

Recommendations to Punjab Prison Act

Foreign National Prisoners

Commonwealth Human Rights Initiative

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FOREIGN NATIONAL PRISONERS

1. Admission of Prisoners

I. At the time of admission of a foreign national prisoner, a letter consisting the name of the prisoner, his claimed nationality, permanent address in his home country, date of arrest, sections charged, name of the police station and language spoken by him must be sent to the embassy/consulate/diplomatic mission of his home country in India to provide such prisoner consular access. They could contact their consular representatives based in India at any time during their detention notwithstanding India's political relation with the country of their origin.

II. Foreign national prisoners must be informed, in a language they understand, of their right to free legal aid and the possibility of transfer to the country of their origin if the subject country¹ is in agreement with Government of India under Repatriation of Prisoners Act, 2004.

2. Interview of Foreign National Prisoner

Every undertrial or convicted foreign national prisoner must be allowed reasonable facilities for seeing or communicating with his relatives or friends with a view to the preparation of his defense or an appeal, procuring of bail or arranging the fine amount that has been levied on him. He must also be allowed to have interviews or write letters to his friends once or twice, or oftener, with the supervision

¹ Qatar, United Kingdom, Mauritius, Bulgaria, Brazil, Cambodia, Egypt, France, Bangladesh, South Korea, Saudi Arabia, Iran, Kuwait, Sri Lanka, UAE, Maldives, Thailand, Turkey, Italy, Bosnia & Herzegovina, Israel, Russia, Vietnam and Australia

RATIONALE

- ✓ Vienna Convention on Consular Relations, 1963, signed by India on 28th November, 1977
- ✓ Rule 38, UN Standard Minimum Rules for Treatment of Prisoners
- ✓ 15.1; 15.2; 24.1, Recommendation CM/Rec (2012)12 of the Committee of Ministers to member States concerning foreign prisoners
- ✓ <https://wcd.coe.int/ViewDoc.jsp?id=1989353&Site=CM>
- ✓ Article 21 of the Constitution of India
- ✓ 15.3
- ✓ Recommendation CM/Rec (2012)12 of the Committee of Ministers to member States concerning foreign prisoners

RATIONALE

- ✓ Rule 37 & 92, UN Standard Minimum Rules for Treatment of Prisoners
- ✓ 22.1, Recommendation CM/Rec (2012)12 of the Committee of Ministers to member States concerning foreign prisoners
- ✓ Foreign National Prisoners belonging to impoverished countries with poor rule of law fall prey to alienation and unhealthy standards of public defense. Therefore, it is important to enhance lawyer-client communication in their cases. Considering the long distance between the prisoner and his family, it is of paramount importance that foreign national prisoner are given the opportunity to write to their family in order to maintain or restore family ties.



of the Superintendent, to enable him to arrange for the management of his property or other family affairs.

3. *Procedure for Visiting a Foreign National Prisoner*

- I. The relative of a foreign national prisoner may write to the Secretary, Department of Home, Punjab and Superintendent of prison the prisoner is detained in, requesting for permission to visit the prisoner. Such letter shall contain the details of the visitor such as name, age, the relationship with the prisoner, a document proving the relationship, conversant language and details of the prisoner such as name, age, name of the prison detained in and sections charged with (if known).
- II. The Superintendent must write to the Secretary, Department of Home within 7 days providing the condition of prisoner, the details of his case and his background.
 - I. Department of Home must take a decision on granting or rejecting the permission of visit within 7 days, and intimate such a decision to the Superintendent of the prison and the relative of the prisoner containing specific visiting hours and other necessary details.
 - II. After the receipt of such a letter, the Superintendent of the jail shall immediately write to the Intelligence Bureau apprising them of such a visit and requesting them for deputation of an interpreter who can understand the language of the visitor and Foreign National Prisoner on the date decided by the Home Department.
- III. The prisoner may meet the relative for 60 minutes or less at the Visitor Center.

RATIONALE

- ✓ Recommendations 22.5; 22.6
- ✓ Recommendation CM/Rec (2012)¹² of the Committee of Ministers to member States concerning foreign prisoners
- ✓ The procedure to grant or reject permission to family of the prisoner to visit him/her must be flexible considering the problems the poverty stricken family may face for obtaining visa.



4. Eligibility for bail and set-off of sentence under CrPC

- I. The names of foreign national prisoners who are eligible for release on bail under Sections 436, 436A and 167(2) must be included in the list prepared by the Superintendent of the jails for the inspection by Periodic Review Committees and District Monitoring Committee.
- II. The foreign national prisoners who are released on bail by the court under Section 436, 436A and 167(2) shall be transferred to Detention Centers made for housing the foreign national prisoners.
- III. The District Monitoring Committee while recommending and computing the term of sentence for a foreign national prisoner, must consider setting off the time already spent by them as undertrial under Section 428 of Code of Criminal Procedure.

5. Transfer of a Foreign National Prisoner

- I. If a sentenced foreign national prisoner belonging to a country with which the Government of India has signed an agreement under Repatriation of Prisoners Act, 2004 expresses his interest to serve the remaining part of his sentence in the country of his origin, the Superintendent of the prison in which he is lodged must seek his consent on a prescribed form and send it to Foreigners Division, Ministry of Home Affairs and Foreigners Division, State Government.
- II. The Superintendent of the prison in any case, must inform the prisoner of such an Agreement during his admission at the time of his final conviction and ask him whether he intends to serve the remaining sentence in the country of his origin, considering his

RATIONALE

The Indian Legal system does not create any discrimination or differentiation between Indian Nationals and foreign nationals when it comes to granting bail. The fundamental right to "equality before law" provided by the Constitution of India is not denied to the foreign nationals merely on the ground of them being non-citizens of this country. For the "right to personal liberty" of foreign nationals is equally important as that of the Indian nationals and the same is curbed when the security of the society is put at stake. (*Lambert Kroger vs Enforcement Directorate (2000 85 (2000) DLT 62); Haroub Slaum Sleyoum vs. Shri Abdul Qadir*)

RATIONALE

Article 5(1)(f)

UN Model Agreement on the Transfer of Foreign Prisoners and Recommendations on the treatment of foreign prisoners

Repatriation of Prisoners Act, 2004

Transfer of Sentenced Prisoners Agreements with 24 countries



eligibility for the transfer under the subject Agreement.

6. *Deportation Center for Released Foreign National Prisoner*

Punjab must have a detention center to house all the foreign national prisoners awaiting their repatriation or deportation. Every prisoner must be transferred to a detention center once h/she has served the sentence.

Repatriation of a Foreign National Prisoner

- I. The Superintendent of the prison in which the foreign national prisoner is detained must initiate the repatriation procedure at least 6 months before the estimated date of release of the prisoner.
- II. The Superintendent must seek the prisoner's consent for repatriating him to his country of origin or the country where his family has been residing. Once the consent is taken, the Superintendent must locate his file and mark it as "Repatriation Case/Urgent Consideration required".
- III. He must write to the Secretary in charge of Prisons, Department of Home, Punjab with the details of the prisoner, order of the court, nature and duration of his sentence and medical report requesting to issue an order of repatriation. He must mark a copy of such letter to:
 - District Collector
 - Deputy Superintendent of Police the district where the prisoner was arrested
 - Superintendent of Police, Criminal Investigation Department
 - Foreign Registration Officer of the district
 - Foreigner Division, Ministry of Home Affairs

RATIONALE

- ✓ Article 21 of the Constitution of India
- ✓ Inordinate delay takes place in repatriating the prisoner due to lack of operational guidelines and coordination amongst the stakeholders to effect the return of the prisoner to his home country. As a result of which many foreign national prisoners are forced to overstay for over a year till the time the administrative formalities are not completed.



- Consular, Passport and Visa Division, Ministry of External Affairs, the Station
- IV. Secretary, Department of Home must issue a deportation order and an order of transfer to the detention center within 4 weeks. He must also intimate the embassy/consulate/diplomatic mission of the country of origin of prisoner to arrange travel documents marking a copy to the Foreigner Division and Consular, Passport and Visa Division of the Ministry of Home Affairs.
- V. The embassy/consulate/diplomatic mission of the country of origin must verify the nationality of the prisoner by checking earlier records of consular access provided to him or by verifying the residence of his family. It must then issue the travel documents and tickets (if the journey is by air) and send it to either the territorial division in the Ministry External Affairs managing the affairs of prisoners' country (if any) or the Consular, Passport and Visa Division of Ministry External Affairs within 4 weeks.
- VI. Ministry of External Affairs must send the travel documents and tickets immediately to the Secretary, Department of Home, Punjab within 1 week.
- VII. Secretary, Department of Home, Punjab must send the documents to CID, Punjab and the Deputy Superintendent of Police (DySP) of the district where the prisoner was arrested with a permission to repatriate the prisoner within 2 weeks.
- VIII. The DySP must arrange for a police escort to take the prisoner to embassy/consulate/diplomatic mission and then to the place from where the prisoner will travel to his country of origin.
- IX. The expenditure incurred by the State Government in transportation of the prisoner, if not borne by the



Embassy may be reimbursed by the Central Government for performing the tasks on behalf of them.

7. *Asylum seekers in Detention*

- I. If a foreign national prisoner has been arrested under Section 14 or 14A(b) of the Foreigners Act and claims to belong to a country where he fears persecution due to his race, religion, nationality, membership to a particular social group or political opinion OR the embassy/consulate/diplomatic mission has rejected the prisoner's claim to nationality thereby rendering him stateless, the Superintendent of the jail or the Welfare Officer of that district must write to the Director General of Prisons seeking the intervention of the Central Government.
- II. The Director General of Prisons must write to Foreigners Division, Ministry of Home Affairs and United Nations High Commissioner for Refugees apprising them of his case details and the decision of the embassy/consulate/diplomatic mission.

9. *Death of a Foreign National Prisoner in Custody*

In cases of emergency and where the foreign prisoner has given prior consent, the prison authorities shall endeavor to inform family members of the death, serious illness or serious injury of such a prisoner.

RATIONALE

- ✓ 24.4, Recommendation CM/Rec (2012)12 of the Committee of Ministers to member States concerning foreign prisoners <https://wcd.coe.int/ViewDoc.jsp?id=1989353&Site=CM>
- ✓ India accepted the Bangkok Principles, 1966 that upheld the principle of non-refoulement which means that no person fearing persecution in his country must be sent to that country. Therefore, to abide by the international standards that India has ratified, it is important that none of the asylum seekers who are caught while fleeing persecution are detained. Instead they should be given the opportunity to present their cases to either the Ministry of Home Affairs or the UNHCR, India which deals with asylum seekers on ad hoc basis.