall be taken to ensure that detention is not unduly prolonged by delays relating to the finalisation of the immigration status of the foreign prisoner.

65 35.1. Preparation for release of foreign prisoners shall start in good time and in a manner that facilitates their reintegration into society.

35.2. In order to facilitate the reintegration of foreign prisoners into society: a. their legal status and their situation after release shall be determined as early as possible during their sentence; b. where appropriate, prison leave and other forms of temporary release shall be granted to them; and c. they shall be assisted in making or re-establishing contact with family, friends and relevant support agencies.

35.3. Where foreign prisoners are to remain in the State in which they were held after release, they shall be provided with support and care by prison, probation or other agencies which specialise in assisting prisoners.

2004, of the United Republic of Tanzania emphasizes presidential 'prerogative of mercy'.⁶⁶

Some bilateral transfer agreements signed by India point to the powers being with either country or acknowledge the possibility of receiving country determining pardon. Illustratively, the Treaty between the Kingdom of Thailand and the Republic of India on the Transfer of Sentenced Prisoners, 25 January, 2012, deals with 'Review of Judgment and Pardon, Amnesty or Commutation';⁶⁷ the UK-India Prison Transfer Agreement, 2015;⁶⁸ the Agreement between the Government of the People's Republic of Bangladesh and the Government of the Republic of India on the Transfer of Sentenced Persons, 11 January 2010.⁶⁹

In the light of these realities, the Indian legislation on repatriation needs to be amended to invite into the Act the constitutionally given powers for mercy.

Amendments to bilateral transfer agreements:

Prisoner Transfer Agreements with UK, Sri Lanka, Mauritius and those with other countries require a modification to include provisions on the eligibility, procedure and benefits of remission for the persons being transferred from these countries to India and vice-versa from India.

SOP & Sentence Match Guidelines on Sentence Adaptation:

A Standard Operating Procedure for executive stakeholders would be beneficial to give guidelines on determining dual criminality. These instructions will be required for prison staff who are responsible for sentence calculations in order to ensure prisoners are released on the correct date according to the relevant legislations. Something similar has been undertaken by the National Offender Management Service in the UK for prison staff who calculate the sentences and can be referred for guidance. It incorporates the new instructions for calculating sentences imposed on or after 3 December 2012 following implementation of the release and recall provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPOA 2012).

A matrix based sentence match guidelines document for prioritized offences across the criminal codes of countries with whom bilateral agreements have been signed is vital to take forward the intent of MHA Guidelines.

⁶⁶ Section 13(1) Nothing in this Act shall be construed as limiting the exercise by president's prerogative of mercy provided for in Article 45 of the Constitution of the United Republic of Tanzania, 1977.

Section 13(2) Where the prerogative of mercy has been decided in a designated country in respect of a transferred prisoner, any pardon granted pursuant thereto, shall to the extent to which that prerogative is exercised, have effect as if it were a pardon granted by the President to the transferred prisoner in terms of Article 45 of the Constitution of the United Republic of Tanzania, 1977.

⁶⁷ Article 11(2), Treaty between the Kingdom of Thailand and the Republic of India on the Transfer of Sentenced Prisoners: Either of the contracting states may grant pardon, amnesty or commutation of the sentence in accordance with its constitution or other laws.

⁶⁸ Article 10 (2), UK-India Prison Transfer Agreement, 2015: Pardon, amnesty or commutation, and review of Judgment states, Either of the contracting states may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws, though 10(1) states that the transferring State alone shall decide on any application for the review of the judgment.

⁶⁹ Article 10 (2), Agreement between the Government of the People's Republic of Bangladesh and the Government of the Republic of India on the Transfer of Sentenced Persons, 11 January 2010 deals with pardon, amnesty or commutation and review of judgment and leaves a clause open for negotiation between the two countries on these matters. While Article 10(1) states that the transferring State alone shall decide on any application for the review of the judgment, Article 10(2) adds, "Unless both the Contracting states otherwise agree, the transferring state alone may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws". Thereby leaving space open for pardon, amnesty and commutation in the receiving country.

7. Travel Documents & Signing of Warrants

The process of a transfer requires

- passports or travel documents to return
- issuing warrants on either side – warrant to release/transfer from the side of the country where the prisoner is lodged and a warrant to receive the prisoner by the country which has agreed to have him in its prisons as its national.

The warrant is an authorization to transfer, hold a person in custody and hand over at a specified location to which the person must be taken and for a specific time period for which he can be held.

On Paper

Sub-section (4) of Section 12 of the Repatriation of Prisoners Act states, “A warrant under sub-section (2) of section 12 shall provide for-

- (a) the bringing of the prisoner into India from a contracting State or a place outside India;
- (b) the taking of such prisoner in any part of India being a place at which effect may be given to the provisions contained in the warrant;
- (c) the nature and duration of imprisonment of the prisoner in accordance with the terms and conditions referred in sub-section (1) of section 12 and the imprisonment of such prisoner in India in such manner as may be contained in the warrant; and
- (d) any other matter which may be prescribed”.

Agencies Involved:

At least ten agencies are involved in this process of physical transfer of the prisoner from a foreign prison to Indian prison.

Verification Agencies: Indian Missions, Intelligence Bureau, State Government, CID & Police Department, Prison Department, Sentence Adaptation Agencies: Ministry of Law & Justice (MoL&J), Narcotics Control Bureau, Customs, Others, Transit Agencies: Government of the foreign country, Airports Authority of India, Indian Missions, State Home Department, Bureau of Immigration (GoI), State Security agencies, Bureau of Civil Aviation (GoI), and State Home Departments.

State Home Department selects the prison, identifies the police escorts in co-operation with the Police Department and the Prison Department. The Prison Department receives the warrant, the prisoner and his records on transfer.

Three of these are new stakeholders in the coordination process with the MHA.

The new stakeholders are the following:

- Bureau of Civil Aviation (BCAS) looks into all security clearances and plans, monitors, coordinates aviation security matters. It is set up as a cell in the Directorate General of Civil Aviation which itself is under the Ministry of Civil Aviation.
- Airports Authority of India gives security clearance on ground amongst other things. It comes under the Ministry of Civil Aviation.
- Bureau of Immigration in India gets the permission from aviation agencies and airlines.
- Bureau of Immigration of foreign country or equivalent department dealing with transfers of foreign prisoners obtains the permissions from Airlines.
- **Acceptance of Transfer Request & Cooperation on Transit:** Central Government accepts the request for a transfer of a prisoner who is a citizen of India, from a contracting State wherein he is undergoing any sentence of imprisonment based on nationality verification being confirmed. This is as per Section 12(1) of the Repatriation of Prisoners Act, 2003 that permits an application only from a confirmed Indian national.

- **NOC from State Security Agencies:** Based on No Objection reports from the state security agencies and the IB at the centre, nationality verification approval is communicated by the GoI to the foreign country where the Indian national is lodged.
- **Cooperation between Contracting States:** The contracting states must co-operate with each other on the transit of a prisoner if they have agreed to it and can refuse to grant transit only in special circumstances. Article 14 (1) of Standard Draft Agreement of the MHA used as guidance for bilateral treaties states, “If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such arrangements, except that it may refuse to grant transit (a) if the sentenced person is one of its own nationals; (b) if the request may infringe upon the sovereignty, safety, public order or any other essential interest of the Contracting State”.
- **Advance Notice for Transfer:** The contracting state intending to make such a transfer shall give advance notice to the other contracting state of such transit. Illustratively, Article 14 (2) of the Standard Draft Agreement used by the MHA to sign bilateral treaties on the transfer of sentenced prisoners.
- **Re-documentation & Issuing of Travel Documents by Indian Mission:** GoI, if satisfied, will authorize the Indian High Commission in that country to issue travel document as part of a re-documentation process. In case of difficulties, unsigned Passport Application form with prisoner’s details can also be sent by the government of foreign country to the Indian High Commission.
- **Fingerprints** may also be sent by agreed means as per Part A(b) of MHA 2015 Guidelines for the Repatriation of Prisoners Act, 2003; Also, as per MoU between UK & GoI for a pilot project to serve the basis for the return of immigration offenders, 2007.⁷⁰ **(Refer the Box below on details of the MoU).**

Box No. 7

Details of MoU on Pilot Project for the Return of Indian Immigrant Offenders from UK – 2007

On Paper

- The UK shall provide High Commission of India with evidence of nationality in cases where nationality is acknowledged and also where it is not.
- In the first case, it comprises personal details of each person to be returned; a completed and signed application for an issue of an Indian travel document in all cases where nationality is acknowledged, with fingerprints and other evidence of nationality. In cases where nationality is not acknowledged, the UK shall provide with personal particulars and completed but unsigned passport application. This is sent to Indian High Commission
- UK then requests for an Emergency Travel document
- GoI will complete verification within 3 months from the time completed passport application is submitted by the UK
- GoI, if satisfied, will authorize the Indian High Commission in that country to issue travel document as part of a re-documentation process.

On Ground

This MoU was effective in speeding up verification processes in India, getting reliable verification reports from the states in relation to immigrant offenders and reducing false ‘nil’ reports vis-à-vis physical verification of addresses.

⁷⁰ Based on discussion with the British High Commission and other stakeholders.

- **Issuing of Emergency Travel Documents or Emergency Return Certificates:** These may be issued to Indian citizens by the Consular Offices/Agents in the Indian Mission abroad for those whose passports have been impounded, revoked, lost, stolen or damaged and who have to be repatriated. This is as per Section 4 (2) of the Passports Act, 1967 read with Rules 3 and 4 of the Passport Rules, 1980; *Satwant Singh Sawhney v APO, New Delhi, AIR 1967 SC 1836*: It has been held that deprivation of passports amounts to infringement to right to personal liberty under Article 21 of the Constitution and right to travel abroad includes the right to return to India. The issuing of emergency travel documents also becomes significant in the case of illegal immigrants some of who also serve prison sentences in foreign countries and are eligible for repatriation.
- **Issuing of Warrant:** The warrant carries the name of the person escorting and the name of the person-in-charge of the prison to which he is escorted. Warrant to transfer the prisoner is issued under Section 12 (2) of the RPA Act, 2003 – “12(2) If the Central Government accepts the request for a transfer under sub-section (1) then, notwithstanding anything contained in any other law for the time being in force, it may issue a warrant to detain the prisoner in prison in accordance with the provisions of section 13 in such form as may be prescribed”. Under Sub-section (3) of Section 13 of Repatriation of Prisoners Act, 2003, the signing authority can receive and hold in custody any prisoner as determined under sub-section (1), delivered to him under the direction made in the warrant and to convey such prisoner to any prison determined under sub-section (1).⁷¹ This is supported under the CrPC Section 105B which deals with Assistance with Securing the Transfer of Persons. Sub section (5) states, “Where the person transferred to India pursuant to sub-section (1), or sub-section (2) is a prisoner in a contracting State, the Court in India shall ensure that the conditions subject to which the prisoner is transferred to India are complied with and such prisoner shall be kept in such custody subject to such conditions as the Central Government may direct in writing”.
- **Signing of Warrant by Joint Secretary of MHA or Home Minister:** Warrant must be signed by someone of at least the Joint Secretary rank in India (Form 3, Rule 5(2), Form of Warrant, under sub-section (2) of Section 12 of the RPA, 2003). In some cases it could be the Home Secretary, the Home Minister or the Prime Minister. But the Act/Guidelines do not mention this.
- The warrant must be copied to (i) Joint Secretary (CS), Ministry of Home Affairs, Government of India; (ii) Joint Secretary (CPV), Ministry of External Affairs, Government of India; (iii) Secretary, Department of Prison, (Government of(State in which the prisoner is to be imprisoned); (iv) Charge-de-Affairs, Embassy(Name of the State); Mr. / Ms.....(Name and address of the authorised person (official) of the contracting State). (Rules, 2004)
- **Prison Selection:** Once warrant is issued under Section 12(2) of the RPA Act, prison selection and officer to hold the prisoner in custody are determined by Central Government in consultation with the State Government as per Section 13(1) of the Act.
- **Allotment of Escorts:** Two police officers of the state where the prisoner is to be lodged are to escort the prisoner back from the foreign jail or the contracting country agrees to escort him under their own arrangements. This is as per Section (m) of 2015 MHA Guidelines under RPA, 2003. They carry the signed warrant to receive the prisoner and travel documents for the prisoner. In some cases, the sentencing country might itself designate the task to its own police officers.
- **Handing over Identification Documents of the Prisoner by Receiving State to Transferring State:** The Indian Mission in the foreign country must provide all documentation and clear photo identification of the authorized representative/security personnel well in advance along with all other ID details and names and designations to the foreign prison authorities.
- **Flight Arrangements/airlines:** Airlines arrangements are taken care of either by the sentencing country or by the receiving country depending on the agreement between them. This might be done either through direct flight and own country aircraft or transit

⁷¹ This is supported under the CrPC Section 105B.

through a third country and foreign airlines.

- **Obtaining Permission from Airlines:** Foreign country's Bureau of Immigration or equivalent department that overlooks foreigners' stay and departures gets the permission from the airlines which is agreeable to carrying prisoners. Generally, direct flights are preferred and 'no transit' or third country zones are avoided.
- **Risk Assessment:** Permission of the airlines involves many procedural clearances and risk assessment to carry a prisoner on board, particularly if they are a foreign airlines. There is further challenge if the flight is not a direct flight but a connecting flight. Airlines have their own protocol for flying deportees and repatriates as they have differential risks. The latter will have security officials as escorts, the former will not, which affects the risk assessment.
- **Avoiding Refusals from Airlines/Foreign Country:** Gol prefers Air India flights to avoid hurdles created by sudden refusals by foreign country in transporting the prisoner on their aircraft. The Bureau of Civil Aviation and Airport Authority of India are Gol's preferred institutions for more independent functioning and preparedness in organizing the transit of the prisoners.
- **Date of Travel:** Date of travel is then fixed. The Indian Mission coordinates between the two governments and the airlines on this.
- **Buying of Tickets & Costs:** The actual buying of tickets could be done either by the prisoner or the prisoner's family, or the Indian Mission in the foreign country or the government of the foreign country which may have earmarked funds for this. This is often a contentious issue involving delays.

Article 15 of the Standard Draft Agreement of the MHA states that any costs incurred in the application of this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, demand or seek to recover all or part of the costs of transfer from the sentenced person or from some other source. Most of Gol's bilateral transfer agreements, except for a few as in the case of the UK, place the burden of the costs on the contracting/receiving state. MHA Guidelines state that the Gol may take care of the costs of travel in cases where the prisoner cannot. The Guidelines also state that except in certain cases Gol would expect to be reimbursed by the prisoner or other sources for bearing this cost of tickets. Case documents reveal that the ability to take care of costs is one of the first things that Gol checks with the prisoner interested in transfer.

- **Sending of Tickets:** The tickets are then sent to the Home Ministry or the Foreign Affairs or the office in charge of repatriation of prisoners. For instance, in the case of the UK it would be the National Offender Management Service that operates under the guidance of the Home Office.
- **Time taken to Finalise Travel:** Depending on the country, it may take a few weeks to months to coordinate between all agencies and finalise the travel. Mauritius would take about 8 months. UK would take a few weeks. The time taken over the actual transit needs to be factored into the timelines in the MHA Guidelines.
- **Transferring the Prisoner:** The prisoner may be transferred from the prison where lodged to another prison for convenient transit to airport.
- **Transit & Handing Over:** On the stipulated date, the prisoner would be escorted to the airport by the foreign country police and prison authorities from the prison as per procedure with all documentation and clear photo identification of the authorized representative / security personnel who are to escort the prisoner to India.
- **Handing Over Prisoner's Records by Transferring State to Receiving State:** Prisoner's records and personal effects are generally handed over by the authorized person in foreign prison to the escorts who have the warrant to receive the prisoner.
- **Handing Over of the Prisoner:** The prisoner shall be handed over to the authorized

representative /security personnel of that country by the officials of the foreign country prison at the airport after Immigration along with all the documents and belongings of the prisoner. The officials of the foreign prison shall send a copy of all the documents exchanged to their Home Office for information. (Section 13 (3) of the Repatriation of Prisoners Act, 2003 states, "It shall be lawful for the officer referred to in sub-section (1) of Section 13 to receive and hold in custody any prisoner delivered to him under the direction made in the warrant issued under sub-section (2).

- **Arrival:** On arrival in home country, the prisoner is then escorted to the state prison where he will be lodged and handed over with the warrant to the officer-in-charge of the prison. (Section 13 (3) of the Repatriation of Prisoners Act, 2003).

On Ground



The repatriation timeline shows a gap of 9 years between communication on transfer between the two countries and the actual repatriation. Gol took eight years to provide dates for transfer to Government of Mauritius.

CASE: TIME LINE OF THE REPATRIATION OF Z⁷² FROM MAURITIUS IN 2015.⁷³

- 11.09.1998: Date of Sentence by the Supreme Court of Mauritius to undergo penal servitude for life.
- 24 October 2005: India and Mauritius sign the bilateral agreement on transfer of prisoners based on India's Repatriation of Prisoners Act, 2003 and Mauritius' Transfer of Prisoners Act, 2001.
- Date of Transfer Application to the Commissioner of Prisons to be transferred to the Republic of India: Not provided. Correspondence indicates that the application has been initiated since 1 January 2006.
- 01.07.2006: Communication initiated between the Indian government and the Mauritian government on the repatriation of Shri Z. This date is indicated in the 24.11.2014 communication between the Indian High Commission in Mauritius and the MHA that makes mention of MHA's letter no. V-17011/7/2006-PR dated 28.04.14. It shows the case has been in ongoing communication since 2006.
- Date on which the Republic of India has agreed to the transfer: Not provided. But correspondence on finalization of travel dates for the prisoner indicates that the Gol approval would have been provided anytime between late 2013 or early 2014.
- 28.04.2014: MHA India seeks two sets of possible dates for the handing over of Shri Z to Indian authorities. (This date may also be taken as Gol's date of approval for repatriation)
- First week of November 2014: Representation of Shri Z's mother to Smt. Sushma Swaraj, External Affairs Minister of India, before her visit to Mauritius in the same week, and the Minister's assurance that her son's case will be expedited and his repatriation would take place early.
- 20.11.2014: Transfer of detainee Shri Z is approved by the Prime Minister of Mauritius.
- 20.11.2014: Warrant of Transfer of Prisoner is signed by the Honorable Prime Minister, in favour of detainee Z and issued to the Commissioner of Police and the Commissioner of Prisons. The Warrant is issued on Second Schedule, Regulation 4, Section 10 of the Transfer of Prisoners Act, 2001 and the Transfer of Prisoners (Republic of Indian) Regulations 2006. The Prime Minister, in the name of the state, commands the Commissioner of Police and the Commissioner of Prisons to take the prisoner from his place of detention at Beau Bassin Central Prison in Mauritius to his place of departure from Mauritius at SSR International Airport and deliver him at that place to the lawfully delegated representative of the responsible authority of the Republic of India.
- 21.11.2014: Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius writes to the High Commission of India asking it to make the necessary arrangement in regard to the date and escort to operate the transfer smoothly and to inform this Ministry of these arrangements well in advance.
- 24.11.2014: The Indian High Commission writes to Under Secretary (Prison Reform), CS Division, MHA, New Delhi referring to ongoing communication on this case since 28.04.2014 and seeks two sets of possible dates for his handing over to Indian authorities. It requests that the escort/security party from India may please be sent to Mauritius for taking custody of Shri Z and repatriating him to India. "We may please be informed about their arrival in Mauritius two weeks in advance to work out last minute arrangements and issue travel document to Shri Z for smooth repatriation". This letter also mentions that a copy of the Warrant of Transfer of Prisoner duly signed by the Honorable Prime Minister on 20 November 2014, in favour of detainee Z, is also enclosed.

⁷² Real name of the prisoner has not been disclosed.

⁷³ RTI response of the High Commission of India, Mauritius.

- 21.01.2015: Shri Z is repatriated to India.
- Gap of almost 7 months (6 months 3 weeks) between India seeking dates for transfer of Shri Z and approval of the Prime Minister and issuing of transfer warrant (28.04.2014-20.11.2014).
- Gap of 2 months between PM's approval with warrant and actual repatriation (20.11.2014-21.01.2015).
- Gap of almost 8 months between approval by Gol and actual repatriation of Shri Z: Gol had sought dates for Shri Z's transfer on 28.04.2014. Shri Z was repatriated after 8 months 3 weeks from this date on 21.01.2015 (28.04.2014-21.01.2015).

Recommendations for the Removal of Barriers

- This last stage of approval process involving the approval from the heads of two states, needs to be captured in the MHA Guidelines and strategies evolved to shorten this time period through diplomatic means.
- Strategic measures to shorten the post approval process for transfer (involving Indian Missions, MHA, the Prime Minister or Home Secretary's Office in the foreign country) should be prioritized. The SOP for Indian Missions could delineate these.
- The details of procedures to be followed by specific duty-holders with regard to issuance of warrants, travel documents, emergency visas for the section dealing with transfers into India are not outlined in the MHA Guidelines 2015 as they ought to be and a SOP is required in this regard. Responsibilities and time to be taken at each step of this process needs to be delineated in the Guidelines and/or in the SOP.
- Procedures for issuing emergency travel documents by Indian Missions are missing in the MHA Guidelines. They must be elaborated both in the Guidelines for all stakeholders as well as in the SOP for Indian Missions.
- One of the difficulties experienced by Gol in getting Indian prisoners transferred from certain countries is dependence on the transferring country for arrangement of flights and their airlines for transporting the prisoner. Building the self-reliance in transit with explicit obligations of institutions like the Bureau of Civil Aviation, Airport Authorities of India as well as the MHA with appropriate timelines for each step and actor in the new Guidelines will be absolutely critical to speedy transfers.
- The funds available to pay for escorts to transport an Indian national back with is very limited. The MHA has only rupees 10 lakhs which is grossly inadequate and pushes the cost of travel expense of the prisoner on to prisoners' families except in cases where prisoner transfer treaties place the responsibility on the transferring country. The MHA should consider developing a government funded returns scheme or ensuring the proper utilization of the ICWF Fund of the Indian Missions in this regard.
- Resources of the MEA's Indian Community Welfare Fund need to be earmarked for spending on escorts and prisoners' tickets to improve the numbers of repatriation so that prisoners with poor economic background may be given this cover.
- A step by step procedure for Indian Missions in this regard is provided below.

Recommendations Specific to Indian Missions

Step 1: Compiling an authentic and comprehensive data base across countries of Indian nationals in jails abroad

- Formulate strategy to overcome privacy and data protection laws in foreign countries that prevent access to Indian prisoners.
- Analyse the approximate number and current location abroad where these hapless illegal Indian immigrants are languishing in jails abroad.

- The MEA could use diplomatic channels to write to the Embassies/High Commissions in New Delhi of all countries with whom India has signed treaties (or even where it has not) and those countries that are patronized by Indian nationals. (Names, parentage, addresses, offences, judgments and other possible particulars of illegal Indian immigrants in detention in the respective countries)

Step 2: Nationality Verification by the States

- All persons originating from Punjab, Haryana, Gujarat, Tamil Nadu or other states can be placed on separate lists. MEA can then send the list to the respective states for nationality verification or place the details on the Nationality Verification Portal wherever they cannot be verified with its own data base. Once they confirm conclusively the identity, the authenticated details can be sent back to the MEA or uploaded on the MEA portal for next steps by the MEA and Indian Missions and the MHA.

Step 3: MHA/MEA/Ministry of Indian Overseas Affairs to write to Ambassadors of Indian High Commissions

- Particularly in those countries where bilateral agreements exist, MEA or Ministry of Indian Overseas Affairs to write to the remaining countries, requesting them to establish contact with foreign authorities in their respective jurisdictions to start the dialogue for transfer of these illegal immigrant prisoners undergoing sentence, including those who might have finished their sentences but have no resources to return or who continue in prison only for an unpaid fine.

Step 4: Issuance of passports and travel documents to Indian illegal immigrants by Consular sections of the Indian High Commission in coordination with foreign authorities.

- This is as per the Passports Act, 1967 read with Passport Rules, 1980, where emergency travel documents can be issued to Indian citizens abroad by Consular officers/Agents in the Indian Mission abroad within their consular jurisdiction and all Indian citizens whose passports may have been impounded, revoked, lost, stolen or damaged and who have to be repatriated are entitled to be given emergency return certificates. All persons producing prima facie proof of India citizenship are entitled to new passports and are also covered for grant of emergency travel documents to enable them to return to India.

Step 5: The Indian Community Welfare Fund (ICWF) housed with Ministry of Indian Overseas Affairs (controlled by its Diaspora Services Division) for use by Indian Missions must be diverted with specific directions for use for the release of illegal immigrants in jails abroad and all persons eligible for repatriation whose nationality has been verified.

- The ICWF is meant for providing emergency services on a means test basis, and meant to provide for free air passage to stranded Indian abroad, to provide boarding and lodging expenses as well as for emergency medical care and initial legal assistance where required.

Step 6: Bilateral agreements must be signed with those countries on priority where several Indian nationals are lodged - eg., Malaysia, Nepal, China, Germany. Indian Missions must be utilised by the MEA in this regard.

8. Consent, Voluntariness & Communication

On Paper

The first step in the transfer process is often an expression of interest from a sentenced person in being transferred. Such an expression of interest may also come from a close relative of the sentenced person (Paragraph 4 of the Draft Model Agreement).⁷⁴

Transfer is an 'opportunity' provided to the prisoner. Sentenced persons should be informed of their right to ask to be transferred, the substance of what a transfer involves and the procedure for making transfer wishes clear to the authorities (Article 2, paragraph 2, and Article 4 of the European Convention). In addition, Paragraph 6 of the Model Agreement states that a prisoner shall be fully informed of the possibility and of the legal consequences of a transfer, in particular whether or not he might be prosecuted because of other offences committed before his transfer.

On Ground

1. The prisoner sometimes makes their consent contingent upon the prison selected for him. It has been known in certain cases that the prisoner refused to provide the undertaking required under Rule 3 that he will not challenge the convicted or adapted sentence until he knew more about the prison selected for him.
2. Official stakeholders at state level believe that the prisoner is generally allowed to select the prison.
3. Currently, information on early release, remission are not being furnished under India's bilateral treaties nor accounted for in the Draft Standard Agreement, as one of the mandatory elements that the receiving state should provide a prisoner. The lists of documents/information to be handed over by receiving state does not include this. Such communication would guide consent more efficiently.
4. Neither policies nor practices reflect any provision for seeking the prisoner's consent before warrant is issued.

Policy Barriers

1. **How consent, rejection or withdrawal of consent for transfer is to be communicated**
 - Current provision: There is no provision for this in the Repatriation of Prisoners Act for transfers into India.
 - Amendment: New Section: "The sentenced person, and their representative, shall be informed, in writing, in a language they understand, of any action taken by the sentencing State or by the administering State, as well as of any decision taken by either State on a request for transfer, as soon as possible. The receiving and transferring states shall each convey their consent, any reasons for rejection or withdrawal of consent in writing to the sentenced prisoner or the prisoner's representative in a language that is comprehensible to them, to the agencies within their own government and to the authorities of the contracting state as soon as possible".
 - Justification: Ensuring fair process, transparency, accountability and removing arbitrariness in the process of prisoner rehabilitation should be the primary goals of international prisoner transfer laws around the world. But neither sections 12 nor 13 of the Act make any explicit mention of the process to be followed between the state,

⁷⁴ Refer Annexure C, Standard Draft Agreement for Bilateral Prisoner Transfer Agreements.

the contracting state and prisoner in notifying consent or the agencies responsible. Neither do the 2003 Act nor the 2015 Guidelines for the implementation of the Act place obligations on the verification and approval authorities to furnish the reasoning or grounds of rejection to the prisoner, prisoner's representative or the contracting state, making the process of decision making non-transparent and prey to arbitrariness. This is a huge gap. A prisoner can only appeal or re-apply based on reasons known for rejection or withdrawal of consent. Further, a prisoner is deprived of their right to appeal or re-apply in the absence of any obligation for reasons for rejection or withdrawal of consent to be communicated to him. A prisoner may have several reasons to withdraw their application.

International standards and country repatriation legislations and bilateral agreements that set good policy in this regard are as follows:

Article 4(5) Council of Europe, Convention on the Transfer of Sentenced Prisoners, 21.3.1983 states, "The sentenced person shall be informed, in writing, of any action taken by the sentencing State or by the administering State under the preceding paragraphs, as well as of any decision taken by either State on a request for transfer".

Recommendations on the Treatment of Foreign Prisoners, UN Model Agreement on the Transfer of Prisoners, 1985: Foreign prisoners should be informed, in a language they understand, of the prison regime and regulations as well as their right to request contact with consular authorities.

Section 11(1) of Canada's International Transfer of Offenders Act, 2004 states under the heading "Writing", "A consent, a refusal or a withdrawal of consent is to be given in writing". Section 11(2) further states under the heading, "Reasons", "If the Minister does not consent to a transfer, the Minister shall give reasons".

Section 8, Tanzania Transfer of Prisoners Act, 2004: Under "Means of communicating information on requests" emphasizes on written replies.⁷⁵

Section 38, Republic of Kenya's Transfer of Prisoners Act, 2015 emphasizes on: Prisoner and prisoner's representative to be kept informed.⁷⁶

Section 6 (5) of the Ireland Transfer of Sentenced Prisoners Act, 1995 lays down that the Minister may not consent to a request under subsection (1) or subsection (2) of this section, unless the Minister is satisfied that all reasonable steps have been taken to inform the sentenced person concerned in writing in his or her own language.⁷⁷

Sections 23 & 24, Republic of Kenya's Transfer of Prisoners Act, 2015 provide for the decision-making authority to inform the prisoner along with other authorities of the decision to transfer both into and from Kenya. Significantly, they outline the information sharing between stakeholders between and within country, decision-making, transparency, timeliness, and record to be maintained in writing. The inclusion of 'as soon as possible' in the consent conveying process is highly valuable for ensuring accountability and time-boundedness.⁷⁸

75 Section 8 (1), Tanzania Transfer of Prisoners Act, 2004: Every request for the transfer of a prisoner and every reply thereto shall be in writing.

Section 8 (2): All communications relating to the transfer of a sentenced prisoner shall be through such means as may be prescribed.

76 Section 38, Republic of Kenya's Transfer of Prisoners Act, 2015: The Attorney-General shall ensure that any prisoner or prisoner's representative who makes a request for transfer under this Act is kept informed of the progress of the request.

77 Section 6 (5) of the Ireland Transfer of Sentenced Prisoners Act, 1995: lays down what the prisoner must be informed of: (a) of the substance, so far as relevant to the person's case, of the international arrangements in accordance with which it is proposed to transfer him or her; (b) of the effect in relation to the person of any warrant which may be issued in respect of him or her under section 7 of this Act; (c) of the effect in relation to the person of the law relating to his or her detention under such a warrant, and (d) of the powers of the Minister under section 9 of this Act.

78 Section 23: Government's consent to transfer to Kenya (1) The Attorney-General shall provide each Cabinet Secretary concerned with— (a) any information that the transfer country has given to the Attorney General; and (b) particulars of— (i) the method by which the Attorney-General considers the sentence of imprisonment imposed by the transfer country could be enforced by Kenya; and (ii) any other proposed terms of the transfer. (2) Each Cabinet Secretary concerned shall advise the Attorney-General in writing as to whether the Cabinet Secretary consents to the transfer on the terms proposed as soon as possible after receiving the notification.

Section 24. Formal consent to transfer: The Attorney-General shall— (a) formally notify the sentencing country as soon as possible after all appropriate consents to the transfer have been given; and (b) ask the sentencing country to formally consent to the transfer on the terms proposed by Kenya and to confirm the prisoner's formal consent to transfer on those terms.

Section 3, Ireland Transfer of Sentenced Prisoners Act, 1995 assures the supply of information to sentenced prisoner.⁷⁹

2. Whether consent of prisoner transferred into India and verification of the consent are addressed

- Current Provision: No provision in the Repatriation of Prisoners Act for ensuring the consent of Indian national prisoner for transfer or for verifying the voluntariness of the consent is currently available.
- Amendment: New provision to be added: Before granting permission for repatriation, the prisoner should be informed about the total quantum of sentence the prisoner will have to undergo and repatriation should be allowed only if the prisoner gives his consent in writing. The transferring state shall afford an opportunity to the receiving state to verify that the consent is given with appropriate procedures. The consent shall be verified by representatives of the Indian Mission.
- Justification: Paragraph 3, Preamble, UN Model Agreement on the Transfer of Foreign Prisoner, 1985 states that a transfer may be requested by either the sentencing or the administering State. A transfer shall be dependent on the consent of both States and the prisoner as well. The administering State should be given the opportunity to verify the free consent of the prisoner.

The Repatriation of Prisoners Act, 2003, does not mention any explicit provision to deal with the prisoner's consent or 'verification' of that consent with regard to the Indian prisoner in foreign country prison, though there are broad facilitative provisions under Section 12. Section 12(1) of the Repatriation of Prisoners Act, 2003 states, "The Central Government may accept the transfer of a prisoner, who is a citizen of India, from a contracting State wherein he is undergoing any sentence of imprisonment subject to such terms and conditions as may be agreed to between India and that State".

While Section 12(1) of the Act empowers the government to introduce provisions on verification of consent into all bilateral agreements, it requires explicit mention in the Act that the government of the sentencing state must afford an opportunity to the contracting State to verify through a consul or other official agreed upon with the contracting State that the consent is given voluntarily and with full knowledge of the legal consequences. Explicit mention will also help to clarify the role of the Indian Missions in this regard. Article 7 of Gol's Standard Draft Agreement does deal with consent and its verification but all bilateral treaties signed by India do not have the provision for consent verification. Article 7(2) states that the transferring State shall afford an opportunity to the receiving State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article, which in turn emphasizes voluntary consent with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.

The 2015 MHA Guidelines on Repatriation of Prisoners Act have tried to integrate the prisoner's consent in a limited manner. Provision (i)b of MHA Guidelines 2015 lays down the right of the prisoner to be informed about the adapted sentence and

Section 15. Government's consent to transfer from Kenya: (1) The Attorney-General shall notify the prisoner or the prisoner's representative and any Cabinet Secretary who appears to the Attorney-General to be responsible for matters which relate to the transfer— (a) of the decision of the transfer country with respect to the request; (b) where the consent is given, of the proposed method by which the sentence of imprisonment shall be enforced by the transfer country; and (c) any other proposed terms of the transfer. (2) The prisoner or prisoner's representative and the Cabinet Secretary concerned shall advise the Attorney-General as to whether they consent to the transfer on the terms proposed by the transfer country. (3) The Attorney-General shall— (a) decide whether or not consent should be given for the transfer of a prisoner on the terms proposed by the transfer country; and (b) notify the transfer country whether consent— (i) has been given for the transfer of the prisoner on those terms; or (ii) shall be given if the transfer country agrees to vary the terms proposed in a particular way.

79 Section 3: Supply of Information to Sentenced Prisoner: 3. A person on whom a sentence has been imposed in the State and to whom the provisions of this Act concerning a transfer out of the State may apply shall be informed, in a language which he or she understands, as soon as may be after the commencement of the sentence, of the substance of this Act.

his/her consent: "Before granting permission for repatriation, the prisoner should be informed about the total quantum of sentence, the prisoner will have to undergo and repatriation should be allowed only if the prisoner gives his consent in writing". Provision (h) of MHA Guidelines 2015 points to privileging the choice of the prisoner with regard to identification of jail by the state authorities: "...Since the spirit of such international agreement is to allow the transferred person to stay close to his/her family, the state government/UT administration should preferably lodge the prisoner close to the place where the prisoner wants to be located or where the near relatives are staying". Though the 2004 Rules specify the requirement for the prisoner's signed consent request for transfer (Form 1 under Rule 3, Annexure I & point 1 of Checklist of documents to be furnished along with repatriation request of the prisoner, Annexure II), they make no mention of verification of consent.

Provision (i)b of MHA Guidelines 2015 lays down the right of the prisoner to be informed about the adapted sentence and his/her consent: "Before granting permission for repatriation, the prisoner should be informed about the total quantum of sentence the prisoner will have to undergo and repatriation should be allowed only if the prisoner gives his consent in writing". However, the Guidelines do not elucidate who will verify this consent. For all practical purposes, the only Indian authority in a position to verify the consent of an Indian national in a foreign prison would have to be the Indian Missions. This responsibility needs to be factored into both the Act and the Guidelines.

In contrast to India's 2003 Act and 2015 MHA Guidelines, international standards and most of the new Acts in Commonwealth countries and India's own bilateral agreements for transfer of sentenced prisoners with UK, Thailand and Bangladesh, reflect the need to incorporate this provision substantively.

UN Model Agreement on the Transfer of Foreign Persons states that the transfer should take place only with the expressed consent of the prisoner. Such consent should refer to the transfer itself and also to the State to which the transfer is to be effected. As the sentenced person's consent is one of the basic elements of the transfer mechanism, it seems necessary that the sentencing State should not only ensure that the consent is given voluntarily, and with full knowledge of the legal consequences that the transfer would entail for the person concerned, but also that the administering State should have an opportunity to verify that the consent is given in accordance with these conditions. Such verification can be effected with the assistance of the diplomatic or consular corps, or any other official agreed upon between the States concerned.

Article 3(1j) of the UK-India Prisoner Transfer Agreement that lays down the 'Conditions for Transfer' states that transfer of a sentenced person can take place under this Agreement provided: "consent to the transfer is given by the sentenced person or, where in view of his age or physical or mental condition either contracting state considers it necessary, by any other person entitled to act on his behalf in accordance with the law of the contracting state".

Article 6(1) of the India-UK Prisoner Transfer Agreement, 2005 places obligations on the transferring state to verify the voluntariness of the consent given.⁸⁰ Article 6(2) of the UK-India Prisoner Transfer Agreement gives the receiving state the opportunity to verify the consent of the prisoner.⁸¹

Article 7 of the Treaty between the Kingdom of Thailand and the Republic of India on the Transfer of Sentenced Prisoners, 25 January, 2012 deals with the voluntariness of consent and its verification.⁸²

80 Article 6(1): The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(i) of Article 3 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.

81 Article 6(2): The transferring State shall afford an opportunity to the receiving State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article". The provision for this opportunity is in keeping with the UN Model Agreement on Transfer of Foreign Persons, 1985, that the administering State must be given the opportunity to verify that the sentenced person has in fact consented to being transferred.

82 Article 7 (1): the transferring state shall ensure that the person required to give consent to the transfer in accordance

Article 6, Agreement between the Government of the People's Republic of Bangladesh and the Government of the Republic of India on the Transfer of Sentenced Persons, 11 January 2010 deals with 'Consent and Its Verification'.⁸³

Rule 62(1) & 2 of the UN Standard Minimum Rules for Treatment of Prisoners, 2015 also point to the role of diplomatic representatives in this regard.⁸⁴

The Preamble of the Prisoner Transfer Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Republic of India emphasizes on the two contracting countries honoring voluntariness in the transfer.⁸⁵

Article III, Para 2 of the Inter American Convention on Serving Criminal Sentences Abroad also refers to unbiased and thoughtful consent of a prisoner.⁸⁶

Section 1, Repatriation of Prisoner's Act, 1984 (UK) dealing with the Issue of Warrant for Transfer emphasizes the importance of information to the prisoner and the prisoner's consent⁸⁷ and under Section 1(5) obliges the Minister to ensure his satisfaction with regard to information to the prisoner as per standards.⁸⁸

Recommendation

This task of verifying consent in the case of sentenced Indian prisoners in foreign prisons can only effectively be undertaken by the Indian Missions. There is requirement of categorical mention in the Act and bilateral agreements on the verification of consent of the prisoner and for the Guidelines to mention the duties of the Indian Missions in verifying the consent of the prisoner to the adapted sentence, the selected prison, the issuing of warrant.

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- with Article 4 paragraph 1(h) of this Treaty does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring state.
- Article 7(2): The transferring state shall afford an opportunity to the receiving state to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.
- 83 Article 6(1): The transferring state shall ensure that person required to give consent to the transfer in accordance with paragraph 1 (i) of Article 3 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the governing country. Article 6(2): The transferring state shall afford an opportunity to the receiving state to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.
- 84 Rule 62(1). Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.
- Rule 62(2). Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.
- 85 "Desiring to facilitate the social rehabilitation of sentenced persons into their own countries; and considering that this objective should be fulfilled by giving foreigners, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences within their own society."
- 86 Article III, Para 2 states: 'The sentenced person must consent to the transfer, having been previously informed of the legal consequences thereof.'
- 87 Section 1(1) of the Act states: Subject to the following provisions of this section, where -....(c) the prisoner has consented to being transferred in accordance with those arrangements,
- Section 1(4): The Secretary of State shall not issue a warrant under this Act, other than one superseding an earlier warrant, unless he is satisfied that all reasonable steps have been taken to inform the prisoner in writing in his own language- (a) of the substance, so far as relevant to the prisoner's case, of the international arrangements in accordance with which it is proposed to transfer him, (b) of the effect in relation to the prisoner of the warrant which it is proposed to issue in respect of him under this Act, (c) in the case of a transfer into the United Kingdom, of the effect in relation to the prisoner of the law relating to his detention under that warrant (including the effect of any enactment or instrument under which he may be re- leased earlier than provided for by the terms of the warrant), (d) in the case of a transfer out of the United Kingdom, of the effect in relation to the prisoner of so much of the law of the country or territory to which he is to be transferred as has effect with respect to transfers under those arrangements, and (e) of the powers of the Secretary of State under section 6 of this Act; and, the Secretary of State shall not issue a warrant superseding an earlier warrant under this Act unless the requirements of this subsection were fulfilled in relation to the earlier warrant.
- 88 Section 1(5): The Secretary of State shall not issue a warrant under this Act unless he is satisfied that the consent given for the purposes of subsection (1)(c) above was given in a manner authorised by the international arrangements in accordance with which the prisoner is to be transferred and was so given either- (a) by the prisoner himself ; or (b) in circumstances where it appears to the Secretary of State inappropriate by reason of the physical or mental condition or the youth of the prisoner for the prisoner to act for himself, by a person appearing to the Secretary of State to be an appropriate person to have acted on the prisoner's behalf".

9. Monitoring of Transfer Process & Outcomes

The process of approving and effecting a transfer is a complex process involving the governments of the two concerned countries and the prisoner. It involves several stages and several agencies at the Centre and states, their co-ordination, communication and their reports to the MHA and information to the prisoner. This has been detailed in the previous chapters dealing with the application process, nationality and criminality verification, sentence adaptation, the process of seeking the consent of the prisoner and the actual transfer of the prisoner. The chapters have pointed to policy gaps and delays in implementation caused by several factors such as the inadequate capacities of the Indian Missions to reach prisoners abroad, many checkpoints in the process at Centre and state levels in the country, low prioritisation amongst stakeholders, incomplete documentation, incomplete information to prisoners, time-taking sentence adaptation process with particular difficulty in adapting life-sentence cases, and uncertainty of resources, policies and standards governing the actual physical transfer of the prisoner from a foreign country prison into a prison in India by escorts from the concerned state.

Keeping the rehabilitative intent of the Repatriation of Prisoners Act, 2003 in mind, the transfer process must be so expedited by all agencies that the applicant prisoner seeking to return to the country and be rehabilitated waits for the Govt's decision and action for a period no longer than absolutely necessary.

Monitoring the transfer process is, therefore, vital to ensuring the full impact of the Act. A policy framework with timelines of implementation and accountability with mechanism for monitoring at the highest levels would ensure that problems are detected on time, requests do not accumulate into pendency and adverse effects are not created.

As the final chapter of the report, "Monitoring of Transfer Process & Outcomes" deals with an assessment of the legal framework available for time-bound implementation, supervision mechanisms, their actual workings, and recommendations for an effective monitoring system for the overall transfer process.

As the MHA 2015 Guidelines lay down a supervised and time-bound process, the chapter mainly discusses its promise if given rigour and provides certain suggestions on areas for improvement that would, in the long run, impact the number and speed of sentenced Indian prisoners being repatriated.

On Paper

- Timeline under MHA 2015 Guidelines: The Guidelines lay down a timeline for processing and effecting transfer of an Indian national from a prison abroad to one in India. It is a 44 day Rule where the clock starts ticking from the time of receiving the application by the MHA till the time of its approval for transfer and communications completed for the handover of the person.
- The Guidelines lay down the time to be taken by the following agencies for completing their tasks in the transfer process as provided below:
 - Nationality verification by MHA, MEA, State Govt. - 10 days.
 - Comments from NCB/MoL, others - 10 days.
 - Comments from security agencies - 10 days.
 - Adaptation of sentence - 5 days.
 - Approval of MHA for repatriation - 7 days.
 - Communication of repatriation schedule and handover date to foreign country by

MHA - 2 days.

Finally, there is the repatriation of the prisoner back to India. But the MHA Guidelines place no timeline for how swiftly this should happen following upon all communications.

- Provision (o) of Part A of the Guidelines states that on receiving complete documentation and application, a Monitoring Committee will endeavor to finalise a case within 1 month, i.e., 30 days even lesser time than that stipulated under provision (n).

Supervision of Prisoner Transfers under a Monitoring Committee of the MHA:

- Provision (o) of Part A of the Guidelines mandates a Monitoring Committee under the overall responsibility of the Joint Secretary of the MHA, Centre-State Division and lays down the composition and mandate of the Monitoring Committee and timeline to finalise a case on receipt of complete documentation and repatriation request.
- Joint Secretary (CS) of the MHA is required to conduct monthly reviews of pending cases and finalise cases as per the timelines set out under provision (n) and (o).
- According to the Guidelines, other members of the Monitoring Committee are drawn from the Ministry of External Affairs (the concerned territorial division), the Ministry of Law, Narcotics Control Bureau, Customs, Security Agencies.
- The MHA Guidelines lay down the mandate of the Monitoring Committee as responsibility to hold monthly meetings, review status cases, address pendency issues and ensure finalisation of cases within one month.

On Ground

CHRI filed RTI request to the MHA(CS) on 15 March 2017 to find out about the functioning and performance of the Monitoring Committee set up under the 2015 Guidelines. It specifically sought to know whether such a committee had been formed, and if so, the total number of monthly meetings held till date, participations of members in the meeting, total number of cases finalised for repatriation in these meetings, total number of coordination meetings held before every prisoner transfer. It asked for details of the last 5 rejected and last 5 accepted cases of voluntary transfers supervised and finalized by the Monitoring Committee in order to access whether the 44 day timeline was practical.

The MHA refused the information in its reply dated 25 April 2017 on the grounds that information was not being maintained in the format sought by CHRI. But acknowledged that the Division Head does review cases of transfer of prisoners and from time to time takes appropriate action by sending reminders to concerned agencies.

- However according to the MHA, the Monitoring Committee is now being revived and its functioning is expected to be more regular with documentation of its processes and decisions.

Stakeholder discussions revealed that the 44-day timeline was impractical

- Left to itself the process would spill over more than 6 months or a year. The intent of keeping a time deadline is to speed up the process and reduce the total time taken to 2-3 months and prevent further delay.
- The timeline outlined for each agency is currently impractical and difficult to meet without prioritisation, targets, reporting and reviews, technological fixes, capacity building, M&E.
- Currently most agencies take more than the scheduled time. Eg. Sentence adaptability can take months and not merely 10 to 15 days; Verification processes may take at least a month even with monitoring in place.
- The MHA is planning to revise these Guidelines soon. However practical timelines should be backed by inter-agency coordination and monitoring.

Recommendations to Improve the Functioning of the Monitoring Committee

- Case processing speed could be improved with prioritisation, technology, capacity building.
- The holding of monthly review meetings by the monitoring committee as per the Guidelines will immensely improve the prioritization given to prisoner transfer into India.
- The Joint Secretary's attention on the status of transfer cases must be periodically timed and not left to the final stage. This will serve the purpose of having a monitoring committee with a monthly monitoring gaze.
- This monitoring must be preceded or accompanied by awareness of all stakeholders about the Act, Guidelines, process and obligations.
- Technological assistance to the Monitoring Committee through an online system with pre-set alerts or video-conferencing would motivate the Committee to convene monthly with departmental Action Taken Reports without having to physically meet.
- Further, the agenda of repatriation can also be clubbed with other inter-departmental meetings to help periodic stock-taking.
- Information maintenance with case tracking systems should be maintained online with the help of case managers and technical assistants.
- CHRI's RTI queries and formats provide a baseline for internal case tracking and monitoring and could be used with some modifications for holding and managing information online.
- It would greatly enhance the work of all stakeholders if case based information were to be proactively disclosed as per the Right to Information Act, 2005, the Department of Personnel and Training Guidelines and related jurisprudence.

In concluding the report, it is imperative to recall that the right to return to one's country as enshrined in the 1966 International Covenant on Civil and Political Rights (ICCPR), under Article 12(4) should not be denied to Indian nationals serving sentences in the prisons of foreign countries. Article 10 of the ICCPR affirms the right to rehabilitation under the penitentiary system and the 1985 UN Model Agreement on the Transfer of Foreign Prisoners lays down that the social re-settlement of offenders who have committed crimes abroad lies in facilitating their quick return to their home country to serve their sentence.

The Repatriation of Prisoners Act, 2003 and the various Prisoner Transfer Agreements signed between India and other countries are symbolic of commitments to these international instruments of human rights. It is binding upon the Central Government, the Indian Missions and the State Governments, therefore, to ensure that the terms of the treaties and agreements do not fall by the wayside and all endeavours are made to identify and know who the Indian nationals are who are imprisoned abroad and who, upon their confirmed nationality, may be rehabilitated under the terms of these laws and treaties in a transparent, time-bound, accountable and dignified manner.

ANNEXURES

THE REPATRIATION OF PRISONERS ACT, 2003

THE REPATRIATION OF PRISONERS ACT, 2003

REGISTERED No.DL-(N)04/000712003-05

THE GAZETTE OF INDIA

EXTRAORDINARY

PART II-Section I

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MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

(Legislative Department)

New Delhi, the 30th September 30/Asvina 8,1925 (Saka)

The following Act of Parliament received the assent of the President on the 28th

September 2003, and is hereby published for general information:-

THE REPATRIATION OF PRISONERS ACT, 2003

NO. 49 OF 2003

[28th September, 2003.]

An Act to provide for the transfer of certain prisoners from India to country or place outside India and reception in India of certain prisoners from country or place outside India.

Be it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Repatriation of Prisoners Act, 2003. Short title and commencement

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,— Definitions

(a) “contracting State” means a Government of any country or place outside India in respect of which arrangement has been made by the Central Government with the Government of such country or place through a treaty or otherwise for transfer of prisoners from India to such country or place and vice versa and includes any other Government of such country or place specified by the Central Government, by notification in the Official Gazette, under sub-section (1) of section 3;

(b) “prescribed” means prescribed by rules made under this Act;

(c) “prisoner” means a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in contracting States;

(d) “warrant” means a warrant issued under sub-section (1) of section 7 or sub-section (2) of section 12, as the case may be;

(e) words and expressions used herein and not defined but defined in the Code of Criminal Procedure, 1973 (2 of 1974) have the meanings respectively assigned to them in that Code.

Application of Act 3. (1) The Central Government may, by notification in the Official Gazette, direct that the provisions of this Act shall apply to a country or place outside India as may be specified in the notification.

(2) If the notification under sub-section (1) relates to a country or place outside India with which a treaty has been entered into by India for the transfer of prisoners between that country and India, then, such notification shall also set out the full text of the said treaty and shall in no case remain in force longer than the period of the said treaty.

	<p>(3) If the Central Government is of the opinion that, with respect to a country or place outside India, provisions of this Act require to be modified to give effect to a treaty in relation to such country, it may, by notification in the Official Gazette, direct that the application of this Act to such country shall be subject to such conditions, exceptions and modifications specified in the notification.</p>
<p>Application for transfer by a prisoner</p>	<p>4. Any prisoner who is a citizen of a contracting State may make an application to the Central Government for transfer of his custody from India to that contracting State:</p> <p>Provided that if a prisoner is not able to make an application himself because of his ill health, mental condition, old age or being a minor, then, the application may be made by any other person entitled to act on his behalf.</p>
<p>Consideration of request by Central Government</p>	<p>5. (1) On receipt of the application under section 4, the Central Government shall direct the officer in charge of the prison, where the prisoner is confined, to furnish such information which in the opinion of that Government is relevant for the purpose of transfer.</p> <p>(2) On receipt of the information under sub-section (1), if the Central Government is satisfied that—</p> <p>(a) no inquiry, trial or any other proceeding is pending against the prisoner; (b) death penalty has not been awarded to the prisoner;</p> <p>(c) the prisoner has not been convicted for an offence under the martial law; and</p> <p>(d) transfer of custody of the prisoner to the contracting State shall not be prejudicial to the sovereignty, security or any other interest of India, it shall pass an order for forwarding the application of the prisoner to the contracting State.</p>
<p>Comments of contracting State</p>	<p>6. (1) The application of the prisoner shall be forwarded by the Central Government through prescribed means to the Government of the contracting State to deal with such application along with the following information, namely:—</p> <p>(a) a copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the prisoner;</p> <p>(b) the nature, duration and date of commencement of the sentence of the prisoner;</p> <p>(c) medical report or any other report regarding the antecedents and character of the prisoner, where it is relevant for the disposal of his application or for deciding the nature of his confinement; and</p> <p>(d) any other information which the Central Government may consider necessary.</p> <p>(2) Where any application of a prisoner forwarded by the Central Government has been accepted by the contracting State, the Central Government may seek from such contracting State, all or any of the following information or documents before taking decision to transfer the prisoner to the contracting State, namely:—</p> <p>(a) a statement or document indicating that the prisoner is a citizen of the contracting State;</p> <p>(b) a copy of the relevant law of the contracting State constituting the act or omission as the offence, on account of which the sentence has been passed in India, as if such act or omission was an offence under the law of that State;</p> <p>(c) a statement of the fact or any law or regulation relating to the duration and enforcement of the sentence of the prisoner in the contracting State upon his transfer;</p>

	<p>(d) the willingness of the contracting State to accept the transfer of the prisoner and an undertaking to administer the remaining part of the sentence of the prisoner;</p> <p>(e) an undertaking to comply with the conditions, if any, specified by the Central Government; and</p> <p>(f) any other information or document which the Central Government may consider necessary.</p>
Consideration of request by Central Government	<p>7. (1) If the Central Government, on receipt of a communication from the concerned contracting State,—</p> <p>(a) expressing its willingness to accept the transfer of the prisoner; and</p> <p>(b) undertaking to comply with the conditions specified in the warrant,</p> <p>is satisfied that the prisoner should be transferred to the said State, the Central Government may, notwithstanding anything contained in any other law for the time being in force, issue a warrant in accordance with the provisions of section 8 in such form as may be prescribed.</p> <p>(2) Where a warrant is issued under sub-section (1), the Central Government shall inform the contracting State accordingly and request that State to specify the person to whom and the place within India where custody of the prisoner shall be delivered.</p>
Provision to issue warrant for transfer	<p>8. (1) The Central Government shall authorise an officer not below the rank of a Joint Secretary to a State Government, within the limits of whose jurisdiction the place of imprisonment of the prisoner is situated, to issue a warrant on behalf of the Central Government under sub-section (1) of section 7 directing the officer incharge of the prison therein to deliver the custody of the prisoner to the person authorised by the contracting State to which the prisoner is to be transferred, presenting such person a copy of the warrant together with all the records relating to the prisoner and the personal effects taken from the prisoner at the time of his admission in the prison.</p> <p>(2) Upon the presentation of a warrant referred to in sub-section (1), the officer incharge 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 the personal effects relating to the prisoner to be removed from the prison is given.</p> <p>(3) After delivery of the prisoner to the person authorised by the contracting State under sub-section (2), the officer incharge of the prison transferring the prisoner shall forward a copy of the warrant to the court which committed the prisoner to the prison, along with a statement that the prisoner has been delivered to the person authorised by the contracting State under sub-section (1).</p> <p>(4) The delivery of the prisoner in compliance of the warrant issued under sub-section (1) shall discharge the officer incharge of the prison from the responsibility of keeping the prisoner in his custody.</p>
Operation of warrant and retaking prisoner	<p>9. It shall be lawful for the person authorised by the contracting State to whom the custody of a prisoner is delivered under the provisions of sub-section (2) of section 8 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, the prisoner may be arrested without warrant by any person who shall without undue delay deliver such prisoner to the officer incharge of the nearest police station and the prisoner so arrested shall be liable for committing an offence under section 224 of the Indian Penal Code (45 of 1860) and shall also be liable for such sentence of imprisonment in India which he would have to undergo if the delivery of custody of such prisoner had not been made under section 8.</p>

- Transfer of record 10. Where a prisoner is or is to be transferred to a contracting State under the provisions of this Act, the Central Government may requisition the records of any proceeding, including judicial proceedings relating to that prisoner from any court or office, and may direct that such records shall be sent to the Government of the contracting State.
- Power of court and Central Government shall not be affected 11. The transfer of a prisoner from India to a contracting State shall not affect the power of the court which passed the judgment to review its judgment and power of the Central Government or State Government to suspend, remit or commute the sentence in accordance with any law for the time being in force.
- Transfer into India 12. (1) The Central Government may accept the transfer of a prisoner, who is a citizen of India, from a contracting State wherein he is undergoing any sentence of imprisonment subject to such terms and conditions as may be agreed to between India and that State.
(2) If the Central Government accepts the request for a transfer under sub-section (1), then, notwithstanding anything contained in any other law for the time being in force, it may issue a warrant to detain the prisoner in prison in accordance with the provisions of section 13 in such form as may be prescribed.
- Determination of prison and issue of warrant for receiving transfer in India 13. (1) The Central Government shall, in consultation with a State Government, determine the prison situated within the jurisdiction of such State Government where the prisoner with respect to whom a warrant has been issued under sub-section (2) of section 12, shall be lodged and the officer who shall receive and hold him in custody.
(2) The Central Government shall authorise any officer not below the rank of a Joint Secretary to that Government to issue a warrant under sub-section (2) of section 12 and to direct the officer referred to in sub-section (1) to receive and hold the prisoner, with respect to whom the warrant is issued, in custody.
(3) It shall be lawful for the officer referred to in sub-section (1) to receive and hold in custody any prisoner delivered to him under the direction made in the warrant issued under sub-section (2) of section 12 and to convey such prisoner to any prison determined under sub-section (1) for being dealt with in accordance with the said warrant and if the prisoner escapes from such custody, the prisoner may be arrested without warrant by any person who shall without undue delay deliver such prisoner to the officer incharge of the nearest police station and the prisoner so arrested shall be liable for committing an offence under section 224 of the Indian Penal Code (45 of 1860) and shall also be liable to be dealt with in accordance with the said warrant.
(4) A warrant under sub-section (2) of section 12 shall provide for—
(a) the bringing of the prisoner into India from a contracting State or a place outside India;
(b) the taking of such prisoner in any part of India being a place at which effect may be given to the provisions contained in the warrant;
(c) the nature and duration of imprisonment of the prisoner in accordance with the terms and conditions referred to in sub-section (1) of section 12 and the imprisonment of such prisoner in India in such manner as may be contained in the warrant; and
(d) any other matter which may be prescribed.
(5) Notwithstanding anything contained in any other law for the time being in force, the imprisonment of a prisoner in compliance with a warrant issued under sub-section (2) of section 12 shall be deemed to be imprisonment under a sentence of a court competent to pass such a sentence of imprisonment in India.

(6) If the sentence of imprisonment passed against the prisoner in the contracting State is incompatible with the Indian law as to its nature, duration or both, the Central Government may, by order, adapt the sentence of such punishment as to the nature, duration or both, as the case may be, as is compatible to the sentence of imprisonment provided for a similar offence had that offence been committed in India:

Provided that the sentence so adapted shall, as far as possible, correspond with the sentence imposed by the judgment of the contracting State to the prisoner and such adapted sentence shall not aggravate the punishment, by its nature, duration or both in relating to the sentence imposed in the contracting State.

Power to make rules 14. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the means through which an application may be forwarded under sub-section (1) of section 6; (b) the form in which a warrant may be issued under sub-section (1) of section 7;

(c) the form in which a warrant may be issued under sub-section (2) of section 12; and

(d) any other matter which may be prescribed under clause (d) of sub-section (4) of section 13.

Laying of rules, etc. 15. Every notification issued under sub-sections (1) and (3) of section 3 and every rule made under section 14 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule or both Houses agree that the notification or rule should not be made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

Power to remove difficulties 16. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament.

SUBHASH C. JAIN
Secy. to the Govt. of India

REPATRIATION OF PRISONERS RULES, 2004

THE GAZETTE OF INDIA EXTRAORDINARY
PART II-Section 3-sub-section (i)

PUBLISHED BY AUTHORITY

No.333) NEW DELHI, MONDAY, AUGUST 9, 2004/SRAVANA 18, 1926

MINISTRY OF HOME AFFAIRS NOTIFICATION
New Delhi, the 9th August, 2004

G.S.R505 (E)- In exercise of the powers conferred by section 14 of the Repatriation of Prisoners Act, 2003 (49 of 2003), the Central Government hereby makes the following rules, namely:-

1. Short title and commencement: (1) These rules may be called the Repatriation of Prisoners Rule, 2004. (2) They shall come into force on the date of their publication in the Official Gazette.
2. Definitions- In these rules, unless the context otherwise required:-
 - (a) "Act" means the Repatriation of Prisoners Act, 2003 (49 of 2003);
 - (b) "Application" means an application made under section 4 of the Act;
 - (c) "Diplomatic channel" means through the missions of the respective countries;
 - (d) "Section" means a section of the Act;
 - (e) All other words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in that Act.
3. Form of application:- An application under section 4 of the Act shall be made by a prisoner for his transfer on a plain paper and in Form 1 appended to these rules and in accordance with the procedure and instructions set out in that form.
4. Means of forwarding the application:- The application of the prisoner along with other informations as required under sub-section (1) of section 6, shall be forwarded by the Central Government to the Government of the contracting State either directly or through the diplomatic channel.
5. Form of warrants:- (1) A warrant under sub-section (1) of section 7 of the Act shall be issued in Form 2 appended to these rules and in accordance with the procedure and instructions set out in that form.
(2) A warrant under sub-section (2) of section 12 of the Act shall be issued in Form 3 appended to these rules and in accordance with the procedure and instructions set out in that form.

Form 1

**APPLICATION FOR TRANSFER OF SENTENCED PERSON (under rule 3)
(Particulars are to be furnished in respect of the sentenced person)**

To

Joint Secretary
(CS) Government of India
Ministry of Home Affairs
North Block
New Delhi

Sir,

I request that I may be transferred to serve remaining period of my sentence in a prison situated in _____, the country of my nationality (name of the contracting State).
I hereby furnish the following information for consideration of my application:-

1. Name in BLOCK LETTERS and nationality
2. Name of father/husband

3. Full address in the contracting State
4. Date of birth/age
5. Offence(s) under which convicted
6. Name of the Court which convicted
7. Date of judgment
8. The nature, duration and date of commencement of the sentence
9. Name of the prison, where undergoing sentence :

I, _____, (name in full alongwith nationality and in block letters), son/daughter of Mr./Ms. _____ declare that the information furnished by me as above is correct, complete and true to the best of my knowledge and belief. I may be held liable for any action, if any information furnished by me is found incorrect.

Address (in case signatory is other than the prisoner): _____ (signature of the applicant or of the person entitled to act on behalf of the prisoner in case of his ill health, mental condition, old age or being minor)

(Please see instructions overleaf).

Instructions

1. The application in original should be sent to Joint Secretary (CS), Government of India, Ministry of Home Affairs, North Block, New Delhi by; ordinary/registered post.
2. A copy of the application may be delivered to the officer-in-charge of the jail where the prisoner is undergoing the sentence.
3. Following documents may be attached with the application:- (a) A copy of the judgment passed against the prisoner; (b) Document indicating that the prisoner is a citizen of the contracting State.
4. In case the application is being made by the person entitled to act on behalf of the prisoner, he/she should write his/her full name alongwith nationality & address below his/her signature.

Form 2

[See rule 5(1)]

Form of Warrant

(Under sub-section (1) of section 7 of the Repatriation of Prisoners Act, 2003)

Mr/Ms..... the Jail Superintendent/Jailor (or the officer's designation who is in charge of the prison where the prisoner is imprisoned) (Name of the Jail with full address) is hereby directed to deliver the custody of

Mr/Ms.....(Name and nationality of the Prisoner) son/wife/daughter of age address (as it appears in the prison record) who was convicted of offences under section (s) of (Name of the legislation under which sentenced) to Mr./Ms..... (Name and designation of the authorized person (official) of the contracting State) at (place of delivery of prisoner in India i.e. Embassy, Airport etc.) on (Date of delivery) as requested by the Government of in terms of Agreement/Arrangement between the Government of the Republic of India and the Government of On transfer of convicted offenders entered into by India with (Name of the contracting State) which came into force on

2. Mr./Ms (Name of the prisoner) as mentioned herein above, would undergo the remaining part of the sentence in the contracting State, which he/she would have undergone in India, had he/she not been transferred out of India.

3. In case the prisoner escapes from the custody within India, the prisoner may be arrested without warrant by any person who shall without undue delay deliver such prisoner to the nearest police

state and the prisoner so arrested shall be liable for committing an offence under section 224 of the Indian Penal Code and shall also be liable for such sentence of imprisonment in India which he would have to undergo if the delivery of custody of such prisoner had not been made under section 8.

Authorised Officer of the State Government
(Not below the rank of a Joint Secretary).

To
Sh/Smt.
.....(Designation)
Address.....
.....

Copy to: (i) Joint Secretary (CS), Ministry of Home Affairs, Government of India
(ii) Joint Secretary (CPV), Ministry of External Affairs, Government of India
(iii) Secretary, Department of Prison, Government of(State in which imprisoned)
(iv) Charge-de-Affairs, Embassy.....(Name of the contracting State)Address (official).....
(v) Mr./Ms.....(Name and address of the Authorized person (official) of the contracting State).

Form 3
[See rule 5(2)]

Form of Warrant

(under sub-section (2) of section 12 of the Repatriation of Prisoners Act, 2003

Mr./Ms..... Designation..... Address (official).....
is hereby directed to receive the custody of Mr./Ms.....(Name and nationality of the prisoner) Address.....(as it appears in the letter of the contracting State) at
..... (Place of receiving of the prisoner outside India by the authorized official)
and to hold the prisoner for bringing him to India from the place of receiving. The custody of the said prisoner shall be handed over by the receiving officer to the officer-in-charge of
..... (Name and Address of the prison) where the prisoner has to serve his/her remaining part of the sentence in India as per the existing law for the offence committed by him/her in the contracting State.

(Authorized Officer of the State Government)
Not below the rank of a Joint Secretary

To

Sh./Smt.....
.....(Designation)

Address.....
.....

Copy to :

- (i) Joint Secretary (CS), Ministry of Home Affairs, Government of India
- (ii) Joint Secretary (CPV), Ministry of External Affairs, Government of India
- (iii) Secretary, Department of Prison, (Government of.....(State in which the prisoner is to be imprisoned).
- (iv) Charge-de-Affairs, Embassy.....(Name of the State) Address (official)
- (v) Mr./Ms.....(Name and address of the Authorised person (official) of the contracting State).

[F.N.VII-11017/23/2002-PR]

A.K. SRIVASTAVA,
JOINT SECRETARY (CS)

Form 1
APPLICATION FOR TRANSFER OF SENTENCED PERSON (under rule 3)
(Particulars are to be furnished in respect of the sentenced person)

To

Joint Secretary (CS) Government of India Ministry of Home Affairs
 NDCC-D Building, Jai Singh Road
 New Delhi -110001
 (Fax - +91-011-23438097)

Sir,

[request that I may be transferred to serve remaining period of my sentence in a prison situated in _____, the country of my nationality (name of the contracting State). I hereby furnish the following information for consideration of my application:-

1. Name in BLOCK LETTERS and nationality
2. Name of father/husband
3. Full address in the contracting State
4. Date of birth/age
5. Offence(s) under which convicted
6. Name of the Court which convicted
7. Date of judgment
8. The nature, duration and date of commencement of the sentence
9. Name of the prison, where undergoing sentence:

I, _____, (name in full alongwith nationality and in block letters), son/daughter of Mr. / Ms. _____ declare that the information furnished by me as above is correct, complete and true to the best of my knowledge and belief. I may be held liable for any action, if any information furnished by me is found incorrect.

Address (in case signatory is other than the prisoner):

(signature of the applicant or of the person entitled to act on behalf of the prisoner in case of his ill health, mental condition, old age or being a minor) (Please see instructions overleaf).

Instructions

1. The application in original should be sent to Joint Secretary (CS), Government of India, Ministry of Home Affairs, NDCC. II Building, Jai Singh Road, New Delhi by ordinary/registered post.
2. A copy of the application may be delivered to the officer-in-charge of the jail where the prisoner is undergoing the sentence.
3. Following documents may be attached with the application:- (a) A copy of the judgment passed against the prisoner;
 (b) Document indicating that the prisoner is a citizen of the contracting State.
4. In case the application is being made by the person entitled to act on behalf of the prisoner, he/she should write his/her full name along with nationality & address below his/her signature.

Checklist of documents to be furnished alongwith the repatriation request of the prisoner

S.No.	Documents	Status	Yes / No
1	Signed consent request for repatriation -this is given in Form 1 of Repatriation of prisoner Rules 2004 (pages 15 and 16 of the guidelines refer)- to be signed by the prisoner or on his behalf.		
2	Copy of judgment, translated in English if in any other language. This should also be accompanied by a summary statement of the conviction and the offences for which convicted under the relevant Jaws of the country in which convicted.		
3	Copies of identification documents like passport etc.		
4	(a)Nominal roll from the jail lodged In (b) presently routed through the jail authorities listing out (i) the start date of conviction/ sentence (ii) period under gone and (iii) the balance remaining as on date of application.		
5	A record of his health and mental condition (Certificate from a Medical Doctor)		
6	(i) A recent photograph in profile and (ii) front view with other details		
7	A certified confirmation that no other case is pending in any other court in the country of incarceration- (this would be done through the jail authorities and home department)		
8	A confirmation that no appeal is pending against his present conviction in any court of law/tribunal		
9	An undertaking (as per Annexure III) by the prisoner that he/she will not challenge the conviction of the court once repatriated to his own country by way of an attempt to get a lower sentence as the repatriation process is not intended to subvert the judicial process for getting lesser sentences in own countries.		
10	Whether the prisoner, or his relatives etc. are ready to bear his cost of transportation		

Undertaking to be given by the prisoner applying for his/her repatriation to India

1. IS/o/D/O/W/o presently lodged in.....(name of jail and the city/country) since (start date of sentence) for the offence of.....(list offence(s) under sections/articles/clausesof the (Acts / Rules etc. of the country where sentenced) do hereby undertake of my own volition not to agitate/challenge the sentence adaptability order issued under the terms of the Agreement on Transfer of Sentenced persons once I am repatriated back to India in any cOUI1of law as I agree, while making a request for transfer to abide by the terms and conditions of the Agreement/Treaty on transfer of sentenced persons between India and (name of the country / Multilateral Convention)

2. I also confirm that there is no other case pending against me at the time of making the request for repatriation and further, that there is no appeal pending in the case under which I have been convicted by a court of law in the country of incarceration.

Signature of the prisoner

Place

Date

Witness thereto

Place

Date

STANDARD DRAFT AGREEMENT OF GoI FOR BILATERAL PRISONER TRANSFER TREATIES

AGREEMENT BETWEEN THE GOVERNMENT OF INDIA AND THE GOVERNMENT OF ON THE TRANSFER OF SENTENCED PERSONS

The Government of the Republic of India and the Government of hereinafter referred to as the Contracting States;

Desiring to facilitate the social rehabilitation of sentenced persons into their own countries; and

Considering that this objective should be fulfilled by giving foreign nationals, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences in their own society;

Have agreed as follows:

ARTICLE 1.1

Definitions

For the purpose of this Agreement:

- (a) "judgment" means a decision or order of a court or tribunal imposing a sentence;
- (b) "receiving State" means a State to which the sentenced person may be, or has been, transferred in order to serve his sentence or remainder thereof;
- (c) "sentence" means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time or for life imprisonment in the exercise of its criminal jurisdiction;
- (d) "sentenced person" means a person undergoing a sentence of imprisonment under a judgment passed by a criminal court including the courts established under the law for the time being in force in the Contracting States;
- (e) "transferring State" means the State in which the sentence was imposed on the person who may be, or has been transferred.

ARTICLE 2

General Principles

1. A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. To that end, he may express to the transferring State or the receiving State his willingness to be transferred under this Agreement.
2. Transfer may be requested by any sentenced person who is a national of a Contracting State or by any other person who is entitled to act on his behalf in accordance with the law of the Contracting State by making an application to the Contracting State and in the manner prescribed by the Government of that Contracting State

ARTICLE 3

Central Authorities

1. Authorities in charge of the implementation of this Agreement for the Contracting States are:
 - For the Republic of India: Ministry of Home Affairs.
 - For the: Ministry of
2. In case either Contracting State changes its competent authorities, it shall notify the other State of the same through diplomatic channels.

ARTICLE 4

Conditions for transfer

1. A sentenced person may be transferred under this Agreement on the following conditions:
 - (a) the person is a national of the receiving State;
 - (b) the death penalty has not been imposed on the sentenced person;
 - (c) the judgment is final;
 - (d) no criminal proceedings are pending against the sentenced person in the transferring State in which his presence is required;
 - (e) the sentenced person has not been convicted for an offence under the military law;
 - (f) at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or is undergoing a sentence of life imprisonment
 - (g) that the acts or omissions for which that person was sentenced in the transferring State are those which are punishable as a crime in the receiving State, or would constitute a criminal offence if committed on its territory;
 - (h) transfer of custody of the sentenced person to the receiving State shall not be prejudicial to the sovereignty, security or any other essential interest of the transferring State;
 - (i) consent to the transfer is given by the sentenced person or, where in view of his age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his behalf in accordance with the law of the Contracting State; and
 - (j) the transferring and receiving States agree to the transfer.
2. In exceptional cases, the transferring and receiving States may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months.

ARTICLE 5

Obligation to furnish information

1. If the sentenced person has expressed an interest to the transferring State in being transferred under this Agreement, the transferring State shall send the following information and documents to the receiving State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
 - (a) the name and nationality, date and place of birth of the sentenced person and his address, if any, in the receiving State along with a copy of his passport or any other personal identification documents, and Fingerprints of the Sentenced Person, as possible;
 - (b) a statement of the facts upon which the sentence was based;
 - (c) the nature, duration and date of commencement of the sentence;
 - (d) a certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the sentenced person;
 - (e) a medical, social or any other report regarding the antecedents and character of the sentenced person, where it is relevant for the disposal of his application or for deciding the nature of his confinement;
 - (f) any other information which the receiving State may specify as required, to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him under its law;
 - (g) the request of the sentenced person to be transferred or of a person entitled to act on his behalf in accordance with the law of the transferring State; and
 - (h) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence.
 - (i) A statement from the Transferring State agreeing to the transfer of the Sentenced Person.

2. For the purposes of enabling a decision to be made on a request under this Agreement, the receiving State shall send the following information and documents to the transferring State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:

- (a) a statement or document indicating that the sentenced person is a national of the receiving State;
- (a) a copy of the relevant law of the receiving State which provides that the acts or omissions on account of which the sentence has been imposed in the transferring State constitute a criminal offence according to the law of the receiving State, or would constitute a criminal offence if committed on its territory;
- (a) a statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the receiving State after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 2 of Article 9 of this Agreement on his transfer;
- (a) the willingness of the receiving State to accept the transfer of the sentenced person and an undertaking to administer the remaining part of the sentence of the sentenced person; and
- (a) any other information or document which the transferring State may consider necessary.

ARTICLE 6

Requests and replies

1. Requests for transfer shall be made in writing in the prescribed proforma, if any, and addressed by the Central authority of the transferring State through diplomatic channels to the Central Authority of the receiving State. Replies shall be communicated through the same channels.
2. The receiving State shall promptly inform the transferring State of its decision whether or not to agree to the requested transfer.

ARTICLE 7

Consent and its verification

1. The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(h) of Article 4 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.
2. The transferring State shall afford an opportunity to the receiving State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

ARTICLE 8

Effect of transfer for the receiving State

1. The competent authorities of the receiving State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 9 of this Agreement.
2. Subject to the provisions of Article 11 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions.

ARTICLE 9

Continued enforcement of sentence

1. The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.
2. If the sentence is by its nature or duration, or both, incompatible with the law of the receiving State, that State may, with the prior consent of the transferring State, by court or administrative order, adapt the sentence to a sentence prescribed by its own law for a similar offence. As to its nature and duration, the adapted sentence shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall, however, not aggravate, by its nature or duration, the sentence imposed by the transferring State.

ARTICLE 10

Effect of completion of sentence for the transferring State

When the receiving State notifies the transferring state under paragraph 1(a) of Article 13 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging the sentence in the transferring state.

ARTICLE 11

Review of judgment and Pardon, amnesty or commutation

1. The transferring State alone shall decide on any application for review of the judgment.
2. Either of the contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its constitution or other laws.

ARTICLE 12

Termination of enforcement of sentence

1. The Transferring State shall promptly notify the Receiving State of any decisions taken in its territory which entails terminating the enforcement of the sentence or part thereof.
2. The receiving State shall terminate enforcement of the sentence or part thereof as soon as it is informed by the transferring State of any decision or measure as a result of which the sentence ceases to be enforceable.

ARTICLE 13

Information on enforcement of sentence

1. The receiving State shall notify the transferring State:
 - (a) when the enforcement of the sentence has been completed; or
 - (b) If the sentenced person escapes from custody before enforcement of the sentence has been completed. In such cases the receiving State shall take measures to secure his arrest for the purposes of serving the remainder of his sentence and to render him/ her liable for committing an offence under the relevant law of the receiving State.
2. The receiving State shall furnish a special report concerning the enforcement of the sentence, if so required by the transferring State.

ARTICLE 14

Transit

1. If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such arrangements, except that it may refuse to grant transit
 - (a) if the sentenced person is one of its own nationals.
 - (b) if the request may infringe upon the sovereignty, safety, public order or any other essential interest of the Contracting State.
2. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit.

ARTICLE 15

Costs

Any costs incurred in the application of this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, demand or seek to recover all or part of the costs of transfer from the sentenced person or from some other source.

ARTICLE 16

Language

Requests and supporting documents shall be in English or shall be accompanied by a translation into English.

ARTICLE 17

Scope of Application

This Agreement shall be applicable to the enforcement of sentences imposed either before or after the entry into force of this Agreement.

ARTICLE 18

Settlement of Disputes

(1) The Central Authorities shall endeavor to mutually resolve any dispute arising out of the interpretation, application or implementation of this Agreement.

(2) If the Central Authorities are unable to resolve the dispute mutually, it shall be resolved through diplomatic channels.

ARTICLE 19

Handing Over of Sentenced Persons

The handing over of the transferred person by the transferring State to the receiving State shall occur at a place to be agreed upon between the transferring and receiving State. The receiving State shall be responsible for the transport of the prisoner from the transferring State and shall also be responsible for custody of the sentenced person outside the territory of the transferring State.

ARTICLE 20

Amendments

Any amendments or modifications to this Agreement agreed to by the Contracting States shall come into force in the same manner as the Agreement itself.

ARTICLE 21

Final Provisions

1. This Agreement shall be subject to ratification. Each Contracting State shall notify the other as soon as possible, in writing, through diplomatic channels, upon the completion of its legal procedures required for the entry into force of this Agreement. The Agreement shall come into force on the first day of the second month of the date of the last notification.
2. The Agreement shall remain in force for an indefinite period. It may, however, be terminated by either of the Contracting State by giving a written notice of termination to the other Contracting State. The termination shall take effect after six months of the date of such notice.
3. Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of prisoner who have been transferred under this Agreement before the date on which such termination takes effect.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at on the day of, in the Hindi, English and languages, all texts being equally authentic. In case of differences in interpretation the English text shall prevail

**For the Government of
the Republic of India**

**For the Government of
the.....**

**GUIDELINES FOR THE TRANSFER OF SENTENCED
PERSONS UNDER THE REPATRIATION OF PRISONERS
ACT, 2003**

F.N. 11017/23/2002-PR Government of India/Bharat
Sarkar Ministry of Home Affairs/ Grih Mantralya CS
Division

New Delhi, the 10th August 2015

To

The Principal Secretary (Prisons)/ (Home-in charge of prisons) All States/ Union
Territories

Subject: Repatriation of prisoners from India to a foreign country or vice versa
under the Repatriation of Prisoners Act.
2003 -Issue of guidelines-regarding

Sir/Madam,

As you are aware, the Repatriation of Prisoners Act, 2003 was enacted by the Government of India with a view to help the foreign prisoners imprisoned in a jail in India or vice versa to be transferred to their native countries for serving the remaining part of their sentence near to their families so as to help them in the process of their social rehabilitation.

Consequent upon the enactment of the said Act, the Agreements on Transfer of Sentenced Persons are being negotiated with interested countries. At present we have operational agreements with the following 35 countries:

United Kingdom, Mauritius, Bulgaria, France, Egypt, Sri Lanka, Cambodia, South Korea, Saudi Arabia, Iran, Bangladesh, Israel, UAE, Italy, Turkey, Maldives, Thailand, Russian Federation and Kuwait, Belize, Brazil, Canada, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Venezuela, Paraguay, United States, Uruguay, Panama and Czech Republic.

The prisoners of these countries in India and Indian prisoners in these countries can apply for repatriation in terms of the enclosed guidelines for processing requests of such prisoners.

Encl: As above

Yours faithfully

Rajnish Kwatra
Under Secretary (Prison Reforms)
Tel: 011-23438185

**GOVERNMENT OF INDIA
MINISTRY OF HOME
AFFAIRS CS DIVISION**

**GUIDELINES FOR THE TRANSFER OF SENTENCED PERSONS
UNDER THE REPATRIATION OF PRISONERS ACT, 2003**

Consequent upon the enactment of the Repatriation of Prisoners Act, 2003, the agreements on Transfer of Sentenced Persons are negotiated with the interested countries on the basis of their response on the Indian standard draft agreement. Our agreements are operational with the following 35 countries; **United Kingdom, Mauritius, Bulgaria, France, Egypt, Sri Lanka, Cambodia, South Korea, Saudi Arabia, Iran, Bangladesh, Israel, UAE, Italy, Turkey, Maldives, Thailand, Russian Federation and Kuwait, Belize, Brazil, Canada, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Venezuela, Paraguay, United States, Uruguay, Panama and Czech Republic.**

The prisoners of these countries in India and Indian prisoners in these countries can apply for repatriation in terms of these guidelines for processing requests of such prisoners.

For processing the cases of request of such prisoners, following procedure needs to be followed for their repatriation from India to the foreign country or vice versa:

A. REPATRIATION OF INDIAN PRISONER IMPRISONED IN FOREIGN JAILS TO INDIA

- (a) **Application:** Prisoner may submit application for repatriation to the Prison Authorities or Indian Mission in that country giving all details in the application format given in Form 1 of Repatriation of Prisoners Rules 2004 which is enclosed as **Annexure I**
- (b) **Forwarding of the request:** The request for repatriation of a prisoner should be forwarded by the Indian Mission accompanied with all necessary documentary evidence to establish the identity of the person concerned like passport, photographs, fingerprints etc. A copy of the judgment (in English) detailing the offence for which the prisoner was imprisoned, including the details of number of years for which convicted, sentence undergone, and sentence pending) and is undergoing the sentence in the foreign country. The Indian Mission in the country where the prisoner is incarcerated should ensure that complete and correct details are collected and provided to the Ministry of Home Affairs.. Till all the aforementioned details are received the case should not be taken up for processing at all in the Ministry.
- (c) As a rule, permission will not be granted to habitual/repeat offenders or members of any international/national organized crime gangs as the probability of their social rehabilitation is doubtful and their presence in India (even in prisons) can be detrimental to the larger interest of the country. The Mission forwarding the request should prima facie satisfy itself on the basis of its intelligence inputs before forwarding the request for repatriation.
- (d) Generally, permission would be denied in cases of persons charged with heinous crimes like multiple murders/ serial killings, terrorism, pedophiles etc.
- (e) For ensuring that only applications accompanied by all the relevant information and documents are forwarded by the Indian Mission, a detailed check list is enclosed as **Annexure II**
- (f) **Nationality Verification:** Upon receipt of a request and related documents from the prisoner claiming to be an Indian national imprisoned in the foreign country who seeks repatriation, first nationality of the prisoner will be verified. In case the prisoner has produced details of Indian passport issued to him/her in the past by the Government of India, the correctness of such details will be verified with the Chief Passport Officer, MEA for the purpose of nationality verification. In case the passport details are found to be correct, the prisoner will be considered to be an Indian national and no further verification from the State Government will be required. However, in case there is any ambiguity in establishing Indian nationality through this process, the case will be referred to the respective state Government / UT Administration for verification.
- (g) **Verification of the Criminal records:** The State Government concerned will be advised to ascertain that the said prisoner has no other criminal record in India.
- (h) **Identification of a jail:** The State Government should also be advised to identify a

suitable jail where the prisoner could be lodged in case he is repatriated to India. Since the spirit of such International Agreement is to allow the transferred person to stay close to his/her family, the State Government / UT administration should preferably lodge the prisoner close to the place where the prisoner wants to be located or where the near relatives are staying.

- (i) **Sentence adaptability:** In view of the provisions of the agreement that the sentence awarded to the prisoner has to be adapted to a punishment or measure as is prescribed by the Indian law for a similar offence, a reference may be made to the Ministry of Law / Narcotics Control Bureau/Customs and other concerned Ministries, based on the offence convicted for, seeking their comments as to the maximum quantum of sentence which the prisoner is liable to serve in India had that offence been committed in India and whether the sentence would require to be adapted in conformity with Indian law. If so, what is the adaptation that would be required.
- a. In case the prisoner was convicted on the charge of drug trafficking, a reference would be made to the Narcotics Control Bureau (NCB) seeking their comments on the proposed repatriation with specific comments as to the probability of the prisoner indulging in similar offences on his release as also the track record of the prisoner as per their database. The NCB may also be asked regarding the quantum of the sentence if similar crimes had been committed in India by the prisoner.
 - b. Before granting permission for repatriation, the prisoner should be informed about the total quantum of sentence, the prisoner will have to undergo in India and repatriation should be allowed only if the prisoners gives his consent in writing.
- (j) **IB Report:** A report from the Intelligence Bureau (IB) on the possible connections of the prisoner with any International / National gangs of organized crime should be obtained.
- (k) Upon the receipt of above reports, the case would be processed for granting permission for repatriation or otherwise, in the light of the provisions of the agreement with that country.
- (l) **Repatriation Cost:** Where the relatives/friends of the prisoner staying in India request for his repatriation, the Government may explore the possibility of recovering all or part of the costs of transfer from them. This would include the return airfare for the prisoner, while the travel cost for the escort officers would be reimbursed to the concerned State Government/ UT Administration by the Ministry of Home Affairs.
- (m) **Escorting during transportation:** Each prisoner will be escorted back from the foreign jail by at least two police officers of the State where he is to be lodged, unless that country agrees to escort him back to India under their own arrangements.
- (n) **Time line for each activity;** To process the cases expeditiously after receipt of the request with all documentation for repatriation from or on behalf of the prisoner the following timelines will be followed-

Sl no	Activity	To be completed	Time line
1	Nationality verification	MEA / MHA/State Govt	10 days
2	Comments from NCBI / MOL other stakeholders	MHA	10 days
3	Comments from security agencies	MHA	10 days
4	Adaptability of sentence as per Indian Law	MHA	5 days
5	Approval of the competent authority for repatriation	MHA	1 week
6	Communication to the other country of the repatriation schedule and suggested handover date after approval	MHA	2 days
7	Repatriation back to India after confirmation of the travel schedule	MHA in tandem with other stakeholders	As per schedule decided

- (o) **Monitoring Committee** -A committee headed by JS (CS) would meet once a month to review the status of such cases and to take up pendency issues with other agencies like MEA (the concerned territorial division), Narcotics Control Board, MOL in a time bound manner as per the timelines laid down above. It would be the endeavour of the

committee to finalize a case within one month on receipt of complete documentation alongwith the repatriation request.

B. REPATRIATION OF A FOREIGN NATIONAL FROM A PRISON IN INDIA TO THE FOREIGN COUNTRY

- (a) The report of the State Government concerned along with their “no objection” for such repatriation shall be obtained essentially. While conveying their “no objection”, the State Government should specifically state that no inquiry, trial, criminal proceeding, appeal or revision is pending against the prisoner in any court in India.
- (b) A report may also be sought from the Intelligence Bureau seeking information as to whether his repatriation shall in any way be against the national interest of India and whether there are any chances of his pursuing anti- India activities on his return to his native country.
- (c) In case the person sentenced was involved in a crime relating to narcotics, comments will be obtained from the NCB or the arresting authority, as the case may be. In case he was involved in a crime relating to Customs laws, comments will be obtained from the Custom authorities; in the case of any other crime, comments will be sought from the agency or authority that arrested the person.
- (d) A report may be obtained from the accepting country on the question whether his sentence would require adaptation in that country. If yes, then what kind of adaptation would be required? Will it make any material difference to the duration! nature of sentence? The baseline is that the sentence cannot be aggravated in its duration or intensity.
- (e) On receipt of such reports, the case should be processed for granting permission for repatriation or otherwise in the light of the provisions of the agreement.
- (f) A Coordination meeting would be taken by JS(CS) with all stakeholders at least a week before the actual transfer with BCAS, CISF, FFRO, Police, Prison authorities and foreigners Division of MHA to roll out and clearly mark responsibilities for the transfer. Embassy officials of the concerned prisoner would also be associated for them to understand the process and to take up getting exit visa from the office of FRRO
- (g) Once the foreign country to which the prisoner belongs conveys its willingness to accept the transfer of the prisoner, the date of repatriation may be fixed in consultation with the State Government concerned, Embassy of that country and MHA. In case the prisoner is imprisoned outside Delhi, he would first be transferred to a Central Jail in the city from where flight for the destination country is scheduled for better coordination amongst all the agencies involved in the repatriation of the prisoner. The prisoner would be escorted to the Airport by the Police from the jail as per procedure with all documentation and clear photo identification of the escort officers of the foreign country who are to escort the prisoner out -these would be provided by the embassy concerned well in advance alongwith all other ID details and names and designations.
- (h) On the stipulated date, the prisoner shall be handed over to the authorized representative / security personnel of that country by the officials of Central jail at the IGI airport after Immigration alongwith all the documents and belongings of the prisoner. The officials of Central j ail shall send a copy of all the documents exchanged to MHA for information.

REPATRIATION OF PRISONERS ACT, UNITED KINGDOM

Repatriation of Prisoners Act 1984

CHAPTER 47

ARRANGEMENT OF SECTIONS

Section

1. Issue of warrant for transfer.
2. Transfer out of the United Kingdom.
3. Transfer into the United Kingdom.
4. Temporary return.
5. Operation of warrant and retaking prisoners.
6. Revocation etc. of warrants.
7. Expenses.
8. Interpretation and certificates.
9. Short title, commencement and extent.

SCHEDULE : Operation of certain enactments in relation to the prisoner

Repatriation of Prisoners Act 1984

1984 CHAPTER 47

An Act to make provision for facilitating the transfer between the United Kingdom and places outside the British Islands of persons for the time being detained in prisons, hospitals or other institutions by virtue of orders made in the course of the exercise by courts and tribunals of their criminal jurisdiction. [26th July 1984]

BE IT ENACTED by the Queen's most Excellent Majesty, by and

with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. (1) Subject to the following provisions of this section,

where-

Issue of warrant for transfer.

- (a) The United Kingdom is a party to international arrangements providing for the transfer between the United Kingdom and a country or territory outside the British Islands of persons to whom subsection (7) below applies, and
 - (b) The Secretary of State and the appropriate authority of that country or territory have each agreed to the transfer under those arrangements of a particular person (in this Act referred to as "the prisoner"), and
 - (c) the prisoner has consented to being transferred in accordance with those arrangements, the Secretary of State shall issue a warrant providing for the transfer of the prisoner into or out of the United Kingdom.
- (2) The Secretary of State shall not issue a warrant under this Act, and, if he has issued one, shall revoke it, in any case where after the duty under subsection (1) above has

arisen and before the transfer in question takes place circumstances arise, or are brought to the Secretary of State's attention, which in his opinion make it inappropriate that the transfer should take place.

- (3) The Secretary of State shall not issue a warrant under this Act providing for the transfer of any person into the United Kingdom unless-
- (a) that person is a British citizen; or
 - (b) the transfer appears to the Secretary of State to be appropriate having regard to any close ties which that person has with the United Kingdom; or
 - (c) it appears to the Secretary of State that the transfer is such a transfer for the purpose of the temporary return of the prisoner to the United Kingdom as may be provided for by virtue of section 4(1)(b) below.
- (4) The Secretary of State shall not issue a warrant under this Act, other than one superseding an earlier warrant, unless he is satisfied that all reasonable steps have been taken to inform the prisoner in writing in his own language-
- (a) of the substance, so far as relevant to the prisoner's case, of the international arrangements in accordance with which it is proposed to transfer him,
 - (b) of the effect in relation to the prisoner of the warrant which it is proposed to issue in respect of him under this Act,
 - (c) in the case of a transfer into the United Kingdom, of the effect in relation to the prisoner of the law relating to his detention under that warrant (including the effect of any enactment or instrument under which he may be released earlier than provided for by the terms of the warrant),
 - (d) in the case of a transfer out of the United Kingdom, of the effect in relation to the prisoner of so much of the law of the country or territory to which he is to be transferred as has effect with respect to transfers under those arrangements, and
 - (e) of the powers of the Secretary of State under section 6 of this Act;
- and, the Secretary of State shall not issue a warrant superseding an earlier warrant under this Act unless the requirements of this subsection were fulfilled in relation to the earlier warrant.
- (5) The Secretary of State shall not issue a warrant under this Act unless he is satisfied that the consent given for the purposes of subsection (1)(c) above was given in a manner authorised by the international arrangements in accordance with which the prisoner is to be transferred and was so given either-
- (a) by the prisoner himself; or
 - (b) in circumstances where it appears to the Secretary of State inappropriate by reason of the physical or mental condition or the youth of the prisoner for the prisoner to act for himself, by a person appearing to the Secretary of State to be an appropriate person to have acted on the prisoner's behalf.
- (6) A consent given for the purposes of subsection (1)(c) above shall not be capable of being withdrawn after a warrant has been issued in respect of the prisoner; and, accordingly, a purported withdrawal of that consent after that time shall not affect the validity of the warrant, or of any provision which by virtue of section 6 below subsequently supersedes provisions of that warrant, or of any direction given in relation to the prisoner under section 2(3) below.
- (7) This subsection applies to a person if he is for the time being required to be detained in a prison, a hospital or any other institution either-
- (a) by virtue of an order made in the course of the exercise by a court or tribunal in the United Kingdom, or in any country or territory outside the British Islands, of its criminal jurisdiction; or
 - (b) under the provisions of this Act or any similar provisions of the law of any part

of the United Kingdom or of the law of any country or territory outside the British Islands.

(8) In subsection (7)(b) above the reference to provisions similar to the provisions of this Act shall be construed as a reference to any provisions which have effect with respect to the transfer between different countries and territories (or different parts of a country or territory) of persons who are required to be detained in prisons, hospitals or other institutions by virtue of orders made in the course of the exercise by courts and tribunals of their criminal jurisdiction.

2. (1) The effect of a warrant providing for the transfer of Transfer out of the prisoner out of the United Kingdom shall be to authorise- United Kingdom

The taking of the prisoner to any place in any part of the United Kingdom and his delivery, at a place of departure from the United Kingdom, into the custody of a person representing the appropriate authority of the country or territory to which the prisoner is to be transferred; and

the removal of the prisoner by the person to whom he is so delivered to a place outside the United Kingdom.

1967 c. 80.

(2) Subject to subsections (3) to (5) below, the order by virtue of which the prisoner is required to be detained at the time such a warrant is issued in respect of him shall continue to have effect after his removal from the United Kingdom so as to apply to him if he is again in the United Kingdom at any time when under that order he is to be, or may be, detained.

(3) If, at any time after the removal of the prisoner from the United Kingdom. it appears to the Secretary of State appropriate to do so in order that effect may be given to the international arrangements in accordance with which the prisoner was transferred, the Secretary of State may give a direction varying the order referred to in subsection (2) above or providing for that order to cease to have effect.

(4) The power by direction under subsection (3) above to vary the order referred to in subsection (2) above shall include power by direction-

(a) to provide for how any period during which the prisoner is, by virtue of a warrant under this Act, out of the part of the United Kingdom in which that order has effect is to be treated for the purposes of that order; and

(b) to provide for the prisoner to be treated as having been-

1967 c. 80. (i) released on licence under section 60 or 61 of the Criminal Justice Act 1967 (release on licence of, respectively, persons serving determinate sentences and persons sentenced to imprisonment for life etc.) ; or

1975 c. 21. (ii) released on licence under section 206(2) of the Criminal Procedure (Scotland) Act 1975 (release on licence of children convicted on indictment) or re- leased under section 58A(3) of the Children and Young Persons (Scotland) Act 1937 (release of children committed for residential training) ; or

1953 c. 18 (N.I.) (iii) released on licence under section 23 of the Prison Act (Northern Ireland) 1953 or discharged on licence under section 73 of the Children and Young Persons Act (Northern Ireland) 1968 (release and discharge on licence of, respectively, persons serving imprisonment for life and young persons in detention for grave crimes) ; or

S.I. 1976/226 (N.I.4) (iv) for the purposes of Part II of the Treatment of Offenders (Northern Ireland) Order 1976 (conviction within certain period after discharge), discharged from prison or a young offenders centre in pursuance of rules made under section 13 of the said Act of 1953.

(5) Except in relation to any period during which a restriction order is in force in respect of the prisoner, subsection (2) above shall not apply in relation to a hospital order; and. Accordingly, a hospital order shall cease to have effect in relation to the prisoner-

- (a) at the time of his removal from the United Kingdom if no restriction order is in force in respect of him at that time; and
- (b) if at that time a restriction order is in force in respect of him, as soon after his removal as the restriction order ceases to have effect.

(6) In subsection (5) above--

“hospital order” means an order made under section 37 of the Mental Health Act 1983. section 175 or 376 of the Criminal Procedure (Scotland) Act 1975 or section 48

1983 c. 20.

of the Mental Health Act (Northern Ireland) 1961 or any order or direction 1975 c. 21.

made under another enactment (N.I.) but having the same effect as an order 1961 c. 13.

made under one of those sections; and “restriction order” means an order made under section 41 of the said Act of 1983. section 178 or 379 of the said Act of 1975 or section 53 of the said Act of 1961 or any order or direction made under another enactment but having the same effect as an order made under one of those sections.

(7) References in this section to the order by virtue of which the prisoner is required to be detained at the time a warrant under this Act is issued in respect of him include references to any order by virtue of which he is required to be detained after the order by virtue of which he is required to be detained at that time ceases to have effect.

3. (1) The effect of a warrant providing for the transfer of the prisoner into the United Kingdom shall be to authorise--

Transfer into the United Kingdom

- (a) the bringing of the prisoner into the United Kingdom from a place outside the United Kingdom;
- (b) the taking of the prisoner to such place in any part of the United Kingdom, being a place at which effect may be given to the provisions contained in the warrant by virtue of paragraph (c) below, as may be specified in the warrant; and
- (c) the detention of the prisoner in any part of the United Kingdom in accordance with such provisions as may be contained in the warrant, being provisions appearing to the Secretary of State to be appropriate for giving

effect to the international arrangements in accordance with which the prisoner is transferred.

(2) Subject to section 4(2) to (4) below, a provision shall not be contained by virtue of subsection (1)(c) above in a warrant under this Act unless it satisfies the following two conditions, that is to say-

- (a) it is a provision with respect to the detention of a person in a prison, a hospital or any other institution; and
- (b) it is a provision which at the time the warrant is issued may be contained in an order made either-
 - (i) in the course of the exercise of its criminal jurisdiction by a court in the part of the United Kingdom in which the prisoner is to be detained; or
 - (ii) otherwise than by a court but for the purpose of giving effect to an order made as mentioned in sub-paragraph (i) above.

(3) In determining for the purposes of paragraph (c) of subsection (1) above what provisions are appropriate for giving effect to the international arrangements mentioned in that paragraph, the Secretary of State shall, to the extent that it appears to him consistent with those arrangements to do so, have regard to the inappropriateness of the warrant's containing provisions which-

- (a) are equivalent to more than the maximum penalties (if any) that may be imposed on a person who, in the part of the United Kingdom in which the prisoner is to be detained, commits an offence corresponding to that in respect of which the prisoner is required to be detained in the country or territory from which he is to be transferred ; or

(b) are framed without reference to the length-

(i) of the period during which the prisoner is, but for the transfer, required to be detained in that country or territory; and

(ii) of so much of that period as will have been, or be treated as having been, served by the prisoner when the said provisions take effect.

(4) Subject to subsection (6) below and the Schedule to this Act, a provision contained by virtue of subsection (1)(c) above in a warrant under this Act shall for all purposes have the same effect as the same provision contained in an order made as mentioned in subparagraph (i) or, as the case may be, subparagraph (ii) of subsection (2)(b) above.

(5) A provision contained by virtue of subsection (1)(c) above in a warrant under this Act shall take effect with the delivery of the prisoner to the place specified in the warrant for the purposes of subsection (1)(b) above.

(6) Subsection (4) above shall not confer any right of appeal on the prisoner against provisions contained by virtue of subsection (1)(c) above in a warrant under this Act.

(7) The Schedule to this Act shall have effect, subject to section 4(4) below, with respect to the operation of certain enactments in relation to provisions contained by virtue of subsection (1)(c) above in a warrant under this Act.

(8) For the purposes of determining whether at any particular time any such order as is mentioned in subsection (2)(b) above could have been made as so mentioned, there shall be disregarded both-

(a) any requirement that certain conditions must be satisfied before the order is made; and

(b) any restriction on the minimum period in respect of which the order may be made.

Temporary return 4. (1) A single warrant under this Act may provide for the Temporary transfer of the prisoner both out of and into (or into and out of) return. The United Kingdom if it appears to the Secretary of State that the transfers are to be for the purpose of the temporary return of the prisoner either-

(a) from the United Kingdom to a country or territory outside the British Islands from which he has previously been transferred into the United Kingdom under this Act or any other enactment; or

(b) to the United Kingdom from a country or territory outside the British Islands to which he has previously been transferred from the United Kingdom under this Act.

(2) The provisions contained by virtue of section 3(1)(c) above in a warrant under this Act issued for the purpose of the temporary return of the prisoner to a country or territory outside the British Islands may, where the prisoner is required when that warrant is issued to be detained in accordance with provisions so contained in an earlier warrant under this Act, require the prisoner to continue, after his return to the part of the United Kingdom in which the provisions contained in the earlier warrant have effect, to be detained in accordance with those earlier provisions.

(3) A warrant issued under this Act containing, with respect to provisions contained in an earlier warrant, any such requirement as is referred to in subsection (2) above, shall provide that any period during which the prisoner is out of the part of the United Kingdom in which the provisions contained in the earlier warrant have effect and is in custody is to be treated (except to such extent as may be specified in the warrant in order that effect may be given to the international arrangements in question) as a period during which the prisoner is detained under the provisions contained in the earlier warrant.

(4) The provisions contained by virtue of section 3(1)(c) above in a warrant under this Act issued for the purpose of the temporary return of the prisoner to the United Kingdom may require the prisoner to be detained in accordance with any order which on his return will apply in respect of him in pursuance of section 2(2) above; and the Schedule to this Act shall not apply in relation to the provisions so contained in such a warrant.

Operation of warrant and retaking prisoners.

5. (1) Where a warrant has been issued under this Act the following provisions of this section shall have effect for the purposes of the warrant, except (without prejudice to section 3(4) above or any enactment contained otherwise than in this Act) in relation to any time when the prisoner is required to be detained in accordance with provisions contained in the warrant by virtue of section 3(1) (c) above.

(2) The prisoner shall be deemed to be in the legal custody of the Secretary of State at any time when, being in the United Kingdom or on board a British ship a British aircraft or a British hovercraft, he is being taken under the warrant to or from any place, or being kept in custody under the warrant.

(3) The Secretary of State may, from time to time, designate any person as a person who is for the time being authorised for the purposes of the warrant to take the prisoner to or from any place under the warrant, or to keep the prisoner in custody under the warrant.

(4) A person authorised by or for the purposes of the warrant to take the prisoner to or from any place or to keep the prisoner in custody shall have all the powers, authority, protection and privileges-

(a) of a constable in any part of the United Kingdom in which that person is for the time being; or

(b) if he is outside the United Kingdom, of a constable in the part of the United Kingdom to or from which the prisoner is to be taken under the warrant.

(5) If the prisoner escapes or is unlawfully at large, he may be arrested without warrant by a constable and taken to any place to which he may be taken under the warrant under this Act.

(6) In subsection (2) above-

“British aircraft” means a British-controlled aircraft within the meaning of section 92 of the Civil Aviation Act 1982 c. 16.

Act 1982 (application of criminal law to aircraft), or one of Her Majesty’s aircraft;

“British hovercraft” means a British-controlled hovercraft within the meaning of the said section 92 as applied in relation to hovercraft by virtue of provision made under the Hovercraft Act 1968, or one of

Her Majesty’s hovercraft; and
1968 c. 59.

“British ship” means a British ship within the meaning of the Merchant Shipping Act 1894, or one of Her Majesty’s ships ;
1894 c. 60.

and in this subsection references to Her Majesty’s aircraft, hover-craft or ships are references to the aircraft, hovercraft or, as the case may be, ships which belong to, or are exclusively employed in the service of, Her Majesty in right of the government of the United Kingdom.

(7) In subsection (5) above “constable”, in relation to any part of the United Kingdom, means any person who is a constable in that or any other part of the United Kingdom or any person who, at the place in question has, under any enactment (including subsection (4) above), the powers of a constable in that or any other part of the United Kingdom.

Revocation etc. of warrants

6. (1) Subject to section 1(4) above, if at any time it appears to the Secretary of State appropriate, in order that effect may be given to any such arrangements as are mentioned in section 1(1) (a) above or in a case falling within section 1(2) above, for a warrant under this Act to be revoked or varied, he may, as the case may require-

(a) revoke that warrant; or

(b) revoke that warrant and issue a new warrant under this Act containing provision superseding some or all of the provisions of the previous warrant.

(2) Subject to subsection (3)(c) below, the provision that may be contained in a new warrant issued by virtue of subsection (1)(b) above shall be any provision that could have been contained in the previous warrant.

(3) A new warrant issued by virtue of subsection (1)(b) above may provide-

(a) that a provision contained in it is to be treated as having taken effect when the provisions which that provision supersedes took effect;

(b) that things done under or for the purposes of the superseded provisions are, accordingly, to be treated as having been done under or for the purposes of the provision contained in the new warrant; and

(c) that an enactment in force at the time the new warrant is issued is, for the purposes of subsection (2) above or this subsection, to be treated as having been in force when the superseded provisions took effect,

(4) The powers conferred by this section shall be exercisable notwithstanding any defect in the warrant which is revoked.

Expenses

7. (1) Subject to subsection (2) below, any expenses incurred by the Secretary of State for the purposes of this Act shall be defrayed out of money provided by Parliament.

(2) Subject to subsections (3) and (4) below, it shall be the duty of the Secretary of State, in the case of the transfer of a person into the United Kingdom under this Act, to secure the payment to him by that person, or from some other source, of the amount of any

expenses incurred by him in connection with the conveyance of that person to the United Kingdom; and for this purpose the Secretary of State shall have the same power as in any other case where he assists the return of a person to the United Kingdom to require a person to give an undertaking to pay the Secretary of State the whole or any part of that amount, to enforce such an undertaking and to make such other arrangements for recovering that amount as he thinks fit.

(3) Subsection (2) above shall not apply to the extent that in any case it appears to the Secretary of State that it would be unreasonable for him to exercise any of the powers conferred by that subsection either because of the exceptional circumstances of the case or because the means of the prisoner are insufficient to meet the expenses and their recovery, whether immediately or at some future time, from the prisoner or from any other source is impracticable.

(4) The expenses mentioned in subsections (2) and (3) above shall not include-

- (a) any expenses of providing an escort for a person transferred into the United Kingdom under this Act; or
- (b) any expenses of the conveyance of such a person beyond the place at which he first arrives in the United Kingdom.

(5) The Secretary of State shall pay any sums received by him by virtue of subsection (2) above into the Consolidated Fund.

Interpretation and certificates.

8. (1) In this Act, except in so far as the context otherwise requires -

“ international arrangements” includes any arrangements between the United Kingdom and a colony;

“ order” includes any sentence, direction, warrant or other means of giving effect to the decision of a court or tribunal; and

“the prisoner” has the meaning given by section 1 (1)(b) above

(2) In this Act a reference to criminal jurisdiction, in relation to a court or tribunal in a country or territory outside the British Islands, includes a reference to any jurisdiction which would be a criminal jurisdiction but for the age or incapacity of the persons in respect of whom it is exercised.

(3) In any proceedings, the certificate of the Secretary of State-

- (a) that a particular country or territory is a party to any such international arrangements as are mentioned in section 10(a) above,
- (b) that the appropriate authority of a country or territory which is such a party has agreed to the transfer of a particular person in accordance with any such arrangements, or
- (c) that, for the purposes of any provision of this Act, a particular person is or represents the appropriate authority of any country or territory, shall be conclusive of the matter certified.

9. (1) This Act may be cited as the Repatriation of Prisoners, Act 1984.

(2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint.

Short title commencement and extent

- (3) This Act extends to Northern Ireland.
- (4) Her Majesty may by Order in Council make provision for extending the provisions of this Act, with such exceptions, adaptations and modifications as may be specified in the Order, to any of the Channel Islands, to the Isle of Man or to any colony.

Section 3.

SCHEDULE

OPERATION OF CERTAIN ENACTMENTS IN RELATION TO THE PRISONER

Application of Schedule

1. This Schedule applies where a warrant is issued under this Act providing for the transfer of the prisoner into the United Kingdom; and in this Schedule "the relevant provisions" means the provisions contained in the warrant by virtue of section 3(1)(c) of this Act or, in the case of a warrant which contains such a requirement as is referred to in section 4(2) of this Act, the provisions in accordance with which the prisoner continues, in pursuance of that requirement, to be detained.

Release on licence

- 1967 c. 80
2. (1) In determining for the purposes of section 60 of the Criminal Justice Act 1967 (release on licence) whether the prisoner has at any time served one third of his sentence or the specified period mentioned in subsection (1) of that section the prisoner's sentence shall, subject to sub-paragraph (2) below, be deemed to begin with the day on which the relevant provisions take effect.

(2) If the warrant specifies a period to be taken into account for the purposes of this paragraph the prisoner's sentence and the amount he has served shall, so far only as the question whether he has served one third of his sentence is concerned, be deemed to be increased by that period.

3. Where the relevant provisions include provision equivalent to a sentence in relation to which section 61 of the Criminal Justice Act

1967 (release on licence, on the recommendation of the Parole Board and I after consultation with the Lord Chief Justice or Lord Justice General and with the trial judge if available, of person sentenced to life imprisonment etc.) applies, subsection (1) of that section shall be deemed to have effect in relation to the prisoner as if the words "together with the trial judge if available" were omitted.

Persons under the age of 21

- 1982 c. 48
4. (1) Where the prisoner has not attained the age of 21 years at the time the warrant containing the relevant provisions is issued and the relevant provisions include provision equivalent to a sentence under section 6 or 8 of the Criminal Justice Act 1982 (youth custody and custody for life)-

(a) subsections (1) to (7) of section 12 of that Act (accommodation of persons sentenced under section 6 or 8) shall not apply in relation to the prisoner; and

(b) the prisoner may be detained=-

(i) in a youth custody centre,

(ii) in a remand centre, or

(iii) in a prison,

as the Secretary of State may from time to time direct.

(2) Where-

(a) at the time the warrant containing the relevant provisions is

issued the prisoner is not less than 16 years of age but has not attained the age of 21 years. and

(b) the relevant provisions include provision equivalent to an order imposing detention under section 207 or 415 of the

Criminal Procedure (Scotland) Act 1975 (restriction on 1975 c. 21 detention of persons under 21 years of age).

the provisions of those sections which require that, in certain circumstances a person shall be detained in a specified type of institution shall not apply in relation to the prisoner. and the prisoner may be detained-

(i) in a young offenders institution. or

(ii) in a prison.

as the Secretary of State may from time to time direct.

Mental health legislation

5. (1) References in-

(a) the Mental Health Act 1983. and 1983 c. 20

(b) the Mental Health Act (Northern Ireland) 1961. 1961 c. 15 (N.I.).

to the date of an order under either of those Acts shall have effect.

in relation to any of the relevant provisions which is equivalent to such an order. as references to the day on which the relevant provisions take effect.

(2) Where the relevant provisions include provision equivalent to a hospital order within the meaning of the said Act of 1983 or such an order and a restriction order within the meaning of that Act. the prisoner may (in addition to any application he may make under that Act) apply to a Mental Health Review Tribunal at any time in the period of six months beginning with the day on which the relevant provisions take effect

(3) References howsoever expressed in-

(a) the Mental Health (Scotland) Act 1984, and 1984 c. 36.

(b) the Criminal Procedure (Scotland) Act 1975. 1975 c. 21.

to the date of an order of the type referred to in the definition of hospital order or restriction order in section 2(6) of this Act shall have effect. in relation to any of the relevant provisions which is equivalent to such an order, as a reference to the day on which the relevant provisions take effect.

(4) Where the relevant provisions include provisions equivalent in Scotland to such an order, the prisoner may at any time in the period of six months beginning with the day on which the relevant provisions take effect. appeal to the Sheriff to order his discharge ; and (without prejudice to section 3(4) of this Act) in any appeal under this paragraph the provisions of the said Act of 1984 in respect of appeals by a patient subject to. such an order apply to an appeal by the prisoner where he is subject to any such equivalent provision as they apply to a patient who is subject to such an order.

Rehabilitation of offenders

6. The relevant provisions shall be disregarded for the purposes of the application, in relation to any offence of which the prisoner was convicted in a country or territory outside the British Islands, of-

1974 c. 53. (a) the Rehabilitation of Offenders Act 1974, except section 1(2) (person not rehabilitated unless he serves sentence etc.); and
S.I. 1978/1908 (N.I. 21). (b) the Rehabilitation of Offenders (Northern Ireland) Order 1978, except Article 3(2) (person not rehabilitated unless he serves sentence etc.).

1981 c. 34. The Representation of the People Act 1981

7. For the purposes of section 1 of the Representation of the People Act 1981 (disqualification of certain offenders for membership of the House of Commons), the prisoner shall, while detained in accordance with the relevant provisions, be deemed to be detained in pursuance of the order in pursuance of which, at the time of his transfer into the United Kingdom, he was required to be detained in the country or territory from which he was transferred.

S.I. 1981/155 (N.I.2). The Firearms (Northern Ireland) Order 1981

8. Where the relevant provisions include provision equivalent to such a sentence as is mentioned in paragraph (2) of Article 22 of the Firearms (Northern Ireland) Order 1981 (possession of firearm by person previously convicted of crime), that paragraph shall apply in relation to the prisoner as if for the reference in that paragraph to the period of eight years from the date so mentioned there were substituted a reference to the period of eight years from the day on which the relevant provisions take effect.

PRISONER TRANSFER AGREEMENT BETWEEN INDIA AND UNITED KINGDOM

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Agreement

between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India on the Transfer of Sentenced Persons

New Delhi, 18 February 2005

[Instruments of ratification were exchanged on 21 November 2005 and the Agreement entered into force on that date]

Presented to Parliament

by the Secretary of State for Foreign and Commonwealth Affairs by Command of Her Majesty May 2006

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AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF INDIA ON THE TRANSFER OF SENTENCED PERSONS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India, hereinafter referred to as the Contracting States;

Desiring to facilitate the social rehabilitation of sentenced persons into their own countries; and

Considering that this objective should be fulfilled by giving foreigners, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences within their own society;

Have agreed as follows :

ARTICLE 1

Definitions

For the purpose of this Agreement:

“Judgment” means a decision or order of a court or tribunal imposing a sentence;

(b) “Receiving State” means a State to which the sentenced person may be, or has been, transferred in order to serve his sentence;

- (c) "Sentence" means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time or for life imprisonment, in the exercise of its criminal jurisdiction;
- (d) "Sentenced person" means a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in the Contracting States;
- (e) "Transferring State" means the State in which the sentence was imposed on the person who may be, or has been transferred.

ARTICLE 2

General Principles

1. A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. To that end, he may express to the transferring State or the receiving State his willingness to be transferred under this Agreement.
2. Transfer may be requested by any sentenced person who is a national of a Contracting State or by any other person who is entitled to act on his behalf in accordance with the law of the Contracting State by making an application to the Contracting State and in the manner prescribed by the Government of that Contracting State.

ARTICLE 3

Conditions for transfer

1. A sentenced person may be transferred under this Agreement only on the following conditions:
 - (a) the person is a national of the receiving State;
 - (b) the death penalty has not been imposed on the sentenced person; (c) the judgment is final;
 - (d) no inquiry, trial or any other proceeding is pending against the sentenced person in the transferring State;
 - (e) at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or is undergoing a sentence of life imprisonment;
 - (f) that the acts or omissions for which that person was sentenced in the transferring State are those which are punishable as a crime in the receiving State, or would constitute a criminal offence if committed on its territory;
 - (g) The sentenced person has not been convicted for an offence under the military law;
 - (h) Transfer of custody of the sentenced person to the receiving State shall not be prejudicial to the sovereignty, security or any other interest of the transferring State;
 - (i) Consent to the transfer is given by the sentenced person or, where in view of his age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his behalf in accordance with the law of the Contracting State; and
 - (j) The transferring and receiving States agree to the transfer.
2. In exceptional cases, the transferring and receiving States may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months.

ARTICLE 4

Obligation to furnish information

1. If the sentenced person has expressed an interest to the sentencing State in being transferred under this Agreement, the transferring State shall send the following information and documents to the receiving State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
 - (a) The name and nationality, date and place of birth of the sentenced person;
 - (b) His address, if any, in the receiving State;

- (c) A statement of the facts upon which the sentence was based;
 - (d) The nature, duration and date of commencement of the sentence;
 - (e) A certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the sentenced person;
 - (f) A medical, social or any other report on the sentenced person, where it is relevant for the disposal of his application or for deciding the nature of his confinement;
 - (g) Any other information which the receiving State may specify as required in all cases to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him under its law;
 - (h) The request of the sentenced person to be transferred or of a person entitled to act on his behalf in accordance with the law of the transferring State; and
 - (i) A statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence.
2. For the purposes of enabling a decision to be made on a request under this Agreement, the receiving State shall send the following information and documents to the transferring State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
- (a) A statement or document indicating that the sentenced person is a national of the receiving State;
 - (b) A copy of the relevant law of the receiving State constituting the acts or omissions, on account of which the sentence has been passed in the transferring State, as if such acts or omissions were an offence under the law of the receiving State or would constitute an offence if committed on its territory;
 - (c) A statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the receiving State after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 2 of Article 8 of this Agreement on his transfer;
 - (d) The willingness of the receiving State to accept the transfer of the sentenced person and an undertaking to administer the remaining part of the sentence of the sentenced person; and
 - (e) Any other information or document which the transferring State may consider necessary.

ARTICLE 5

Requests and replies

1. Requests for transfer shall be made in writing in the prescribed proforma, if any, and addressed through the central authority of the requesting State through diplomatic channels to the central authority of the requested State. Replies shall be communicated through the same channels.
2. For the purpose of paragraph 1 of this Article, the central authority shall be, in relation to India, the Ministry of Home Affairs; and in relation to the United Kingdom of Great Britain and Northern Ireland, shall be:
 - (i) Her Majesty's Prison Service in relation to England and Wales; (ii) The Scottish Prison Service in relation to Scotland; and
 - (iii) The Northern Ireland Prison Service in relation to Northern Ireland.
3. The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

ARTICLE 6

Consent and its verification

1. The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(i) of Article 3 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.

2. The transferring State shall afford an opportunity to the receiving State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

ARTICLE 7

Effect of transfer for the receiving State

1. The competent authorities of the receiving State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 8 of this Agreement.
2. Subject to the provisions of Article 10 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions.

ARTICLE 8

Continued enforcement of sentence

1. The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.
2. If, however, the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that State may, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall however not aggravate, by its nature or duration, the sentence imposed in the transferring State.

ARTICLE 9

Effect of completion of sentence for the transferring State

When the receiving State notifies the transferring State under paragraph 1(a) of Article 12 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging that sentence in the transferring State.

ARTICLE 10

Pardon, amnesty or commutation, and Review of Judgment

1. The transferring State alone shall decide on any application for the review of the judgment.
2. Either of the Contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

ARTICLE 11

Termination of enforcement of sentence

The receiving State shall terminate enforcement of the sentence as soon as it is informed by the transferring State of any decision or measure as a result of which the sentence ceases to be enforceable.

ARTICLE 12

Information on enforcement of sentence

1. The receiving State shall notify the transferring State:
 - (a) When the enforcement of the sentence has been completed; or
 - (b) If the sentenced person escapes from custody before enforcement of the sentence has been completed. In such cases the receiving State should make arrangements for his/her arrest and make him/her liable for committing an offence under the relevant law of the receiving State;
2. The receiving State shall furnish a special report concerning the enforcement of the sentence, if so required by the transferring State.

ARTICLE 13

Transit

If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such arrangements, except that it may refuse to grant transit to any sentenced person who is one of its own nationals. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit.

ARTICLE 14

Costs

Any costs incurred in the application of this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, seek to recover all or part of the costs of transfer from the sentenced person or from some other source.

ARTICLE 15

Territorial application

1. This Agreement shall apply;
 - (a) To the Republic of India, and
 - (b) in relation to the United Kingdom, to Great Britain and Northern Ireland, and to the Isle of Man, and any territory for the international relations of which the United Kingdom is responsible and to which the Agreement shall have been extended by agreement between the Contracting States;and references to the territory of a Contracting State shall be construed accordingly.
2. The Application of this Agreement to any territory, in respect of which extension has been made in accordance with paragraph 1 of this Article, may be terminated upon expiry of six months' notice given by either Contracting State to the other through the diplomatic channels.

ARTICLE 16

Language

Requests and supporting documents shall be accompanied by a translation into the language or one of the official languages of the requesting State.

ARTICLE 17

Scope of application

This Agreement shall be applicable to the enforcement of sentences imposed either before or after the entry into force of this Agreement.

ARTICLE 18

Amendments

Any amendments or modifications to this Agreement agreed by the Contracting States shall come into effect when confirmed by an Exchange of Diplomatic Notes.

ARTICLE 19

Final provisions

1. This Agreement shall be subject to ratification and shall enter into force on the date on which instruments of ratification are exchanged.
2. The Agreement shall continue to remain in force until six months from the date upon which either Contracting State gives written notice to the other Contracting State of its intention to terminate it.

3. Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of sentenced persons who have been transferred under this Agreement before the date on which such termination takes effect.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at New Delhi on the 18th day of February 2005, in the English and Hindi languages, all texts being equally authentic.

For the Government of the
United Kingdom of Great Britain
and Northern Ireland:

JACK STRAW

For the Government of the
Republic of India:

SHIVRAJ V. PATIL

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF INDIA AND THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS ON THE TRANSFER OF PRISONERS

The Government of the Republic of India and the Government of the Republic of Mauritius hereinafter referred to as the Contracting States;

Desiring to facilitate the social rehabilitation of sentenced persons into their own countries; and

Considering that this objective should be fulfilled by giving foreigners, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences within their own society;

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this Agreement:

- (a) "Judgment" means a decision or order of a court or tribunal imposing a sentence;
- (b) "Receiving State" means a State to which the sentenced person may be, or has been, transferred in order to serve his sentence;
- (c) "Sentence" means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time or for life imprisonment, in the exercise of its criminal jurisdiction;
- (d) "Prisoner" means a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in the Contracting States;
- (e) "Transferring State" means the State in which the sentence was imposed on the person who may be, or has been transferred.

ARTICLE 2

General Principles

- 1. A prisoner in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. To that end, he may express to the transferring State or the receiving State his willingness to be transferred under this Agreement.
- 2. Transfer may be requested by any prisoner who is a national of a Contracting State or by any other person who is entitled to act on his behalf in accordance with the law of the Contracting State by making an application to the Contracting State and in the manner prescribed by the Government of that Contracting State.

ARTICLE 3

Conditions for transfer

- 1. A prisoner may be transferred under this Agreement only on the following conditions:
 - (a) the person is a national of the receiving State;
 - (b) the death penalty has not been imposed on the prisoner
 - (c) the judgment is final;
 - (d) no inquiry, trial or any other proceeding is pending against the prisoner in the transferring State;
 - (e) at the time of receipt of the request for transfer, the prisoner still has at least six months of the sentence to serve or is undergoing a sentence of life imprisonment;

- (f) that the acts or omissions for which that person was sentenced in the transferring State are those which are punishable as a crime in the receiving State, or would constitute a criminal offence if committed on its territory;
 - (g) The prisoner has not been convicted for an offence under the military law;
 - (h) Transfer of custody of the prisoner to the receiving state shall not be prejudicial to the sovereignty, security or any other interest of the transferring State;
 - (i) Consent to the transfer is given by the sentenced person or, where in view of his age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his behalf in accordance with the law of the Contracting State; and
 - (j) The transferring and receiving States agree to the transfer.
2. In exceptional cases, the transferring and receiving States may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months.

ARTICLE 4

Obligation to furnish information

1. If the prisoner has expressed an interest to the sentencing State in being transferred under this Agreement, the transferring State shall send the following information and documents to the receiving State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:
 - (a) The name and nationality, date and place of birth of the prisoner;
 - (b) His address, if any, in the receiving State;
 - (c) A statement of the facts upon which the conviction and sentence was based;
 - (d) The nature, duration and date of commencement of the sentence;
 - (e) A certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the prisoner;
 - (f) A medical, social or any other report on the prisoner, where it is relevant for the disposal of his application or for deciding the nature of his confinement;
 - (g) Any other information which the receiving State may specify as required in all cases to enable it to consider the possibility of transfer and to enable it to inform the prisoner of the full consequences of transfer for him under its law;
 - (h) The request of the prisoner to be transferred or of a person entitled to act on his behalf in accordance with the law of the transferring State; and
 - (i) A statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence.
2. For the purposes of enabling a decision to be made on a request under this Agreement, the receiving State shall send the following information and documents to the transferring State unless either the receiving or the transferring State has already decided that it will not agree to the transfer
 - (a) A statement or document indicating that the prisoner is a national of the receiving State;
 - (b) A copy of the relevant law of the receiving State constituting the acts or omissions, on account of which the sentence has been passed in the transferring State, as if such acts or omissions were an offence under the law of the receiving State or would constitute an offence if committed on its territory;
 - (c) A statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the receiving State after prisoner transfer including, if applicable, a statement of the effect of paragraph 2 of Article 8 of this Agreement on his transfer;
 - (d) The willingness of the receiving State to accept the transfer of the prisoner and an undertaking to administer the remaining part of the sentence of the prisoner; and
 - (e) Any other information or document which the transferring State may consider necessary.

ARTICLE 5

Requests and replies

1. Requests for transfer shall be made in writing in the prescribed proforma, if any, and addressed through the central authority of the requesting State through diplomatic channels to the central authority of the requested State. Replies shall be communicated through the same channels.
2. For the purpose of paragraph 1 of this Article, the central authority shall be, in relation to India, the Ministry of Home Affairs; and in relation to the Republic of Mauritius, shall be the Prime Minister's office:
3. The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

ARTICLE 6

Consent and its verification

1. The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(i) of Article 3 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.
2. The transferring State shall afford an opportunity to the receiving State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article

ARTICLE 7

Effect of transfer for the receiving State

1. The competent authorities of the receiving State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 8 of this Agreement.
2. Subject to the provisions of Article 10 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions.

ARTICLE 8

Continued enforcement of sentence

1. The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.
2. If, however, the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that State may, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall however not aggravate, by its nature or duration, the sentence imposed in the transferring State.

ARTICLE 9

Effect of completion of sentence for the transferring State

1. When the receiving State notifies the transferring State under paragraph 1(a) of Article 12 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging that sentence in the transferring State.

ARTICLE 10

Review of judgement

1. The transferring State alone shall decide on any application for the review of the judgment which may include grant of pardon, amnesty or commutation of the sentence or any other mode of review or remission in accordance with its Constitution or other laws.

ARTICLE 11

Termination of enforcement of sentence

1. The receiving State shall terminate enforcement of the sentence as soon as it is informed by the transferring State of any decision or measure as a result of which the sentence ceases to be enforceable.

ARTICLE 12

Information on enforcement of sentence

1. The receiving State shall notify the transferring State:
 - (a) When the enforcement of the sentence has been completed; or
 - (b) If the prisoner escapes from custody before enforcement of the sentence has been completed. In such cases the receiving State should make every effort to have the prisoner arrested so that he serves the remainder of his sentence and that the prisoner be prosecuted for committing an offence under the relevant law of the receiving State on escape of prisoner;
2. The receiving State shall furnish a special report concerning the enforcement of the sentence, if so required by the transferring State.

ARTICLE 13

Transit

1. If either Contracting State enters into arrangements for the transfer of a prisoner with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the prisoner being transferred pursuant to such arrangements, except that it may refuse to grant transit to any sentenced person who is one of its own nationals. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit.

ARTICLE 14

Costs

1. Any costs incurred in the application of this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, seek to recover all or part of the costs of transfer from the sentenced person or from some other source.

ARTICLE 15

Language

Requests and supporting documents shall be in English or accompanied by a translation into English.

ARTICLE 16

Scope of application

1. This Agreement shall be applicable to the enforcement of sentences imposed either before or after the entry into force of this Agreement.

ARTICLE 17

Amendments

Any amendments or modifications to this Agreement agreed by the Contracting States shall come into effect when confirmed by an Exchange of Diplomatic Notes.

ARTICLE 18

Final provisions

1. This Agreement shall be subject to ratification and shall enter into force on the date on which instruments of ratification are exchanged.

2. The Agreement shall continue to remain in force until six months from the date upon which either Contracting State gives written notice to the other Contracting State of its intention to terminate it.
3. Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of prisoner who have been transferred under this Agreement before the date on which such termination takes effect.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at New Delhi on the 24th day of October 2005, in the Hindi and English languages, all texts being equally authentic.

For the Government of the Republic of India:
of Mauritius:
SHIVRAJ V. PATIL
HOME MINISTER

TRADE & COOPERATION

For the Government of the Republic
MADAN MURLLIDHAR DULLLOO
MINISTER OF FOREIGN, AFFAIRS,
INTERNATIONAL

TRANSFER OF OFFENDERS ACT, CANADA

CONSOLIDATION

International Transfer of Offenders Act

Current to April 25, 2017

Last amended on December 6, 2014

Published by the Minister of Justice at the following address:

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OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the Legislation *Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

NOTE

This consolidation is current to April 25, 2017. The last amendments came into force on December 6, 2014. Any amendments that were not in force as of April 25, 2017 are set out at the end of this document under the heading “Amendments Not in Force”.

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An Act to implement treaties and administrative arrangements on the
International transfer of persons found guilty of criminal offences

[Assented to 14th May 2004]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Short Title

Short title

1 This Act may be cited as the *International Transfer of Offenders Act*.

Interpretation

Definitions

2 The following definitions apply in this Act.

Canadian offender means a Canadian citizen within the meaning of the *Citizenship Act* who has been found guilty of an offence — and is detained, subject to supervision by reason of conditional release or probation or subject to any other form of supervision in a foreign entity — and whose verdict and sentence may no longer be appealed. (*délinquant canadien*)

criminal offence means an offence against an Act of Parliament. (*infraction criminelle*)

foreign entity, other than in sections 31 and 32, means a foreign state — or a province, state or other political sub-division of a foreign state, a colony, dependency, possession, protectorate, condominium, trust territory or any territory falling under the jurisdiction of a foreign state or a territory or other entity, including an international criminal tribunal — with which Canada has entered into a treaty on the transfer of offenders or an administrative arrangement referred to in section 31 or 32. (*entité étrangère*)

foreign offender means a citizen or national of a foreign entity who has been found guilty of a criminal offence — and is detained, subject to supervision by reason of conditional release or probation or subject to any other form of supervision in Canada — and whose verdict and sentence may no longer be appealed. (*délinquant étranger*)

Minister means the Minister of Public Safety and Emergency Preparedness. (*ministre*)

penitentiary has the same meaning as in subsection 2(1) of the *Corrections and Conditional Release Act*. (*pénitencier*)

prison means a place of confinement other than a penitentiary. (*prison*)

treaty includes an international agreement or convention, but does not include an administrative arrangement entered into under section 31 or 32. (*traité*)

2004, c. 21, s. 2; 2005, c. 10, s. 34.

Purpose and Principles

Purpose

3 The purpose of this Act is to enhance public safety and to contribute to the administration of justice and the re-habilitation of offenders and their reintegration into the community by enabling offenders to serve their sentences in the country of which they are citizens or nationals.

2004, c. 21, s. 3; 2012, c. 1, s. 135

Dual criminality

4 (1) Subject to subsection (3), a transfer is not available unless the Canadian offender's conduct would have constituted a criminal offence if it had occurred in Canada at the time the Minister receives the request for a transfer.

Conduct determinative

(2) For greater certainty, it is not relevant whether the conduct referred to in subsection (1) is named, defined or characterized by the foreign entity in the same way as it is in Canada.

Exception — children

(3) A transfer is available to a Canadian offender who, at the time the offence was committed, was a child within the meaning of the *Youth Criminal Justice Act* even if their conduct would not have constituted a criminal offence if it had occurred in Canada at that time. That offender may not be detained in Canada.

Effect of transfer

5 (1) A transfer may not have the effect of increasing a sentence imposed by a foreign entity or of invalidating a guilty verdict rendered, or a sentence imposed, by a foreign entity. The verdict and the sentence, if any, are not subject to any appeal or other form of review in Canada

Evidence

(2) A document supplied by a foreign entity that sets out a finding of guilt and a sentence, if any, and purports to be signed by a judicial official or a director of a place of confinement in the foreign entity is proof of the facts alleged, in the absence of evidence to the contrary and without proof of the signature or official character of the person appearing to have signed it.

Minister

Administration of Act

6 (1) The Minister is responsible for the administration of this Act.

Designation by Minister

(2) The Minister may, in writing, designate, by name or position, a staff member within the meaning of subsection 2(1) of the *Corrections and Conditional Release Act* to act on the Minister's behalf under section 8, 12, 15, 24,

30 or 37.

Request for transfer

7 A person may not be transferred under a treaty, or an administrative arrangement entered into under section

31 or 32, unless a request is made, in writing, to the Minister.

Consent

Consent of three parties

8 (1) The consent of the three parties to a transfer — the offender, the foreign entity and Canada — is required.

Withdrawal of consent

(2) A foreign offender — and, subject to the laws of the foreign entity, a Canadian offender — may withdraw their consent at any time before the transfer takes place.

Information about treaties

(3) The Minister or the relevant provincial authority, as the case may be, shall inform a foreign offender, and the Minister shall take all reasonable steps to inform a Canadian offender, of the substance of any treaty — or administrative arrangement entered into under section 31 or 32

— that applies to them.

Information about sentence and other obligations

(4) The Minister

(a) shall inform a Canadian offender, in writing, as to how their foreign sentence is to be served in Canada and, in the case of an offender who is required to comply with the *Sex Offender Information Registration Act*,

(i) inform them, in writing, of that obligation and of sections 4 to 7.1 of that Act and sections 490.031 and 490.0311 of the *Criminal Code*, and

- (ii) on the day of the transfer at the earliest, deliver a copy of Form 1 of the schedule to
 - (A) the offender,
 - (B) the Attorney General of the province, or the minister of justice of the territory, in which the person is to be detained in custody, and
 - (C) the person in charge of the place in which the person is to be detained in custody; and
- (b) shall deliver to a foreign offender the information with which the Minister was provided by the foreign entity as to how their Canadian sentence is to be served.

Person authorized to consent

(5) In respect of the following persons, consent is given by whoever is authorized to consent in accordance with the laws of the province where the person is detained, is released on conditions or is to be transferred:

- (a) a child or young person within the meaning of the *Youth Criminal Justice Act*;
- (b) a person who is not able to consent and in respect of whom a verdict of not criminally responsible on account of mental disorder or of unfit to stand trial has been rendered; and
- (c) an offender who is not able to consent.

2004, c. 21, s. 8; 2010, c. 17, s. 61.

Provincial authority

9 (1) If a foreign offender is — or a Canadian offender would, after their transfer, be — under the authority of a province or if a Canadian offender is a child within the meaning of the *Youth Criminal Justice Act*, the consent of the Minister and the relevant provincial authority is required.

Purpose and principles

(2) In determining whether to consent to a transfer, the provincial authority shall take into account the purpose and principles of this Act.

Factors — Canadian offenders

10 (1) In determining whether to consent to the transfer of a Canadian offender, the Minister may consider the following factors:

- (a) whether, in the Minister’s opinion, the offender’s return to Canada will constitute a threat to the security of Canada;
- (b) whether, in the Minister’s opinion, the offender’s return to Canada will endanger public safety, including
 - (i) the safety of any person in Canada who is a victim, as defined in subsection 2(1) of the *Corrections and Conditional Release Act*, of an offence committed by the offender,
 - (ii) the safety of any member of the offender’s family, in the case of an offender who has been convicted of an offence against a family member, or
 - (iii) the safety of any child, in the case of an offender who has been convicted of a sexual offence involving a child;
- (c) whether, in the Minister’s opinion, the offender is likely to continue to engage in criminal activity after the transfer;
- (d) whether, in the Minister’s opinion, the offender left or remained outside Canada with the intention of abandoning Canada as their place of permanent residence;
- (e) whether, in the Minister’s opinion, the foreign entity or its prison system presents a serious threat to the offender’s security or human rights;
- (f) whether the offender has social or family ties in Canada;
- (g) the offender’s health;
- (h) whether the offender has refused to participate in a rehabilitation or reintegration program;

- (i) whether the offender has accepted responsibility for the offence for which they have been convicted, including by acknowledging the harm done to victims and to the community;
- (j) the manner in which the offender will be supervised, after the transfer, while they are serving their sentence;
- (k) whether the offender has cooperated, or has undertaken to cooperate, with a law enforcement agency; or
- (l) any other factor that the Minister considers relevant

Factors – Canadian and foreign offenders

(2) In determining whether to consent to the transfer of a Canadian or foreign offender, the Minister may consider the following factors:

- (a) whether, in the Minister's opinion, the offender will, after the transfer, commit a terrorism offence or criminal organization offence within the meaning of section 2 of the *Criminal Code*; and
- (b) whether the offender was previously transferred under this Act or the *Transfer of Offenders Act*, chapter T-15 of the Revised Statutes of Canada, 1985.

Additional factor – Canadian young persons

(3) In determining whether to consent to the transfer of a Canadian offender who is a young person within the meaning of the *Youth Criminal Justice Act*, the Minister and the relevant provincial authority shall consider the best interests of the young person.

Primary consideration – Canadian children

(4) In determining whether to consent to the transfer of a Canadian offender who is a child within the meaning of the *Youth Criminal Justice Act*, the primary consideration of the Minister and the relevant provincial authority is to be the best interests of the child.

2004, c. 21, s. 10; 2012, c. 1, s. 136.

Writing

11 (1) A consent, a refusal of consent or a withdrawal of consent is to be given in writing

Reasons

(2) If the Minister does not consent to a transfer, the Minister shall give reasons.

Consent voluntary

12 The Minister shall take all reasonable steps to determine whether an offender's consent has been given voluntarily.

Continued Enforcement and Adaptation

Continued enforcement

13 The enforcement of a Canadian offender's sentence is to be continued in accordance with the laws of Canada as if the offender had been convicted and their sentence imposed by a court in Canada.

Adaptation

14 Subject to subsection 17(1) and section 18, if, at the time the Minister receives a request for the transfer of a Canadian offender, the sentence imposed by the foreign entity is longer than the maximum sentence provided for in Canadian law for the equivalent offence, the Canadian offender is to serve only the shorter sentence.

Equivalent offence

15 For the purposes of the application of any Act of Parliament to a Canadian offender, the Minister shall identify the criminal offence that, at the time the Minister receives their request for a transfer, is equivalent to the offence of which the Canadian offender was convicted.

Probation

Deemed probation order

16 A foreign sentence that consists of a period of supervision, other than by reason of conditional release — or a period of supervision that is, other than by reason of a conditional release, an element of a foreign sentence of imprisonment of less than two years — is deemed to be a probation order under section 731 of the *Criminal Code*, to a maximum of three years, or under paragraph

42(2)(k) of the *Youth Criminal Justice Act*, to a maximum of two years.

Young Persons

Transfer of young person — 12 or 13 years old

17 (1) Subject to subsection (2), and if the following conditions are met, the maximum sentence to be enforced in Canada is the maximum youth sentence that could have been imposed under the *Youth Criminal Justice Act*:

- (a) the Canadian offender was, at the time the offence was committed, 12 or 13 years old; and
- (b) their sentence is longer than the maximum youth sentence that could have been imposed under that Act for an equivalent offence.

Sentence for young person convicted of murder — 12 or 13 years old

(2) A Canadian offender who was 12 or 13 years old at the time the offence was committed and whose conduct, if it had occurred in Canada, would have constituted first or second degree murder within the meaning of section 231 of the *Criminal Code* is required to serve

- (a) the sentence imposed by the foreign entity — if less than ten years, in the case of first degree murder, or less than seven years, in the case of second degree murder — consisting, in the same proportion as in paragraph 42(2)(q) of the *Youth Criminal Justice Act*, of a committal to custody and a placement under conditional supervision to be served in the community; or
- (b) the maximum sentence that could be imposed under paragraph 42(2)(q) of that Act if the sentence imposed by the foreign entity was ten years or more in the case of first degree murder or seven years or more in the case of second degree murder.

Transfer of young person — 14 to 17 years old

18 A Canadian offender is deemed to be serving an adult sentence within the meaning of the *Youth Criminal Justice Act* if

- (a) the Canadian offender was, at the time the offence was committed, from 14 to 17 years old; and
- (b) their sentence is longer than the maximum youth sentence that could have been imposed under that Act for an equivalent offence.

Parole eligibility for young person convicted of murder — 14 to 17 years old

19 (1) A Canadian offender who was from 14 to 17 years old at the time the offence was committed, and who was sentenced to imprisonment for life for conduct that, if it had occurred in Canada, would have constituted first or second degree murder within the meaning of section 231 of the *Criminal Code*, is deemed to be serving an adult sentence within the meaning of the *Youth Criminal Justice Act*. They are eligible for full parole on the day on which they have served the shorter of

- (a) the period of ineligibility imposed by the foreign entity, and
- (b) either
 - (i) five years, if they were 14 or 15 years old at the time the offence was committed, or
 - (ii) ten years, in the case of first degree murder, or seven years, in the case of second degree murder, if they were 16 or 17 years old at the time the offence was committed

Deemed to have received adult sentence

(2) A Canadian offender who was from 14 to 17 years old at the time the offence was committed and who received a sentence for a determinate period of more than ten years for conduct that, if it had occurred in Canada, would have constituted first degree murder within the meaning of section 231 of the *Criminal Code* — or of more than seven years for conduct that, if it had occurred in Canada, would have constituted second degree murder within the meaning of that section — is deemed to have received an adult sentence within the meaning of the *Youth Criminal Justice Act*.

Deemed to have received youth sentence

(3) A Canadian offender who was from 14 to 17 years old at the time the offence was committed and who received a sentence for a determinate period of ten years or less for conduct that, if it had occurred in Canada, would have constituted first degree murder within the meaning of section 231 of the *Criminal Code* — or of seven years or less for conduct that, if it had occurred in Canada, would have constituted second degree murder within the meaning of that section — is deemed to have received a youth sentence within the meaning of the *Youth Criminal Justice Act*.

Placement

20 A Canadian offender who was from 12 to 17 years old at the time the offence was committed is to be detained

- (a) if the sentence imposed in the foreign entity could, if the offence had been committed in Canada, have been a youth sentence within the meaning of the *Youth Criminal Justice Act*,
 - (i) in the case of an offender who was less than 20 years old at the time of their transfer, in a youth custody facility within the meaning of that Act, and
 - (ii) in the case of an offender who was at least 20 years old at the time of their transfer, in a provincial correctional facility for adults; and
- (b) if the sentence imposed in the foreign entity could, if the offence had been committed in Canada, have been an adult sentence within the meaning of that Act,
 - (i) in the case of an offender who was less than 18 years old at the time of their transfer, in a youth custody facility within the meaning of that Act,
 - (ii) in the case of an offender who was at least 18 years old at the time of their transfer, in a provincial correctional facility for adults if their sentence is less than two years, and
 - (iii) in the case of an offender who was at least 18 years old at the time of their transfer, in a penitentiary if their sentence is at least two years.

Sentence Calculation

Where committed

21 Subject to section 20, a Canadian offender who was detained in a foreign entity is to be detained in Canada in (a) a prison if they were sentenced to imprisonment for less than two years; or (b) a penitentiary if they were sentenced to imprisonment for two years or more.

Credit towards completion of sentence

22 (1) The length of a Canadian offender's sentence equals the length of the sentence imposed by the foreign entity minus any time that was, before their transfer, recognized by the foreign entity as a reduction, other than time spent in confinement after the sentence was imposed.

Credit for time spent in confinement

(2) The time that a Canadian offender spent in confinement, after the sentence was imposed and before their transfer, is subtracted from the length of the sentence determined in accordance with subsection (1). The resulting period constitutes the period that the offender is to serve on the sentence.

Eligibility for parole — general

23 Subject to sections 19 and 24, a Canadian offender who is transferred to Canada is eligible

for full parole on the day on which they have served, commencing on the day on which they commenced serving their sentence, the lesser of seven years and one third of the length of the sentence as determined under subsection 22(1).

Eligibility for parole – murder

24 (1) Subject to subsections 17(2) and 19(1), if a Canadian offender was sentenced to imprisonment for life for an offence that, if it had been committed in Canada, would have constituted murder within the meaning of the *Criminal Code*, their full parole ineligibility period is

10 years. If, in the Minister's opinion, the documents supplied by the foreign entity show that the circumstances in which the offence was committed were such that, if it had been committed in Canada after July 26, 1976, it would have been first degree murder within the meaning of section 231 of that Act, the full parole ineligibility period is

- (a) 15 years, if the offence was committed before the day on which paragraph 745.6(1)(a.1) of the *Criminal Code* comes into force; or
- (b) 25 years, if the offence was committed on or after that day.

Multiple murders

(2) Subject to subsection (3), if a Canadian offender who was subject to a sentence of imprisonment for life for a conviction for murder, or an offence that, if it had been committed in Canada, would have constituted murder, within the meaning of the *Criminal Code*, received an additional sentence of imprisonment for life – imposed by the foreign entity for a conviction for an offence that, if it had been committed in Canada, would have constituted murder within the meaning of that Act – the full parole ineligibility period in respect of the additional sentence is established under section 745 of that Act.

Exception – second degree murder

(3) If the additional sentence referred to in subsection (2) is in respect of a conviction for an offence that, if it had been committed in Canada, would have constituted second degree murder within the meaning of section 231 of the *Criminal Code* – and if the offence was committed before all of the Canadian offender's convictions for murder, or for offences that, if they had been committed in Canada, would have constituted murder, within the meaning of that Act – the full parole ineligibility period in respect of the additional sentence is 10 years.

Credit for time spent in custody

(4) In calculating the period of imprisonment for the purpose of this section, the time served by an offender includes any time spent in custody between the day on which they were arrested and taken into custody for the offence for which they were sentenced and the day on which the sentence was imposed.

2004, c. 21, s. 24; 2011, c. 2, s. 6.

Temporary absence and day parole – persons convicted of murder

25 Subject to section 746.1 of the *Criminal Code*,

- (a) a Canadian offender who is transferred to Canada – and was sentenced to imprisonment for life for an offence that, if it had been committed in Canada, would have constituted murder within the meaning of that Act – is eligible for day parole in accordance with the *Corrections and Conditional Release Act* and for an absence without escort in accordance with the *Corrections and Conditional Release Act* or the *Prisons and Reformatories Act*; and
- (b) their absence with escort may be authorized in accordance with the *Corrections and Conditional Release Act* or the *Prisons and Reformatories Act*.

Statutory release – penitentiary

26 (1) If a Canadian offender is detained in a penitentiary, they are entitled to be released on statutory release on the day on which they have served, commencing on the day of their transfer, two thirds of the period determined in accordance with subsection 22(2).

Release – prison

(2) If a Canadian offender is detained in a prison, they are entitled to be released on the day on which they have served, commencing on the day of their transfer, the period determined in accordance with subsection 22(2) less the amount of any remission earned under the *Prisons and Reformatories Act* on that period.

If eligible for parole, etc., before transfer

27 If, under the *Corrections and Conditional Release Act* or the *Criminal Code*, the day on which a Canadian offender is eligible for a temporary absence, day parole or full parole is before the day of their transfer, the day of their transfer is deemed to be their day of eligibility.

Review by Board

28 Despite sections 122 and 123 of the *Corrections and Conditional Release Act*, the Parole Board of Canada is not required to review the case of a Canadian offender until six months after the day of their transfer.

2004, c. 21, s. 28; 2012, c. 1, s. 160.

Application

29 (1) Subject to this Act, a Canadian offender who is transferred to Canada is subject to the *Corrections and Conditional Release Act*, the *Prisons and Reformatories Act* and the *Youth Criminal Justice Act* as if they had been convicted and their sentence imposed by a court in Canada.

Canadian sentence

(2) If, before the transfer, a Canadian offender is subject to a Canadian sentence of imprisonment, they are

(a) eligible for full parole on the later of

- (i) the day established in accordance with section 19, 23 or 24, as the case may be, and
- (ii) the full parole eligibility date established under the *Corrections and Conditional Release Act*; and

(b) entitled to statutory release on the later of

- (i) the day established in accordance with section 26, and
- (ii) the statutory release date established under that Act.

Compassionate Measures

Canadian offender

30 (1) A Canadian offender shall benefit from any compassionate measures – including a cancellation of their conviction or shortening of their sentence – taken by a foreign entity after the transfer.

Foreign offender

(2) The Minister shall take all reasonable steps to inform the foreign entity and the foreign offender of any compassionate measures taken by Canada after the transfer.

Administrative Arrangements

Administrative arrangements – offenders

31 If no treaty is in force between Canada and a foreign entity on the transfer of offenders, the Minister of Foreign Affairs may, with the consent of the Minister, enter into an administrative arrangement with the foreign entity for the transfer of an offender in accordance with this Act.

Administrative arrangements – mentally disordered persons

32 (1) If the relevant provincial authority consents to the transfer, the Minister of Foreign Affairs may, with the consent of the Minister, enter into an administrative arrangement with a foreign entity for the transfer, in accordance with this Act, of a person in respect of whom a verdict of unfit to stand trial or not criminally responsible on account of mental disorder was rendered and may no longer be appealed.

Consent — provincial authority

(2) The consent of a provincial authority to a transfer under this section shall take into account the purpose and principles of this Act. Consent to the transfer of a person in respect of whom a verdict of not criminally responsible on account of mental disorder has been rendered — or of a citizen or national of a foreign entity in respect of whom a verdict of unfit to stand trial has been rendered

— is given by the attorney general of a province or, in the

case of a territory, the Attorney General of Canada, on the recommendation of the relevant Review Board established under section 672.38 of the *Criminal Code*. Consent to the transfer of a Canadian citizen in respect of whom a verdict of unfit to stand trial has been rendered in a foreign entity is given by the relevant provincial authority.

Factors — provincial authority

(3) A Review Board, in deciding whether to recommend to the attorney general that a person be transferred — and the relevant provincial authority, in deciding whether to consent to a transfer under subsection (2) — shall consider the following factors:

- (a) the best interests of the person, including their mental condition, the likelihood of their reintegration into society and their treatment and other needs; and
- (b) the need to protect society from dangerous persons.

Additional factor — unfit to stand trial

(4) The attorney general, in deciding whether to consent to the transfer to a foreign entity of a person in respect of whom a verdict of unfit to stand trial has been rendered, shall consider their ability to effectively prosecute the case in the event that the person becomes fit to stand trial.

Definition of foreign entity

33 In sections 31 and 32, **foreign entity** means a foreign state, a province, state or other political subdivision of a foreign state, a colony, dependency, possession, protectorate, condominium, trust territory or any territory falling under the jurisdiction of a foreign state or a territory or other entity, including an international criminal tribunal.

Part XX.1 of Criminal Code

34 (1) Subject to the other provisions of this Act — and, in the case of a young person, section 141 of the *Youth Criminal Justice Act* — Part XX.1 of the *Criminal Code* applies to a person who is transferred to Canada under an administrative arrangement that was entered into under section 32. The verdict of the foreign court is deemed to be a verdict of not criminally responsible on account of mental disorder and to have been made on the day of their transfer.

Presumption

(2) The person is deemed to be the subject of an order under paragraph 672.54(c) of the *Criminal Code* and a warrant of committal under section 672.57 of that Act until the Review Board of the province to which the person is transferred makes a disposition under section 672.47 of that Act. The Review Board shall, within 45 days after the day of the person's transfer, hold a hearing and make a disposition.

Extension of time period

(3) If the Review Board is of the opinion that there are exceptional circumstances that warrant it, it may take a maximum of 90 days to hold a hearing and make a disposition.

Transportation for transfer

35 (1) A person who is discharged under paragraph

672.54(b) of the *Criminal Code* or detained under paragraph 672.54(c) of that Act may — with the consent of the attorney general of the province from which they are to be transported and, if applicable, the attorney general of the province to which they are to be transported — be transported to any other place in Canada in order to expedite their transfer to a foreign entity.

Warrant

(2) If a person is to be transported in order to expedite their transfer, an officer authorized by the attorney general of the province from which they are to be transported shall sign a warrant specifying the place in Canada to which they are to be transported, the terms of their transfer and, if applicable, the place of detention.

Territories

(3) For the purpose of this section, in respect of a territory, the relevant attorney general is the Attorney General of Canada.

36 A warrant referred to in subsection 35(2) is sufficient authority for

- (a) the person who is responsible for the custody and transportation of the person being transferred to convey them to the place in Canada to which they are to be transported and, if applicable, deliver them to the person in charge of the place of detention;
- (b) the person in charge of the place of detention to detain the person being transferred; and
- (c) the person who is responsible for the custody and transportation of the person being transferred to deliver them to the person from the foreign entity who is responsible for the transfer.

Sex Offender Information Registration Act

Obligation

36.1 If the criminal offence identified under section 15 or 36.3 is one referred to in paragraph (a), (c), (c.1), (d), (d.1) or (e) of the definition **designated offence** in subsection 490.011(1) of the **Criminal Code**, the person is required to comply with the **Sex Offender Information Registration Act**.

2010, c. 17, s. 62; 2014, c. 25, s. 44.

When obligation begins

36.2 (1) The obligation begins on the day of the person's transfer.

Duration of obligation

- 2) The obligation
 - (a) ends 10 years after the day on which the sentence was imposed or the person was found not criminally responsible on account of mental disorder if the maximum term of imprisonment provided for in Canadian law for the equivalent criminal offence is two or five years;
 - (b) ends 20 years after the day on which the sentence was imposed or the person was found not criminally responsible on account of mental disorder if the maximum term of imprisonment provided for in Canadian law for the equivalent criminal offence is 10 or 14 years; and
 - (c) applies for life if the maximum term of imprisonment provided for in Canadian law for the equivalent criminal offence is life.

Duration – if more than one offence

- (3) The obligation applies for life if the person was convicted of, or found not criminally responsible on account of mental disorder for, more than one offence in respect of which the equivalent criminal offence is an offence referred to in paragraph (a), (c), (c.1), (d), (d.1) or (e) of the definition *designated offence* in subsection 490.011(1) of the *Criminal Code*.

Duration – if previous obligation

- (4) The obligation applies for life if the person is, or was at any time, subject to an obligation under section

490.019 or 490.02901 of the *Criminal Code* or section

227.06 of the *National Defence Act*.

Duration – if previous order

- (5) The obligation applies for life if the person is, or was at any time, subject to an order made previously under section 490.012 of the *Criminal Code* or section 227.01 of the *National Defence Act*.

Duration – if previous offence

- (6) The obligation applies for life if
- (a) the person was, before or after the coming into force of this paragraph, previously convicted of, or found not criminally responsible on account of mental disorder for, an offence referred to in paragraph (a), (c), (c.1), (d), (d.1) or (e) of the definition *designated offence* in subsection 490.011(1) of the *Criminal Code* or in paragraph (a) or (c) of the definition *designated offence* in section 227 of the *National Defence Act*;
 - (b) the person was not served with a notice under section 490.021 or 490.02903 of the *Criminal Code* or section 227.08 of the *National Defence Act* in connection with that offence; and
 - (c) no order was made under subsection 490.012(1) of the *Criminal Code* or subsection 227.01(1) of the *National Defence Act* in connection with that offence.

2010, c. 17, s. 62; 2014, c. 25, s. 45.

Not criminally responsible – equivalent offence

36.3 (1) If a request is made to transfer a person in respect of whom a verdict of not criminally responsible on account of mental disorder was rendered for an offence that consists of one or more acts that are sexual in nature, the Minister shall identify the criminal offence that, at the time the Minister receives the request, is equivalent to that offence.

Not criminally responsible – delivery of Form 1

(2) If the person is required to comply with the *Sex Offender Information Registration Act*, the Minister shall deliver a copy of Form 1 of the schedule to the Review Board of the province to which the person is transferred.

2010, c. 17, s. 62.

General Provision

Transfer to Canada not valid

37 (1) The foreign sentence of a person transferred to Canada under this Act is enforceable in Canada unless a court determines that, because the person is not a Canadian citizen, the transfer is not valid.

Minister to notify foreign entity and other ministers

(2) If the court declares that the transfer of the person to Canada is not valid, the Minister shall notify the foreign entity, the minister responsible for the *Immigration and Refugee Protection Act* and the minister responsible for the *Extradition Act* that the transfer is not valid.

Transfer to foreign entity not valid

(3) If a foreign entity declares that the transfer of a foreign offender is not valid, the Canadian sentence that they were serving before the transfer is enforceable in Canada.

Transitional Provision

Application to pending cases

38 **This Act applies in respect of all requests for transfer that are pending on the day that this section comes into force.**

Consequential Amendment

Corrections and Conditional Release Act

39 [Amendment]

References

40 [Amendments]

Coordinating Amendment

41 [Amendments]

Rep

42 [Repeal]

Coming into Force

Coming into force

* 43 **This Act, other than section 41, comes into force on a day to be fixed by order of the Governor in Council.**

* [Note: Section 41 in force on assent May 14, 2004; Act, other than section 41, in force October 29, 2004, see SI/2004-140.]

SCHEDULE

Subparagraph 8(4)(a)(ii) and subsection 36.3(2))

FORM 1

Obligation To Comply with Sex Offender Information Registration Act

To A.B., of , (occupation), (address in Canada), (date of birth), (gender):

Because you are being transferred to Canada under the

International Transfer of Offenders Act;

And because you were convicted of or found not criminally responsible on account of mental disorder for (description, date and location of offence(s)) that the Minister has identified as being equivalent to (description of offence(s)) under (applicable provision(s) of the Criminal Code), a designated offence (or designated offences) as defined in subsection 490.011(1) of the *Criminal Code*;

You are provided with this to inform you that you are required to comply with the *Sex Offender Information Registration Act* commencing on the day of your transfer.

1 You must report for the first time to the registration centre referred to in section 7.1 of the *Sex Offender Information Registration Act*, whenever required under sub-section 4(2) of that Act.

2 You must subsequently report to the registration centre referred to in section 7.1 of the *Sex Offender Information Registration Act*, whenever required under section

4.1 or 4.3 of that Act, for a period of years after the day on which you were sentenced or found not criminally responsible on account of mental disorder for the offence (or if paragraph 36.2(2)(c) or any of subsections 36.2(3) to

(6) of the *International Transfer of Offenders Act* applies, for life because you were convicted of or found not criminally responsible on account of mental disorder for (description of offence(s)) under (applicable designated offence provision(s) of the Criminal Code), a designated offence (or designated offences) within the meaning of subsection 490.011(1) of the *Criminal Code*.

3 Information relating to you will be collected under sections 5 and 6 of the *Sex Offender Information Registration Act* by a person who collects information at the registration centre.

4 Information relating to you will be registered in a database, and may be consulted, disclosed and used in the circumstances set out in the ***Sex Offender Information Registration Act***.

5 If you believe that the information registered in the database contains an error or omission, you may ask a person who collects information at the registration centre referred to in section 7.1 of the *Sex Offender Information*

Registration Act to correct the information.

- 6 You have the right to apply to a court to terminate the obligation to comply with the *Sex Offender Information Registration Act* and the right to appeal the decision of that court.
- 7 If you are found to have not complied with the ***Sex Offender Information Registration Act***, you may be subject to a fine or imprisonment, or to both.
- 8 If you are found to have provided false or misleading information, you may be subject to a fine or imprisonment, or to both.

For administrative use only:

Transferred on *(date)*.

Sentence imposed or verdict of not criminally responsible on account of mental disorder rendered on *(date)*.

2010, c. 17, s. 63.

RELATED PROVISIONS

– 2014, c. 25, s. 45.1

Review

45.1 (1) Within five years after this section comes into force, a comprehensive review of the provisions and operation of this Act shall be undertaken by such committee of the House of Commons as may be designated or established by the House for that purpose.

Report

(2) The committee referred to in subsection (1) shall, within a year after a review is undertaken pursuant to that subsection or within such further time as the House may authorize, submit a report on the review to the Speaker of the House, including a statement of any changes the committee recommends.

THE TRANSFER OF PRISONERS ACT, 2004, TANZANIA

ARRANGEMENT OF SECTIONS

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6.	Obligation to furnish information
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8.	Means of communicating information on requests
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15.	Prisoner in lawful custody during transfer
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19.	Transit prisoners
20.	Regulations
21.	Amendment of The Prisons Act, 1967

I ASSENT,
Benjamin W. Nhapa
President
4th June 2004

An Act to provide for the transfer of prisoners between the United Republic of Tanzania and other countries for the purpose of enforcing sentences of imprisonment passed upon them and to provide for matters connected therewith

(.....)

ENACTED by the Parliament of the United Republic of Tanzania

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Transfer of Prisoners Act, 2004 and shall come into operation on such date as the Minister may, by notice published in the **Gazette, appoint.** Short title and commencement
2. This Act shall apply to any prisoner who is already serving a sentence of imprisonment on the date of commencement of this Act in a country designated as such by the Minister in accordance with section 4 of this Act. Application
3. In this Act unless the context requires otherwise- “Act” means the Transfer of Prisoners Act, 2004; Interpretation
“appropriate authority”; in relation to Tanzania; means the Minister or other person or authority designated by him for the purpose of this Act, and in relation to a foreign country means the authority responsible for the administration of the law relating to the transfer of prisoners;
“Designated country” means any country designated as such pursuant to the provisions of section 4 of this Act;
“Minister” means the Minister for the time being responsible for matters relating to prisoners;
“prisoner” means a Tanzania citizen serving a sentence in a designated country or a citizen of a designated country serving a sentence in Tanzania;
“transfer” means transfer of a prisoner from a designated country to Tanzania or from Tanzania to a designated country;
“Warrant” means any judicial document authorizing the transfer of a prisoner to or from the United Republic.

PART II

TRANSFER OF SENTENCED PRISONERS TO THE UNITED REPUBLIC OF TANZANIA

- Designation of countries
4. Where an agreement has been made with any country in respect to the transfer of prisoners to Tanzania, the Minister may by an order published in the **Gazette**, declare that this part of the Act shall apply in the case of that country subject to such conditions, exceptions and qualifications as may be specified in the order, and this Part shall apply accordingly.
- Request for transfer
5. (1) Where the Minister is requested by an appropriate authority of a designated country that -

(a) a prisoner or his representative has applied for a transfer to Tanzania and that country has agreed to such transfer;

(b) that country requests such transfer and the prisoner consents to that transfer,

the Minister shall after consultation with the Attorney-General determine whether he agrees to the transfer or not.

(2) A request made under this section for the transfer of a prisoner shall be accompanied by the following particulars-

(a) the name, sex, date and place of birth, or if the date of birth is not known the approximate age of the prisoner;

(b) the prisoner's address if any, in Tanzania;

(c) a certified copy of the judgment or other order of the Court;

(d) a statement of the facts and circumstances upon which the conviction and sentence or other order were based;

(e) the nature of the sentence, if any, its date of commencement and duration;

(f) any medical or other report pertaining to the prisoner including a report of his treatment in the designated country together with any recommendation for further treatment in Tanzania; and

(g) the address of the prisoner's last residence;

(h) full names and addresses of three referees who are citizens of the United Republic of Tanzania and are at the material time residing in Tanzania;

(i) any other information which the Minister may require to enable him to consider the desirability of a transfer.

(3) The Minister may, on receipt of any application under subsection (1), request the designated country to furnish him with information indicating that -

(a) the prisoner has applied or consented to such transfer; or

(b) the prisoner by reason of his physical, mental condition or age appears to be incapable of acting for himself, and that an application has been made or consent has been given by another person on behalf of the prisoner.

(4) Where an application for transfer of a prisoner to Tanzania has been made by a prisoner or consent for transfer to Tanzania has been given by another person on behalf of a prisoner, then, if that prisoner is habitual resident of Tanzania Zanzibar, the Minister shall before making any decision, consult with the Minister responsible for the custody of offenders in the Revolutionary Government of Zanzibar regarding the application and, where there is consensus in the affirmative, the provisions of this Act shall *mutatis mutandis* apply to such transfer.

(5) In determining the request for transfer made under subsection (1), the Minister shall not agree to a transfer where the prisoner has less than six months of the sentence remaining to be served except on exceptional circumstances.

Obligation to furnish information

6. (1) Where the Minister determines request for a transfer he shall-
- (a) inform the appropriate authority of a designated country of the decision; and

Insane or mentally
disordered
prisoners

- (b) if he agrees to the transfer, issue a warrant in the prescribed form for that purpose.
 - (2) A prisoner or his representative who is aggrieved by the decision of the Minister may appeal to a court.
 - (3) Where the Minister agrees to the transfer of a prisoner, he shall issue a warrant authorizing-
 - (a) the bringing of the prisoner from the designated country to the United Republic of Tanzania;
 - (b) the taking of the prisoner by an authorized person to such place of detention as may be indicated in the warrant; and
 - (c) the detention of the prisoner in accordance with such provisions as may be provided in the warrant, being provisions appearing to the Minister to be appropriate for giving effect to the arrangements in accordance with which the prisoner is transferred.
7. Where a citizen of the United Republic, having been charged with an offence in a designated country, has been-
- (a) ordered by a court of that country to be detained because he has been found to be insane or mentally disordered or mentally defective prisoner and unfit to stand trial;
 - (b) found guilty of an offence but was insane at the time of the commission of the offence,
 - (c) that person may be transferred to the United Republic at the request of the appropriate authority of that country and with the consent of the Attorney-General.
8. (1) Every request for the transfer of a prisoner and every reply thereto shall be made in writing.
- (2) All communications relating to the transfer of a sentenced prisoner shall be through such means as may be prescribed.
9. (1) A certified copy of a judgment or other order referred to in paragraph (c) of section 5(2) shall-
- (a) be accepted as conclusive proof of the facts stated therein; and
 - (b) have effect as if it were a judgment or other order of a court of competent jurisdiction in Tanzania.
- (2) Any document required under this Act to be certified shall, if that document purports to be certified or signed by a judicial officer of authority or by the person in charge of any penal institution in the country in which the prisoner was detained, and without proof of the signature or the official character of the person by whom it purports to be signed or certified, be accepted as evidence of the facts stated therein unless the contrary is proved.
- (3) A document referred to in this section, shall when accepted-
- (a) be treated as though it was duly certified or signed in relation to a person convicted and sentenced in Tanzania; and
 - (b) subject to this Act, have effect according to the terms thereof.
10. (1) A transferred prisoner sentenced to a term of imprisonment shall -
- (a) be credited with any remission of that term

Remission	<p>to which he had become entitled at the date of his transfer in accordance with the law relating to remission of prison sentences in the designated country; and</p> <p>(b) be credited to earn remission of the remaining term of imprisonment as if he has been sentenced to a term of imprisonment of the same length by a court in Tanzania</p> <p>(2) Any remission of imprisonment referred to in paragraph (a) of subsection (1) shall be liable to forfeiture for a disciplinary offence as if it were remission earned by virtue of paragraph (b) of subsection (1).</p>
Detention of transferred prisoners	<p>11. (1) Subject to the provisions of this section, a transferred prisoner shall be detained in a prison or such other institution as the Minister may direct for the unexpired portion of his sentence.</p> <p>Cap. 13 (2) A transferred prisoner who would, if he had been convicted in Tanzania, have been treated by reason of his age as a young offender within the meaning of the Children and Young Persons Ordinance and sentenced accordingly, shall be dealt with in accordance with the provisions of that Ordinance.</p> <p>Parole 12. (1) Where a prisoner has, before transfer been released on parole in the designated country and that parole was subsequently revoked, the time spent on parole shall count towards the completion of sentence in Tanzania.</p> <p>(2) A transferred prisoner who is, at the date of his transfer on parole in the designated country in which he was convicted and sentenced shall, upon transfer to Tanzania, be treated as a person on parole, notwithstanding that such a prisoner may not be eligible for parole under the law relating to parole of Tanzania.</p> <p>(3) A breach of any condition of parole or of a conditional pardon shall render the offender liable to the same consequences as if he had been granted respite, or had been conditionally pardoned, in accordance with the laws of Tanzania.</p> <p>13. (1) Nothing in this Act shall be construed as limiting the exercise by President's prerogative of mercy provided for in Article 45 of the Constitution of the United Republic of Tanzania, 1977.</p>
Prerogative of mercy	<p>(2) Where the prerogative of mercy has been exercised in a designated country in respect of a transferred prisoner, any pardon granted pursuant thereto, shall to the extent to which that prerogative is exercised, have effect as if it were a pardon granted by the President to the transferred prisoner in terms of Article 45 of the Constitution of the United Republic of Tanzania; 1977.</p>

PART III

TRANSFER OF PRISONERS FROM THE UNITED REPUBLIC OF TANZANIA

14. (1) Where an agreement between Tanzania and a designated country has been or is deemed to have been entered into, the Principal Commissioner of Prisons shall, as far as practicable, cause to be informed prisoners who are citizens of such designated country of the purpose of the agreement.
- (2) A prisoner may apply in writing to the Minister through the Principal Commissioner of Prisons to be transferred 'to a designated country.
- (3) The Minister shall where he agrees to the application for the transfer, cause to be sent to the responsible person of the designated country-
- (a) the application made by the prisoner or certified copy of the application; and
- (b) particulars of the kind set out in section 5.

(4) Where the designated country agrees to the transfer of a prisoner, the Minister shall cause to be sent to appropriate authority a request for a warrant issued under subsection (3) authorizing the taking of the sentenced prisoner from his place of detention to a place of departure in Tanzania and his delivery at that place into the custody of the responsible authority of the country to which the sentenced prisoner is to be transferred.

(5) Where an application for transfer outside the United Republic has been made by a prisoner or consent for such transfer has been given by another person on behalf of that prisoner, then, if such prisoner is detained in Tanzania Zanzibar, the Minister shall before making any decision consult with the Minister responsible for the custody of offenders in the Revolutionary Government of Zanzibar regarding the application and, where there is consensus in the affirmative, the provisions of this Act shall *mutatis mutandis* apply to such transfer.

PART IV

CUSTODY AND TRANSFER OF PRISONERS

- Prisoner in lawful custody during transfer
15. (1) A prisoner, while being transferred to or from Tanzania, shall be deemed to be in lawful custody of the person who is duly authorized to escort him.
- (2) Where a prisoner referred to under subsection (1) escapes from such lawful custody he shall be treated in the same manner as a person escaping from custody under a warrant issued for his arrest in Tanzania.
- Continued enforcement
16. Notwithstanding the provisions of this Act, where the sentence imposed by the foreign country upon a sentenced prisoner who is transferred to Tanzania by its nature or duration incompatible with any law of the United Republic of Tanzania, the President shall invoke the provisions of Article 45 of the Constitution of the United Republic of Tanzania, 1977,
- provided that, the legal nature of the sentence imposed shall so far as possible, correspond with that of the sentence imposed by a foreign country.
17. (1) Where a prisoner is serving a sentence in Tanzania consequent upon transfer, and the Minister is satisfied that the designated country from which he has been transferred has immediately before his transfer to Tanzania exercised the power of pardon or any other power which renders the sentence no longer enforceable in that country, or that the sentence completed the prisoner shall no longer be subject to detention reason only of that sentence.
- (2) Where a foreign sentenced prisoner is serving a sentence in a designated country consequent upon his transfer from Tanzania under this Act, and the power which renders the sentence no longer enforceable in Tanzania has been exercised or the sentence has been completed, the Minister shall forthwith inform the designated country to Which the foreign prisoner was transferred that he is no longer subject to detention by reason 'only of that Sentence.
- Cost of transfer of sentenced prisoners
18. (1) Subject to the provisions of this section, the cost of a transfer of a prisoner under this Act shall be borne out by Tanzania and the designated country in such proportion as may be agreed upon by them.
- (2) Subject to the provisions of subsection (4), in the case of a transfer of a prisoner who is a Tanzanian citizen, the expenses of such transfer shall be borne by such prisoner or by his agent, and for this purpose the Minister shall have the power to require a person with or without a surety to give an undertaking to pay the expenses to the Minister.
- (3) Any expenses referred to in subsection (2) shall be regarded as a civil debt owed to the Government of Tanzania.
- (4) The provisions of subsections (2) and (3) shall not apply where

it appears to the Minister that it would be unreasonable for him to exercise the power conferred by these subsections because:

- (a) of the exceptional circumstances of the case; or
- (b) the means of such a sentenced prisoner are insufficient to meet the expenses, and their recovery, whether immediately or at some future time, from such sentenced prisoner or from any other source is impracticable.

19. Where:-

- (a) a designated country has agreed with a third country to transfer a prisoner into or out of its territory pursuant to an arrangement relating to the transfer of prisoners; and
- (b) that country seeking permission for the prisoner and escorting officer to land and transit in Tanzania during the course of the transfer,

Amendment of the Prisons Act, 1967- shall apply to the Minister, permission to land and transit in Tanzania.

(2) The Minister may refuse to issue a permit for transit where

- (a) the person sought to be transferred is a citizen of Tanzania;
- (b) the offence for which the sentence was imposed is not an offence under the laws of Tanzania; or
- (c) the person being transferred is wanted in Tanzania in respect of any offence against the laws of Tanzania

(3) A permit issued under subsection (1) shall not authorize the holding of the prisoner in custody in Tanzania for such time as is reasonably necessary to facilitate the transfer between the requesting country and the country of destination.

(4) A prisoner who is being transferred pursuant to a permit issued under subsection (1) shall not while in Tanzania, be detained or otherwise subjected to any restriction on his liberty in respect of an offence committed or sentence imposed prior to his departure from the territory of the designated country.

20. (1) The Minister may make regulations as may be necessary for better and proper administration of this Act.

(2) Regulations made under this section may provide for-

- (a) the form and manner in which a prisoner may apply to be transferred to or from Tanzania;
- (b) any matter which is required or permitted to be prescribed under this Act; and
- (c) generally any matter in respect of which the Minister considers it necessary or expedient to make regulations for carrying into effect the purposes of this Act.

(3) Different regulations may be made in respect of different designated countries.

Amendment of the prisons Act, 1967- 21. The Prisons Act, 1967 is amended in section 25 by deleting a fullstop at the end of subsection (1) and inserting a "comma" and the following phrase "or an order or direction made in pursuance to the provisions of the Transfer of Prisoners Act, 2004."

Passed in the National Assembly on the 19th April 2004

Clerk of the National Assembly

LAWS OF KENYA

TRANSFER OF PRISONERS ACT

NO. 22 OF 2015

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NO. 22 OF 2015

TRANSFER OF PRISONERS ACT

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41. Arrest or persons escaping from custody.
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43. Power to make regulations.

NO. 22 OF 2015

TRANSFER OF PRISONERS ACT

[Date of assent: 8th October, 2015.]

[Date of commencement: 1st January, 2016.]

AN ACT of Parliament to facilitate the implementation of arrangements made for the transfer of persons serving sentence of imprisonment for criminal offences committed in Kenya or in countries outside Kenya, pursuant to subsisting agreement

[Act No. 22 of 2015, L.N. 257/2015.]

PART I – PRELIMINARY

1. Short title and commencement

This Act may be cited as the Transfer of Prisoners Act, 2015.

2. Object of Act

The object of this Act is to facilitate the transfer of prisoners between Kenya and countries with which Kenya has entered into agreements for the transfer of prisoners to enable the prisoners to serve out their sentences of imprisonment in the countries of their nationality or in countries with which they have community ties.

3. Interpretation

(1) In this Act, unless the context otherwise requires—

“administering country” means the country of origin of a prisoner serving a sentence in Kenya;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for immigration;

“Cabinet Secretary concerned” means the Cabinet Secretary responsible for matters relating to the matter for which the sentence has been imposed;

“community ties” shall have the meaning assigned to it by subsection (4) and (5);

“continued enforcement method” in relation to a sentence of imprisonment, means enforcing the sentence—

- (a) without modifying the duration of the sentence of imprisonment or its legal nature; or
- (b) with only such modifications to the duration of the sentence or its legal nature as the Attorney-General may consider are necessary to ensure that enforcement of the sentence is consistent with the law of Kenya;

“escort officer” in relation to a prisoner, means the police officer, prison officer or other person specified in the warrant authorizing the transfer of the prisoner under this Act as the escort officer for the prisoner;

“extradition country” means any country that is declared by the regulations to be an extradition country;

“foreign law” means a prisoner who is a citizen of an administering country;

“Kenyan citizen” shall have the meaning assigned to it under the Kenyan Citizenship and Immigration Act, 2011;

“mental illness” shall have the meaning assigned to it under the Mental Health Act;

“mental impairment” includes senility, intellectual disability, mental illness, damage or severe personality disorder;

“mentally impaired prisoner” means—

- (a) a person serving a sentence of imprisonment, who is acquitted for an offence on the ground of mental impairment; or
- (b) a person serving a sentence of imprisonment because the person has been found mentally unfit to stand trial;

“national” in relation to a country, means a person who is a citizen of the country under that country’s law;

“non-parole period” in relation to a sentence of imprisonment, means the part of the term of imprisonment for that sentence during which the person is not to be released on parole, whether that part of the term is fixed or recommended by a court or fixed by operation of law;

“police officer” means a member of the National Police Service;

“prison officer” means a person appointed or employed to assist in the management of a prison;

“prisoner” means a person who is serving a sentence in a country outside

Kenya and includes—

- (a) a mentally impaired prisoner; and
- (b) a person who has been released on parole;

“prisoner’s representative” means a person whom the prisoner has authorized to consent to the prisoner’s transfer as set out to in section 6;

“Regulations” means regulations made under this Act and in force;

“release on parole” means any form of conditional release in the nature of parole, and includes—

- (a) release on probation; and
- (b) release on licence to be at large;

“responsible authority” means the authority responsible for matters related to correctional services in a sentencing country;

“sentence” means any punishment or measure involving deprivation of liberty ordered by a court for a determinate or indeterminate term in the exercise of its criminal jurisdiction, and includes any direction or order given or made by the court with respect to the commencement of the punishment or measure;

“sentencing country” means a country in which a sentence of imprisonment is imposed and the prisoner is held in custody;

“**superintendent**” in relation to a prison means the person for the time being in charge of the prison;

“transfer country” means a foreign country whose citizen or with which a person with community ties is imprisoned in Kenya;

“**treaty**” includes a convention, protocol, agreement or arrangement.

- (2) For the purposes of this Act, the following persons shall be deemed to be serving a sentence of imprisonment—
 - (a) a person who has been released by a court from serving the whole or a part of a sentence of imprisonment upon giving a security, with or without sureties by recognizance or otherwise, that the person will comply with conditions relating to the person’s behavior and in relation to whom action can no longer be taken because of a breach of a condition of the security or because of the expiration of the security;
 - (b) a person who, through prerogative or mercy prerogative or discretion the exercise of the or other executive given by law, is no longer required to serve the whole or part of a sentence of imprisonment;
 - (c) a person on whom a sentence of imprisonment has been imposed but which has not yet begun.
- (3) If a sentence of death imposed on a person has been commuted to a term of imprisonment or to imprisonment for life, this Act shall apply to and in relation to the person as if the sentence of death had been a sentence of imprisonment for that term or for life.
- (4) For the purposes of this Act, a prisoner has community ties with a transfer country if—
 - (a) the prisoner’s principal place of residence immediately before being sentenced to imprisonment in Kenya was in the transfer country;
 - (b) the prisoner’s parent, grandparent or child has a principal place of residence in the transfer country;
 - (c) the prisoner has a close continuing relationship involving frequent contact and a personal interest in the other person’s welfare with anyone whose principal place of residence is in the transfer country.
- (5) For the purposes of this Act, a prisoner has community ties with Kenya if—
 - (a) the prisoner’s principal place of residence immediately before being sentenced to imprisonment in the transfer country was in Kenya;
 - (b) the prisoner’s parent, grandparent or child has a principal place of residence in Kenya;
 - (c) the prisoner is married to anyone whose principal place of residence is in Kenya;
 - (d) the prisoner has a close continuing relationship, involving frequent personal contact and a personal interest in the other person’s welfare with anyone whose principal place of residence is in Kenya

4. Application of the Act

This Act shall apply in case where an agreement for the transfer of prisoners subsists between Kenya and a sentencing country.

PART II – TRANSFER GENERALLY

5. Attorney-General's consent required for transfer

- (1) A prisoner may be transferred upon a request or application—
 - (a) to the government of Kenya by the sentencing country;
 - (b) by the Government of Kenya as the sentencing country; or
 - (c) by or on behalf of the prisoner to the Attorney- General, and subsequent action by the Attorney- General.
- (2) Upon application made in writing to the Attorney-General by a prisoner serving a sentence of imprisonment in a prison of a sentencing state, the Attorney-General shall communicate such application to the sentencing state for consideration.
- (3) If the Attorney-General is informed by the responsible authority of a sentencing country that it agrees with a request or an application for transfer of a prisoner to Kenya, the Attorney-General shall advise the responsible authority as to whether or not the Government of Kenya agrees to such transfer, and if both governments agree thereto, the Attorney-General shall initiate the transfer procedure.

6. Consent of prisoner and prisoner's representative

- (1) A prisoner may consent to being transferred under this Act only if the prisoner is an adult and capable of so consenting.
- (2) Where a prisoner is a minor, or is incapable of consenting to a transfer under this Act, such consent may be given by the prisoner's parent, guardian or legal representative.
- (3) A prisoner or prisoner's representative has a right to be informed, in a language, including sign language or Braille, in which the prisoner or prisoner's representative is able to communicate with reasonable fluency, of the legal consequences of transfer of the prisoner under this Act before consenting to the transfer.
- (4) In the case of a prisoner in a transfer country, a person who has not reached the age that under the law of that country is the age at which a person is considered for legal purposes to be an adult, such person shall not give any consent under this Act.

7. Conditions for transfer of prisoners

A prisoner may be transferred between Kenya and a transfer country under this

Act if the following conditions are satisfied—

- (a) the prisoner is eligible for transfer from or to Kenya;
- (b) Kenya and the transfer country have an agreement for the transfer of the prisoner under this Act;
- (c) the prisoner or the prisoner's representative has consented in writing to the transfer on the agreed terms;
- (d) the appropriate consent in writing has been given to transfer on the agreed terms;
- (e) the relevant conditions for transfer of the prisoner are satisfied;
- (f) the transfer of the prisoner is not likely to prevent the surrender of the prisoner to any extradition country—
 - (i) known by the Attorney-General to have requested the extradition of the prisoner or to have expressed interest in extraditing the prisoner; or
 - (ii) that, in the opinion of the Attorney-General, is reasonably likely to request the prisoner's extradition.

8. Eligibility for transfer of prisoners to Kenya

- (1) A prisoner shall be eligible for transfer to Kenya from a sentencing country under this Act if the prisoner—
 - (a) is a Kenyan citizen;
 - (b) is permitted to travel to, enter and remain in Kenya indefinitely under the Kenya Citizenship and Immigration Act, 2011 and has community ties with Kenya; and
 - (c) the offence for which the sentence is imposed is punishable under Kenyan law.
- (2) If a request is made for the transfer of a prisoner to Kenya, the Attorney- General shall consult with the Cabinet Secretary responsible for immigration about whether the prisoner—
 - (a) is eligible under subsection (1) for a transfer to Kenya; or
 - (b) is likely to be eligible under subsection (1) for a transfer to Kenya at a future time specified by the Attorney-General.

9. Conditions for transfer from Kenya

- (1) The conditions for the transfer from Kenya of a prisoner, other than a mentally impaired prisoner, shall be as follows—
 - (a) neither the sentence of imprisonment imposed by the Kenyan court nor the conviction on which it is based is subject to appeal; and
 - (b) subject to subsection (3), the acts or omissions constituting the offence in relation to which the prisoner is serving the sentence in Kenya would, if the acts or omissions had occurred in the transfer country, have constituted an offence in transfer country; and
 - (c) in a case where the sentence of imprisonment is determinate, on the day of receipt of the request for transfer—
 - (i) at least six months of the prisoner's sentence remains to be served, whether or not the prisoner has been released on parole; or
 - (ii) a period shorter than six months remains to be served and the Attorney-General has decided that, in the circumstances, transfer for a shorter period is acceptable.
- (2) The conditions for transfer from Kenya of a mentally impaired prisoner shall be deemed to be satisfied if—
 - (a) neither the sentence of imprisonment imposed by the Kenyan court nor the acquittal or finding of unfitness to stand trial on which it is based is subject to appeal; or
 - (b) subject to subsection (3), the acts or omissions constituting the offence—
 - (i) in respect of which the prisoner was charged but acquitted on the ground of mental impairment or found unfit to stand trial; and
 - (ii) in relation to which the prisoner is serving the sentence in Kenya, would, if the acts or omissions had occurred in the transfer country, have constituted an offence in the transfer country; and
 - (c) in a case where the sentence of imprisonment is determinate, on the day of receipt of the request for transfer—
 - (i) at least six months of the prisoner's sentence remains to be served, whether or not any review affecting the duration of the sentence is pending; or
 - (ii) a period shorter than six months remains to be served, and the Attorney-General has decided that, in the circumstances of the case, transfer for a shorter period is acceptable.
- (3) The Attorney-General may exempt particular cases from the requirements of subsection (1) (b) or (2) (b).

10. Transfer to Kenya

- (1) The conditions for the transfer to Kenya of a prisoner, other than a mentally impaired prisoner, shall be as follows—
 - (a) neither the sentence of imprisonment imposed by the court in sentencing country nor the conviction on which it is based is subject to appeal under the law of that country;
 - (b) subject to subsection (3), the acts or omissions constituting the offence in relation to which the prisoner is serving the sentence in the sentencing country would, if the acts or omissions had occurred in Kenya, have constituted an offence in Kenya; and
 - (c) in a case where the sentence of imprisonment is determinate, on the day of receipt of the request for transfer—
 - (i) at least six months of the prisoner's sentence remains to be served (whether or not the prisoner has been released on parole); or
 - (ii) a period shorter than six months remains to be served and the Attorney-General has decided that, in the circumstances, transfer for a shorter period is acceptable.
- (2) The conditions for transfer to Kenya of a mentally impaired prisoner shall be as follows—
 - (a) neither the sentence of imprisonment imposed by the sentencing country's court nor the acquittal or finding of unfitness to stand trial on which it is based is subject to appeal under the law of the sentencing country; and
 - (b) subject to subsection (3), the acts or omissions constituting the offence—
 - (i) in respect of which the prisoner was charged but acquitted on the ground of mental impairment or found unfit to stand trial; and
 - (ii) in relation to which the prisoner is serving the sentence in the sentencing country.would, if the acts or omissions had occurred in Kenya, have constituted an offence in Kenya; and
 - (c) in a case where the sentence of imprisonment is determinate, on the day of receipt of the request for transfer a period of six months or less of the prisoner's sentence remains to be served, whether or not any review affecting the duration of the sentence is pending, and the Attorney-General had decided that, in the circumstances, transfer for a shorter period is acceptable.
- (3) The Attorney-General may exempt any particular cases from the requirements of subsection (1) (b) or (2) (b).

PART III — TRANSFER FROM KENYA

11. Applications for transfer from Kenya

A prisoner serving a sentence of imprisonment in Kenya, or the prisoner's representative, may apply to the Attorney-General, in the manner prescribed by the regulations, for transfer of the prisoner to a transfer country to complete serving the sentence on terms agreed in accordance with this Act.

12. Preliminary consideration of application for transfer of a prisoner from Kenya

- (1) The Attorney-General shall forward a copy of an application received under section 11 to each Cabinet Secretary, is any, who has or is likely to have an interest in the transfer.
- (2) A Cabinet Secretary to whom an application is forwarded shall advise the Attorney-General of any matter that the Cabinet Secretary considers relevant to the processing of the application.
- (3) A Cabinet Secretary to whom an application is forwarded may request the Attorney-General to obtain from the transfer country information that is relevant to the Cabinet Secretary's assessment of the application.
- (4) The Attorney-General—
 - (a) shall notify a transfer country of an application for transfer to that country; and

- (b) may request the transfer country to indicate its provisional views on the application, including the method by which it is likely that the sentence of imprisonment would be enforced by the transfer country if, following a formal request for transfer, it consents to the transfer.

(5) The Attorney-General may provide the transfer country with—

- (a) details of any request for extradition of the prisoner that has been made under the Extradition (Contiguous and Foreign countries) Act (Cap. 76) or the Extradition (Commonwealth countries) Act or of any expression of interest in extradition made by another country or of any country that, in the opinion of the Attorney-General, may wish to extradite the prisoner; and
- (b) any other information that the Attorney-General considers may assist the transfer country in giving its provisional views on the proposed transfer.

13. Formal request for transfer

- (1) The Attorney-General may make a formal request in writing for the transfer of a prisoner from Kenya to a transfer country.
- (2) In deciding whether to make a formal request under subsection (1), the Attorney-General may take into account any matter the Attorney-General considers relevant, including any matter advised by a Cabinet Secretary.
- (3) Any transfer granted under this section shall be subject to the provision of section 8.

14. Information to accompany a formal request

A formal request for transfer from Kenya to a transfer country shall be accompanied by—

- (a) information required to be provided in accordance with arrangements made with the transfer country; and
- (b) any other available information which the Attorney-General considers relevant to the request and that may appropriately be provided.

15. Government's consent to transfer from Kenya

- (1) The Attorney-General shall notify the prisoner or the prisoner's representative and any Cabinet Secretary who appears to the Attorney-General to be responsible for matters which relate to the transfer—
 - (a) of the decision of the transfer country with respect to the request;
 - (b) where the consent is given, of the proposed method by which the sentence of imprisonment shall be enforced by the transfer country; and
 - (c) any other proposed terms of the transfer.
- (2) The prisoner or prisoner's representative and the Cabinet Secretary concerned shall advise the Attorney-General as to whether they consent to the transfer on the terms proposed by the transfer country.
- (3) The Attorney-General shall—
 - (a) decide whether or not consent should be given for the transfer of a prisoner on the terms proposed by the transfer country; and
 - (b) notify the transfer country whether consent—
 - (i) has been given for the transfer of the prisoner on those terms;
 - or
 - (ii) shall be given if the transfer country agrees to vary the terms proposed in a particular way.

16. Issues of warrant for transfer from Kenya

The Attorney-General may, subject to Part II, issue a warrant, in the form prescribed by the regu-

lations, for the transfer of a prisoner from Kenya to a transfer country if written consent has been given by the prisoner or the prisoner's representative—

- (a) on the terms proposed by the transfer country; or
- (b) where the transfer country has agreed to vary the terms, on the terms as varied.

17. Warrants for transfer from Kenya

- (1) A warrant for the transfer of a prisoner from Kenya shall authorize the transfer of the prisoner from Kenya to the transfer country to complete serving the sentence of imprisonment in accordance with terms agreed under this Act.
- (2) A warrant for transfer from Kenya shall—
 - (a) specify the name and date of birth of the prisoner to be transferred; (b) specify the transfer country to which the prisoner is to be transferred;and
 - (c) confirm that both the prisoner's representative and the transfer country have consented to the transfer.
- (3) If the prisoner is a prisoner other than a prisoner who has been released on parole, the warrant shall—
 - (a) require the superintendent of the prison, or the person in charge of the hospital or other place in which the prisoner is serving the sentence of imprisonment, to release the prisoner into the custody of a person specified in the warrant; and
 - (b) authorize the person to take the prisoner to a place in Kenya and, if necessary, to detain the prisoner in custody for the purpose of placing the prisoner in the custody of an escort officer for transport out of Kenya;
 - (c) authorize the escort officer to transport the prisoner in custody out of Kenya to the transfer country for surrender to a person appointed by the transfer country to receive the prisoner.
- (4) If the prisoner has been released on parole, the warrant shall—
 - (a) specify any approvals, authorities, permissions or variations to the parole or other order or licence that have been made under any Kenyan law; and
 - (b) specify any procedures for the transfer of the prisoner to the transfer country that have been agreed on with the transfer country and give any necessary authorisation and directions.
- (5) The Attorney-General may take any action that is necessary to ensure that the warrant is executed in accordance with its intended effect.

18. Cancellation of warrant for transfer from Kenya

- (1) The Attorney-General may cancel a warrant for transfer from Kenya at any time before the prisoner to whom it relates leaves Kenya.
- (2) Without prejudice to the generality of subsection (1), the Attorney-General shall cancel the warrant if the prisoner or prisoner's representative or the transfer country concerned, withdraws consent to the transfer.

PART IV — TRANSFER TO KENYA

19. Application for transfer

An application for transfer of a prisoner to Kenya may be made by the prisoners or by the Attorney-General in accordance with section 5.

20. Transfer request from sentencing country

The Attorney-General may consent to a request from a sentencing country for the transfer of a prisoner serving a sentence of imprisonment in that country to Kenya to complete serving the sentence on terms agreed under this Act, if the Attorney-General is satisfied that such a transfer fulfils the conditions set out in section 9.

21. Information to accompany request

Before consenting to the transfer of a prisoner to Kenya under this Part, the Attorney-General may request the sentencing country to provide—

- (a) details of any request for the transfer of the prisoner that has been made to the sentencing country or of any country that has expressed interest in extradition of the prisoner or that is likely, in the opinion of the transfer country, to request extradition; and
- (b) any other information which the Attorney-General considers relevant to the assessment of whether consent should be given for the transfer of the prisoner to Kenya.

22. Enforcement of sentence by court in sentencing country

Before consenting to the transfer of a prisoner to Kenya under this Part, the Attorney-General shall—

- (a) decide, in accordance with Part V, the method by which the sentence of imprisonment imposed by the sentencing country will be enforced in Kenya if the prisoner is transferred; and
- (b) advise the sentencing country of this and of any other proposed terms on which consent is proposed to be given to the transfer.

23. Government's consent to transfer to Kenya

(1) The Attorney-General shall provide each Cabinet Secretary concerned with—

- (a) any information that the transfer country has given to the Attorney-General; and
- (b) particulars of—
 - (i) the method by which the Attorney-General considers the sentence of imprisonment imposed by the transfer country could be enforced by Kenya; and
 - (ii) any other proposed terms of the transfer.

(2) Each Cabinet Secretary concerned shall advise the Attorney-General in writing as to whether the Cabinet Secretary consents to the transfer on the terms proposed as soon as possible after receiving the notification.

24. Formal consent to transfer

The Attorney-General shall—

- (a) formally notify the sentencing country as soon as possible after all appropriate consents to the transfer have been given; and
- (b) ask the sentencing country to formally consent to the transfer on the terms proposed by Kenya and to confirm the prisoner's formal consent to transfer on those terms.

25. Issue of warrant for transfer to Kenya

The Attorney-General may issue a warrant, in the form prescribed by the regulations, for the transfer of the prisoner from a transfer country to Kenya if written consent has been given by the prisoner or prisoner's representative, or, where the transfer country has agreed to vary the terms, on the terms as varied.

26. Warrants for transfer to Kenya

(1) The sentencing country shall issue a warrant to authorize the transfer of the prisoner from the sentencing country to Kenya to complete serving the sentence of imprisonment imposed by the sentencing country in accordance with terms agreed under this Act.

(2) A warrant for transfer to Kenya shall—

- (a) specify the name and date of birth of the prisoner to be transferred;
- (b) specify the sentencing country from which the prisoner is to be transferred; and
- (c) confirm that—

- (i) the prisoner's or prisoner's representative; and
 - (ii) the transfer country,
- have each given their written consent to the transfer.
- (3) If the prisoner is a prisoner other than a prisoner who has been released on parole, the warrant shall—
- (a) authorize an escort officer to collect the prisoner from a place, whether in Kenya or the sentencing country specified in the warrant;
 - (b) if the place is in the transfer country—
 - (i) authorize the escort officer to transport the prisoner in custody to Kenya for surrender to a person appointed by the Attorney- General to receive the prisoner; and
 - (ii) if appropriate, authorize the escort officer to escort the prisoner to the prison, hospital or other place, in Kenya, for the prisoner to begin serving the remainder of the sentence of imprisonment in accordance with this Act;
 - (c) if the prisoner is escorted to a prison, require the superintendent of the prison to take the prisoner into custody to be dealt with in accordance with the terms agreed under this Act; and
 - (d) if the prisoner is escorted to a hospital or other place, authorize the detention of the prisoner in that hospital or place to be dealt with in accordance with the terms agreed under this Act.
- (4) If the prisoner has been released on parole, the warrant shall—
- (a) specify the procedures (if any) for the transfer of the prisoner to Kenya that have been agreed upon with the sentencing country; and
 - (b) give any necessary authorization and directions.
- (5) The Attorney-General may give any other direction or approval necessary to ensure the warrant is executed in accordance with its terms.

27. Cancellation of warrant

- (1) The Attorney-General may cancel a warrant for transfer to Kenya at any time before the prisoner to whom it relates leaves the sentencing country.
- (2) The Attorney-General shall cancel the warrant if the prisoner or the prisoner's representative or the sentencing country concerned, withdraws consent to the transfer.

28. Effect of warrant on prisoner's sentence

The prisoner to whom a warrant relates shall be entitled to be released when the prisoner has completed serving the sentence of imprisonment in accordance with this Act unless any other law authorizes the prisoner's detention in respect of an offence other than that in relation to which the sentence of imprisonment was imposed.

PART V – ENFORCEMENT OF SENTENCE

29. Prisoner transferred from Kenya taken to be prisoner of transfer country

On transfer of a prisoner from Kenya under this Act, the sentence of imprisonment is taken for all purposes in the transfer country, and the prisoner is a prisoner of the transfer country.

30. Pardon, amnesty or commutation of sentences of imprisonment of prisoners transferred from Kenya

- (1) During the period in which a sentence of imprisonment is served in a transfer country by a prisoner transferred from Kenya under this Act, the prisoner's conviction may be quashed or otherwise nullified and the prisoner may be pardoned or granted any amnesty or commutation of sentence of imprisonment that could be granted under Kenyan law as if the prisoner were serving the sentence of imprisonment in Kenya.
- (2) If, during the period in which the sentence of imprisonment is served by a prisoner transferred

from Kenya under this Act to a transfer country, the prisoner's conviction is quashed or otherwise nullified or the prisoner is pardoned or granted amnesty or commutation of sentence of imprisonment under Kenyan law, the Attorney-General shall immediately notify the transfer country that the prisoner should no longer be detained in custody or otherwise subjected to detention or supervision only because of the sentence of imprisonment.

31. Sentence enforcement in Kenya

The Attorney-General may direct a sentence of imprisonment imposed on a prisoner by a court of a sentencing country to be enforced on transfer of the prisoner to Kenya under this Act by means of—

- (a) the continued enforcement method; or
- (b) the converted enforcement method.

32. Duration and nature of enforced sentence

- (1) The sentence of imprisonment to be enforced under section 31 may not be more severe, in legal nature or duration, than the sentence of imprisonment imposed by the sentencing country.
- (2) Without prejudice to subsection (1)—
 - (a) if the sentence of imprisonment imposed by the transfer country is for a determinate period, the sentence of imprisonment to be enforced under this Act may not be for a longer duration than that sentence;
 - (b) if the sentence of imprisonment imposed by the sentencing country is for an indeterminate period, the sentence of imprisonment to be enforced under this Act shall, as far as practicable, be subject to similar terms affecting the duration of the sentence as those imposed in the transfer country; and
 - (c) the sentence of imprisonment to be enforced under this Act may not be of a kind that involved a more severe form of deprivation of liberty than the sentence of imprisonment imposed by the sentencing country.

33. Directions concerning enforcement of sentence

- (1) In ordering that a sentence of imprisonment be enforced by the continued enforcement method or the converted enforcement method, the Attorney-General may, subject to section 32, give such directions as the Attorney-General may consider appropriate as to the duration and legal nature of the sentence of imprisonment as it is to be enforced under this Act.
- (2) Without prejudice to the generality of subsection (1), directions may be made—
 - (a) as to the entitlement of the prisoner to be released on parole following the transfer; and
 - (b) if the prisoner is a mentally impaired prisoner, as to any review to be undertaken of the mental condition of the prisoner and treatment to be provided to the prisoner following the transfer.
- (3) For the purpose of forming an opinion or exercising a discretion under this section, the Attorney-General shall have regard to such factors as the Attorney-General may consider relevant, including—
 - (a) any submissions made by the sentencing country;
 - (b) the sentence of imprisonment that might have been imposed if the acts and omissions constituting the offence had been committed in Kenya; and
 - (c) any limitations or requirement that in relation to the way in which a sentence of imprisonment imposed by the sentencing country may be enforced in Kenya arising from any agreement to which Kenya and the sentencing country are parties.

34. No appeal or review of sentences of imprisonment imposed by the transfer country, etc

- (1) A prisoner who is transferred to Kenya under this Act shall have no right of appeal or review in Kenya against the sentence of imprisonment imposed by the court of the sentencing country.

- (2) A prisoner shall have no right of appeal against a decision of the Attorney- General concerning the enforcement in Kenya under this Act of a sentence of imprisonment imposed by a court of a sentencing country.

35. Prisoners who are transferred to Kenya

- (1) Any period of the sentence of imprisonment as originally imposed by the sentencing country served by the prisoner before the transfer shall be deemed to have been served under the sentence of imprisonment as enforced under this Act.
- (2) While serving a sentence of imprisonment imposed by a sentencing country that is enforced under this Act, a prisoner who is transferred to Kenya under this Act may be detained in a prison, hospital or any other place in Kenya.
- (3) Any Kenyan law, practice or procedure concerning the detention of prisoners shall apply in relation to the prisoner on and after transfer to Kenya to the extent that it is capable of applying concurrently with this Act.
- (4) Without prejudice to subsection (3), Kenyan law and practice and procedure relating to the following matters shall be applicable to a prisoner who is transferred to Kenya under this Act—
- (a) conditions of imprisonment and treatment of prisoners; (b) the release on parole of prisoners;
 - (c) the classification and separation of prisoners;
 - (d) the removal of prisoners from one prison to another;
 - (e) the removal of prisoners between prisons and hospitals or other places or between one hospital to other place and another;
 - (f) the treatment of mentally impaired prisoners; and
 - (g) the eligibility for participation in prison programs.
- (5) A prisoner shall be entitled to any remission or reduction of the sentence of imprisonment imposed by the transfer country for which the prisoner would be eligible in accordance with any applicable Kenya law if the sentence were a sentence of imprisonment for an offence against a law of Kenya.
- (6) Nothing in this section shall prevent the sentencing country from pardoning or granting amnesty to or quashing or otherwise nullifying the conviction of a prisoner serving a sentence of imprisonment imposed by the sentencing country in Kenya in accordance with this Act, or from commuting the sentence.
36. Pardon, amnesty or commutation of sentences of imprisonment of prisoners transferred to Kenya
- (1) During the period in which a sentence of imprisonment is served in Kenya by a prisoner transferred to Kenya under this Act, the prisoner may be pardoned or granted any amnesty or commutation of sentence of imprisonment that could be granted under Kenyan law if the sentence of imprisonment had been imposed for an offence against a Kenyan law.
- (2) The Attorney-General may, in a form prescribed by the regulations, direct that a prisoner may not be detained in custody or otherwise be subjected to detention or supervision in Kenya under a sentence or imprisonment imposed by a sentencing country and enforced under this Act only because of that sentence of imprisonment if, during the period in which the sentence of imprisonment is served in Kenya, the sentencing country notifies the Attorney-General that the prisoner's conviction has been quashed or otherwise nullified or that the prisoner has been pardoned or granted amnesty or commutation of sentence of imprisonment under the law of the transfer country.

37. Recovery of costs and expenses of transfer

The terms agreed under this Act for the transfer of a prisoner may, if the Attorney-General considers it appropriate, include terms relating to the recovery of the costs and expenses reasonably incurred in transferring the prisoner.

38. Prisoner and prisoner's representative to be kept informed

The Attorney-General shall ensure that any prisoner or prisoner's representative who makes a request for transfer under this Act is kept informed of the progress of the request.

39. Power of Attorney-General to delegate powers under this Act

The Attorney-General may, in writing, delegate all or any of the Attorney-General's powers under this Act or the regulations to the Solicitor-General or to any Deputy Solicitor-General.

40. Transit of prisoners through Kenya

(1) The following provisions apply to the transit in custody through Kenya of a prisoner who is being transferred from a sentencing country to another transfer country—

- (a) the prisoner may be transported in custody through Kenya for the purposes of the transfer;
- (b) if the aircraft or ship that transports the prisoner makes a landing or calls at a place in Kenya—
 - (i) the escort officers may hold the prisoner in custody at the place for a period not exceeding twenty-four hours;
 - (ii) police officers may provide such assistance at the place as is reasonable and necessary to facilitate transporting of the prisoner in custody;
 - (iii) any magistrate to whom application is made, in a form prescribed by the regulations, by or on behalf of the sentencing country concerned, shall issue a warrant ordering a person specified in the warrant to hold the prisoner in custody for such period or periods as the magistrate may consider necessary to facilitate the transport of the prisoner;
 - (iv) the Attorney-General may, on application made by the sentencing country concerned, authorize a magistrate in writing to issue a warrant ordering a person named in the warrant to hold the prisoner in custody for a further specified period in order to facilitate the transporting of the prisoner; or
 - (v) the Attorney-General may, at any time, direct a person having custody of the prisoner under paragraph (iv) to release the prisoner from custody.

(2) The total period or periods of any custody in accordance with paragraph (1) (b) may not exceed ninety-six hours.

41. Arrest or persons escaping from custody

- (1) A police officer may, without a warrant, arrest a person if the officer believes on reasonable grounds that the person has escaped from custody authorized by this Act.
- (2) As soon as practicable after arresting a person in accordance with subsection (1), a police officer shall take the person before a magistrate.
- (3) If the magistrate is satisfied that the person has escaped from custody authorized by this Act, the magistrate may issue a warrant authorizing any police officer to return the person to the custody from which the person escaped.

42. Prisoner being transferred to or from Kenya under warrant in lawful custody

A prisoner who is being transferred to or from Kenya under a warrant issued under this Act shall be deemed to be in lawful custody for the purpose of sections

122,123 and 124 of the Penal Code (Cap. 63).

43. Power to make regulations

- (1) The Attorney-General may make regulations prescribing matters—
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Regulations made under subsection (1) may make provision for or with respect to information to be provided to prisoners and other persons for the purposes of this Act relating to the international transfer of prisoners.
- (3) The Regulations may prescribe offences for contravening, or failing to comply with, any of the regulations and provide for the imposition of a fine for such an offence not exceeding one hundred thousand shillings.

ANSWER TO QUESTION NO. 34, RAJYA SABHA, 2015

Transfer of Indian prisoners in foreign countries

S. No.	Name of Country	No. of Indian prisoners in various foreign jails at present, country-wise.
1	Angola	2
2	Armenia	2
3	Austria	5
4	Australia	51
5	Azerbaijan	1
6	Bahrain	106
7	Bangladesh	223
8	Belgium	27
9	Bhutan	24
10	Brunei	2
11	Bulgaria	1
12	Cambodia	2
13	Canada	23
14	China	117
15	Colombia	5
16	Cyprus	8
17	Denmark	18
18	Egypt	6
19	Fiji	2
20	France	51
21	Germany	1
22	Ghana	6
23	Greece	40
24	Indonesia	25
25	Iran	36
26	Iraq	9
27	Ireland	1
28	Israel	4
29	Italy	145
30	Japan	5
31	Jordan	5
32	Kenya	3
33	Korea (Republic of)	1
34	Kuwait	290
35	Kyrgyzstan	1
36	Madagascar	1

37	Malaysia	319
38	Maldives	26
39	Mauritius	10
40	Mexico	3
41	Morocco	1
42	Myanmar	76
43	Nepal	614
44	New Zealand	9
45	Nigeria	13
46	Oman	75
47	Pakistan	352
48	Philippines	5
49	Poland	3
50	Portugal	4
51	Qatar	96
52	Romania	1
53	Russian Federation	5
54	Saudi Arabia	1508
55	Senegal	5
56	Seychelles	2
57	Singapore	158
58	South Africa	16
59	Spain	60
60	Sri Lanka	73
61	Suriname	1
62	Sweden	1
63	Switzerland	6
64	Syria	1
65	Tanzani	1
66	Thailand	76
67	Uganda	3
68	U.A.E.	785
69	UK	437
70	Ukraine	1
71	U.S.A	291
72	Yemen	4
	TOTAL	6290

**GOVERNMENT OF INDIA
MINISTRY OF EXTERNAL AFFAIRS
LOK SABHA UNSTARRED QUESTION NO.2294
TO BE ANSWERED ON 15.03.2017
INDIANS JAILED ABROAD**

**2294. SHRI MD. BADARUDDOZA KHAN: COL. SONARAM CHOUDHARY: SHRI P. KUMAR:
SHRI MOHD. SALIM:**

Will the Minister of EXTERNAL AFFAIRS be please to state:

- (a) the number of Indians imprisoned in various foreign jails particularly in Pakistan, Sri Lanka, Bangladesh and the articles seized from them;
- (b) the details of various mechanisms to check them cross International Border;
- (c) whether the Government is aware of herdsmen rearing cattle on Indo-Pak border particularly the border adjoining Rajasthan being lodged in Pakistan jails and being awarded punishment by Pakistan courts, if so, the details thereof; and
- (d) whether the Government is taking any concrete action to get the Indian captives released and if so, the details thereof?

**ANSWER
THE MINISTER OF STATE IN THE MINISTRY OF EXTERNAL AFFAIRS
[GEN. (DR) V. K. SINGH (RETD)]**

- (a) Due to the strict provisions of privacy laws, the United States of America, Canada, Australia and many countries in Europe do not share information about Indian nationals in their prisons. However, as per information available, 7059 Indian nationals are lodged in foreign jails. A list showing country-wise details is attached at Annexure. Various articles seized from them include VOIP set along with SIM cards, fake passports, narcotic drugs, fake currency, boats, GPS, stimulating tablets, foreign currency and gold.
- (b) Our immigration authorities and security forces monitor the movement across the international borders of the country.
- (c) There are two prisoners from Rajasthan in the jails in Pakistan who are not herdsmen.
- (d) As soon as the information about detention/arrest of an Indian national is received by an Indian Mission/Post, it gets in touch with the local Foreign Office and other concerned local authorities to get consular access to the detained/arrested Indian national to confirm their Indian nationality and ensure their welfare. In some countries where pro bono lawyers are available, the Mission arranges legal assistance to the Indian prisoners. Government of India also provides initial legal assistance to distressed Indian nationals in deserving cases.

Steps taken by our Missions include requesting local authorities for speedy trials, seeking remission of sentence, providing advice and guidance in legal and other matters, ensuring fair and humane treatment in foreign jails, issue of emergency certificates and repatriation to India of those who are released. In some countries, our Mission also requests the local government for grant of amnesty to the arrested Indians and if any mercy petition for remission of sentences is received from the family members of the Indian prisoners, the Mission forwards them to the local authorities for consideration. India has signed Treaties for Transfer of Sentenced Persons with 42 countries, under which Indian prisoners have been brought back to India from some of these countries.

In those cases where Indian nationals complete their sentences and are waiting for completion of deportation formalities, Indian Missions and Posts in those countries take up with the respective foreign governments the speeding up of the process, including issue of final Exit Visas, waiver of penalties imposed on Indian workers, etc. from the concerned authorities and for the early return of the Indian nationals to India. Where required, the Indian Missions and Posts abroad also provide

airfares for facilitating the return of the Indian prisoners who have completed their sentences, to India.

SI No.	Name of Country	Indian imprisoned in various foreign jails
1	Armenia	1
2	Austria	5
3	Australia	61
4	Azerbaijan	2
5	Bangladesh	39
6	Belgium	15
7	Bhutan	45
8	Cambodia	4
9	Canada	72
10	China	203
11	Cote D' Ivoire	1
12	Cuba	1
13	Cyprus	2
14	Denmark	8
15	Egypt	1
16	Ethiopia	2
17	Fiji	2
18	Ghana	2
19	Germany	114
20	Indonesia	21
21	Iran	74
22	Iraq	2
23	Ireland	1
24	Israel	4
25	Italy	228
26	Japan	6
27	Jordan	2
28	Kenya	2
29	Korea (Republic of)	1
30	Kuwait	520
31	Kyrgyzstan	1
32	Lebanon	7
33	Libya	1
34	Malawi	1
35	Malaysia	342
36	Maldives	9
37	Mauritius	6

38	Mexico	2
39	Mozambique	2
40	Myanmar	123
41	Nepal	950
42	Netherlands	1
43	Nicaragua	1
44	Nigeria	1
45	Oman	99
46	Pakistan	362
47	Panama	2
48	Philippines	10
49	Portugal	4
50	Qatar	159
51	Russia	5
52	Saudi Arabia	1709
53	Singapore	86
54	Slovak Republic	1
55	South Africa	7
56	Spain	33
57	Sri Lanka	101
58	Suriname	3
59	Thailand	46
60	Togo	1
61	Uganda	2
62	UK	2
63	Ukraine	1
64	United Arab Emirates	1214
65	U.S.A	322
66	Uzbekistan	1
67	Yemen	1
	Total	7059

**GOVERNMENT OF INDIA
MINISTRY OF EXTERNAL AFFAIRS**

**RAJYA SABHA
UNSTARRED QUESTION NO.2731
TO BE ANSWERED ON 10.08.2017**

INDIANS IN FOREIGN PRISONS

2731. SHRI HUSAIN DALWAI:

Will the Minister of EXTERNAL AFFAIRS be pleased to state:

- (a) the details of Indian nationals lodged in foreign prisons convicted and under trials, domicile-wise, gender-wise, offence-wise and category-wise;
- (b) the total number of applications for repatriation received and the total number of Indian nationals repatriated from foreign prisons since the enactment of the Repatriation of Prisoners Act, 2003;
- (c) the number of countries with which India has bilateral agreements in regard to repatriation of prisoners; and
- (d) the details of inter-ministerial process of interaction between different Ministries and Departments within Government and the average time taken to process such repatriation requests?

ANSWER

THE MINISTER OF STATE IN THE MINISTRY OF EXTERNAL AFFAIRS
(SHRI M. J. AKBAR)

- (a) As per the information available with the Ministry, country-wise list showing the details is attached as Annexure. Due to strong privacy laws prevailing in many countries, the local authorities do not share information on prisoners unless the person concerned consents to the disclosure of such information. Even, countries which share the information, do not generally provide the detailed information about the Indians who have been imprisoned.
- (b) After the enactment of the Repatriation of Prisoners Act in 2003, 170 applications for repatriation have been received and 61 Indian prisoners have been repatriated from foreign prisons.
- (c) So far, India has signed bilateral agreements with 30 countries. Besides this, India has acceded to the Inter American Convention, by virtue of which, India can receive and send requests to the member countries as well as those countries who have signed/ratified the Inter American Convention.
- (d) The processing of cases of transfer of prisoners involves steps like nationality verification, security clearance, views of Narcotic Control Bureau, if drug trafficking is involved, identification of prison by the State/Union Territory Government, completion of documents process by the India/foreign Mission concerned and consent of the transferring/receiving Governments. Time taken to process and an application for transfer depends on the completion of necessary formalities and documents by the concerned agencies and State/ Union Territory Governments.

S. No.	Country	Number of Prisoners			Details of Indian nationals lodged in foreign prisons (As per information received from our Missions / Posts abroad)		
		Total Prisoners	Convicted	Under Trials	Domicile-wise	Gender-wise	Offence-wise
1	Armenia	1	1	0	Details not provided	1-Male	Details not provided
2	Austria	5	5	0	2-Punjab	5-Male	Murder
3	Australia	65	50	15	Details not provided	65 -Male	Sexual assault, murder, unlawful wounding, attempt to murder, road accident offence
4	Azerbaijan	1	1	0	1-Kerala	1- Male	Possession of narcotics
5	Bahrain	82			Details not provided	75 - Male 7 - Female	Theft, accepting bribes, financial fraud, consumption of alcoholic drinks
6	Belarus	5	5	0	Punjab	5-Male	Crossing into Poland illegally
7	Bangladesh	21	21	0	7 - West Bengal 3 - Tripura 1 -Tamil Nadu 5 - Manipur 5-Meghalaya	21 - Male	Narcotic act, arms act, murder case, explosive act, control of entry
8	Belgium	31	31	0	Details not provided	31-Male	Human trafficking
9	Bhutan	62	62	0	36 - West Bengal 16- Assam 1-Tamilnadu	11- Male	Drugs, burglary, robbery, counterfeiting, auto stripping
10	Brunei	1	0	1	1 - Tamil Nadu	1 - Male	Murder charge
11	Cambodia	5	1	4	1 - J&K 1-Punjab 1-Kerala 1- Gujarat & others	5 - Male	Drug trafficking
12	Canada	50	50	0	Details not provided	48 - Male 2 -Female	Murder, assault with a weapon, manslaughter, sexual interference and laundering precedes of crime
13	China	28	17	11	Details not provided	25 - Male 3 - Female	drugs smuggling, intentional injury causing death, smuggling import and export of goods, illegal cross border, embezzlement, rape, fake documentation, theft
14	Colombia	2	2	0	1 - Punjab, 1 - Gujarat	2 - Male	Possession of fake documents, drug trafficking
15	Cote D'ivoire	1			Details not provided	Details not provided	Details not provided
16	Croatia	3	0	3	Details not provided	3-Male	Details not provided
17	Cuba	1			Details not provided	1 - Male	Corruption of minors and drug trafficking
18	Cyprus	8	3	5	3-Punjab 1-Haryana 4-not known	7-Male 1-Female	Premeditated murder, circulation of false document, illegal employment
19	Denmark	8	0	8	Details not provided	8 - Male	Details not provided

20	Egypt	3	1	2	1 - Gujarat 2-Andhra Pradesh	3 - Male	Drugs trafficking
21	Ethiopia	3	2	1	2 - Rajasthan 1-Tamilnadu	3 - Male	Financial fraud
22	Djibouti	1			Details not provided		Details not provided

23	Fiji	2	2	0	2 - Punjab	1 - Male 1 - Female	Drugs and passport related
24	France	13			Details not provided		Details not provided
25	Germany	114	113	1	Details not provided	114-Male	Details not provided
26	Georgia	1	Details not available	Details not available	Details not provided	1-Male	Details not provided
27	Ghana	3			Details not provided		Details not provided
28	Greece	17			Details not provided		Details not provided
29	Guatemala	4	4	0	Details not provided	4-Male	Details not provided
30	Indonesia	28	25	3	Details not provided	26 - Male 2 - Female	Immigration violation, misuse of stay permit, drug trafficking, fake documents
31	Iran	37	17	20	22 - Gujarat 1- Bihar 1- Jharkhand 2 - West Bengal 1- Rajasthan 1- J&K & Others	37 - Male	Diesel smuggling, illegal entry into Iranian waters
32	Iraq	11	1	10	6 -Telangana 3- Bihar 1- Jharkhand 1-Maharashtra	11- Male	Human trafficking and overstaying without valid documents
33	Ireland	3	3	0	Details not provided	3- Male/Female	Details not provided
34	Israel	4			Details not provided		Details not provided
35	Italy	78	78	0	Details not provided	77-Male 1- Female	Details not provided
36	Japan	7	7	0	1 - Delhi, 2 - Kerala 1 -Punjab 1 -Uttarakhand 1 - Uttar Pradesh 1 -Maharashtra & Others	7 - Male	Robbery and murder, violation of customs law, narcotics trafficking

37	Jordan	2	1	1	1-Chhattisgarh 1- Chhattisgarh	2 -Male	Theft
38	Kazakhstan	1	1	0	Details not provided	1-Male	Details not provided
39	Kenya	2	0	2	1 - Haryana 1 -Kerala	2 -Male	Trafficking in narcotic drugs
40	Korea (Republic of)	3	1	2	1 - West Bengal 1-Kerala 1-Madhya Pradesh	3 - Male	Violation of Unfair Competition, Prevention and Trade Secret Protection Act

41	Kuwait	488	403	85	Details not provided	Details not provided	Murder and drug charges
42	Kyrgyzstan	1			Details not provided	Details not provided	Details not provided
43	Lebanon	7	0	7	Details not provided	7 - Male	Murder, forgery, drug abuse, bribery
44	Libya	1	1	0	Details not provided	Details not provided	Fake currency case
45	Malaysia	304			Details not provided	287 -Male 17 -Female	Visa violation, drug related, human trafficking
46	Maldives	11	11	0	Details not provided	Details not provided	Drug trafficking
47	Mauritius	7	5	2	Details not provided	7-Male	Drug trafficking
48	Mexico	2			Details not provided	Details not provided	Murder and human trafficking
49	Mozambique	5	2	3	Details not provided	5-Male	Kidnapping, theft
50	Myanmar	39	38	1	Details not provided	Details not provided	Myanmar Immigration Act offence
51	Nepal	859	Details not available	Details not available	Details not provided	859 - Male /Female	Narcotic smuggling, theft, Murder
52	Netherlands	1	1	0	1 - Haryana	1 - Male	Murder
53	New Zealand	13	13	0	Details not provided	13 - Male/ Female	Details not provided
54	Niger	1			Details not provided	Details not provided	Details not provided

55	Nigeria	2			Details not provided	2-Male	Oil Bunkering and fraud case
56	Oman	84	84	0	Details not provided	84 - Male/ Female	Murder, theft, bribery, drug dealing and alcohol trading
57	Pakistan	467			416-believed to be Indian prisoners (fisherman - consular access not yet provided) 51-Civil prisoners as detailed below: 3- Gujarat 2- Punjab 6-J&K 5-MP 3-UP 4- Delhi 5- Bihar 5- WB 1- Maharashtra 1-Kerala 2-Rajasthan 1- Andhra Pradesh 1-Orissa 12-Not known	467- Male/ Female	Pakistan Army Act, Official Secret Act, Foreigners Act, Entry Pakistan Act and Others.
58	Panama	3	1	2	1-Delhi 1-Gujarat 1-Maharashtra	3-Male	Smuggling of illegal migrants, organised crime, imprisonment offence

59	Peru	1			Details not provided	Details not provided	Details not provided
60	Philippines	17	0	17	Details not provided	17- Male	Kidnapping for ransom, anti trafficking, drug related offence, attempted murder, acquisition of explosive fire arms, robbery

61	Portugal	3			Details not provided	Details not provided	Details not provided
62	Qatar	177	Details not available	Details not available	Details not provided	175- Male 2-Female	Drug cases, cheque bounce, murder case, sex related crimes, theft cases, forgery and fraud, driving traffic violations
63	Romania	2			Details not provided	Details not provided	Details not provided
64	Russian Federation	5	5	0	Details not provided	Details not provided	Fraud, murder, sexual offence
65	Saudi Arabia	2084	845	1239	Details not provided	Details not provided	Alcohol, Bribery, financial fraud, burglary
66	Senegal	1	1	0	Details not provided	Details not provided	Details not provided
67	Seychelles	2			Details not provided	Details not provided	Details not provided
68	Singapore	133	80	53	Details not provided	126 - Male, 7- Female	Causing death, sexual offences, commercial crimes, customs offence, drug related offence, immigration offences
69	Slovak Republic	1	1	0	1 - Punjab	1 - Male	Human trafficking
70	South Africa	7			Details not provided	Details not provided	Details not provided
71	Spain	36	36	0	Details not provided	36 - Male	Details not provided
72	Sri Lanka	46	5	41	31-Tamil Nadu 3-Kerala 1-Maharashtra 6-Puducherry	4-Male 1-Female	Drugs, visa fraud
73	Suriname	3	0	3	Details not provided	Details not provided	Human trafficking and money laundering
74	Tanzania	3	1	2	Details not provided	3-Male	Possession of illegal items

75	Thailand	47	46	1	2-Andhra Pradesh 45-Others	44-Male 3-Female	Stealing
76	Trinidad & Tobago	1	1	0	1-Kerala	1-Male	Travelling on forged documents
77	Turkey	2	0	2	Details not provided	Details not provided	Details not provided
78	Uganda	1	1	0	1-Maharashtra	1-Male	Embezzlement of corporate funds
79	United Arab Emirates	1376	Details not available	Details not available	Details not provided	Details not provided	Details not provided

80	United Kingdom	376	Details not available	Details not available	Details not provided	376-Male/ Female	Details not provided
81	Ukraine	1			Details not provided	Details not provided	Details not provided
82	United States of America	279	8, detail of others not known	3, detail of others not known	Details not provided	276-Male/ Female	Criminal records, fraud case,
83	Uzbekistan	1	1	0	Details not provided	1-Male	Financial fraud
84	Vietnam	1	0	1	1-Haryana	1-Male	Details not provided
85	Yemen	1	Details not available	Details not available	Details not provided	1-Male	Not available (Unofficially it is believed to be murder).
86	Zambia	1	Details not available	Details not available	Details not provided	Details not provided	Details not provided
	Total	7620					

PRODUCTIVITY LINKED INCENTIVE SCHEME

(Initiative of the MEA for Passport Offices)

QUESTION NO. 4374 PRODUCTIVITY LINKED INCENTIVE SCHEME

December 14, 2016

LOK SABHA
UNSTARRED QUESTION NO.4374
TO BE ANSWERED ON 14.12.2016

PRODUCTIVITY LINKED INCENTIVE SCHEME

4374. SHRI ANTO ANTONY:

Will the Minister of EXTERNAL AFFAIRS be pleased to state:

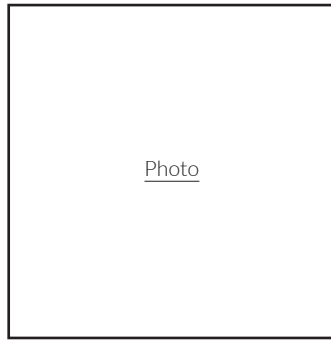
- (a) whether the Government is implementing any scheme called Productivity Linked Incentive Scheme (PLIS) to enhance the efficiency in the functioning of the Passport Offices in the country; and
- (b) if so, the details thereof including the salient features of the scheme?

ANSWER

**THE MINISTER OF STATE IN THE MINISTRY OF EXTERNAL AFFAIRS
[GEN. (DR) V. K. SINGH (RETD)]**

- (a) Yes. The Ministry of External Affairs is implementing a Scheme called Productivity Linked Incentive Scheme (PLIS) to enhance the efficiency in the functioning of the Passport Offices in the country.
- (b) The salient features of the PLIS are as under:-
 - (i) PLIS is an incentive which is awarded after individual/group performance is measured against pre-set goals for a given period of assessment.
 - (ii) It is non-additive and non-cumulative.
 - (iii) It is a variable component of the pay and is a reward based on performance.
 - (iv) PLIS is aimed at significant improvements in economy, efficiency and effectiveness; enhancing sustained higher productivity by motivating employees through incentivizing individual and/or team performance and acting as a catalyst to usher in responsive governance and public accountability by linking tangible rewards to measurable achievements of employees.
 - (v) The Scheme is applicable to the officials of Central Passport Organisation (CPO) in Pay Band 1, Pay Band 2 and Pay Band 3 of the Sixth Pay Commission including those on deputation to CPO.
 - (vi) PLIS in respect of all the cadre officials is being implemented from the date of commissioning of the respective Passport Seva Kendra (PSK)/ Passport Seva Laghu Kendras (PSLK) within the jurisdiction of the concerned Regional Passport Office (RPO)/ Passport Office (PO).
 - (vii) Payment of incentive is subject to proper work data kept on record in respect of PSKs/ PO/RPO.
 - (viii) PLIS is paid between 15% and 35% of the Basic Pay + Grade Pay subject to a maximum of Rs. 1,20,000/- per annum.
 - (ix) It is paid on quarterly basis by the Passport Office after obtaining the approval of the Ministry of External Affairs.

PERFORMA FOR VERIFICATION OF NATIONALITY STATUS / ANTECEDENTS



(PLEASE TYPE OR PRINT)

- 1. FULL NAME: _____
- 2. ALIASES, IF ANY: _____
- 3. (a) FULL NAME OF FATHER: _____
(b) FULL NAME OF MOTHER: _____
© FULL NAME OF SPOUSE: _____
- 4. DATE AND PLACE OF BIRTH: _____
(DD-MM-YYYY) (VILLAGE)
(DISTRICT)
- 5. PRESENT OCCUPATION: _____
- 6. NATIONALITY: _____
- 7. PRESENT ADDRESS IN USA _____
- 8. COMPLETE PERMANENT ADDRESS IN INDIA: _____
- 9. DETAILS OF PASSPORT: PASSPORT NO. _____ DATE OF ISSUE: _____
PLACE OF ISSUE: _____ DATE OF EXPIRY: _____
- 10. VISIBLE DISTINGUISHING MARKS IF ANY: _____
- 11. DATE OF LEAVING INDIA: _____
- 12. PERIOD OF STAY ABROAD: _____
- 13. DATE OF LOSS OF PASSPORT: _____
- 14. NAME & ADDRESS OF TWO (1) _____
RELATIVES / FRIENDS (AT THE (2) _____
PLACE OF PERMANENT RESIDENCE
IN INDIA, Given in Sr.8 Above) _____
- 15. NAME & ADDRESS OF TRAVEL AGENT _____
INVOLVED IN SENDING THE INDIVIDUAL ABROAD _____

NOTE: Please complete all entries legibly and fully: Incomplete information will only lead to delay in the process of issuing passport).

RTI TO 4 INDIAN MISSIONS (MAURITIUS, SRI LANKA, CANADA AND UK)

Date: 10 March 2017

To,
Shri Saikat Sen Sharma, Counsellor (Coordination) The Central Public Information Officer
High Commission of India India House, Aldwych London, WC2B 4NA

Subject: Application under - Section 6(1) of Right to Information Act- 2005. Particulars of

information required:

In reference to the India's Repatriation of Prisoners Act 2003 (hereinafter the 2003 Act),
Repatriation of

Prisoners Rules 2004 (the 2004 Rules) and MHA's Repatriation of Prisoners Guidelines 2015
(the 2015

Guidelines), kindly provide the following information:

1. Certified copies of all guidelines/circulars/orders issued by the Government of India addressing the role and duties of the Indian Missions following the 2003 Act, the 2004 Rules and 2015 Guidelines.
2. Certified copy of any form and format created by the Indian Mission for sentenced Indian prisoners to procedurally avail the benefits of the 2003 Act, the 2004 Rules and 2015 Guidelines.
3. Certified copy of any information or awareness materials created for sentenced Indian prisoners to timely avail the benefits of the 2003 Act, the 2004 Rules and 2015 Guidelines.
4. Details of all services and funds provided by the Indian Mission for the benefit of Indian prisoners, both undertrials and convicts, in UK.
5. Details of number of staff dedicated to servicing prisoner awareness and prisoner applications and their designations as on 1st March 2017.
6. Total number of visits made by consular and other officers to the sentenced Indian prisoners and the purpose of their visit from 1st March 2016 to 1st March 2017.
7. Year-wise details of all applications for voluntary transfer from sentenced Indian prisoners in UK prisons received and processed by the Indian Mission from 1st October 2003 to 1 March 2017, preferably in the following format:

Year	Total number of sentenced Indian prisoners in UK prisons	Total number of applications received	Total number of applications found eligible as per criteria laid down by both Indian and UK governments	Total number of applications sent to the Indian MHA	Total number of applications accepted for transfer by the Government of India	Total number of applications rejected	Total number of cases pending as on 1 March 2017

8. Information on the total number of first time offenders and repeat offenders who applied for voluntary transfer between 1st March 2014 to 1st March 2017 and total number found eligible by the Indian Mission for further processing by MHA, preferably in the following format:

Year	Total number of applications received from		Total number of applications found eligible by the Indian Mission of		Total number of applications rejected by the MHA of		Total number of cases pending with the Indian Mission as on 1 March 2017 of	
	First time Offenders	Repeat Offenders	First time Offenders	Repeat Offenders	First time Offenders	Repeat Offenders	First time Offenders	Repeat Offenders

9. (i) Details of the last two successful cases of repatriation accepted by the MHA in the time period 1st March 2014 to 1st March 2017, including their Form 1 applications as provided under Rule 3 of the Repatriation of Prisoners Rules 2004 and all accompanying process documents on case verification exchanged between Indian Mission, Centre, home state and prisoner.

(ii) Details of the last two unsuccessful cases that were rejected by the MHA in the time period 1st March 2014 to 1st March 2017, including their Form 1 applications as provided under Rule 3 of the Repatriation of Prisoners Rules 2004 and all accompanying process documents on case verification exchanged between Indian Mission, Centre, home state and prisoner.

10. Details of last ten applications for voluntary transfers from sentenced Indian prisoners in UK received by the Indian Mission where the application process, identity verification and criminality verification have been completed, preferably in the following format:

Name/ Case number of prisoner & Name of prison where lodged	Home state in India	Period of sen- tence	Date on which prisoner was informed regarding right to transfer to home state prison	Date when application documenta- tion process was initiated	Date of prisoner's consent for trans- fer and undertaking to accept the adapted sentence	Date on which documentation completed for the application as required under Form 1 of Rule 3 Re- patriation of Prisoners Rules 2004	Date on which completed application of prisoner was submitted to the Indian Mission	Date on which prisoner's transfer application was sent by Indian Mission to the Joint Secretary, MHA	Date when verification of prisoner's consent was initiated on request by MHA	Date/s of meet- ing with the prisoner	Date of completion of veri- fication process	Present status of the applica- tion (Ac- cepted, Rejected, Under process)

11. Details of applications and consent verifications pending with the Indian Mission as on 1st March 2017: (i) Total number of pending applications and the reasons thereof
(ii) Total number of pending consent verifications and the reasons thereof

12. Record of reasons for rejection of all applications initiated since 1st September 2015 for voluntary transfer by the MHA.

Applicant Name: Sana Das

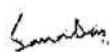
Postal Address: 55 A, Third Floor, Siddhartha Chambers-1, Kalu Sarai, New Delhi – 16

Phone/Mobile No: +91-9958019935 e-mail Id: sanadas26@gmail.com Date: 10th March 2017

Place: New Delhi

I state that the information sought does not fall within the restrictions contained in Section 8 & 9 of the Act and to the best of my knowledge it pertains to your office.

I have also attached an IPO for Rs. 10/- towards payment of the prescribed application fee as under the section 6(1) of the Right to Information Act. I request you to kindly accept my application and provide me with the information requested above at my postal address as mentioned above.



Signature of Applicant

RTI TO MHA (CS) GENERAL INFORMATION ON REPATRIATED PRISONERS

Date 15 March 2017

To

Shri Satinder Kumar Bhalla, Director (CS-I)
The Central Public Information Officer
Ministry of Home Affairs
NDCC-II Building, Jai Singh Road,
New Delhi – 110001

Subject: Application under - Section 6(1) of Right to Information Act- 2005.

Particulars of information required: In reference to the India's Repatriation of Prisoners Act 2003 (hereinafter the 2003 Act), Repatriation of Prisoners Rules 2004 (the 2004 Rules) and MHA's Repatriation of Prisoners Guidelines 2015 (the 2015 Guidelines), kindly provide the following information:

- Total number of sentenced Indian prisoners in India's prisons repatriated since 1st October 2003, the states and prisons where they are located as on 1st March 2017, their offence background as per penal provisions of the sentencing country and related IPC sections, preferably in the following format.

Name of prisoner/Case number	Name of prison where detained	Name of home state	Country from where repatriated	Date when entered prison in India	Offence as per penal provisions of the sentencing country	Offence corresponding in IPC or other Indian law

- The year wise total number of applications received by the MHA from sentenced Indian prisoners in foreign countries between 1st October 2003 – 1st March 2017, with details of the country from where received, respective prison population, and their present status, preferably in the following format.

Year (2003-2017)	Name of foreign country from where application received	Total number of sentenced Indian prisoners in the foreign country	Total number of applications received	Total number of applications accepted for repatriation by the Indian government	Total number of applications rejected	Total number of cases pending as on 1 March 2017

- Country wise numbers of all sentenced Indian prisoners in foreign prisons whose nationality –
 - has been verified to be Indian between the year 2003 and 1st March 2017 and whose transfer to Indian prison is pending.
 - could not be verified to be Indian between 1st March 2014 to 1st March 2017.

Year (2003-2017)	Name of foreign country from where application received	Total number whose identity was verified to be Indian	Total number whose identity could not be verified to be Indian

- Number of all repatriation request cases from 1st March 2003-1st March 2017 where the Indian government undertook pardon, review of sentence, sentence remission or sentence suspension.
- The year wise and country wise total number of transfer applications received from sentenced Indian prisoners in Sri Lanka, Mauritius, Canada and UK between the time period 1st March 2014 to 1st March 2017.
- Details of status of all received applications from sentenced Indian prisoners in Sri Lanka, Mauritius, Canada and UK between the time period 1st March 2014 to 1st March 2017, preferably in the following table.

Year (2014-2017)	Name and case number of prisoner	Name of foreign country and prison from where application received	Date of application as provided in Form 1 under Rule 3 of Repatriation of Prisoners Rule, 2004	Date when application received by MHA from Indian Mission in transferring country	State and prison in India to which transfer sought	Status of the case (Repatriated / Rejected / Pending)		
						Date of Repatriation	Date of Rejection	Pending

7. The offence details with date of receipt of all transfer applications from sentenced Indian prisoners in Sri Lanka, Mauritius, UK and Canada pending as on 1st March 2017 with –
- the Office of the Chief Passport Officer of the MEA identity and nationality verification.
 - the home states in India as on 1st March 2017 for identity and nationality verification.
 - the IB for its verification report.
8. The year wise and country wise details of stage and status of verification and reasons for pendency of all transfer applications from sentenced Indian prisoners in Sri Lanka, Mauritius, Canada and UK received between the time period 1st March 2014 to 1st March 2017, preferably in the following format.

Stages of Verification	Name and case number of prisoner	Name of foreign country from where application received	Year and Date on which application in Form 1 received (1 st March 2014-1 st March 2017)	Pending Status of Verification Please mention in the relevant row appropriate for the case, the duration of pendency; whether central govt. dept./state dept./ Indian Mission with which pending)		Reasons for pending status
				Central govt. dept./ State dept./ Indian Mission with which pending	Duration of pendency	
Sent back to Indian Mission for completion of application						
Identity verification by MHA, MEA, State						
Security and criminality verification by IB, State						
IB verification report						
Sentence adaptability by MOL, NCB, Customs, others						
Voluntary consent verification of the prisoner by Indian Mission						
No objection certificate of the state for repatriation						
Selection of suitable home state prison						
Finalising date of repatriation						
Visas or travel documents pending for transfer						
Any other						

9. Details of the year wise and country wise voluntary transfer cases from Sri Lanka, Mauritius, UK and Canada investigated to have nexus with international criminal gangs and whose applications were rejected on that ground between 1st March 2014 to 1st March 2017. Kindly provide the date when application was received by the MHA, offence particulars of each case, the time taken for IB verification report in these cases, date of rejection information sent.

Year (2014-2017)	Name of foreign country and prison from where application was rejected	Name and case number of prisoner found having nexus with international criminal gangs	Date when transfer application received by MHA	Time taken by IB and other agencies for criminality verification and finalization of IB verification report	Date of receipt of IB verification report	Date of rejection

10. The total numbers of transferred Indian prisoners who have spent more than six months in a home state prison in India as on 1st March 2017 and their details, preferably in the following format.

Year	Number of transferred prisoners who have spent less than 6 months	Number of transferred prisoners who spent 6 months and more but less than a year	Number of transferred prisoners who spent a year and more but less than 2 years	Number of transferred prisoners who spent 2 years and more but less than 3 years	Number of transferred prisoners who spent 3 years and more but less than 5 years	Number of transferred prisoners who spent 5 years and more

11. Certified copies of any budgetary guidelines for expenditure on transferred Indian prisoners.
12. Details of all legal contestation made by sentenced Indian prisoners on their adapted sentence in India with the final court judgments in their matter or citations as on 1st March 2017.
13. Record of reasons for rejection of all applications initiated since 1st September 2015 for voluntary transfer by the MHA.

Applicant Name: Sana Das
 Postal Address: 55 A, Third Floor, Siddhartha Chambers-1, Kalu Sarai, New Delhi – 110016
 Phone/Mobile No: +91-9958019935
 e-mail Id: sanadas26@gmail.com
 Date: 15th March 2017
 Place: New Delhi

I state that the information sought does not fall within the restrictions contained in Section 8 & 9 of the Act and to the best of my knowledge it pertains to your office.

I have also attached an IPO for Rs. 10/- towards payment of the prescribed application fee as under the section 6(1) of the Right to Information Act. I request you to kindly accept my application and provide me with the information requested above at my postal address as mentioned above.

Signature of Applicant

RTI TO MHA (CS) ON FUNCTIONING OF MONITORING COMMITTEE

Date 15 March 2017

To

Shri Satinder Kumar Bhalla, Director (CS-I)
The Central Public Information Officer
Ministry of Home Affairs
NDCC-II Building, Jai Singh Road,
New Delhi - 110001

Subject: Application under - Section 6(1) of Right to Information Act- 2005.

In reference to the India's Repatriation of Prisoners Act 2003 (hereinafter the 2003 Act), Repatriation of Prisoners Rules 2004 (the 2004 Rules) and MHA's Repatriation of Prisoners Guidelines 2015 (the 2015 Guidelines), kindly provide the following information:

1. Details, including the composition and mandate, of any Monitoring Committee created under provision (o) of the MHA's 2015 Guidelines for the Transfer of Sentenced Prisoners issued on 10 August 2015 under the Repatriation of Prisoners Act, 2003.
2. Total number of monthly meetings held by the Monitoring Committee from 9th September 2015 to 1st March 2017 as mandated under provision (o) of the 2015 Guidelines and total number of cases finalized for repatriation in these meetings, total number accepted and total number rejected, with their offence details.
3. Certified copies of the minutes of all monthly meetings held by the Monitoring Committee between 9th September 2015 and 1st March 2017 including:
 - a) Date and venue of meeting
 - b) Details of persons who attended the meetings
 - c) Details of cases finalized for repatriation in these meetings
4. Total number of coordination meetings held a week before every prisoner transfer as per provision (f) of the MHA's 2015 Guidelines for the Transfer of Sentenced Prisoners.
5. Certified copies of the minutes of all coordination meetings held between 9th September 2015 and 1st March 2017 including:
 - a) Date and venue of meeting
 - b) Details of persons who attended the meetings
 - c) Details of the cases discussed for transfer of sentenced prisoners
6. Details of the last 5 rejected and last 5 accepted cases of voluntary transfers supervised and finalized by the Monitoring Committee headed by Joint Secretary (CS) since 10th August 2015, preferably in the following format.

Dt. of Receipt of Form 1 Appl.	Country from where transfer request sent	Time taken for identity verification (in days, weeks and months)			Nationality verification		Time taken for criminality verification (in days, weeks and months)			Time taken for IB Report (in days, weeks and months)		Duration of sentence adaptation (in days, weeks and months)		Time Taken for voluntary consent verification (in days, weeks and months)		Time taken for no objection certificate from the home state (in days, weeks and months)		Time taken for transfer (in days, weeks and months)			
		By MHA	By MEA	By home state	(+) ve	(-) ve	By IB	By home state	By other agencies	(+) ve	(-) ve	By court	By executive	(+)ve verification	(-)ve verification	Provided	Not provided	Yes	No	Re-jected	
Case 1																					
Case 2																					

7. Record of reasons for all rejections in the last 10 cases of voluntary transfers finalised by the Monitoring Committee as on 1st March 2017.

Applicant Name: Sana Das

Postal Address: 55 A, Third Floor, Siddhartha Chambers-1, Kalu Sarai, New Delhi – 110016

Phone/Mobile No: +91-9958019935

e-mail Id: sanadas26@gmail.com

Date: 15th March 2017

Place: New Delhi

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Signature of Applicant

RTI TO MEA (CPV) ON NATIONALITY VERIFICATION

Date: 15 March 2017

To

Shri Jagpal Singh,
The Central Public Information Officer
Section Officer (CPV-RTI) & CPIO RTI Section,
CPV Division, Ministry of External Affairs,
Patiala House Annexe, Tilak Marg, New Delhi -110001

Subject: Application under - Section 6(1) of Right to Information Act- 2005.

Particulars of information required: **In reference to the India's Repatriation of Prisoners Act 2003 (hereinafter the 2003 Act), Repatriation of Prisoners Rules 2004 (the 2004 Rules) and MHA's Repatriation of Prisoners Guidelines 2015 (the 2015 Guidelines), kindly provide the following information:**

Kindly provide certified copies of the following:

1. The year wise and country wise total number of voluntary transfer applications from sentenced Indian prisoners in foreign countries for whom **nationality verification** has been undertaken between **1st October 2003 and 1st March 2017**, with total numbers **pending**, preferably in the following format.

Month and Year	Name of country from where application was sent	Total number of voluntary transfer applications from sentenced Indian prisoners	Number of transfer cases for whom nationality verification undertaken	Total number of pending cases

2. The year and country wise total number of all applications from sentenced Indian prisoners in Sri Lanka, Mauritius, UK and Canada between 1st March 2014 to 1st March 2017 and the status of their nationality verification.

Month and Year	Name of country from where application was sent	Total number of voluntary transfer applications from sentenced Indian prisoners in Sri Lanka, Mauritius, UK and Canada	Total number of transfer cases for whom nationality verification undertaken	Status of Verification			Reasons for pendency
				Approved	Rejected	Pending	

3. As on 1st March 2017, the country wise and year wise, total number of transfer applications from all sentenced prisoner cases from Sri Lanka, Mauritius, UK and Canada pending with –
 - (i) the Office of the Chief Passport Officer of the MEA for nationality verification.
 - (ii) the home states with the names of states and respective numbers
4. Record of reason in each case where the Indian nationality could not be verified by the department with respect to all transfer applications received since 1st September 2015 from sentenced Indian prisoners in foreign countries.

Applicant Name: Sana Das
Postal Address: 55 A, Third Floor, Siddhartha Chambers-1, Kalu Sarai, New Delhi – 110016
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e-mail Id: sanadas26@gmail.com
Date: 15th March 2017
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I state that the information sought does not fall within the restrictions contained in Section 8 & 9 of the Act and to the best of my knowledge it pertains to your office.

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Signature of Applicant

RTI TO PUNJAB & GUJARAT HOME DEPARTMENTS

17 March 2017

To,
 Additional Chief Secretary Home
 The Public Information Officer
 Home Department Punjab
 Room no. 10, 8th floor, Punjab civil secretariat 1, sector -1
 Chandigarh, UT- 160001

Subject: Application under - Section 6(1) of Right to Information Act- 2005.

Particulars of information required: **In reference to the India's Repatriation of Prisoners Act 2003 (hereinafter the 2003 Act), Repatriation of Prisoners Rules 2004 (the 2004 Rules) and MHA's Repatriation of Prisoners Guidelines 2015 (the 2015 Guidelines), kindly provide the following information:**

Time Period: 1st March 2003 – 1st March 2017

- How many transferred Indian offenders lodged in Punjab prisons have been considered by the Indian government for pardon, review of sentence, sentence remission or sentence suspension.
- Details of all legal contestation made by transferred Indian prisoners in Punjab prisons on their adapted sentence in India with the final court judgments in their matter or citations.
- Details of all sentenced Indian prisoners in Punjab's prisons repatriated from foreign countries, preferably in the following format.

Name of prisoner/ Case number	Country from where repatriated	Type of Offender Background		Offence as per penal provisions of the sentencing country	Offence corresponding in IPC or other Indian law	Date when entered prison in Punjab	Name of prison in Punjab where detained	Date of release
		First time offender	Repeat offender					

Time Period: As on 1st March 2017

- The total numbers of transferred Indian prisoners from foreign countries by their period of detention preferably in the following format:

< 6 months	More than 6 months – 1 year	More than 1 - 2 years	More than 2 - 3 years	More than 3-5 years	> 5 years

Time Period: 1st September 2015-1st March 2017

- The year wise total number of transfer applications of sentenced Indian prisoners in foreign countries received by Govt. of Punjab from the MHA/MEA (Govt. of India) for no objection clearance for transfer and their present status, preferably in the following format.

Year (2015-2017)	Total number of transfer applications received from MHA/MEA, GOI for verification and clearance	Total number of applications verified with no objection clearance for repatriation	Total number of applications rejected or refused clearance for transfer	Total number of cases pending as on 1 March 2017

Time Period: 1st March 2014 and 1st March 2017

6. The status of all applications of sentenced Indian prisoners in foreign countries received from the MHA/MEA (Govt. of India), where identity verification was undertaken by the government of Punjab, preferably in the following format.

Year and date of application received by the state	Name of prisoner/ Case No.	Offence as per penal provisions of the sentencing country	Offence corresponding in IPC or other Indian law	Type of offender background	Country where applying prisoner is/ was lodged	Status of identity verification			

7. The year wise, country wise and offence details of stage and status of verification of all transfer applications received in this period from the MHA/MEA (Govt. of India), and presently pending with the Govt. of Punjab, preferably in the following format.

Stages of Verification	Name and case number of prisoner	Offence background		Name of foreign country from where application received	Year and Date on which transfer application received by state from MHA/MEA	Pending Status of Verification	
		First time offender	Repeat offender			Please mention the duration of pendency in the relevant row appropriate for the case	
						State department with which pending	Duration of pendency
Address & Identity verification	1.			1.			
	2.			2.			
Security and criminality verification	1.			1.			
	2.			2.			
No objection certificate of the state for repatriation	1.			1.			
	2.			2.			
Selection of suitable home state prison	1.			1.			
	2.			2.			
Finalising date of repatriation	1.			1.			
	2.			2.			
Visas or travel documents pending for transfer	1.			1.			
	2.			2.			
Any other (Escorts, etc.)	1.			1.			
	2.			2.			

8. Reasons for non-verification, pendency or rejection of an application for the mentioned time period, preferably in the following format:

Year	Name of prisoner/ Case No. (if any) whose identity verification is pending	Name of prisoner/ Case No. (if any) whose transfer application was rejected	Name of foreign country where applying prisoner is lodged	Record of reasons
2014- 2017				
2014				
	1.	1.		
	2.	2.		

Applicant Name: Sana Das
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Date: 17th March 2017 and Place: New Delhi

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I have also attached an IPO for Rs. 10/- towards payment of the prescribed application fee as under the section 6(1) of the Right to Information Act. I request you to kindly accept my application and provide me with the information requested above at my postal address as mentioned above.

Signature of Applicant

INTERNATIONAL STANDARDS ON THE REPATRIATION OF SENTENCED PRISONERS

The international legal framework on the transfer for sentenced prisoners and foreign national prisoners is guided by various articles of Paragraphs 1,3, 4 of the International Covenant on Civil and Political Rights ICCPR,¹ Article 5 of the Universal Declaration of Human Rights (UDHR)², Article 36 of the Vienna Convention on Consular Relations, 1963 (VCCR),³ Article 8 of the European Convention on Human Rights(ECHR) that discusses the right to respect for private and family life, ⁴ Preamble, UN Model Agreement on the Transfer of Foreign Prisoner, 1985 emphasizes the prompt response transfers deserve and who can move the process,⁵ Paragraph 2, 3 and 4, Recommendations on the Treatment of Foreign National Prisoners, UN Model Agreement on the Transfer of Foreign Prisoner, 1985,⁶ UN Standard Minimum Rules for Treatment of Prisoners (Mandela Rules) 2015, ⁷ Recommendation No. R (84) 12 Concerning Foreign Prisoners - 13, Council of Europe, Committee of Ministers,⁸ Recommendation CM/Rec (2012)12 of the Committee of Ministers to member states concerning foreign prisoners, Council of Europe⁹, Recommendation

- 1 **Paragraphs 1 & 4, Article 6**, of the International Covenant on Civil and Political Rights (ICCPR): 1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. 4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases. **Article 7, ICCPR**: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation. Paragraphs 1 & 4, Article 9, ICCPR: 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. 4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
- 2 No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.
- 3 Local authorities must notify all detained foreigners “without delay” of their right to have their consulate informed of their detention. At the request of the national, the authorities must then notify the consulate without delay, facilitate unfettered consular communication and grant consular access to the detainee. Consuls are empowered to arrange for their nationals’ legal representation and to provide a wide range of humanitarian and other assistance, with the consent of the detainee. Local laws and regulations must give “full effect” to the rights enshrined in Article 36.
- 4 This provides a right to respect for one’s “private and family life”, his home and his correspondence”, subject to certain restrictions that are “in accordance with law” and “necessary” in a democratic society. 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection off the rights and freedoms of others.
- 5 **Paragraph 1, Preamble**: The social resettlement of offenders should be promoted by quickly facilitating the return of persons convicted of crime abroad to their home country to serve their sentence.
Paragraph 3, Preamble: A transfer may be requested by either the sentencing or the administering State. A transfer shall be dependent on the consent of both States and the prisoner as well. The administering State should be given the opportunity to verify the free consent of the prisoner.
- 6 **Paragraph 2**: Foreign prisoners should have the same access as national prisoners to education, work and vocational training. Paragraph 3: Foreign prisoners should in principle be eligible for measures alternative to imprisonment, as well as for prison leave and other authorized exits from prison. Paragraph 4: Foreign prisoners should be informed, in a language they understand, of the prison regime and regulations as well as their right to request contact with consular authorities. Proper assistance should be given in dealings with medical or programme staff and concerning such matters as complaints, special diets and religious representation and counseling.
- 7 **Rule 62.1**. Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong. 62. 2. Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.
- 8 Foreign prisoners, who in practice do not enjoy all the facilities accorded to nationals and whose conditions of detention are generally more difficult, should be treated in such a manner as to counterbalance, so far as may be possible, these disadvantages.

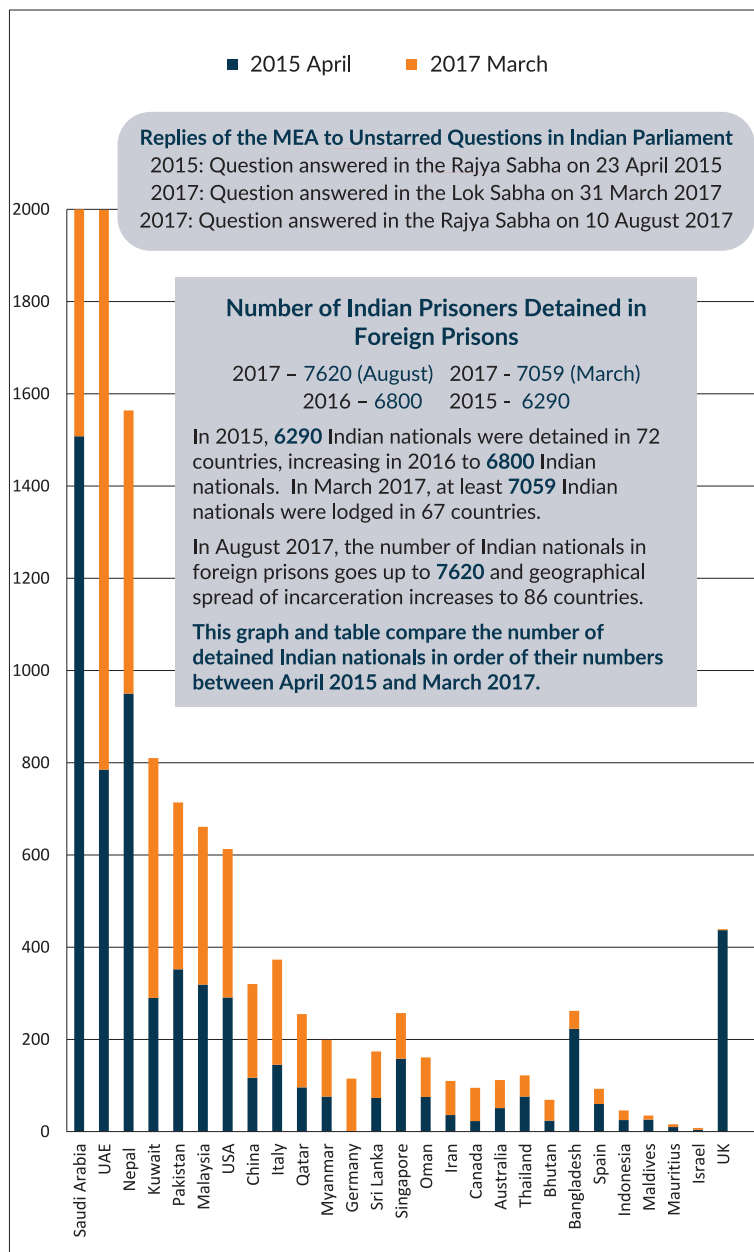
9 VI. Preparation for release (Paragraphs 35.1 – 35.7), Council of Europe, Committee of Ministers: 35.1. Preparation for release of foreign prisoners shall start in good time and in a manner that facilitates their reintegration into society. 35.2. In order to facilitate the reintegration of foreign prisoners into society: a. their legal status and their situation after release shall be determined as early as possible during their sentence; b. where appropriate, prison leave and other forms of temporary release shall be granted to them; and c. they shall be assisted in making or re-establishing contact with family, friends and relevant support agencies. 35.3. Where foreign prisoners are to remain in the State in which they were held after release, they shall be provided with support and care by prison, probation or other agencies which specialise in assisting prisoners. 35.4. Where foreign prisoners are to be expelled from the State in which they are being held, efforts shall be made, if the prisoners consent, to contact the authorities in the State to which they are to be sent with a view to ensuring support both immediately upon their return and to facilitate their reintegration into society. 35.5. In order to facilitate continuity of treatment and care where foreign prisoners are to be transferred to another State to serve the remainder of their sentence, the competent authorities shall, if the prisoner consents, provide the following information to the State to which the prisoners shall be sent: a. the treatment the prisoners have received; b. the programmes and activities in which they have participated; c. medical records; and d. any other information that will facilitate continuity of treatment and care. 35.6. Where foreign prisoners may be transferred to another State, they shall be assisted in seeking independent advice about the consequences of such a transfer. 35.7. Where foreign prisoners are to be transferred to another State to serve the remainder of their sentence, the authorities of the receiving State shall provide the prisoners with information on conditions of imprisonment, prison regimes and possibilities for release.

10 **Paragraphs 36.1 – 36.2** Council of Europe, Committee of Ministers: Consideration for early release: 36.1. Foreign prisoners, like other prisoners, shall be considered for early release as soon as they are eligible and shall not be discriminated against in this respect. 36.2. In particular, steps shall be taken to ensure that detention is not unduly prolonged by delays relating to the finalisation of the immigration status of the foreign prisoner.

Paragraphs 37.1 and 37.2 Council of Europe, Committee of Ministers: VII. Release from prison: 37.1. In order to assist foreign prisoners to return to society after release, practical measures shall be taken to provide appropriate documents and identification papers and assistance with travel. 37.2. Where foreign prisoners will return to a country with which they have links and, if the prisoner consents, the consular representatives shall assist them where possible in this regard.

Paragraphs 38.1 – 40: VIII. Persons who work with foreign prisoners: 38. Selection - Persons who work with foreign prisoners shall be selected on criteria that include cultural sensitivity, interaction skills and linguistic abilities. 39.1. Training - Staff involved in the admission of foreign prisoners shall be appropriately trained to deal with them. 39.2. Persons who work with foreign prisoners shall be trained to respect cultural diversity and to understand the particular problems faced by such prisoners. 39.3. Such training may include learning languages spoken most often by foreign prisoners. 39.4. Training programmes shall be evaluated and revised regularly to ensure they reflect changing populations and social circumstances. 39.5. Persons who deal with foreign suspects and offenders shall be kept informed of current national law and practices and international and regional human rights law and standards relating to their treatment, including this recommendation. 40. Specialisation - Appropriately trained specialists shall be appointed to engage in work with foreign prisoners and to liaise with the relevant agencies, professionals and associations on matters related to such prisoners.

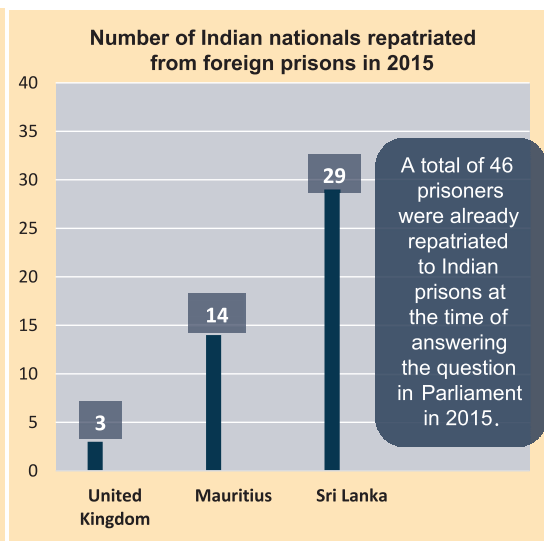
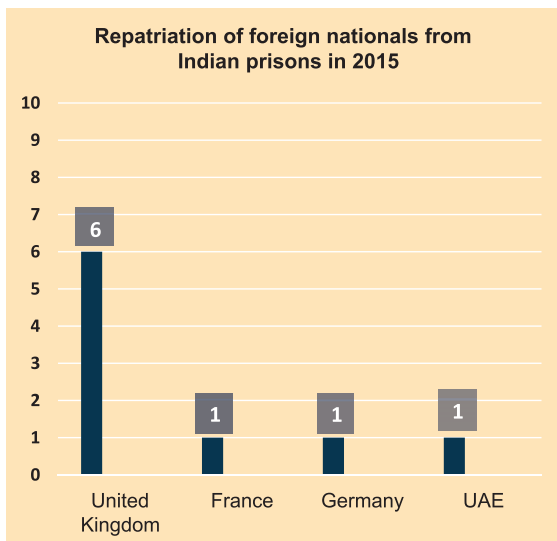
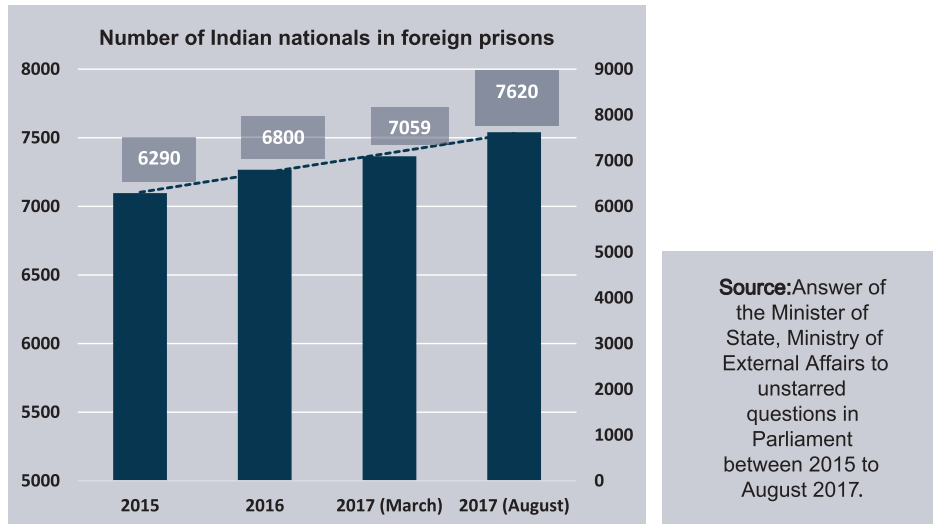
TABLE 1: HOW MANY INDIAN NATIONALS ARE LODGED IN FOREIGN JAILS AND WHERE?



Country	2015	2017
Saudi Arabia	1508	1709
UAE	785	1214
Nepal	950	614
Kuwait	290	520
Pakistan	352	362
Malaysia	319	342
USA	291	322
China	117	203
Italy	145	228
Qatar	96	159
Myanmar	76	123
Germany	1	114
Sri Lanka	73	101
Singapore	158	99
Oman	75	86
Iran	36	74
Canada	23	72
Australia	51	61
Thailand	76	46
Bhutan	24	45
Bangladesh	223	39
Spain	60	33
Indonesia	25	21
Maldives	26	9
Mauritius	10	6
Israel	4	4
UK	437	2

Rather than merely 2 there were at least 373 Indian nationals in UK prisons at the time of the MEA's answer in Parliament in March 2017. This error is now corrected by the answer of the MEA on 10 August 2017 which puts the number at 376.

TABLE 2: TRANSFER OF INDIAN PRISONERS FROM AND INTO INDIA



Between 2003 and March 2018, Gol has received 171 applications for transfer and has repatriated 63 Indian prisoners.

Only 36% of applications have led to actual transfer into India.

Source: Answer of the Minister of State for External Affairs in Parliament on 7 March 2018.

**TABLES 3 & 4: DETAILS OF INDIAN NATIONALS IN FOREIGN PRISONS
IN AUGUST 2017***

No.	State/ Domicile	Number of Indian Nationals in Prisons of these States	
1	Assam	16	<p>Table 4 : FACTS AT A GLANCE: STATUS OF TRANSFER OF INDIAN NATIONALS FROM FOREIGN PRISONS</p> <p>Total number of countries where Indian prisoners are lodged: 86</p> <p>Total number of Indian nationals in foreign prisons: 7620</p> <p>Total number of Indian nationals whose trial status is known: 3646 (48%)</p> <p>Total number of sentenced Indian prisoners: 2095 (57%)</p> <p>Total number of Indian undertrial prisoners: 1551 (43%)</p> <p>Total number of Indian nationals whose sentencing details are not available with Indian Missions: 3974 (52%)</p> <p>Countries where Indian Missions do not have any details of trial or sentencing status: 8/86 (9%) Georgia, Nepal, Qatar, United Arab Emirates, United Kingdom, United States of America (Partial), Yemen, Zambia</p> <p>Total number of prisoners whose domicile status is known to Indian Missions: 226 (3%) Domicile of 7394 Indian nationals is unknown</p> <p>Countries where Indian Missions do not have any details of domicile and gender of Indian prisoners, and in some cases, even their offence details: 55/86 (64%)</p> <p>Countries where details of domicile are not known to Indian Missions: 58/86 (67%) Armenia, Australia, Bahrain, Belgium, Canada, China, Cote D' Ivoire, Croatia, Cuba, Denmark, Djibouti, France, Germany, Georgia, Greece, Guatemala, Indonesia, Ireland, Israel, Italy, Kazakhstan, Lebanon, Libya, Malaysia, Maldives, Mauritius, Mexico, Mozambique, Myanmar, Nepal, New Zealand, Niger, Nigeria, Oman, Peru, Phillipines, Portugal, Qatar, Romania, Russian Federation, Saudi Arabia, Senegal, Seychelles, Singapore, South Africa, Spain, Suriname, Tanzania, Turkey, United Arab Emirates, United Kingdom, Ukraine, United States of America, Uzbekistan, Yemen and Zambia.</p>
2	Andhra Pradesh	5	
3	Bihar	9	
4	Chhattisgarh	2	
5	Delhi	5	
6	Gujarat	28 (22 only in Iran)	
7	Haryana	4	
8	J&K	7	
9	Jharkhand	1	
10	Kerala	11	
11	Maharashtra	5	
12	MP	5	
13	Manipur	5	
14	Meghalaya	5	
15	Orissa	1	
16	Punjab	17	
17	Puducherry	1	
18	Rajasthan	4	
19	Tamil Nadu	34	
20	Telangana	6	
21	Tripura	3	
22	Uttar Pradesh	4	
23	Uttarakhand	1	
24	West Bengal	48 (36 only in Bhutan)	
	TOTAL	226	

* Source: Response of Minister of State, Ministry of External Affairs in the Parliament on 10 August 2017 to Unstarred Question Number 2371. Refer Annexure N for further details

TABLES 5 & 6: FACTS ABOUT INDIA'S PRISONER TRANSFER TREATIES AND NUMBER OF INDIAN NATIONALS IN PRISONS OF TREATY COUNTRIES

Table No. 5 Details of countries with whom treaties are signed

- **Countries with whom India has transfer arrangements:** India has transfer arrangements with 43 countries. Some are bilateral, some multilateral.
- **The 43 countries with whom treaty arrangement exists:** Australia, Bahrain, Bangladesh, Belize, Bosnia & Herzegovina, Brazil, Bulgaria, Cambodia, Canada, Chile, Costa Rica, Czech Republic, Egypt, El Salvador, Ecuador, Estonia, France, Guatemala, Hong Kong, Iran, Israel, Italy, Kazakhstan, Korea, Kuwait, Maldives, Mexico, Mauritius, Mongolia, Nicaragua, Panama, Paraguay, Qatar, Russia, Saudi Arabia, Sri Lanka, Thailand, Turkey, UAE, UK, USA, Uruguay, Venezuela. The names of 29 countries with whom bilateral transfer agreements have been signed are not placed in public domain.
- **Number of Indian prisoners lodged in 'treaty' countries:** In March 2017, 4935 prisoners were lodged in 23 countries where India has signed treaties. In August 2017, 5269 prisoners were lodged in 28 'treaty' countries. The number of prisoners have gone up by 334 and the geographical spread of incarceration has increased to 5 more countries.
- **The 28 countries where 5269 prisoners are lodged:** Australia, Bahrain, Bangladesh, Cambodia, Canada, Egypt, France, Guatemala, Iran, Israel, Italy, Kazakhstan, Korea, Kuwait, Maldives, Mexico, Mauritius, Panama, Qatar, Russia, Saudi Arabia, Sri Lanka, Thailand, Turkey, UAE, UK, USA. **Bahrain, France, Cambodia, Guatemala, Kazakhstan, Turkey are the six additional countries where Indian nationals are found lodged in August 2017.** (Refer Table No. 6 : Number of Indian Nationals Lodged in Treaty Countries)
- **Top 10 significant countries where Indian nationals have been lodged in large numbers between 2015- March 2017:** Saudi Arabia, UAE, Nepal, UK, Kuwait, Pakistan, Bangladesh, Malaysia, USA, China. Other important countries: Italy, Qatar, Myanmar, Sri Lanka, Germany, Singapore, Oman, Canada, Australia, Thailand.
- **Top 10 significant countries where Indian nationals were found lodged as on 10 August 2017:** Saudi Arabia, UAE, Nepal, Kuwait, Pakistan, UK, Malaysia, USA, Qatar, Singapore. Other countries are Germany, Oman, Bahrain, Italy, Australia, Canada, Thailand, Sri Lanka, Myanmar, Spain.
- **Countries where no Indian prisoners are lodged:** In 14 of the 29 countries with whom India has signed bilateral agreements, no Indian national appears to be lodged. These are Belize, Brazil, Bosnia-Herzegovina, Bulgaria, Chile, Costa Rica, Czech Republic, El Salvador, Ecuador, Hong Kong, Mongolia, Paraguay, Uruguay, Venezuela.
- **Countries with whom India needs to sign agreements considering the large number of prisoners there:** Nepal (614); Malaysia (342); China (203); Myanmar (123); Germany (114); Bhutan (45); Indonesia (24).
- **Transparency:** The bilateral agreements of only 26 of the 43 countries have been placed in public domain. As on 10 August 2017, GOI did not have the details of the data of 7393 Indian nationals is unavailable in public domain. Only the domicile status of 227 of these 7620 prisoners appears to be known to GOI or has been revealed by Indian Missions. 2095 of 3646 prisoners whose sentencing status is known are sentenced
- The data protection and privacy laws in many countries prevent an accurate picture of the exact numbers of Indian nationals in foreign country prisons. The detention numbers could be higher.

Table No. 6 Number of Indian Nationals in Prisons of Treaty Countries as on 10 August 2017

Treaty Country	No. of Indian Prisoners Lodged
Australia	65
Bahrain	82
Bangladesh	21
Belize	0
Bosnia & Herzegovina	0
Brazil	0
Bulgaria	0
Cambodia	5
Canada	50
Chile	0
Costa Rica	0
Czech Republic	0
Egypt	3
El Salvador	0
Ecuador	0
Estonia	0
France	13
Guatemala	4
Iran	37
Israel	4
Italy	78
Kazakhstan	1
Korea	3
Kuwait	488
Maldives	11
Mauritius	7
Mexico	2
Mongolia	0
Nicaragua	0
Panama	3
Paraguay	0
Qatar	177
Russia	5
Saudi Arabia	2084
Sri Lanka	46
Thailand	47
Turkey	2
UAE	1376
UK	376
USA	279
Uruguay	0
Venezuela	0
TOTAL	5269

10 KEY FACTS ABOUT PRISON CONDITIONS IN PUNJAB AND GUJARAT

10 Key Facts about Prison Conditions in Punjab

- **Overcrowding:** Problem has been eased through self-financed prison infrastructure under a new scheme. Five new constructions have come up away from the city and five are underway. Punjab now has 29 prison facilities. As per the answer of the Minister of State, Ministry of Home Affairs on 8 August 2017 in Parliament on the number of jails where there was more than 100% overcrowding, 149 out of 1401 jails in the country were declared to have more than 100% overcrowding. In Punjab, only Moga sub jail was found to have more than 100% overcrowding at 182%.
- **Custodial Deaths:** High incidence of custodial deaths as compared to other states. 152 custodial deaths took place in 2016 of which 150 were natural, 2 unnatural. The highest number was found in Amritsar jail at 34 deaths. However, the high number of vacancies in medical appointments blurs the distinction between natural and unnatural.
- **Complaints:** Punjab Prisons receive the highest number of complaints from NHRC (49) and SHRC (271) according to NCRB 2015 Prison Statistics India of which the department disposed of only 5 and 65. However, the number of prisoner complaints related to prison conditions and treatment appear to be few and jail specific as per the Prison Department. Between 2014-2017 there were fifteen complaints from Sangrur district jail and 10 from Malerkotla sub jail.
- **Vacancies in Medical Appointments:** A total of 70 medical staff (27 doctors, 6 counsellors, 37 other medical staff) were sanctioned across 18 out of the 29 jails. In June 2017 only 59 of the 70 medical staff sanctioned were actually appointed. Eleven jails were not sanctioned any doctors or medical staff including New District Jail at Nabha. Total prison population in the 18 jails being 12651, the **ratio of inmate to medical staff is a startling 215:1**. It might be speculated to be even lower if the appointed medical staff are expected to service the prisons where no appointments exist. Deputations from the district medical hospital are hard to come by, further aggravating the problem.
- **Vacancies in Security Appointments:** Jail security is a priority for Punjab Prisons after 2016 Nabha jail break, riot in Hoshiarpur prison, gang wars in Gurdaspur jail and clashes in Kapurthala jail. There is unrest also in the new prisons away from the city as inmates are unable to meet their families easily. As on April 2017, the department was running at 50% deficit in appointment of prison warders. While manpower sanctioned is 3676, actual manpower on the ground was only 2086 – a deficit of 1046 men, a considerable gap between sanctioned staff and staff on ground. After the Nabha prison escape, 300 new staff have been recruited. Mainly ex-servicemen have been provided to the prison department from a private firm.
- **Technological Capacities for Prison Security:** Prison department is short of jammers, baggage checkers, metal detectors. High security zones have been created in prisons for dangerous criminals but this segregation policy is seen as undesirable by this class of offenders. So, there were gang wars in different prisons like Hoshiarpur Central Prison.
- **Total Prison Budget (Non-Plan) & Modernisation:** The prison non-plan budget has reduced from 2,54,75,70,000 in 2015-2016 to 2,27,21,39,000 in 2016-2017. Allocation from this amount towards prison modernization has reduced from 35,60,74,000 in 2015-2016 to 15,16,30,000 in 2016-2017. While 31, 63,79,000 was spent on prison modernization in 2015-2016, the department has spent 6,68,93,000 between 2016-2017.
- **Inmate Expenditure:** With a prison population of 23645 in 2015, Punjab spent 16669.6 per prisoner in the whole year which is about 46 rupees per day (PSI, 2015, NCRB). This is meagre compared to what states like Delhi (201.50 rupees) and Bihar (229.30 rupees) spend per inmate per day.
- **Jail Inspections:** A CHRI study on prison monitoring in India points to overall jail inspections having fallen by 58% in the state, and inspections by medical staff by 85%. (**Looking into the Haze: A Study on Prison Monitoring in India, 2016**). As shown above, medical appointments themselves are in crisis.
- **Rehabilitation:** No prisoner has been provided financial assistance on release; only 12 convicts have been rehabilitated; 3902 prisoners have been provided legal aid. Skilled prisoners were paid 35 rupees as per day wages; semi-skilled prisoners 30 rupees; and unskilled prisoners 25 rupees (PSI, 2015, NCRB).

10 Key Facts about Prison Conditions in Gujarat

- **Overcrowding:** As on 1 April 2017, the total prison population stood at 12, 997, distributed across 28 prison facilities (5 central jails, 8 district jails, 2 special jails, 2 open jails, 11 sub jails). Old jails have been demolished and new ones constructed. Total overcrowding across prisons is controlled at 2.48% with several prisons housing inmates below their capacity. Inmate housing capacity of several jails has been increased. Construction of Lajpore Central Jail, Surat, on the outskirts, started in 2005, got completed in 2011, and has improved the inmate housing capacity from 500 to 3000. Another way of managing overcrowding has been distribution by offence. Gujarat Prison Department has classified its jails by sentence: Less than 6 months punishment: sub-jail; 2-7 years sentence: district jails; more than 7 years sentence: central jail; life imprisonment: central jail. Gujarat prisons gets 100-150 crores as annual budget for construction and repairs. As per the answer of the Minister of State, Ministry of Home Affairs on 8 August 2017 in Parliament on the number of jails where there was more than 100% overcrowding, only one sub jail, Navsari, was found to have more than 100% overcrowding at 107%.
- **Custodial Deaths:** SHRC reports on custodial deaths between 2015-2016 point to 52 deaths with 40 deaths in prisons and 12 in police custody. In 2014-2015 there were 41 deaths in prison and 14 deaths in police custody. In 2013-2014 there were a total of 61 deaths, with 49 of them being in prison and 12 in police custody. According to the Prison Department, 4-5 of these deaths annually would be unnatural. Most of the deaths are in the hospital and not torture, ill treatment or self-harm related cases.
- **Complaints:** According to NCRB 2015 Prison Statistics India, Gujarat Prisons received no complaints from either NHRC or SHRC in 2015.
- **Staff Vacancies:** The earlier problem of shortages has been considerably addressed by the sanctioning of 2900 jail staff at various levels. The process of new recruitments by the Recruitment Board has been completed for guarding staff (*sipahi*) and 752 new personnel have been recruited helping to reduce the manpower deficit.
- **Capacities for Prison Security:** Report No 2 of CAG of India on General & Social (for the year ended March 2013) points to gross security lapses when a 18 feet tunnel was found being built inside Sabarmati jail where Ahmedabad blast accused were housed. Even now several prisons lack watchtowers. According to the Gujarat Prison Department, there are three levels of security and that is sufficient. Only state agencies are involved – (i) State Armed Police is permanently posted – some of them may be commando units; (ii) Jail Sepoys; (iii) Local Police – They guard the outer periphery and do the anti-sabotage checks periodically. 16 out of 27 prisons had CCTV cameras in April 2017. By July 2017 all jails were to have them installed. The prison department is also getting equipped with cell phones, jammers, 4G technology.
- **Prison Construction Budget:** The prison department gets 60-70% of its budgetary ask from the state government every year. Gujarat prisons gets 100-150 crores annual budget for construction and repairs. The Police Housing Corporation takes on all construction activities and there is no problem of unspent balance with the corporation as there is with the state PWD. Expenditure on Lajpore Central Jail, Surat: Total expenditure was 80 crores. Started in 2005, got completed in 2011. Now in the outskirts. Improved the inmate housing capacity from 500 to 3000.
- **Inmate Expenditure:** With a prison population of 11748 in 2015, Gujarat spent 22784.1 per prisoner in the year which is about 63 rupees per day (PSI, 2015, NCRB).
- **Jail Inspections:** CHRI's study, (*Looking into the Haze: A Study on Prison Monitoring in India, 2016*), points to Gujarat being one of the 4 states which had Board of Visitors constituted in all its jails. However, it has not followed the practice of quarterly meetings as prescribed in the Jail Manual.
- **Rehabilitation:** 92 prisoners have been provided financial assistance on release; 115 convicts have been rehabilitated; 1070 prisoners have been provided legal aid. Skilled prisoners were paid 42 rupees as per day wages; semi-skilled prisoners 36 rupees; and unskilled prisoners 30 rupees (PSI, 2015, NCRB).

FACT SHEET ON INDIAN COMMUNITY WELFARE FUND (ICWF)

ICWF: Services & Funds with the Indian Missions for the Benefit of Indian Prisoners

Based on Ministry of Overseas Indian Affairs Revised Scheme in Indian Missions abroad and the Comptroller & Auditor General of India Report, 2013

- Approved by the Cabinet on 20 August 2009 and established on 12 October 2009 after extensive inter-ministerial consultations to meet contingency expenditure incurred by them for carrying out various on-site welfare activities for Overseas Indian Citizens who are in distress. To start with the 'Indian Community Welfare Fund' (ICWF) was established in the Indian Missions in 17 Emigration Clearance Required (ECR) countries and Maldives.
- Ministry of Overseas Indian Affairs (MOIA) is the administering and monitoring body for the operation of the fund and to issue guidelines on revenue generation and expenditure.
- Objective of the Indian Community Welfare Fund (ICWF) Scheme is aimed at providing the services on a means tested basis in the most deserving cases: (i) Boarding and lodging for distressed Overseas Indian workers in Household domestic sectors and unskilled labourers; (ii) Extending emergency medical care to the Overseas Indians in need; (iii) Providing air passage to stranded Overseas Indians in need; (iv) Providing initial legal assistance to the Overseas Indians in deserving cases; (v) Expenditure on incidentals and for airlifting the mortal remains to India or local cremation, burial of the deceased overseas Indians in such cases where the sponsor is unable or unwilling to do so as per the contract and the family is unable to meet the cost; (vi) Providing the payment of penalties in respect of Indian nationals for illegal stay in the host country where prima facie the worker is not at fault; (vii) Providing the payment of small fines/penalties for the release of Indian nationals in jail and detention centre; (viii) Providing support to local Overseas Indian Associations to establish Overseas Indian Community Centres in countries that have population of overseas Indians exceeding 1,00,000; and (ix) Providing support to start and run Overseas Indian Community based student welfare centres in countries that have more than 20,000 Indian students presence.
- However, if the Head of Missions (HOMs) or Posts consider it necessary to deploy the Fund for other services than in most deserving cases, the prior approval of the Ministry of Overseas Indian Affairs shall be obtained.
- Geographical reach and scope of the Scheme extended to 181 countries by 2011. The scheme was extended to 24 Indian Missions on 30 April 2010. On 24 March 2011 the Scheme was further extended to 157 countries all over the world. Scope of the Scheme was expanded by the Ministry based on various suggestions from Missions and done in consultation with the Ministry of External Affairs.
- Target beneficiaries of the Scheme comprises Overseas Indian workers duped by unscrupulous intermediaries in the host countries, runaway house maids, those who become victim of accidents, deserted spouses of Overseas Indians or undocumented Overseas Indian workers in need of emergency assistance or any other Overseas Indian citizens who are in distress would be the main beneficiaries of the Fund. The Fund will also be utilized to meet the expenditure for airlifting the mortal remains of Overseas Indian citizens to India on a means tested basis, on the recommendation of the respective Heads of Missions. It is also meant for release of Overseas Indian nationals from detention centres as well as serve as support to Overseas Indian community centres and student welfare centres. The Heads of Missions will consider requests, written or verbal, depending upon the seriousness or sensitivity of the circumstances on case to case basis.
- Prisoners are not adequately targeted in the ICWF Scheme and the means test is tougher for them. The Scheme guideline states with regard to disbursement, that in respect of Indian nationals in jails/detention centres, the payment of small fines/penalties shall be a maximum of USD 2500 per case after Head of Missions (HOM) satisfies himself that such payment would lead to release of Indian nationals.
- Budgetary support would be provided by Ministry of Overseas Indian Affairs for setting up the ICWF in the 157 Indian Missions to the tune of RS.5 lakh. The MOIA contribution was initially planned for three (3) years or till the period the Fund becomes self-sustaining, whichever is

earlier. The amount was to be released annually and would be limited to meet the deficit in the financial resources of the Missions, with due regard to the utilization of the amount released during previous years.

- Source of funding for the Indian Community Welfare Fund (ICWF) set up in the Missions is as follows: (A) Funds raised by the Indian Missions by levying a service charge on Consular Services as under: (i) For Passport, Visa, OCI and PIO Cards - RS.100/-per document rounded off in local currency. (ii) For attestation of employment document - RS.100/-per worker; rounded off in local currency. (iii)Attestation of other documents and other miscellaneous consular services rendered by Mission (other than in death cases) - RS.100/- per worker, rounded off in local currency. The rates of the service charge may be revised by this Ministry in consultation with the Ministry of External Affairs from time to time.
- Budgetary Support & Self-Sustaining Corpus: Ministry of Overseas Indian Affairs (MOIA) was to provide budgetary support for setting up the ICWF in the 157 Indian Missions to the tune of RS.5 lakh. The MOIA contribution was to be initially for three (3) years or till the period the Fund becomes self-sustaining, whichever is earlier. The amount will be released annually and would be limited to meet the deficit in the financial resources of the Missions, with due regard to the utilization of the amount released during previous years.
- In March 2011, the Standing Committee on External Affairs in its 7th Report (15th Lok Sabha) had expressed concern over the functioning of the ICWF and desired to know about the total Fund collected in each Mission/Post through contribution and the aid received through budgetary support as well as the number of workers benefited and the expenditure made so far in every location. They reiterated the creation of a corpus fund by the MOIA so that welfare to workers in distress did not suffer.
- Audit of the ICWF may be done by C&AG (a six monthly review could be undertaken and release of funds for subsequent year should be based on report of this review) and by a six monthly inspection by a team comprising two Gazetted officers other than those associated with the Fund.
- 2013 CAG Report points to Non-Creation of Corpus, Delay in Implementation & Under-utilisation of ICWF by Indian Missions and Posts: In 2013 C&AG of India Report Number 13 of 2012-2013 points to the non-creation of such a self-sustaining corpus by the MOIA for the ICWF. It revealed 'delay in implementation' of the ICWF by 17 Missions and Posts as a result of which Rs 15.29 crore on account of additional fees could not be collected. It pointed to under-utilisation of the ICWF by the different Missions who let the balances remain idle for two to twenty-two months. 23.95 crore rupees had accumulated up to March 2012 in 26 Missions and Posts. The Missions had utilized only 76.9 lakhs out of this. By holding the balance without any emergent need the Missions lost the opportunity to earn 1 crore rupees through interest. Nor did they create a sustainable corpus funds out of these accounts for the welfare of Indian workers in distress.

**INTER-AMERICAN CONVENTION ON SERVING CRIMINAL SENTENCES
ABROAD, 1966**

104TH CONGRESS 2d Session	SENATE	TREATY DOC. 104-35
<p>INTER-AMERICAN CONVENTION ON SERVING CRIMINAL SENTENCES ABROAD</p> <p>MESSAGE</p> <p>FROM</p> <p>THE PRESIDENT OF THE UNITED STATES</p> <p>TRANSMITTING</p> <p>INTER-AMERICAN CONVENTION ON SERVING CRIMINAL SEN-TENCES ABROAD, DONE IN MANAGUA, NICARAGUA, ON JUNE 9, 1993, SIGNED ON BEHALF OF THE UNITED STATES AT THE OAS HEADQUARTERS IN WASHINGTON ON JANUARY 10, 1995</p> <p>SEPTEMBER 30, 1996.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate</p> <p>39-118</p> <p>U.S. GOVERNMENT PRINTING OFFICE</p> <p>WASHINGTON : 1996</p>		

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 30, 1996.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Inter-American Convention on Serving Criminal Sentences Abroad, drawn up by the Committee on Juridical and Political Affairs within the Permanent Council of the Organization of American States (OAS) and composed of representatives of the Member States. The Convention was adopted and opened for signature at the twenty-third regular session of the General Assembly meeting in Managua, Nicaragua, on June 9, 1993, and signed on behalf of the United States at the OAS Headquarters in Washington on January 10, 1995. The provisions of the Convention are explained in the report of the Department of State that accompanies this message.

Although the United States is already a party to the multilateral Council of Europe Convention on the Transfer of Sentenced Persons, which entered into force for the United States, following Senate advice and consent to ratification, on July 1, 1985, only two other OAS Member States have become parties to that Convention. Ratification of the Inter-American Convention on Serving Criminal Sentences Abroad would help fill a void by providing a mechanism for the reciprocal transfer of persons incarcerated in prisons in OAS Member States, to permit those individuals to serve their sentences in their home countries. A multilateral prisoner transfer convention for the Americas would also reduce, if not eliminate, the need for the United States to negotiate additional bilateral prisoner transfer treaties with countries in the hemisphere.

I recommend that the Senate promptly give its advice and consent to the ratification of this Convention, subject to an understanding and a reservation that are described in the accompanying State Department report.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, August 9, 1996.

The PRESIDENT, *The White House*.
THE PRESIDENT:

I have the honor to submit to you, with the recommendation that it be transmitted to the Senate for its advice and consent to ratification, the Inter-American Convention on Serving Criminal Sentences Abroad, which was adopted and opened for signature at the twenty-third regular session of the OAS General Assembly meeting in Managua, Nicaragua, on June 9, 1993. It was signed on behalf of the United States at the OAS Headquarters in Washington on January 10, 1995. As of April 13, 1996, it had been signed by six other countries: Costa Rica, Venezuela, Canada, Panama, Mexico, and Ecuador. Two countries, Canada and Venezuela, have deposited instruments of ratification: Canada on June 4, 1995, and Venezuela on March 14, 1996. The Convention entered into force on April 13, 1996, thirty days after the deposit of the second instrument of ratification. The Department of State is hopeful that once the United States ratifies the Convention, other states in the region will take the necessary steps to become party to the Convention.

The purpose of the Convention is to facilitate the transfer of foreign prisoners to their home countries by establishing procedures that can be initiated by prisoners who prefer to serve their sentences there. The means employed to achieve this purpose are basically similar to those embodied in bilateral prisoner transfer treaties that are now in force between the United States and eight other countries, and in the multilateral Council of Europe Convention on the Transfer of Sentenced Persons. The major advantages of concluding a multilateral convention with the OAS member States are the establishment of uniform procedures and the saving of resources that would be required to negotiate and bring into force bilateral treaties with a large number of countries in the hemisphere.

The general principles of the Convention are stated in Article II, in which the parties undertake to afford each other the fullest co-operation in respect of the transfer of sentenced persons. The Article provides, subject to the conditions of Article 3, that a sentence imposed upon a national of another state party may be served by the sentenced person in the state of which that person is a national.

Article III sets out the conditions for transfer. The seven conditions are: that the sentence is final; that the sentenced person consents to the transfer, having been previously informed of the legal consequences of such a transfer; that the act for which the sentence has been imposed constitutes a crime in the State to which the prisoner is to be transferred; that the person is a national of the state to which he or she is to be transferred; that the sentence to be served is not the death penalty; that at least six months of the sentence remains to be served at the time the request for transfer is made; and that administration of the sentence is not contrary to domestic law in the state to which the person is to be transferred.

Article IV obliges a Party to inform any sentenced person to whom the Convention may apply of the substance of the Convention. Provision is also made for keeping the sentenced person informed of the processing of a transfer request.

Articles V and VI provide modalities for processing requests and replies and specify supporting documents that may be required in connection with transfer requests. Article V states that a request for transfer of a sentenced person from one state to another may be made by the sentencing state, the receiving state, or the sentenced person. Article V also provides that if the sentence is handed down by a state or province with criminal jurisdiction independent from that of the federal government, the approval of the authorities of that state or province shall be required for the transfer. Article VI requires that the sentencing state inform the requesting state immediately of its decision not to approve the transfer of a sentenced person, and, whenever appropriate, explain its reasons for the refusal.

To ensure that the Convention may be implemented consistently with existing legislation pertaining to prisoner transfer, I recommend that the following understanding to Articles III, IV, V, and VI be included in the United States instrument of ratification:

The United States of America understands that the consent requirements in Articles III, IV, V, and VI are cumulative; that is, that each transfer of a sentenced person under this Convention shall require the concurrence of the sentencing state, the receiving state, and the prisoner, and that in the circumstances specified in Article V, paragraph 3, the approval of the state or province concerned shall also be required.

I also recommend the following reservation to Article V:

With respect to Article V, paragraph 7, the United States of America will require that whenever one of its nationals is to be returned to the United States, the sentencing state provide the United States with the documents specified in that paragraph in the English language, as well as the language of the sentencing state. The United States undertakes to furnish a translation of those documents into the language of the requesting state in like circumstances.

Article VII deals with the rights of the sentenced person. A sentenced person who is transferred under this Convention may not be arrested, tried, or sentenced again in the receiving state for the same offense upon which the sentence to be executed is based. Except as provided under Article VIII, the sentence of a sentenced person who is transferred shall be served in accordance with the laws and procedures of the receiving state, including application of any provisions relating to reduction of time of imprisonment or of alternative service of the sentence. The receiving state may not enforce a sentence so as to lengthen that sentence beyond the date on which it would expire under the terms of the sentence of the court in the sentencing state.

Article VIII provides that the sentencing state shall retain full jurisdiction for the review of sentences issued by its courts, and retains the power to grant pardon, amnesty, or mercy to the sentenced person. Upon notification to the receiving state of such decision, that state must take the corresponding measures immediately.

Article IX provides for the application of the Convention in special cases. Recognizing that this Convention may be applicable to persons subject to supervision or other measures under one of the state party's laws relating to youthful offenders, consent for the transfer of such persons shall be obtained from the person legally authorized to grant it. Also, by special agreement between the parties, the Convention may be applied to persons whom the competent authority in the sentencing state has pronounced unindictable (most likely, because the appropriate authorities have judged the persons mentally incompetent), so that such persons may receive treatment in the receiving state. In accordance with their laws, the parties shall agree on the type of treatment to be accorded such individuals upon transfer. For the transfer, consent must be obtained from the person legally authorized to grant it.

Article X deals with the transfer of a sentenced person across the territory of a third state party to the convention. In such case, the third state shall be notified by transmittal of the decision granting the transfer by the state under whose custody the transfer is to be effected. The state of transit may or may not consent to the transit of the sentenced person through its territory.

Article XI provides that each state party shall, upon signing, ratifying, or acceding to the Convention, advise the General Secretariat of the Organization of American States of the central authority it has designated to perform the functions under the Convention. For the United States, the central authority shall be the U.S. Attorney General, who also has that responsibility under the multilateral Council of Europe Convention on the Transfer of Sentenced Persons, as well as under the bilateral prisoner transfer treaties between the United States and other countries.

Article XII provides that none of the stipulations of the Convention shall be construed to restrict other bilateral or multilateral treaties or other agreements between the parties.

Articles XIII to XIX contain the final clauses of the Convention. Article XVI permits states to set forth reservations to the Convention at such time as they approve, sign, ratify, or accede to it. Article XVIII deals with denunciation of the Convention by one of the parties. Any state party may denounce the Convention at any time by registering its denunciation with the General

Secretariat of the Organization of American States; denunciation shall be effective one year from the date of such denunciation. The provisions of the Convention shall remain in force, however, for the denouncing state with respect to sentenced persons transferred in accordance with the Convention, until the respective sentences have been served. Requests for transfer being processed at the time the Convention is denounced would continue to be processed and executed unless the parties agreed otherwise.

It is my belief that this Convention affords substantial benefits to the United States. With the proposed understanding, the Convention is fully consistent with the provisions of Public Law 95- 144, 18 U.S.C. §§ 4110-4115, enacted by the Congress to implement treaties relating to the transfer of offenders to or from foreign countries. No new legislation will be required.

The Department of Justice joins in recommending that this Convention be transmitted to the Senate at an early date for its advice and consent to ratification, subject to the understanding and reservation to Articles III, IV, V, and VI previously described.

Respectfully submitted,

WARREN CHRISTOPHER.

INTER-AMERICAN CONVENTION ON SERVING CRIMINAL SENTENCES ABROAD

THE MEMBER STATES OF THE ORGANIZATION OF AMERICAN STATES,

CONSIDERING that, according to Article 2.e of the OAS Charter, one of the essential purposes of the Organization of American States is to “seek the solution of political, juridical and economic problems that may arise among them”;

INSPIRED BY THE DESIRE to cooperate to ensure improved administration of justice through the social rehabilitation of the sentenced persons;

PERSUADED that to attain these ends, it is advisable that the sentenced person be given an opportunity to serve the sentence in the country of which the sentenced person is a national; and

CONVINCED that the way to bring about this result is to transfer the sentenced person,

RESOLVES to adopt the following Inter-American Convention on Serving Criminal Sentences Abroad:

ARTICLE I - DEFINITIONS

For the purposes of this convention:

1. *Sentencing state*: means the state party from which the sentenced person would be transferred.
2. *Receiving state*: means the state party to which the sentenced person would be transferred.
3. *Sentence*: means the final judicial decision imposing, as a penalty for the commission of a criminal offense, imprisonment or a term of parole, probation, or other form of supervision without imprisonment. A sentence is understood to be final when no ordinary legal appeal against the conviction or sentence is pending in the sentencing state and the period for its appeal has expired.
4. *Sentenced person*: means the person who is to serve or is serving a sentence in the territory of a state party.

ARTICLE II - GENERAL PRINCIPLES

In accordance with the provisions of this convention:

- a. a sentence imposed in one state party upon a national of another state party may be served by the sentenced person in the state of which he or she is a national; and
- b. the states parties undertake to afford each other the fullest cooperation in connection with the transfer of sentenced persons.

ARTICLE III - CONDITIONS FOR THE

APPLICATION OF THIS CONVENTION

This convention shall be applicable only under the following conditions:

1. The sentence must be final, as defined in Article 1.3 of this convention.
2. The sentenced person must consent to the transfer, having been previously informed of the legal consequences thereof.
3. The act for which the person has been sentenced must also constitute a crime in the receiving state. For this purpose, no account shall be taken of differences of terminology or of those that have no bearing on the nature of the offense.

4. The sentenced person must be a national of the receiving state.
5. The sentence to be served must not be the death penalty.
6. At least six months of the sentence must remain to be served at the time the request is made.
7. The administration of the sentence must not be contrary to domestic law in the receiving state.

ARTICLE IV - PROVISION OF INFORMATION

1. Each state party shall inform any sentenced person covered by the provisions of this convention as to its content.
2. The states parties shall keep the sentenced person informed as to the processing of the transfer.

ARTICLE V - PROCEDURE FOR TRANSFER

The transfer of a sentenced person from one state to another shall be subject to the following procedure:

1. The request for application of this convention may be made by the sentencing state, the receiving state, or the sentenced person. The procedures for the transfer may be initiated by the sentencing state or by the receiving state. In these cases, it is required that the sentenced person has expressed consent to the transfer.
2. The request for transfer shall be processed through the central authorities indicated pursuant to Article XI of this convention, or, in the absence thereof, through consular or diplomatic channels. In conformity with its domestic law, each state party shall inform those authorities it considers necessary as to the content of this convention. It shall also endeavor to establish mechanisms for cooperation among the central authority and the other authorities that are to participate in the transfer of the sentenced person.
3. If the sentence was handed down by a state or province with criminal jurisdiction independent from that of the federal government, the approval of the authorities of that state or province shall be required for the application of this transfer procedure.
4. The request for transfer shall furnish pertinent information establishing that the conditions of Article III have been met.
5. Before the transfer is made, the sentencing state shall permit the receiving state to verify, if it wishes, through an official designated by the latter, that the sentenced person has given consent to the transfer in full knowledge of the legal consequences thereof.
6. In taking a decision on the transfer of a sentenced person, the states parties may consider, among other factors, the possibility of contributing to the person's social rehabilitation; the gravity of the offense; the criminal record of the sentenced person, if any; the state of health of the sentenced person; and the family, social, or other ties the sentenced person may have in the sentencing state and the receiving state.
7. The sentencing state shall provide the receiving state with a certified copy of the sentence, including information on the amount of time already served by the sentenced person and on the time off that could be credited for reasons such as work, good behavior, or pre trial detention. The receiving state may request such other information as it deems necessary.
8. Surrender of the sentenced person by the sentencing state to the receiving state shall be effected at the place agreed upon by the central authorities. The receiving state shall be responsible for custody of the sentenced person from the moment of delivery.
9. All expenses that arise in connection with the transfer of the sentenced person until that person is placed in the custody of the receiving state shall be borne by the sentencing state.
10. The receiving state shall be responsible for all expenses arising from the transfer of the sentenced person as of the moment that person is placed in the receiving state's custody.

ARTICLE VI - REFUSAL OF TRANSFER REQUEST

When a state party does not approve the transfer of a sentenced person, it shall notify the requesting state of its refusal immediately, and whenever possible and appropriate, explain its reasons for the refusal.

ARTICLE VII - RIGHTS OF THE SENTENCED PERSON WHO IS TRANSFERRED AND MANNER OF SERVING SENTENCE

1. A sentenced person who is transferred under the provisions of this convention shall not be arrested, tried, or sentenced again in the receiving state for the same offense upon which the sentence to be executed is based.
2. Except as provided in Article VIII of this convention, the sentence of a sentenced person who is transferred shall be served in accordance with the laws and procedures of the receiving state, including application of any provisions relating to reduction of time of imprisonment or of alternative service of the sentence.

No sentence may be enforced by a receiving state in such fashion as to lengthen the sentence beyond the date on which it would expire under the terms of the sentence of the court in the sentencing state.

3. The authorities of a sentencing state may request, by way of the central authorities, reports on the status of service of the sentence of any sentenced person transferred to a receiving state in accordance with this convention.

ARTICLE VIII- REVIEW OF SENTENCE AND EFFECTS IN THE RECEIVING STATE

The sentencing state shall retain full jurisdiction for the review of sentences issued by its courts. It shall also retain the power to grant pardon, amnesty, or mercy to the sentenced person. The receiving state, upon receiving notice of any decision in this regard, must take the corresponding measures immediately.

ARTICLE IX - APPLICATION OF THE CONVENTION IN SPECIAL CASES

This Convention may also be applicable to persons subject to supervision or other measures under the laws of one of the states parties relating to youthful offenders. Consent for the transfer shall be obtained from the person legally authorized to grant it.

By agreement between the parties, this convention may be applied to persons whom the competent authority has pronounced unindictable, for purposes of treatment of such persons in the receiving state. The parties shall, in accordance with their laws, agree on the type of treatment to be accorded such individuals upon transfer. For the transfer, consent must be obtained from a person legally authorized to grant it.

ARTICLE X - TRANSIT

If the sentenced person, upon being transferred, must cross the territory of another state party to this convention, the latter shall be notified by way of transmittal of the decision granting the transfer by the state under whose custody the transfer is to be effected. In such cases, the state of transit may or may not consent to the transit of the sentenced person through its territory.

Such notification shall not be necessary when air transport is used and no regular landing is scheduled in the territory of the state party that is to be overflown.

ARTICLE XI - CENTRAL AUTHORITY

Upon signing, ratifying, or acceding to this convention, the states parties shall notify the General Secretariat of the Organization of American States of the central authority designated to perform the functions provided herein. The General Secretariat shall distribute to the states parties to this convention a list of the designations it has received.

ARTICLE XII - RELATIONSHIP TO OTHER AGREEMENTS

None of the stipulations of this convention shall be construed to restrict other bilateral or multi-lateral treaties or other agreements between the parties.

FINAL CLAUSES ARTICLE XIII

This convention is open to signature by the Member states of the Organization of American States.

ARTICLE XIV

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

ARTICLE XV

This convention shall remain open to accession by any other state. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

ARTICLE XVI

The States may set forth reservations to this convention at such time as they approve, sign, ratify, or accede to it, provided that the reservations are not incompatible with the object and purpose of this convention and that they relate to one or more specific provisions.

ARTICLE XVII

This convention shall enter into force for the ratifying states on the thirtieth day following the date on which the second instrument of ratification has been deposited.

For each state that ratifies the convention or accedes to it after the second instrument of ratification has been deposited, the convention shall enter into force on the thirtieth day following the day on which such state has deposited its instrument of ratification or accession.

ARTICLE XVIII

This convention shall remain in force indefinitely, but any state party may denounce it. The denunciation shall be registered with the General Secretariat of the Organization of American States. At the end of one year from the date of the denunciation, the convention shall cease to be in force for the denouncing state.

However, its provisions shall remain in force for the denouncing state with respect to sentenced persons transferred in accordance with this convention, until the respective sentences have been served.

Requests for transfer being processed at the time the denunciation of this convention is made will continue to be processed and executed, unless the parties agree to the contrary.

ARTICLE XIX

The original of this convention, whose texts in English, French, Portuguese, and Spanish are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall send a certified copy, for registry and publication, to the Secretariat of the United Nations, pursuant to Article 102 of the United Nations Charter. The General Secretariat of the Organization of American States shall notify the Member states of that Organization and the states that have acceded to the convention of the signatures affixed, the instruments of ratification, accession, or denunciation deposited, and the reservations set forth, if any.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto by their respective governments, have signed this Convention, which shall be called the "Inter-American Convention on Serving Criminal Sentences Abroad".

DONE IN THE CITY OF MANAGUA, NICARAGUA, the ninth of June in the year one thousand nine hundred ninety-three

ORGANIZATION OF AMERICAN STATES
WASHINGTON, D. C.

GENERAL SECRETARIAT

I hereby certify that the foregoing document is a true and faithful copy of the authentic texts in Spanish, English, Portuguese and French of the Inter-American Convention on Serving Criminal Sentences Abroad, signed at Managua, Nicaragua, on June 9, 1993, at the Twenty-third Regular Session of the General Assembly of the Organization of American States, and that the signed originals of these texts are on deposit with the General Secretariat of the Organization of American States.

March 26, 1996

William M. Berenson
Acting Assistant Secretary
for Legal Affairs

ORGANIZATION OF AMERICAN STATES
WASHINGTON, D. C.

GENERAL SECRETARIAT

PROCES-VERBAL OF THE SIGNATURE BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA OF THE INTER-AMERICAN CONVENTION ON SERVING CRIMINAL SENTENCES ABROAD, DONE AT MANAGUA, NICARAGUA, ON JUNE 9, 1993.

The undersigned Her Excellency Mrs. Harriett C. Babbitt, Ambassador, Permanent Representative of the United States of America and His Excellency Mr. Cesar Gaviria, Secretary General of the Organization of American States, have this day met together at the Secretariat of the OAS for the purpose of proceeding to the signing by the Government of the United States of America of the Inter-American Convention on Serving Criminal Sentences Abroad, done at Managua, Nicaragua, on June 9, 1993, at the Twenty-Third Regular Session of the General Assembly of the Organization of American States.

IN WITNESS WHEREOF, the undersigned have affixed their signatures to the present process verbal in Washington, D.C. in duplicate originals. This tenth day of January in the year nineteen hundred ninety-five.

Harriett C. Babbitt
Ambassador, Permanent Representative of
The United States of America to the
Organization of American States

Cesar Gaviria
Secretary General
Organization of American States

COUNCIL OF EUROPE CONVENTION ON THE TRANSFER OF SENTENCED PERSONS, 1983

European Treaty Series -No. 112

Convention on the Transfer of Sentenced Persons

Strasbourg, 21.11.1983

The member States of the Council of Europe and the other States, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Desirous of further developing international co-operation in the field of criminal law;

Considering that such co-operation should further the ends of justice and the social rehabilitation of sentenced persons;

Considering that these objectives require that foreigners who are deprived of their liberty as a result of their commission of a criminal offence should be given the opportunity to serve their sentences within their own society; and

Considering that this aim can best be achieved by having them transferred to their own countries,
Have agreed as follows:

Article 1 – Definitions

For the purposes of this Convention:

- a “sentence” means any punishment or measure involving deprivation of liberty ordered by a court for a limited or unlimited period of time on account of a criminal offence;
- b “judgment” means a decision or order of a court imposing a sentence;
- c “sentencing State” means the State in which the sentence was imposed on the person who may be, or has been, transferred;
- d “administering State” means the State to which the sentenced person may be, or has been, transferred in order to serve his sentence.

Article 2 – General principles

The Parties undertake to afford each other the widest measure of co-operation in respect of the transfer of sentenced persons in accordance with the provisions of this Convention.

ETS 112 – Transfer of Sentenced Persons, 21.III.1983

- 2 A person sentenced in the territory of a Party may be transferred to the territory of another Party, in accordance with the provisions of this Convention, in order to serve the sentence imposed on him. To that end, he may express his interest to the sentencing State or to the administering State in being transferred under this Convention.
- 3 Transfer may be requested by either the sentencing State or the administering State.

Article 3 – Conditions for transfer

- 1 A sentenced person may be transferred under this Convention only on the following conditions:
 - a if that person is a national of the administering State;
 - b if the judgment is final;
 - c if, at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or if the sentence is indeterminate;
 - d if the transfer is consented to by the sentenced person or, where in view of his age or

his physical or mental condition one of the two States considers it necessary, by the sentenced person's legal representative;

- e if the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the administering State or would constitute a criminal offence if committed on its territory; and
 - f if the sentencing and administering States agree to the transfer.
- 2 In exceptional cases, Parties may agree to a transfer even if the time to be served by the sentenced person is less than that specified in paragraph 1.c.
 - 3 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, indicate that it intends to exclude the application of one of the procedures provided in Article 9.1.a and b in its relations with other Parties.
 - 4 Any State may, at any time, by a declaration addressed to the Secretary General of the Council of Europe, define, as far as it is concerned, the term "national" for the purposes of this Convention.

Article 4 – Obligation to furnish information

- 1 Any sentenced person to whom this Convention may apply shall be informed by the sentencing State of the substance of this Convention.
- 2 If the sentenced person has expressed an interest to the sentencing State in being transferred under this Convention, that State shall so inform the administering State as soon as practicable after the judgment becomes final.
- 3 The information shall include:
 - a the name, date and place of birth of the sentenced person;
 - b his address, if any, in the administering State;
 - c a statement of the facts upon which the sentence was based;
 - d the nature, duration and date of commencement of the sentence.
- 4 If the sentenced person has expressed his interest to the administering State, the sentencing State shall, on request, communicate to the State the information referred to in paragraph 3 above.

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- 5 The sentenced person shall be informed, in writing, of any action taken by the sentencing State or by the administering State under the preceding paragraphs, as well as of any decision taken by either State on a request for transfer.

Article 5 – Requests and replies

- 1 Requests for transfer and replies shall be made in writing.
- 2 Requests shall be addressed by the Ministry of Justice of the requesting State to the Ministry of Justice of the requested State. Replies shall be communicated through the same channels.
- 3 Any Party may, by a declaration addressed to the Secretary General of the Council of Europe, indicate that it will use other channels of communication.
- 4 The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.

Article 6 – Supporting documents

- 1 The administering State, if requested by the sentencing State, shall furnish it with:

- a a document or statement indicating that the sentenced person is a national of that State;
 - b a copy of the relevant law of the administering State which provides that the acts or omissions on account of which the sentence has been imposed in the sentencing State constitute a criminal offence according to the law of the administering State, or would constitute a criminal offence if committed on its territory;
 - c a statement containing the information mentioned in Article 9.2.
- 2 If a transfer is requested, the sentencing State shall provide the following documents to the administering State, unless either State has already indicated that it will not agree to the transfer:
- a a certified copy of the judgment and the law on which it is based;
 - b a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, and any other factor relevant to the enforcement of the sentence;
 - c a declaration containing the consent to the transfer as referred to in Article 3.1.d; and
 - d whenever appropriate, any medical or social reports on the sentenced person, information about his treatment in the sentencing State, and any recommendation for his further treatment in the administering State.
- 3 Either State may ask to be provided with any of the documents or statements referred to in paragraphs 1 or 2 above before making a request for transfer or taking a decision on whether or not to agree to the transfer.

Article 7 – Consent and its verification

- 1 The sentencing State shall ensure that the person required to give consent to the transfer in accordance with Article 3.1.d does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the sentencing State.
- 2 The sentencing State shall afford an opportunity to the administering State to verify through a consul or other official agreed upon with the administering State, that the consent is given in accordance with the conditions set out in paragraph 1 above.

Article 8 – Effect of transfer for sentencing State

- 1 The taking into charge of the sentenced person by the authorities of the administering State shall have the effect of suspending the enforcement of the sentence in the sentencing State.

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- 2 The sentencing State may no longer enforce the sentence if the administering State considers enforcement of the sentence to have been completed.

Article 9 – Effect of transfer for administering State

- 1 The competent authorities of the administering State shall:
 - a continue the enforcement of the sentence immediately or through a court or administrative order, under the conditions set out in Article 10, or
 - b convert the sentence, through a judicial or administrative procedure, into a decision of that State, thereby substituting for the sanction imposed in the sentencing State a sanction prescribed by the law of the administering State for the same offence, under the conditions set out in Article 11.
- 2 The administering State, if requested, shall inform the sentencing State before the transfer of the sentenced person as to which of these procedures it will follow.
- 3 The enforcement of the sentence shall be governed by the law of the administering State and

that State alone shall be competent to take all appropriate decisions.

- 4 Any State which, according to its national law, cannot avail itself of one of the procedures referred to in paragraph 1 to enforce measures imposed in the territory of another Party on persons who for reasons of mental condition have been held not criminally responsible for the commission of the offence, and which is prepared to receive such persons for further treatment may, by way of a declaration addressed to the Secretary General of the Council of Europe, indicate the procedures it will follow in such cases.

Article 10 – Continued enforcement

- 1 In the case of continued enforcement, the administering State shall be bound by the legal nature and duration of the sentence as determined by the sentencing State.
- 2 If, however, this sentence is by its nature or duration incompatible with the law of the administering State, or its law so requires, that State may, by a court or administrative order, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. As to its nature, the punishment or measure shall, as far as possible, correspond with that imposed by the sentence to be enforced. It shall not aggravate, by its nature or duration, the sanction imposed in the sentencing State, nor exceed the maximum prescribed by the law of the administering State.

Article 11 – Conversion of sentence

- 1 In the case of conversion of sentence, the procedures provided for by the law of the administering State apply. When converting the sentence, the competent authority:
 - a shall be bound by the findings as to the facts insofar as they appear explicitly or implicitly from the judgment imposed in the sentencing State;
 - b may not convert a sanction involving deprivation of liberty to a pecuniary sanction;
 - c shall deduct the full period of deprivation of liberty served by the sentenced person; and
 - d shall not aggravate the penal position of the sentenced person, and shall not be bound by any minimum which the law of the administering State may provide for the offence or offences committed.
- 2 If the conversion procedure takes place after the transfer of the sentenced person, the administering State shall keep that person in custody or otherwise ensure his presence in the administering State pending the outcome of that procedure.

Article 12 – Pardon, amnesty, commutation

Each Party may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

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Article 13 – Review of judgment

The sentencing State alone shall have the right to decide on any application for review of the judgment.

Article 14 – Termination of enforcement

The administering State shall terminate enforcement of the sentence as soon as it is informed by the sentencing State of any decision or measure as a result of which the sentence ceases to be enforceable.

Article 15 – Information on enforcement

The administering State shall provide information to the sentencing State concerning the enforcement of the sentence:

- a when it considers enforcement of the sentence to have been completed;
- b if the sentenced person has escaped from custody before enforcement of the sentence has been completed; or
- c if the sentencing State requests a special report.

Article 16 – Transit

- 1 A Party shall, in accordance with its law, grant a request for transit of a sentenced person through its territory if such a request is made by another Party and that State has agreed with another Party or with a third State to the transfer of that person to or from its territory.
- 2 A Party may refuse to grant transit:
 - a if the sentenced person is one of its nationals, or
 - b if the offence for which the sentence was imposed is not an offence under its own law.
- 3 Requests for transit and replies shall be communicated through the channels referred to in the provisions of Article 5.2 and 3.
- 4 A Party may grant a request for transit of a sentenced person through its territory made by a third State if that State has agreed with another Party to the transfer to or from its territory.
- 5 The Party requested to grant transit may hold the sentenced person in custody only for such time as transit through its territory requires.
- 6 The Party requested to grant transit may be asked to give an assurance that the sentenced person will not be prosecuted, or, except as provided in the preceding paragraph, detained, or otherwise subjected to any restriction on his liberty in the territory of the transit State for any offence committed or sentence imposed prior to his departure from the territory of the sentencing State.
- 7 No request for transit shall be required if transport is by air over the territory of a Party and no landing there is scheduled. However, each State may, by a declaration addressed to the Secretary General of the Council of Europe at the time of signature or of deposit of its instrument of ratification, acceptance, approval or accession, require that it be notified of any such transit over its territory.

Article 17 – Language and costs

- 1 Information under Article 4, paragraphs 2 to 4, shall be furnished in the language of the Party to which it is addressed or in one of the official languages of the Council of Europe.
- 2 Subject to paragraph 3 below, no translation of requests for transfer or of supporting documents shall be required.

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- 3 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, require that requests for transfer and supporting documents be accompanied by a translation into its own language or into one of the official languages of the Council of Europe or into such one of these languages as it shall indicate. It may on that occasion declare its readiness to accept translations in any other language in addition to the official language or languages of the Council of Europe.

Except as provided in Article 6.2.a, documents transmitted in application of this Convention need not be certified.

- 5 Any costs incurred in the application of this Convention shall be borne by the administering State, except costs incurred exclusively in the territory of the sentencing State.

Article 18 – Signature and entry into force

- 1 This Convention shall be open for signature by the member States of the Council of Europe

and non-member States which have participated in its elaboration. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

- 2 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of paragraph 1.
- 3 In respect of any signatory State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 19 – Accession by non-member States

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Contracting States, may invite any State not a member of the Council and not mentioned in Article 18.1 to accede to this Convention, by a decision taken by the majority provided for in Article 20.d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.
- 2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 20 – Territorial application

- 1 Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 21 – Temporal application

This Convention shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

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Article 22 – Relationship to other Conventions and Agreements

- 1 This Convention does not affect the rights and undertakings derived from extradition treaties and other treaties on international co-operation in criminal matters providing for the transfer of detained persons for purposes of confrontation or testimony.
- 2 If two or more Parties have already concluded an agreement or treaty on the transfer of sentenced persons or otherwise have established their relations in this matter, or should they in future do so, they shall be entitled to apply that agreement or treaty or to regulate those relations accordingly, in lieu of the present Convention.
- 3 The present Convention does not affect the right of States party to the European Convention

on the International Validity of Criminal Judgments to conclude bilateral or multilateral agreements with one another on matters dealt with in that Convention in order to supplement its provisions or facilitate the application of the principles embodied in it.

- 4 If a request for transfer falls within the scope of both the present Convention and the European Convention on the International Validity of Criminal Judgments or another agreement or treaty on the transfer of sentenced persons, the requesting State shall, when making the request, indicate on the basis of which instrument it is made.

Article 23 – Friendly settlement

The European Committee on Crime Problems of the Council of Europe shall be kept informed regarding the application of this Convention and shall do whatever is necessary to facilitate a friendly settlement of any difficulty which may arise out of its application.

Article 24 – Denunciation

- 1 Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.
- 3 The present Convention shall, however, continue to apply to the enforcement of sentences of persons who have been transferred in conformity with the provisions of the Convention before the date on which such a denunciation takes effect.

Article 25 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in the elaboration of this Convention and any State which has acceded to this Convention of:

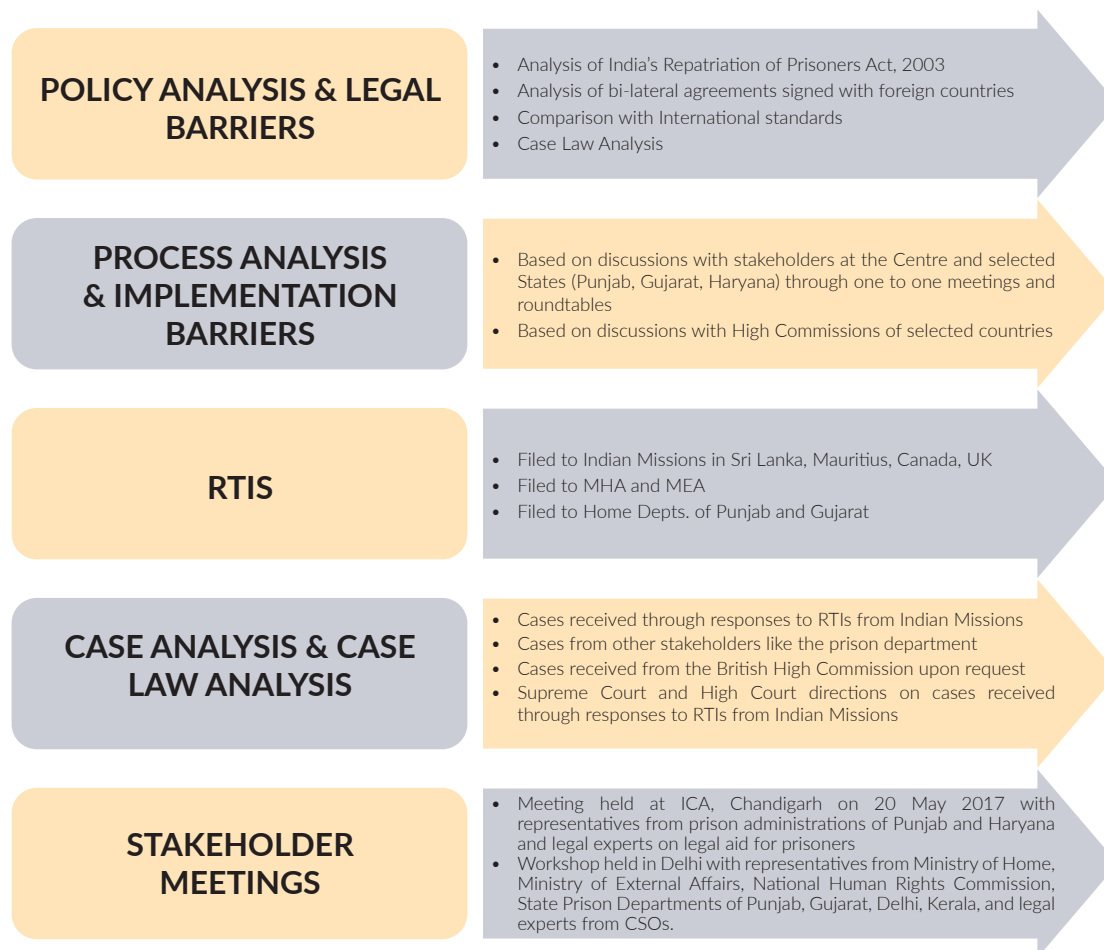
- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 18.2 and 3, 19.2 and 20.2 and 3;
- d any other act, declaration, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 21st day of March 1983, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, and to any State invited to accede to it.

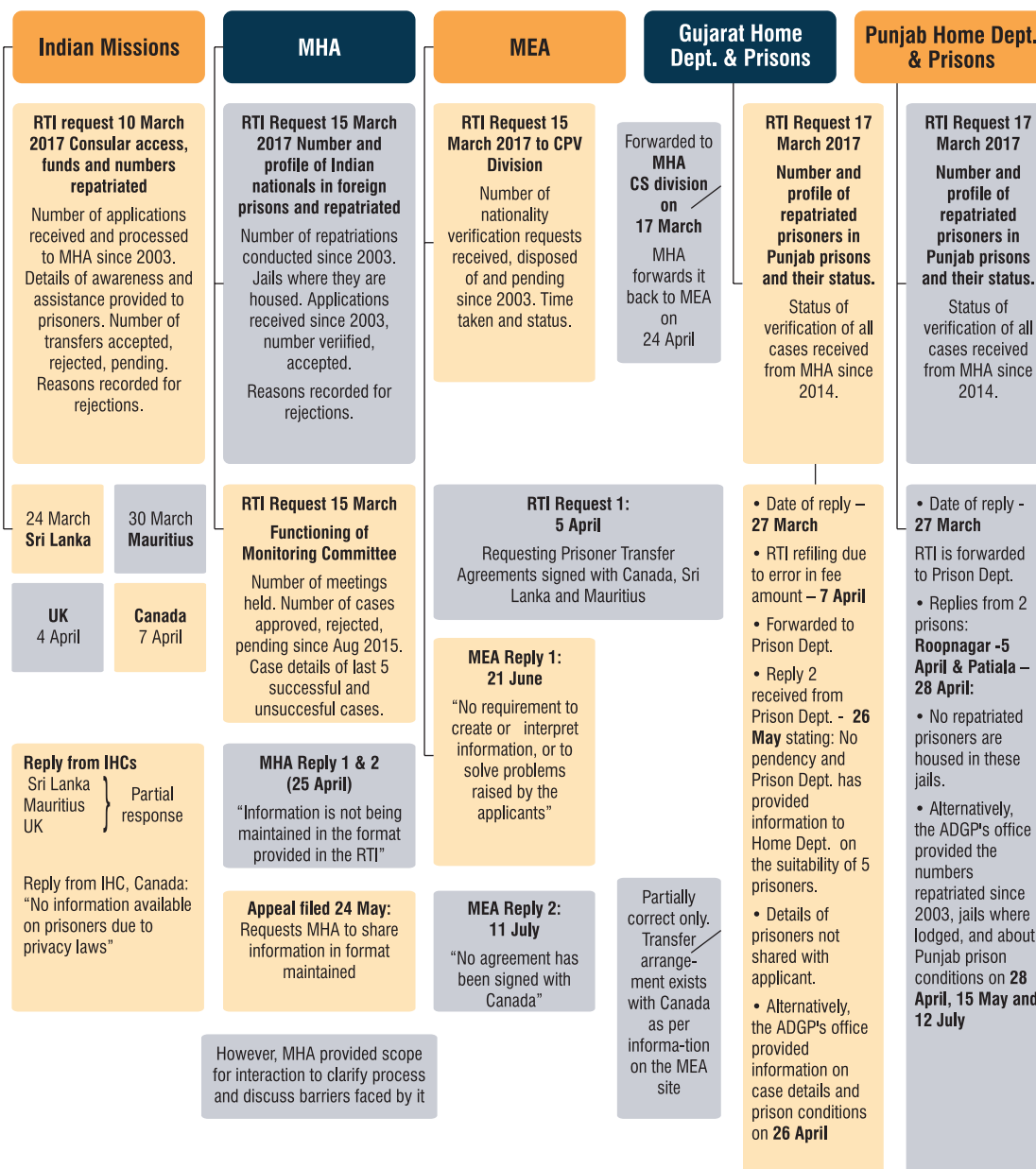
METHODOLOGY

A multi-pronged methodological framework was used to gather the findings in this study concerning the number of repatriation cases dealt with, the legal barriers lying in policies and implementation barriers lying in the process.



CHRI filed RTIs to MHA (Centre-State Division) and MEA (Consular-Passport-Visa Division) for total number of applications received and verified since 2003 and their status as well as that of the functioning of the MHA Monitoring Committee provided under its 2015 Guidelines on Transfer of Sentenced Persons. It also filed RTIs to Indian Missions and High Commissions of Sri Lanka, Mauritius, Canada and UK to seek information on number of Indian prisoners in respective foreign prisons eligible for repatriation, application processing, time taken, number of requests approved, rejected or pending. RTIs were also filed to two states, Punjab and Gujarat, to enquire into the number of applications received by the Home Department for verification, number of cases in which NOC was given, pendency, number and details of transferred prisoners and their treatment. The MHA and MEA did not provide the information citing the use of certain formats in the RTI request as their ground. Indian Missions replied selectively. Some of the queries have been answered on the floor of the Parliament. (Refer Annexures Q, R, S, T, U for full texts of RTIs filed)

RTI RESPONSE CHART



LOK SABHA QUESTION NO. 2601 - REPATRIATION OF PRISONERS

Government of India
Ministry of External Affairs

**Lok Sabha
Unstarred Question No.2601**

To be answered on 03.01.2018

Repatriation of Prisoners

1860. SHRI NINONG ERING:
SHRI KALIKESH N. SINGH DEO:
SHRI A.P. JITHENDER REDDY:

Will the Minister of EXTERNAL AFFAIRS be pleased to state:

(a) the details of Indian nationals (convicts and under-trials) lodged in foreign countries prisons, domicile, sex, offence and category-wise;

(b) the total number of applications for repatriation received and total the total number of Indian nationals repatriated from foreign prisons since the enactment of the Repatriation of Prisoners Act in 2003;

(c) the number of countries with which India has bilateral agreements in regard to repatriation of prisoners;

(d) the details of the inter-ministerial process of interaction between different Ministries and Departments; and

(e) the details of the average time taken to process such repatriation requests?

Answer

THE MINISTER OF STATE IN THE MINISTRY OF EXTERNAL AFFAIRS
(SHRI M. J. AKBAR)

(a) As per the information available with the Ministry, the number of Indian prisoners in foreign jail is 7985 as of 28.12.2017. Detailed country-wise list is given at Annexure. Due to strong privacy laws prevailing in many countries, the local authorities do not share information on prisoners unless the person concerned consents to the disclosure of such information. Even countries which share information, do not generally provide the detailed information about the Indians who have been imprisoned.

(b) After the enactment of the Repatriation of Prisoners Act in 2003, 170 applications for repatriation have been received and 62 Indian prisoners have been repatriated from foreign prisons.

(c) So far, India has signed bilateral agreements with 30 countries. Besides this, India has acceded to the Inter American Convention, by virtue of which, India can receive and send requests to the member countries as well as those countries who have signed/ratified the Inter American Convention.

(d) & (e) In the process of repatriation, mainly two Ministries of the Government of India are involved i.e. Ministry of External Affairs (Consular, Passport & Visa Division) through its Missions and Posts abroad and the Ministry of Home Affairs (Centre-State Division).

The processing of cases of transfer of prisoners involves steps like nationality verification, security clearance, views of Narcotic Control Bureau, if drug trafficking is involved, identification of prison by the State/Union Territory Government, completion of documents process by the India/foreign Mission concerned and consent of the transferring/receiving Governments. Time taken to process an application for transfer depends on the completion of necessary formalities and documents by the concerned agencies and State/ Union Territory Governments.

S.No.	Name of country	Number of prisoners	Details of Indian nationals lodged in foreign prisons (As per information received from our Missions/Posts abroad)		
			Domicile-wise	Sex-wise	Offence-wise
1.	Armenia	1	No details provided	1 - Male	No details provided
2.	Austria	5	5 - Punjab	5 - Male	Murder
3.	Australia	70	No details provided	70-Male	Sexual assault, murder, unlawful wounding, attempt to murder, road accident offence
4	Azerbaijan	3	3-Punjab	Details not provided	Possession of narcotics
5	Bahrain	77	Details not provided	74 - Male	Theft, receiving bribes, financial fraud, consumption of alcoholic drinks
6	Belarus	1	1 - Punjab	1 - Male	Crossing into Poland illegally
7	Bangladesh	19	11 - West Bengal	17- Male 2- Female	Narcotic act, arms act, murder case, explosive act and control of entry
8	Belgium	19	Details not provided	Details not provided	Human trafficking
9	Bhutan	53	36 - West Bengal 16- Assam	49-Male 1 -Female	Drugs, burglary, robbery, counterfeiting and auto stripping
10	Brunei	1	1 - Tamil Nadu	1 - Male	Murder charge
11	Cambodia	6	1 - J&K 1-Punjab 1-Kerala	6- Male	Drug trafficking
12	Canada	70	Details not provided	Details not provided	Murder, assault with a weapon, manslaughter, sexual interference and laundering precedes of crime
13	China	29	Details not provided	26 - Male	Drugs smuggling, intentional injury causing death, smuggling import and export of goods, illegal cross border, embezzlement, rape, fake documentation and theft
14	Colombia	5	1 - Assam	5- Male	Possession of fake documents and drug trafficking
15	Cuba	1	Details not provided	1 - Male	Corruption of minors and drug trafficking
16	Cyprus	6	Details not provided	5 - Male	Corruption of minors and drug trafficking
17	Denmark	7	Details not provided	7 - Male	Details not provided
18	Egypt	3	1 - Gujarat	5- Male 1- Female	Murder and Illegal stay
19	Ethiopia	5	2 - Rajasthan	3- Male	Drug Trafficking
20	Djibouti	1	Details not provided	Details not provided	Details not provided
21	Fiji	2	2 - Punjab	1 - Male	No details provided
22	Finland	1	Details not provided	1 - Male	Rape case
23	France	37	Details not provided	Details not provided	Details not provided
24	Germany	52	Details not provided	Details not provided	Details not provided
25	Ghana	3	Details not provided	Details not provided	Details not provided

26	Greece	17	Details not provided	Details not provided	Details not provided
27	Guatemala	3	Details not provided	3 - Male	Details not provided
28	Indonesia	28	Details not provided	26 - Male	No details provided
29	Iran	38	Details not provided	38 - Male	Diesel smuggling, illegal entry into Iranian waters
30	Iraq	10	5- Telangana	24- Male 2- Female	Immigration violation, misuse of stay permit, drug trafficking and fake documents
31	Ireland	3	Details not provided	Details not provided	Details not provided
32	Israel	7	Details not provided	5 - Kerala	Forged travel documents
33	Italy	79	Details not provided	78 -Male	No details provided
34	Japan	6	2 - Kerala	No details provided	No details provided
35	Jordan	2	1 - Chhattisgarh 1- Chhattisgarh	2 - Male	Theft
36	Korea	7	2 - Kerala 1 - Punjab 1 - Uttarakhand 1-Uttar Pradesh 1 - Maharashtra 1 - Others	No details provided	Drug control violation, Murder, Violation of the gun sword law and extortion
37	Kuwait	506	Details not provided	490 - Male	16
38	Kyrgyzstan	1	Details not provided	Details not provided	Details not provided
39	Lao PDR	2	2 - Kerala	2 - Male	Monetary cheating
40	Libya	3	Details not provided	Details not provided	Fake currency case
41	Malaysia	341	Details not provided	321 -Male	20
42	Malawi	1	Details not provided	1- Male	attempting to externalise foreign currency
43	Maldives	13	Details not provided	13 - Male	Drug trafficking
44	Mauritius	7	Details not provided	7-Male	Drug trafficking
45	Mexico	2	Details not provided	Details not provided	Murder and human trafficking
46	Mozambique	2	Details not provided	Details not provided	Kidnapping, theft
47	Myanmar	40	Details not provided	Details not provided	Myanmar Immigration Act offence
48	Nepal	859	Details not provided	Details not provided	Narcotic smuggling, theft, Murder
49	Netherlands	1	1 - Haryana	1 - Male	Murder
50	New Zealand	13	Details not provided	13 - Male/ Female	Details not provided
51	Oman	60	Details not provided	Details not provided	Murder, theft, bribery, drug dealing and alcohol trading
52	Pakistan	395	331 - Gujarat 12 Daman & Diu 7 Uttar Pradesh 5 - Bihar 2 - Andhra Pradesh 3 - Maharashtra 2 - Punjab 7- J&K 2 -Rajasthan 4 - Madhya Pradesh 4- Delhi 3 - West Bengal 1 - Odisha 12 - Domicile not known	390 – Male 5 - Female	Pakistan Army Act, Official Secret Act, Foreigners Act, Entry Pakistan Act and Others.
53	Panama	3	1-Delhi 1-Gujarat 1-Maharashtra	3 -Male	Smuggling of illegal migrants, organised crime, imprisonment offence

54	Peru	1	Details not provided	Details not provided	Details not provided
55	Philippines	17	Details not provided	17 - Male	Kidnapping for ransom, anti trafficking, drug related offence, attempted murder, acquisition of explosive fire arms, robbery
56	Portugal	6	Details not provided	6 - Male	Details not provided
57	Qatar	196	Details not provided	192 - Male	Drug case, cheque bounce, murder case, sex related crime, theft case, forgery and fraud, driving traffic violation
58	Russian Federation	11	Details not provided	11 - Male	Fraud, murder, sexual offence
59	Saudi Arabia	2229	Details not provided	1361 - Male	No details provided
60	Senegal	1	Details not provided	Details not provided	Details not provided
61	Singapore	115	Details not provided	111 - Male	4
62	Slovak Republic	1	1 - Punjab	1 - Male	Human trafficking
63	South Africa	6	Details not provided	Details not provided	Details not provided
64	Spain	36	Details not provided	36 - Male	Details not provided
65	Sri Lanka	38	Details not provided	Details not provided	Drugs, visa fraud
66	Suriname	3	Details not provided	Details not provided	Human trafficking and money laundering
67	Tanzania	3	Details not provided	3 -Male	Possession of illegal items
68	Thailand	47	2-Andhra Pradesh 45-Others	44 -Male 3 -Female	Stealing
69	Trinidad & Tobago	1	1-Kerala	1 -Male	Travelling on forged documents
70	Uganda	1	1-Maharashtra	1 -Male	Embezzlement of corporate funds
71	United Arab Emirates	1628	Details not provided	Details not provided	Details not provided
72	United Kingdom	376	Details not provided	376 -Male/ Female	Details not provided
73	Ukraine	1	Details not provided	Details not provided	Details not provided
74	United States of America	343	Details not provided	Details not provided	Criminal records, fraud case,
75	Uzbekistan	1	Details not provided	1 - Male	Financial fraud
76	Vietnam	1	1-Haryana	1 - Male	Details not provided
	Total	7983			

**LOK SABHA UNSTARRED QUESTION NO. 1860 -
INDIANS IN FOREIGN JAILS**

Government of India
Ministry of External Affairs

**Lok Sabha
Unstarred Question No.1860**

To be answered on 07.03.2018

Indians in Foreign Jails

1860. Dr. Krishna Pratap:
Mr Konda Vishweshwar Reddy:
Mr Ravindra Kumar Pandey:
Mr Mansukhbhai Dhanjibhai Vasava:
Mr Rajesh Pandey:

Will the Minister of External Affairs answer this:

- (a) The details of Indian nationals (convicts and under trials) lodged in prisons in foreign countries, their domicile, sex, offence and category-wise;
- (b) Total number of Indians who have completed their jail terms and the details of the steps taken to repatriate them;
- (c) What is the total number of applications for repatriation received since the enactment of the Repatriation of Prisoners Act in 2003 and the total number of Indian nationals repatriated from foreign prisons;
- (d) How many countries are there with which India has bilateral agreements for the repatriation of prisoners;
- (e) What is the details of the inter-ministerial process of interaction between different ministries and departments; and
- (f) Detail information on the average time taken to process such repatriation requests.

Answer

The Minister of State for External Affairs
(Gen. (Dr) V. K. Singh (Retd))

(a) & (b) As per the information available with the Ministry, there are 7850 Indian prisoners in foreign jails and as of 28.02.2018, 360 Indians have completed their jail terms.

Detailed country-wise list is given in the Annexure. In many countries there are strong privacy laws so the local authorities in these countries do not share information on prisoners unless the person concerned consents to the disclosure of such information. Those countries, which do share information, they normally do not provide detailed information about the imprisoned persons.

(c) After the enactment of the Repatriation of Prisoners Act in 2003, 170 applications for repatriation have been received and 63 Indian prisoners have been repatriated from foreign prisons.

(d) India has, so far, signed bilateral agreements with 30 countries. Apart from this, India has agreed to the Inter American Convention, through which India can receive and send requests to

the member countries as well as to those countries who have signed/ratified the Inter American Convention.

(e) & (f) Mainly, two Ministries of the Government of India are involved in the process of repatriation: Ministry of External Affairs (consular, passport and visa division) through its Missions and Posts abroad and the Ministry of Home Affairs (Centre-State division).

The process of transfer of prisoners involves many steps such as nationality verification, security clearance, views of Narcotic Control Bureau in case of drug trafficking, identification of prison by the State/Union Territory Government, process of completion of documents by the India/foreign mission concerned, and consent of the transferring/receiving Governments. Time taken to process an application for transfer depends on the completion of required formalities and presentation of documents by the concerned agencies and State/ Union Territory Governments.

S.No.	Name of country	Number of prisoners	Details of Indian nationals lodged in foreign prisons (According to the information received from our missions / posts abroad)			Number of Indians who have completed their jail terms
			Domicile-wise	Male/ Female	Offence-wise	
1.	Armenia	1	No details provided	1 - Male	No details provided	No details provided
2.	Austria	5	5 - Punjab	5 - Male	Murder	No details provided
3.	Australia	70	No details provided	70-Male	Sexual Assault Murder Unlawful hurt Attempt to murder Road accident offense	0
4.	Azerbaijan	5	2 Gujarat 2 Punjab 1 Other	5 Male	Illegal crossing of border	0
5.	Bahrain	77	No details provided	74 - Male 3 - Female	Theft, receiving bribes, financial fraud, consumption of alcoholic drinks	No details provided
6.	Belarus	8	7 - Punjab 1-Tamil Nadu	7 - Male 1 - Female	Illegally crossing the border	0
7.	Bangladesh	19	11 West Bengal 2 Tripura 2 Manipur 2 -Meghalaya 1 Assam 1 Delhi	17- Male 2- Female	Narcotic act, arms act, murder case, explosive act and control of entry	No details provided
8.	Belgium	19	No details provided	No details provided	No details provided	No details provided
9.	Bhutan	50	36 West Bengal 12 Assam 1 Tamil Nadu 1 Bihar	49-Male 1 -Female	Drugs, burglary, robbery, counterfeiting and auto stripping	No details provided
10.	Brunei	1	No details provided	No details provided	No details provided	0
11.	Cambodia	6	1 J&K 1 Punjab 1 Kerala 2 Gujarat 1 Tamil Nadu	6- Male	Drug trafficking	No details provided
12.	Canada	70	23 Male 2 Female 45 Others	No details provided	First degree Murder, Second degree murder, Assault with weapon with Man Slaughter, Trafficking substance under schedule I/II, sexual interference and laundering precedes of crime	No details provided

13.	China	32	6 - Punjab 4 - Manipur 2-Uttar Pradesh 7 - West Bengal 1 - Kerala 1 - Karnataka 4 - Delhi 2-Maharashtra 1 - Gujarat 4 - Others	28-Male 4-Female	Drugs smuggling, intentional injury causing death, smuggling import and export of goods, illegal cross border, embezzlement, rape, fake documentation and theft	No details provided
14.	Colombia	5	1 - Assam 3 - Punjab, 1 - Gujarat	5- Male	Possession of fake documents and drug trafficking	No details provided
15.	Cote D' Ivoire	2		2- Male	Submitting fake documents to the bank to get loan for the company	No details provided
16.	Cuba	1		1- Male	Corruption of minors and drug trafficking	No details provided
17.	Cyprus	6		5- Male 1- Female	Premeditated murder, circulation of false document and illegal employment	No details provided
18.	Denmark	6		5- Male 1- Female	Murder and Illegal stay	17
19.	Egypt	3	1 - Gujarat 2 - Andhra Pradesh	3- Male	Drug Trafficking	No details provided
20.	Ethiopia	5	2 -Rajasthan 2 - Tamil Nadu 1 - Kerala	5- Female	No details provided	No details provided
21.	Djibouti	1	No details provided	No details provided	No details provided	No details provided
22.	Fiji	1	1 Punjab	1 Female	Drug related offence	2
23.	Finland	1	No details provided	No details provided	No details provided	No details provided
24.	France	36	No details provided	No details provided	No details provided	No details provided
25.	Georgia	9	No details provided	9-Male	No details provided	No details provided
26.	Germany	51	No details provided	No details provided	No details provided	No details provided
27.	Ghana	3	No details provided	No details provided	No details provided	No details provided
28.	Greece	17	No details provided	No details provided	No details provided	No details provided
29.	Guatemala	3	No details provided	3- Male	No details provided	No details provided
30.	Indonesia	26	3 - Manipur 8 - Tamil Nadu 3 - Maharashtra 1-Uttar Pradesh 1 - Karnataka 2 - Delhi 3 - Haryana 2 - Punjab 1- Goa 2 - Others	24- Male 2- Female	Immigration violation, misuse of stay permit, drug trafficking and fake documents	No details provided
31.	Iran	17	4 - Gujarat 1 - J&K 1 - Bihar 1 - Jharkhand 1-Uttar Pradesh 9 - Others	17-Male	Diesel smuggling, illegal entry into Iranian waters	No details provided
32.	Iraq	11	8 - Telangana, Bihar and Chhattisgarh 3 - Kolkata	11-Male	Forged travel documents	17
33.	Ireland	3	No details provided	No details provided	No details provided	No details provided

34.	Israel	7	5 - Kerala 1-Maharashtra 1 - Karnataka	No details provided	No details provided	No details provided
35.	Italy	79	No details provided	78 - Male 1 - Female	No details provided	No details provided
36.	Japan	7	2 - Kerala 1 - Punjab 1 - Uttarakhand 1-Uttar Pradesh 1 - Maharashtra 1 - Others	No details provided	Drug control violation, Murder, Violation of the gun sword law and extortion	No details provided
37.	Jordan	16	No details provided	No details provided	Theft and Murder	No details provided
38.	Korea Republic	2	1 - West Bengal 1 - Kerala	2- Male	Violation of drug law and Unfair Competition Prevention and Trade Secret Protection Act of Republic of Korea	2
39.	Kuwait	506	No details provided	490-Male 16-Female	Murder and drug charges	No details provided
40.	Kyrgyzstan	1	1 - J&K	1- Male		2
41.	Lao PDR	2	2 - Kerala	2- Male	Monetary cheating	No details provided
42.	Libya	3	No details provided	No details provided	Fake currency case	No details provided
43.	Malaysia	341	No details provided	321-Male 20Female	Visa violation, drug related, human trafficking	No details provided
44.	Maldives	14	8 - Kerala 6- Tamil Nadu	14- Male	No details provided	0
45.	Mauritius	6	3 -Maharashtra 1 - Andhra Pradesh 1 - Punjab 1 - Others	6- Male	Drug Trafficking	1
46.	Mexico	2	No details provided	No details provided	Murder and human trafficking	No details provided
47.	Mozambique	2	2 - Kerala	2- Male	kidnapping	No details provided
48.	Myanmar	40	No details provided	No details provided	Myanmar Immigration Act offence	No details provided
49.	Nepal	859		N/A	N/A	No details provided
50.	Netherlands	1	1 - Haryana		Murder	No details provided
51.	New Zealand	14	No details provided	No details provided	No details provided	No details provided
52.	Oman	60	No details provided	No details provided	Murder, theft, bribery, drug dealing and alcohol trading	No details provided
53.	Pakistan	311	156 - Gujarat 12 - Daman & Diu 21 -Uttar Pradesh 4 - Bihar 2 - Andhra Pradesh 3 -Maharashtra 2 - Punjab 7- J&K 2 -Rajasthan 4 - Madhya Pradesh 4- Delhi 7 - West Bengal 1- Odisha 93 - Others	306- Male 5- Female		99
54.	Panama	3	No details provided	3- Male	Drug trafficking, Money laundering, Human trafficking, organized crime	No details provided

55.	Peru	1	No details provided	No details provided	No details provided	No details provided
56.	Philippines	17	No details provided	17- Male	Kidnapping for ransom, anti trafficking, drug related offence, attempted murder, acquisition of explosive fire arms, robbery	No details provided
57.	Portugal	6	No details provided	6- Male	No details provided	No details provided
58.	Qatar	196	No details provided	192- Male 4- Female	Drug case, cheque bounce, murder case, sex related crime, theft case, forgery and fraud, driving traffic violation	No details provided
59.	Russian Federation	11	No details provided	11- Male	Fraud, murder, sexual offence	No details provided
60.	Saudi Arabia	2181	No details provided	2140- Male 41- Female	No details provided	201
61.	Senegal	1	No details provided	No details provided	No details provided	No details provided
62.	Singapore	115	No details provided	111- Male 4- Female	Causing death, sexual offences, commercial crimes, customs offence, drug related offence, immigration offence	No details provided
63.	Slovak Republic	1	1 - Punjab	1- Male	Human trafficking	No details provided
64.	South Africa	5	1 - Kerala 4 - Gujarat	5- Male	No details provided	0
65.	Spain	36		36- Male	No details provided	No details provided
66.	Sri Lanka	30	1 - Tamil Nadu 1 - Maharashtra 27 - Others	2- Male 28- Not available	Drug smuggling charges, Sex offense and visa violation	No details provided
67.	Sudan	1	1 - Kerala	1- Male	No details provided	No details provided
68.	Tanzania	1	1 - Tamil Nadu	1- Male	Murder charge	0
69.	Thailand	47	2-Andhra Pradesh 45-Others	44- Male 3- Female	Theft	No details provided
70.	Trinidad and Tobago	1	1 - Kerala	1- Male	Travelling on forged documents	No details provided
71.	Turkey	3	1 - Tamil Nadu 2- Punjab	3- Male	Terrorism charges, Kidnapping and forgery	0
72.	Uganda	1	1 - Maharashtra	1- Male	Corporate funds embezzlement	No details provided
73.	UAE	1628	No details provided	322 - Male 6 - Female 1300 - NA	No details provided	21
74.	United Kingdom	376	No details provided	No details provided	No details provided	No details provided
75.	Ukraine	1	No details provided	No details provided	No details provided	No details provided
76.	USA	343	No details provided	No details provided	Criminal record, cases of fraud	No details provided
77.	Uzbekistan	1	No details provided	1 Male	Financial fraud	No details provided
78.	Vietnam	1	1 - Haryana	1 Male	Financial fraud	No details provided
	Total	7850				360

**IMPRISONMENT DETAILS OF INDIAN NATIONALS IN FOREIGN PRISONS
IN 2017 & 2018 - TOP 25 COUNTRIES**

Countries		Total Pris- oners	Convicted	Under Trials	Domicile- wise	Gender- wise	Offence- wise	Number of Indians who have completed their jail terms
Saudi Arabia	2017	2084	845	1239	Details not provided	Details not provided	Alcohol, Bribery, financial fraud, burglary	
	Jan 2018	2229			Details not provided	1361-Male 35-Female 833 Not known		
	Mar 2018	2181			No details provided	2140-male 41-female	No details provided	201
UAE	2017	1376	Details not available	Details not available	Details not provided	Details not provided	Details not provided	Details not provided
	Jan 2018	1628			Details no provided	Details no provided	Details no provided	
	Mar 2018	1628			Details no provided	322-Male 6-Female 1300-NA	No details provided	21
Kuwait	2017	488	403	85	Details not provided	Details not provided	Murder and drug charges	
	Jan 2018	506			Details not provided	2 - Male	Murder and drug charges	
	Mar 2018	506			1-J& K	1-Male		
Qatar	2017	177			Details not available	175- Male 2-Female	Drug cases, cheque bounce, mur- der case, sex related crimes, theft cases, forgery and fraud, driv- ing traffic violations	
	Jan 2018	196			Details not provided	192= Male 4- Female	Drugs cases, cheque bounce, murdered case, sex related crimes theft cases for and fraud,	
	Mar 2018	196			No details provide	192-Male 4-Female	Drugs cases, cheque bounce, murdered case, sex related crimes theft cases for and fraud,	
Oman	2017	84			Details not provided	84 - Male/Fe- male	Murder, theft, bribery, drug dealing and alcohol trading	
	Jan 2018	60			Details not provided	Details not provided	Murder, theft, bribery, drug dealing and alcohol trading	
	Mar 2018	60			No details provide	No details provide	Murder, theft, bribery, drug dealing and alcohol trading	
Bahrain	2017	82			Details not provided	5 - Male 7 - Female	Theft, accepting bribes, financial fraud, consumption of alco- holic drinks	
	Jan 2018	77			Details not provided	74-Male 3-Female	Theft, accepting bribes, financial fraud, con- sumption of alcoholic drinks	
	Mar 2018	77			Details not provided	74-Male 3- Female	Theft, receiving bribes, financial fraud, con- sumption of alcoholic drinks	No details provided
UK	2017	376	Details not avail- able	Details not available	Details not available	376 Male / Female	Details not Provided	

Source: Answer of the Minister of State for External Affairs in Parliament in August 2017 and March 2018.

	Jan 2018	376			Details not provided	376-Male/ Female	Details not Provided	
	Mar 2018	376			Details not provided	Details not Provided	Details not Provided	No details provided
U.S.A	2017	279	8, detail of others not known	3, detail of others not known	Details not provided	276-Male/ Female	Criminal records, fraud case,	
	Jan 2018	343			Details not provided	Details not provided	Criminal records, fraud case,	
	Mar 2018	343			Details not provided	Details not provided	Criminal records, fraud case,	No details provided
Canada	2017	50	50	0	Details not provided	48 - Male 2 -Female	Murder, assault with a weapon, manslaughter, sexual interference and laundering precedes of crime	
	Jan 2018	70			Details not provided	Details not provided	Murder, assault with a weapon, manslaughter, sexual interference and laundering precedes of crime	
	Mar 2018	70			23 Male 2- Female 45 Others	Details not provided	First degree Murder, second degree murder, Assault with weapon with Man Slaughter, Trafficking substance under schedule I/II, sexual Interference and laundering precedes of crime	No details provided
Nepal	2017	859	Details not available	Details not available	Details not provided	859 - Male/ Female	Narcotic smuggling, theft, Murder	
	Jan 2018	859			Details not provided	Details not provided	Narcotic. smuggling, theft murder	
	March 2018	859				N/A	N/A	No details provided
Sri Lanka	2017	46	5	41	31-Tamil Nadu 3-Kerala 1-Maharashtra 6-Puducherry	4-Male 1-Female	Drugs, visa fraud	
	Jan 2018	38			Details not provided	Details not provided	Drugs, visa fraud	
	March 2018	30			1-Tamil Nadu 1-Maharashtra 27- Others	2 Male 28 - Not available	Drug smuggling charges, Sex offense and visa violation	No details provided
Bangladesh	2017	21	21	0	7 - West Bengal 3 - Tripura 1 -Tamil Nadu 5 - Manipur 5-Meghalaya	21 - Male	Narcotic act, arms act, murder case, explosive act, control of entry	
	Jan 2018	19			11 - West Bengal 2 - Tripura 2 - Manipur 2-Meghalaya 1 Assam 1 Delhi	17-Male 2- Female		

	March 2018	19			11 - West Bengal 2 - Tripura 2 - Manipur 2-Meghalaya 1 Assam 1 Delhi	17-Male 2-Female	Narcotic act, arms act, murder case, explosive act, control of entry	No details provided
Malaysia	2017	304			Details not provided	287 -Male 17 -Female	Visa violation, drug related, human trafficking	
	Jan 2018	341			Details not provided	321-Male 20-Female	Visa violation, drug related, human trafficking	
	March 2018	341			Details not provided	321-Male 20-Female	Visa violation, drug related, human trafficking	Details not provided
Pakistan	2017	467			416-believed to be Indian prisoners (fisherman-consular access not yet provided) 51-Civil prisoners as detailed below: 3- Gujarat 2- Punjab 6-J&K 5-MP 3-UP 4- Delhi 5- Bihar 5- WB 1- Maharashtra 1-Kerala 2-Rajasthan 1- Andhra Pradesh 1-Orissa 12-Not known	467- Male/Female	Pakistan Army Act, Official Secret Act, Foreigners Act, Entry Pakistan Act and Others.	
	Jan 2018	395			331-Gujarat 12-Daman & Diu 7-Uttar Pradesh 5-Bihar 2-Andhra Pradesh 3-Maharashtra 2-Punjab 7- J& K 2- Rajasthan 4- Madhya Pradesh 4-Delhi 3- West Bengal 1 Odisha 12- Domicile not known	390- Male 5-Female	Pakistan Army Act, Official Secret Act, Foreigners Act, Entry Pakistan Act and Others	

	March 2018	311			156-Gujarat 12-Daman & Diu 21-Uttar Pradesh 4-Bihar 2-Andhra Pradesh 3-Maharashtra 2-Punjab 7- J& K 2- Rajasthan 4- Madhya Pradesh 4-Delhi 7- West Bengal 1- Odisha 93-Others	306-Male 5-Female		99
Singapore	2017	133	80	53	Details not provided	126 - Male, 7- Female	Causing death, sexual offences, commercial crimes, customs offence, drug related offence, immigration offences	
	Jan 2018	115			Details not provided	111-Male 4-Female	Causing death, sexual offences, commercial crimes, customs offence, drug related offence, immigration offences	
	March 2018	115			Details not provided	111-Male 4-Female	Causing death, sexual offences, commercial crimes, customs offence, drug related offence, immigration offences	No details provided
Italy	2017	78	78	0	Details not provided	77-Male 1- Female	Details not provided	
	Jan 2018	79			Details not provided	78-Male 1-Female	Details not provided	
	March 2018	79			Details not provided	78-Male 1-Female	Details not provided	Details not provided
Australia	2017	65	50	15	Details not provided	65 -Male	Sexual assault, murder, unlawful wounding, attempt to murder, road accident offence	
	Jan 2018	70			Details not provided	70-Male	Sexual assault, murder, unlawful wounding, attempt to murder, road accident offence	
	March 2018	70			Details not provided	70-Male	Sexual assault, murder, unlawful wounding, attempt to murder, road accident offence	
Bhutan	2017	62	62	0	36 - West Bengal 16- Assam 1-Tamilnadu	11- Male	Drugs, burglary, robbery, counterfeiting, auto stripping	
	Jan 2018	53			36 - West Bengal 16- Assam 1-Tamilnadu	11- Male	Drugs, burglary, robbery, counterfeiting, auto stripping	
	March 2018	50			36 West Bengal 12 - Assam 1 Tamil Nadu 1 Bihar	49-Male 1-Female	Drugs, burglary, robbery, counterfeiting, auto stripping	No details provided

China	2017	28	17	11	Details not provided	25 - Male 3 - Female	Drugs smuggling, intentional injury causing death, smuggling import and export of goods, illegal cross border, embezzlement, rape, fake documentation, theft	
	Jan 2018	29			Details not provided	25 - Male 3 - Female	Drugs smuggling, intentional injury causing death, smuggling import and export of goods, illegal cross border, embezzlement, rape, fake documentation, theft	
	March 2018	32			6-Punjab 4-Manipur 2-Uttar Pradesh 7-West Bengal 1-Kerala 1-Karnataka 4-Delhi 2- Maharashtra 1-Gujarat 4-Others	28 - Male 4- Female	Drugs smuggling, intentional injury causing death, smuggling import and export of goods, illegal cross border, embezzlement, rape, fake documentation, theft	
France	2017	13			Details not provided		Details not provided	
	Jan 2018	37			Details not provided	Details not provided	Details not provided	
	March 2018	36	Details not provided	Details not provided	Details not provided	Details not provided	Details not provided	Details not provided
Germany	2017	114	113	1	Details not provided	114-Male	Details not provided	
	Jan 2018	52	Details not provided	Details not provided	Details not provided	Details not provided	Details not provided	Details not provided
	March 2018	51	Details not provided	Details not provided	Details not provided	Details not provided	Details not provided	Details not provided
Indonesia	2017	28	25	3	Details not provided	26 - Male 2 - Female	Immigration violation, misuse of stay permit, drug trafficking, fake documents	
	Jan 2018	28		Details not provided	26 - Male 2 - Female	Immigration violation, misuse of stay permit, drug trafficking, fake documents		
	March 2018	26			3-Manipur 8-Tamil Nadu 3-Maharashtra	24-Male 2-Female	Immigration violation	Details not provided
Myanmar	2017	39	38	1	Details not provided	Details not provided	Myanmar Immigration Act offence	
	Jan 2018	40			Details not provided	Details not provided	Myanmar Immigration Act Offence	
	March 2018	40			Details not provided	Details not provided	Myanmar Immigration Act Offence	Details not provided
Thailand	2017	47	46	1	2-Andhra Pradesh 45-Others	44-Male 3-Female	Stealing	

	Jan 2018	47			2-Andhra Pradesh 45-Others	44-Male 3-Female	Stealing	
	March 2018	47			2-Andhra Pradesh 45-Others	44-Male 3-Female	Theft	Details not provided
Philippines	2017	17	0	17	Details not provided	17- Male	Kidnapping for ransom, anti trafficking, drug related offence, attempted murder, acquisition of explosive fire arms, robbery	
	Jan 2018	17			Details not provided	17- Male	Kidnapping for ransom, anti trafficking, drug related offence, attempted murder, acquisition of explosive fire arms, robbery	
	March 2018	17			Details not provided	17- Male	Kidnapping for ransom, anti trafficking, drug related offence, attempted murder, acquisition of explosive fire arms, robbery	Details not provided

UN MODEL AGREEMENT ON THE TRANSFER OF FOREIGN PRISONERS AND RECOMMENDATIONS ON THE TREATMENT OF FOREIGN PRISONERS

**Adopted by the Seventh Crime Congress, Milan, 26 August-6 September
1985, and endorsed by the General Assembly in resolution 40/32**

The social resettlement of offenders should be promoted by quickly facilitating the return of persons convicted of crime abroad to their home country to serve their sentence.

Prisoner transfer should take place where the offense in question is punishable by deprivation of liberty in both sending (sentencing) and receiving (administering) countries.

A transfer may be requested by either the sentencing or the administering State. A transfer shall be dependent on the consent of both States and the prisoner as well. The administering State should be given the opportunity to verify the free consent of the prisoner.

At the time of request for a transfer, as a general rule, the prisoner shall have at least six months of the sentence remaining to be served.

The administering State shall either continue enforcement of the sentence or convert the sentence to one prescribed by its law for a corresponding offense.

In the case of continued enforcement, the administering State shall be bound by the sentence determined by the sentencing State. It may, however, adapt the sanction to the punishment prescribed by its own law for the offense, but a sanction involving deprivation of liberty shall not be converted to a pecuniary sanction.

The administering State shall be bound by the findings of the sentencing State, which has the sole competence for review of the sentence.

Costs incurred as a result of a transfer shall be borne by the administering State, unless otherwise decided by both States.

Both the sentencing and administering States shall be competent to grant pardon and amnesty.

RECOMMENDATIONS ON THE TREATMENT OF FOREIGN PRISONERS

Foreign prisoners should have the same access as national prisoners to education, work and vocational training.

Foreign prisoners should be eligible for alternative measures to imprisonment according to the same principles as nationals.

The religious precepts and customs of foreign prisoners should be respected.

Foreign prisoners should be informed, in a language they understand, of the prison regime and regulations as well as their right to request contact with consular authorities. Proper assistance should be given in dealings with medical or programme staff and concerning such matters as complaints, special diets and religious representation and counseling.

Contacts should be facilitated between foreign prisoners and their families and with humanitarian international organizations.

COMMONWEALTH HUMAN RIGHTS INITIATIVE

CHRI believes that the Commonwealth and its member countries must be held to high standards and functional mechanisms for accountability and participation. This is essential if human rights, genuine democracy and development are to become a reality in people's lives. CHRI furthers this belief through strategic initiatives and advocacy on human rights, access to justice and access to information. It does so through research, publications, workshops, information dissemination and advocacy. It has three principal programmes:

Access to Justice

Police Reforms: In too many countries the police are seen as an oppressive instrument of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that the police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In South Asia, CHRI works to strengthen civil society engagement on police reforms. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

Prison Reforms: CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractices. A major area is focussed on highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. We believe that attention to these areas will bring improvements to the administration of prisons as well as have a knock-on effect on the administration of justice overall.

Access to Information

CHRI is acknowledged as one of the main organisations working to promote Access to Information across the Commonwealth. It encourages countries to pass and implement effective Right to Information laws. It routinely assists in the development of legislation and has been particularly successful in promoting Right to Information laws and practices in India, Sri Lanka, Afghanistan, Bangladesh and Ghana. In the later CHRI's is the Secretariat for the RTI civil society coalition. CHRI regularly critiques new legislation and intervenes to bring best practices into governments and civil society knowledge both at a time when laws are being drafted and when they are first being implemented. Its experience of working in hostile environments as well as culturally varied jurisdictions allows CHRI to bring valuable insights into countries seeking to evolve and implement new laws on right to information. In Ghana, for instance it has been promoting knowledge about the value of Access to Information which is guaranteed by law while at the same time pushing for introduction of an effective and progressive law.

International Advocacy and Programming

CHRI monitors commonwealth member states' compliance with human rights obligations and advocates around human rights exigencies where such obligations are breached. CHRI strategically engages with regional and international bodies including the Commonwealth Ministerial Action Group, the UN and the African Commission for Human and People's Rights. Ongoing strategic initiatives include: advocating for and monitoring the Commonwealth's reform; reviewing Commonwealth countries' human rights promises at the UN Human Rights Council, the Universal Periodic Review; advocating for the protection of human rights defenders and civil society space; and monitoring the performance of National Human Rights Institutions in the Commonwealth while advocating for their strengthening.



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