

A Long Night's Journey into Day

A Palestinian returns home after 27 years in Indian prisons

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'I feel good, like the sky' said Yezid¹ on the day he was to fly back to his home after spending 27 years in India, 23 of which were spent in an Indian prison. His case is one of many highlighting the dangerous insularity of Indian prisons that rubs off not just on the lives of its own poor and voiceless but also of those belonging to other countries.

There were 6185 foreign prisoners in India on 31st December 2015. As with other Indian inmates, more than half were awaiting or undergoing trial. The difference however is that they couldn't speak the language everyone else understands and have little or nothing in common with those who are guarding them. Many are abandoned by their spouses or separated from their kids who are then banished to other, not very different, institutions. There is also a problem of unequal burden sharing. West Bengal's prisons house more than half the total foreign prisoners in the country. Ninety-eight percent of these are Bangladeshi nationals. Roughly 70 percent of all the convicts booked mainly under Section 14 of the pre-colonial Foreigners Act were also lodged in West Bengal. The problem is worse in border districts where there is an unbearable 400% occupancy.

But the Prison Statistics published by the National Crime Record Bureau hide more than they reveal. It doesn't give us the number of those who have completed their prison terms but who remain in prison for want of assistance and means to return to their own countries. They remain in jail well past the official date of their release.

The story of Yezid, is one such case. It is an archetype of all the procedural obscurities that a foreign national prisoner has to battle before he can safely return to his home country. Born a Palestinian in Gaza, denied nationality and displaced by statelessness, he was 22 years old and had spent most of his life outside Gaza when he came to India to pursue his education. His tribulations with the criminal justice system in India began with his arrest for overstaying his visa. During that time, all his travel papers were seized and filed in the Nagpur court. Later, he travelled to other parts of India and was involved in various

Q. How do you feel?

A. Very good, like the sky...

Q. Have you decided where you'll go once you reach Gaza?

A. I will go back home, our home, where my family is.

Q. Does your family know that you'll be most likely in Gaza tomorrow?

A. I will call them as soon as I can. I have my niece's number that the embassy had provided.

Q. What are your plans for the future?

A. I want to settle down. Get married have children and take care of our family business. We were landlords and I would like to go back and manage our properties.

Q. Will you miss being here?

A. Yes, in all the years I have made many friends here. Most people came and went, I stayed on. People in prison have been very kind, and treated me well. I was given things for free – 'bhai ko de do' – was the common practice.

¹ Name changed on request.

criminal offences. Unfortunately, his travel papers remained with the Nagpur court even though he was transferred to other states to stand trial in other cases. He underwent multiple convictions, which accounted for the 23 years he spent as a prisoner, three of which were spent awaiting repatriation. Surprisingly, he faced conviction twice for violation of the foreigners act, which may have been quashed had he approached the appropriate court.



In all these years, he did not have the means to speak to his family and inform them of his incarceration as there is no facility for making international calls in prison. Over time he had forgotten Arabic and could speak broken Bengali. When the embassy was able to locate his family 27 years later, their happiness knew no bounds. They had feared Yezid dead, yet unable to mourn and constantly tormented by the fear of loss. One could almost imagine the

happiness felt by him and his niece, when it was arranged for them to speak over the phone early in 2016. Not surprisingly, it took much convincing and dated photos from the embassy and his niece to convince that his family was still around. All these years of incarceration rendered him suspicious and distrustful.

A morbid combination of bureaucratic hurdles, a language barrier and geo political exigencies had given the process of his return a perplexing form, shreds of which were placed together one by one by Commonwealth Human Rights Initiative (CHRI) with cooperation from the prison officers and the embassy.

1. Statelessness

Though the country of his origin was Palestine, he lived out of Gaza for the longest time. Instead of a passport, he had a refugee travel document for a period of five years that was issued to him by Egypt under the Casablanca Protocol of 1965. He recalled it as having an 'oily green' colour. He was born without a nationality and lived across the world on the humanitarian goodwill of other countries. He did not have a home. Adding to the confusion, the court documents in India identified him as an Egyptian and news reports as Jordanian. Not much is known of what transpired between 2013 which is when he was released and 2015 which is when the Welfare Officers at the prison sought assistance of the CHRI to facilitate his repatriation. CHRI is an independent, non-partisan, non-governmental organization working towards reducing unnecessary detention. Towards this, it runs legal aid clinics in five prisons of West Bengal, including the one where Yezid was jailed. CHRI learned the prison authorities were unable to ascertain Yezid's nationality and did not know how to get him repatriated.

2. Absence of Consular Access

Despite it being mandatory for jail officials and the State Home Department to inform the consulate of the prisoner's country at the time of his admission into the jail, it was found that the Embassy of Palestine had not received any such information. Consular access as a right stems from Article 36 of the Vienna Convention on Consular Relations to which India is a party. In the absence of family and relatives in the country of arrest, the consulate/diplomatic mission of the country of prisoner's origin acts as immediate point of contact. Such access assists the consulate primarily in verifying the prisoner's nationality by asking probing questions and retrieving important travel and family details. It also helps the prisoner in understanding legal framework of the country he is arrested in besides restoring ties and contact with his family. In the absence of any such interaction, Yezid was forgotten and lost in the bureaucratic quagmire of a foreign country. Our experience shows that most of the foreign prisoners are not afforded this opportunity further adding to their vulnerability and isolation. For better implementation of the convention, the prison where the prisoner is lodged could inform the Embassy directly instead of routing it through various other governmental desks. This would ensure a more streamlined and less bureaucratic flow of information and faster aid to the prisoner.

3. Absence of travel documents in his jail record

It took CHRI and its partner organizations three months to move the local court and police to obtain the copy of Yezid's travel documents that too after painstakingly convincing the court of their purely humanitarian role in facilitating Yezid's return. Travel documents of an alien is his life and identity in a foreign country even when he is incarcerated. They become all the more important because a foreign prisoner has no choice but to be deported after the completion of the sentence notwithstanding his will to return. In fact, in the absence of timely consular notification and access, these travel documents play an important role in expeditious nationality verification. Thus, during the transfer of the foreign prisoner to another jail in the same state or another state, his travel documents/passport/identity documents must be filed and also transferred herewith.

4. No emigration database with the Consulates

In the absence of nationality and travel documents, consulates do not move further with the repatriation process. The lack of any strict identification tools available with the countries does not help either. It is left to the prison to coordinate with various stakeholders such as courts and police to retrieve the nationality document that more often than not results in a futile exchange of letters. This highlights the imminent need for the creation of an e-database with the country's home/external affairs ministry, wherein details pertaining to entry and exit of foreign nationals can be accessed, in cases where it is difficult to identify nationality from other means. Travels documents are a very important means, not only to prevent a person from being rendered invisible, but also to ensure that contact with family is established.

5. No Guidelines for Stakeholders

The repatriation of a prisoner is a multi-departmental process that involves the prison, state home department, Foreigner Registration Regional Office (FRRO), the territorial division and consular division of Ministry of External Affairs (MEA) and foreigner division of Ministry of Home Affairs (MHA) and the consulate/diplomatic mission. These offices do not have a standard operating procedure for dealing with these cases and are often stuck in the administrative ballgame. Even if they have, none of this is shared with the prison departments, which often leaves them in the dark. In Yezid's case, the lack of guidelines was further aggravated, as his country of origin was Gaza, entry into which is heavily regulated by Egypt.

6. Regulation of entry into Gaza & Approval of the Airline Operator

Even after he was issued a new passport by the Palestinian government, he could not be repatriated unless he had explicit permission to enter Egypt, as the Rafah border crossing from Egypt to Gaza is the only entry and exit point for 1.8 million Palestinians. It opens for a short time several times a year. But the temporary opening of the border is announced just a day or sometimes only a night in advance. His entry into Egypt had to be exclusively facilitated through the diplomatic channels of both the countries based on humanitarian considerations. The permission even when received was contingent on the border being open at that very time of travel. This further had to be synchronized with the guidelines followed by airline operators for removal of deportees. According to guidelines issued by the IATA/Control Authorities Working Group for removal of deportees, the airline operator may refuse to carry the deportee in the carrier if the deportee poses a security risk to the fellow passengers. To analyze and alleviate such risk, a risk assessment form has to be filled and duly processed by the airline operator which requires a 48 hours window. This window was not available to Yezid considering the border regulation. In the light of these circumstances, a failed attempt was made to repatriate him in Emirates airlines in the first week of May a day before his 50th birthday. Fortunately, as a good will gesture, Egypt opened the border again three weeks later on Ramadan when he successfully flew to Egypt on Egypt Air considering it was the national airlines of the receiving country.

Despite bilateral agreements for repatriation, lack of diligent consular assistance; restrictions on making international calls to family; lack of implementation of agreements on transferring of prisoners between India and many countries; sketchy application of deportation/repatriation procedures and absence of alternative facilities to house the released prisoners have contributed to an enormous humanitarian and administrative problem.

It took a mammoth effort on part of every agency concerned viz. CHRI, MEA, FRRO, Prison department, Palestine Embassy and the Egyptian Embassy to finally see him aboard the flight home. Yezid's reality highlights how important it is to coordinate between various stakeholders, both within the government and those outside the system, to facilitate the process of repatriation of an individual back to his home country.

Yezid's tale isn't the only one, there are many such persons, in similar dire circumstances, who may remain behind bars years beyond their actual imprisonment for want of better procedures, mechanisms and guidelines to ensure speedy repatriation back to their home countries. Until that takes place it could only be a matter of time before the criminal justice system collapses, and we would see that those buried and trapped under the rubble would only be the vulnerable and the voiceless.