

CHRI 2019

STRANGERS TO JUSTICE

A Report on Foreigners in Indian Prisons



CHRI

Commonwealth Human Rights Initiative

working for the *practical* realisation of human rights
in the countries of the Commonwealth



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Strangers to Justice is an outcome of CHRI's experience of working on issues of detention and repatriation of foreign nationals in Indian prisons for nearly ten years. CHRI took up the issue of foreign nationals in 2009, starting with Bangladeshi nationals lodged in prisons across West Bengal and working with partner organisations in Bangladesh. Simultaneously, it also began to facilitate the repatriation of Indians in Bangladeshi prisons back to the country. In due course, it started providing assistance to prisoners of other nationalities as well. As more cases were received, hitherto unknown issues began to come to our attention. Over the years, we have visited and interacted with a large number of foreign nationals confined in the prisons of West Bengal, Rajasthan, Haryana, Punjab and Assam.

This report documents and examines the challenges faced by foreign national prisoners (FNPs) in India. While prisoners, in general, are vulnerable due to asymmetrical power dynamics and the closed nature of places of detention, this report is an effort to understand the special vulnerability of foreign nationals stemming from their non-Indian nationality or statelessness. The analysis is anchored by the data collected from 22 states and four Union Territories through Right to Information requests filed by CHRI to heads of all 36 state prison departments across the country.

For the purpose of this report, the term 'foreign national prisoners' refers to prisoners who do not carry the passport of the country in which they are imprisoned.¹ There are several types of FNPs: firstly, those who have travelled between countries for committing a criminal offence or engaged in criminal activities; secondly, those who entered the country on valid documents, but have overstayed their visa period and therefore violated the laws of the country; or committed an offence; thirdly, long-term residents in a country, who have not yet been granted citizenship for various reasons; fourthly, illegal immigrants, i.e. those who enter the country primarily for economic or social reasons and are apprehended.

Over the past decade, CHRI has dealt with cases of FNPs from Afghanistan, Bangladesh, Cameroon, Cote D'Ivoire, France, Kingdom of Lesotho, Liberia, Myanmar, Nepal, Nigeria, Palestine, Saudi Arabia, Sierra Leone, South Africa, Sri Lanka, Ukraine etc. It has been able to identify bottlenecks and lacunae in the existing system that have failed to protect the right of incarcerated FNPs. We found that these issues were not limited to any one country. They should thus not be brushed aside or ignored as lack of political will or international diplomatic relations.

¹United Nations Office on Drugs and Crime (2009) Handbook on Prisoners with special needs. https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf. For the purpose of this report, it excludes any person less than 18 years of age.

It is CHRI's experience that foreign national detainees, whose embassies in India are not able to offer effective protection, often find themselves at the receiving end of the criminal justice system. 'The absence of, or delayed consular access, lack of strict nationality verification tools, restrictions on making international phone calls, inefficient government-funded legal aid and expensive private legal assistance further underline the susceptibility of such prisoners to violations. Language barriers and inadequate understanding of legal system add to their vulnerability'.²

Scope and limitations

The primary focus of this study is to highlight issues faced by foreign nationals detained in prisons in India. It addresses problems related to the arrest, imprisonment, consular access, deportation and repatriation of FNPs, and seeks to bring to the fore the ways in which the existing system is inadequate in dealing with FNPs' issues. The report emphasises upon the urgent need to review and revise the existing guidelines that govern the detention and deportation of foreign nationals in India. It also highlights how the existing system is nothing but 'a chaotic network of systems that intricately intertwines immigration law and criminal law making it complicated'.³

While explored, the need to develop alternatives to detention for cases of illegal immigration has not been taken up in great detail in this report. Preparing that roadmap requires a larger consultative process among stakeholders such as government functionaries, consular officers of diplomatic missions, law enforcement officers, etc. We believe that this study can serve as a stepping stone to that.

This study also does not deal with the issue of transfer of sentenced prisoners under the Repatriation of Prisoners Act, 2003. This is the subject matter for a larger piece of research already conducted by CHRI.⁴ The study also does not delve deeply into specific issues faced by asylum seekers or refugees in detention. We are mindful of the lack of any national legislative framework that affords protection to asylum seekers and refugees in India, and that there are various international instruments which obligate India to afford protection to such persons. However, the scope of issues faced by them in detention merits a separate study.

² Madhurima Dhanuka, Mrinal Sharma & Tahmina Laskar (2017), A Stranger to Justice, Journal of the National Human Rights Commission, India - vol. 16, 2017.

³ *ibid.*

⁴ To understand the barriers that inhibit the implementation of the Repatriation of Prisoners Act 2003 please read Commonwealth Human Rights Initiative (2017), 'Bringing them Home – Repatriation of Indian Nationals from Foreign Prisons – A Barrier Analysis', <http://www.humanrightsinitiative.org/publication/bringing-them-home-repatriation-of-indian-nationals-from-foreign-prisons-a-barrier-analysis>.

Methodology

The report is based on responses received to Right to Information (RTI) requests CHRI sent to all state prison departments between 12 and 18 January, 2018. We received 26 concrete responses; some states and union territories did not respond even after follow up requests, while others responded partially. The remaining rejected the information request on grounds of national security⁵ and other procedural reasons.

In addition to data, the report documents CHRI's experience of interacting with FNPs, prison officers, representatives of Foreigner Regional Registration Offices, representatives from Ministry of Home Affairs and Ministry of External Affairs as well as consular representatives of various embassies (South Africa, Iran, Nepal, Palestine, Ukraine, Bangladesh, Nigeria, Sri Lanka, Somalia, Afghanistan, Austria, and Liberia). These interactions have assisted us in understanding the nuances of the existing system, identifying bottlenecks and formulating possible solutions.

Overview of chapters

We begin with an overview of the international and national legislative framework which govern the entry, stay and removal of foreign nationals in India (Chapter I). Chapter II showcases national facts and figures on FNPs in India. Chapter III provides an analysis of how this legislative framework applies during the arrest, imprisonment, and repatriation of foreign nationals. It looks at the barriers that exist in each step of the process, leading to unnecessary and prolonged detention of foreign nationals in Indian prisons, even beyond the actual term of their sentences. Chapter IV concludes and puts forth recommendations for review and deliberation by stakeholders. Chapter V thereafter puts forth infographic representation of data of FNPs for each of the 26 states/ union territories.

⁵ Right to Information Act 2005, Section 8.

I. Framework for the Incarceration of Foreign Nationals

With an increase in international travel and migration, the number of imprisoned foreign citizens has also gone up.⁶ Some countries deport or otherwise immediately remove all foreign nationals who are sentenced, while others continue to prosecute and punish with lengthy terms of imprisonment. In some other countries, persons can be convicted of and imprisoned for immigration related offences, alongside prisoners who have been convicted of criminal offences.

Even though FNPs constitute a small part of prison population now, their numbers are likely to rise. This can add pressure on the resources of prison authorities, unless criminal policies are rationalised and adequate investment is made to address the challenges related to supervision, care and protection of prisoners with special needs. Thus, it is imperative to first understand the existing framework under both international and national law for the confinement of foreign nationals in prisons in India.

A. Framework under international instruments and conventions

The Standard Minimum Rules⁷, Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment⁸, Vienna Convention on Consular Relations⁹, United Nations Convention Against Torture¹⁰, Model Agreement on the Transfer of Foreign Prisoners and Recommendations for the Treatment of Foreign Prisoners¹¹, etc. guide the confinement and treatment of foreign nationals while in prison. Broadly speaking, in addition to all other guarantees and protections provided to all prisoners, foreign nationals are also entitled to the following rights:

- i. Right of information regarding arrest or apprehension to consular post: This is one of the most important rights that must be guaranteed at the time of a foreigner's arrest. This entails the immediate communication of information about the apprehension to the citizen's diplomatic mission in the arresting

⁶ United Nations Office on Drugs and Crime (2009), Handbook on Prisoners with special needs: New York, https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf.

⁷ United Nations Office on Drugs and Crime (2015), The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

⁸ United Nations (1988), Body of Principles of All Persons under Any Form of Detention or Imprisonment, <https://www.ohchr.org/en/professionalinterest/pages/detentionorimprisonment.aspx>.

⁹ United Nations (1963), Vienna Convention on Consular Relations, http://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf.

¹⁰ United Nations (1984), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

¹¹ United Nations (1985), UN Model Agreement on the Transfer of Foreign Prisoners and Recommendations on the Treatment of Foreign Prisoners <http://www.prisonwatch.org/assets/un-model-agreement-on-the-transfer-of-foreign-prisoners-and-recommendations-on-the-treatment-of-foreign-prisoners.pdf>.

country. Article 36(b) of the *Vienna Convention on Consular Relations 1963* (The Convention) states that the competent authorities should inform the consular post of the concerned state, ‘if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner’. This right can also be found under the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*. Principle 16 states that, ‘If a detained or imprisoned person is a foreigner, he shall also be promptly informed of his right to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national or which is otherwise entitled to receive such communication in accordance with international law or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.’ The United Nations Convention Against Torture also contains similar provisions.¹²

- ii. Right to communicate with their diplomatic mission and consular access: Irrespective of the arrest or detention of any person, all foreigners are entitled to this right. In case of detention, however Article 36(b) of the Convention also ensures that ‘any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay.’ Rule 62 of the *Nelson Mandela Rules 2015* also entails that ‘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.’
- iii. Right to be visited by consular officers in place of detention: Article 36(c) of the Convention further provides that consular officers shall have the right to visit their national who is in prison, custody or detention within their jurisdiction, to converse and correspond with him and to arrange for his legal representation. These authorities are also required to inform the person concerned without delay of his rights.
- iv. Right of prisoners to refuse visit or communication with consular officers: Foreign nationals have a right to refuse consular access as well. Article 36 (c) states that ‘nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.’
- v. Right to Communicate with their families and friends: Detention can be a very traumatic experience for anyone, thus staying in touch with their families and the realities of the outside world is very important.

¹² **Article 6.3.** Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

Article 6.4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Rule 37 of the *Nelson Mandela Rules* states that ‘Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.’ This applies equally for foreigners as well.

- vi. Right to communicate in language understood by him/her: An arrested person has a right to know the offence they have been charged with, but more importantly if the arrested person and the arresting authority do not speak the same language, a translator shall be provided and a translated copy of the charge-sheet shall also be provided, so that one may be able to defend themselves adequately. Article 14 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, states that ‘a person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to...and to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.’
- vii. Right to seek transfer to home country for serving remaining part of sentence: In 1985, the Seventh UN Congress on the Prevention of Crime and the Treatment of offenders adopted the *UN Model Agreement on the Transfer of Foreign Prisoners and Recommendations on the treatment of foreign prisoners* (see box below). This agreement provides a model not only for bilateral agreements but also for multilateral agreements that all UN Member States can adapt to their specific legal systems. Several international instruments are also relevant to the international transfer of sentenced persons, including those referring to rehabilitation and human rights of prisoners. Among them is the United Nations Transnational Organized Crime Convention, which states, in Article 17, that: “States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.”

Recommendations for the treatment of foreign prisoners¹³

- 1. The allocation of a foreign prisoner to a prison establishment should not be effected on the grounds of his nationality alone.*
- 2. Foreign prisoners should have the same access as national prisoners to education, work and vocational training.*
- 3. Foreign prisoners should be eligible for measures alternative to imprisonment, as well as for prison leave and other authorised exits from prison according to the same principle as nationals.*
- 4. Foreign prisoners should be informed promptly after reception into a prison, in a language which they understand and generally in writing, of the main features of the prison regime, including relevant rules and regulations.*

¹³ Adopted at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, 26 August to 6 September 1985, A/CONF. 121/10, 25 April 1985, Annex II.

5. *The religious precepts and customs of foreign prisoners should be respected, with reference, above all, to food and working hours.*
6. *Foreign prisoners should be informed without delay of their right to request contacts with their consular authorities, as well as of any other relevant information regarding their status. If a foreign prisoner wishes to receive assistance from a diplomatic or consular authority, the latter should be contacted promptly.*
7. *Foreign prisoners should be given proper assistance, in a language they can understand, when dealing with medical or programme staff and in such matters as complaints, special accommodations, special diets and religious representation and counselling.*
8. *Contacts of foreign prisoners with families and community agencies should be facilitated, by providing all necessary opportunities for visits and correspondence, with the consent of the prisoner. Humanitarian international organizations, such as the International Committee of the Red Cross, should be given the opportunity to assist foreign prisoners.*
9. *The conclusions of bilateral and multilateral agreements on supervision of and assistance to offenders given suspended sentences or granted parole could further contribute to the solution of the problem faced by foreign offenders.*

B. Framework in India

- i. *Relevant legislations:* The entry, stay, and removal of foreigners in India is governed by the Foreigners Act 1946, the Passport (Entry into India) Act 1920, the Foreigners Order 1948, the Foreigner (Tribunals) Order 1964¹⁴, the Citizenship Act 1955, the Citizenship (Registration of Citizen & Issue of National Identity Cards) Rules, 2003, the Citizenship Rules, 2009, Foreigner's Tribunal and Illegal Migrants (Determination Tribunals) 1979 and the Repatriation of Prisoners Act 2003.¹⁵

The Foreigners Act, 1946 confers upon the central government certain powers in respect of the entry of foreigners into India, their presence therein and their departure therefrom. It also contains provisions that prescribe penalties for contravention of provisions. Section 3 of this Act empowers the Central Government by order, to make provisions either generally or with respect to all foreigners, or with respect to any particular foreigner or any prescribed class or description of foreigners, for prohibiting, regulating or restricting their entry into India or their departure therefrom or their presence or continued presence therein.

¹⁴ Including the Foreigner (Tribunals) Amendment Order 2012.

¹⁵ Additionally, there are there are orders and rules relating to protected and restricted areas restricting movements of specific categories of people and foreigners such as Registration of Foreigners Act, 1939; B. Registration of Foreigners Rules 1939 including the Executive Instructions issued by the Government to supplement and facilitate the administration of these rules; Registration of Foreigners (Exemption) Order 1957; Foreigners (Exemption Order 1957); Exemption Orders under the Passport (Entry into India) Rules 1950; The Foreigners (Internment) Order 1962; The Foreigners (Restriction on Chinese Nationals) Order 1962; The Foreigners (Restriction on Pakistani Nationals) Order 1965; The Foreigners from Uganda Order 1972; The Registration of Foreigners (Bangladesh) Rules 1973; The Foreigners (Report to Police) Order, 1971; The Foreigners (Restriction on Pakistani Nationals) Order 1971; Foreigners (Protected Areas) Order 1958; Foreigners (Restricted Areas) Order 1963; Foreigners (Amendment Order) 2015, Foreigners (Amendment) Order 2016.

The term ‘foreigner is defined in Section 2(a) of the Foreigners Act 1946, to mean a person who is not a citizen of India. The regulations regarding recognition of citizenship are contained in the Citizenship Act, 1955, that was enacted in accordance with powers vested in the parliament by Article 11 of the Constitution of India 1950. The Citizenship Act contains provisions for acquisition and termination of citizenship. As per the Act there are five modes of acquiring the citizenship of India: by birth, descent, registration, naturalisation, incorporation of territory. The act also defines an illegal migrant as a foreigner who entered India (a) Without a valid passport or other prescribed travel documents or (b) With a valid passport or other prescribed travel documents but remains in India beyond the permitted period of time.¹⁶

The Foreigners Order, 1948 further provides for detailed provisions on grant or refusal of permission to enter India and the various restrictions that can be imposed on foreigners. Importantly, section 14 provides for the expenses of deportation. It states that, ‘where an order is made in the case of any foreigner directing, that she shall not remain in India or where a foreigner refused permission to enter India or has entered India without permission, the Central Government may, if it thinks fit, apply any money or property of the foreigner in payment of whole or any part of the expenses of or incidental to the voyage from India and the maintenance until departure of the foreigner and his dependents.’

Further the Passport (Entry into India) Act 1920 empowers the central government to make rules requiring all persons entering India to be in possession of passports, and for all matters ancillary or incidental to that. It also provides for powers to arrest and detain, as well as the power of removal.

ii) Implementing authority: The implementation of the provisions laid down under the various acts have been enshrined upon the Bureau of Immigration (BoI), set up by the Government of India in the Ministry of Home Affairs, New Delhi. BoI is headed by the Commissioner of Immigration and assisted by Foreigner Regional Registration Offices (FRRO) for immigration facilitation services at airports and work relating to registration of foreigners under various Acts and Rules.¹⁷

At present, there are 12 FRROs in major cities i.e. Delhi, Mumbai Kolkata, Chennai, Amritsar, Bengaluru, Hyderabad, Calicut, Kochi, Trivandrum, Lucknow and Ahmedabad. Apart from this, there are 12 Chief Immigration Officers in the cities i.e. Goa, Jaipur, Gaya, Varanasi, Nagpur, Pune, Mangalore, Trichy, Coimbatore, Bagdogra, Chandigarh and Guwahati. At remaining places District Superintendent of Police (SP) or the prescribed authority functions as FRO to facilitate foreigners.

‘The functions of the Bureau are 1. maintenance of all records in respect of every foreigner from the time of grant of a visa to the time of his departure from India; 2. maintenance of up-to-date and complete

¹⁶ The Citizenship Act, 1955 (India) – Section 2(1)(b).

¹⁷ Altogether, there are 86 Immigration Check Posts (ICPs) all over India, catering to international traffic. Out of these, 37 ICPs are functioning under the BoI, while the remaining are being managed by the concerned State Governments. For more information see <https://boi.gov.in/>.

statistics in respect of all foreigners in India; 3. maintenance of records of movements of all foreigners visiting India; 4. coordination of the work of all Registration Officers; 5. taking steps to ensure that foreigners leave India within the authorized periods of their stay; and 6. when a foreigner leaves India by a port or place of entry other than the one through which he enters, intimation regarding such departure will be sent by the Central Foreigners Bureau to the Registration Officer of the port of place of entry.¹⁸

The BoI has also taken up a modernisation programme viz. Mission Mode Project on Immigration, Visa Foreigners’ Registration and Tracking (IVFRT). Under the project, all the Indian Missions, Immigration Checkposts, FRRO/FRO offices are being computerised and networked to develop a secure and integrated delivery framework to facilitate legitimate travellers.

iii) *Penalties*: Foreigners who have contravened any of the provisions given under these legislations can be subjected to certain penalties, including imprisonment. The penalties are found under the specific acts, a list of which is given in Table 1.

Table 1. Penalties under various acts

Section	Offence	Punishment
Section 14, Foreigners Act 1946 ¹⁹	Overstays his visa period Violates conditions of his visa Contravenes any provisions of the Act	Imprisonment which may extend to five years and fine.
Section 14A, Foreigners Act 1946	Entry into restricted areas without proper permit Enters into or stays in any area in India without the valid documents required	Imprisonment for a term which shall not be less than two years, but may extend to eight years and fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees.
Section 14B, Foreigners Act 1946	Using forged passport to enter India	Imprisonment for a term which shall not be less than two years, but may extend to eight years and fine which shall not be less than ten thousand rupees but may extend to fifty thousand rupees.

¹⁸ Bureau of Police Research and Development (2016), Model Police Manual, pg 410, <http://www.bprd.nic.in/WriteReadData/userfiles/file/6798203243-Volume%202.pdf>.

¹⁹ As amended by the Foreigners (Amendment) Act, 2004.

Section	Offence	Punishment
Section 14C, Foreigners Act 1946	Abetment of any offence punishable under the Act	To be punished with punishment provided for the offence.
Rule 5, The Repatriation of Prisoners Rules, 2004	Escapes custody within India. (After being transferred from a foreign country.)	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 of The Repatriation of Prisoners Act, 2003.
Section 25, The Illegal Migrants (Determination by Tribunals) Act, 1983.	<p>Contravening or abetting to contravene an order made under section 20 (expulsion of illegal migrant) of this act.</p> <p>Failure to comply with any directions given by such order.</p> <p>Harbouring a person who has contravened an order under section 20 or failed to comply with directions laid down in such order.</p>	<p>Shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than two thousand rupees.</p> <p>The court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than one year or a fine of less than two thousand rupees.</p>
Section 17, The Citizenship Act, 1955	Any person who, for the purpose of procuring anything to be done or not to be done under this Act, knowingly makes any representation which is false in a material particular shall be punishable.	Imprisonment for a term which may extend to [five years], or [with fine which may extend to fifty thousand rupees], or with both.

Section	Offence	Punishment
Section 28, The Citizenship Rules, 2009	Where an order has been made depriving a person registered or naturalised in India of his citizenship of India, the person so deprived or any other person in possession of the certificate of registration or naturalisation shall, when required by notice in writing given by the Central Government, deliver the said certificate to such person and within such period as may be specified in the notice.	Non-compliance to the same can make one liable to a fine, which may extend to one thousand rupees.
Section 5, The Registration of Foreigners Act, 1939	Any person who contravenes, or attempts to contravene, or fails to comply with, any provision of any rule made under this Act shall be punished.	Imprisonment for a term which may extend to one year or with fine which may extend to one thousand rupees or with both.
Section 3, The Passport (Entry into India) Act, 1920	Contravention of any rules made under Section 3 of this Act is punishable.	Imprisonment for a term which may extend to five years, or with fine which may extend to fifty thousand rupees, or with both.
Section 3A, The Passport (Entry into India) Act, 1920	Second conviction in contravention of any rules under this Act.	Punishable with double the penalty provided for the later offence.
Rule 6, The Passport (Entry into India) Rules, 1950	Contravention or abetment to contravention of entering India without a valid passport and from an invalid port	Punishable with imprisonment for a term which may extend to five years, or with fine which may extend to fifty thousand rupees, or with both
Rule 6A, The Passport (Entry into India) Rules, 1950	Second conviction of an offence under any rule or order made under the Passport (Entry into India) Act, 1920 (34 of 1920).	Punishable with double the penalty provided for the later offence.

- iv) *Adjudication:* Cases filed against FNPs are usually adjudicated by criminal courts as per the provisions of the Code of Criminal Procedure 1973. However, in some states, cases pertaining to nationality of individuals are adjudicated by Foreigner Tribunals.¹⁹ There are, at present a 100 such tribunals set up in Assam.²⁰ They have been conferred powers of the Civil Court under the Code of Civil Procedure, 1908 in respect of summoning and enforcing the attendance of any person and examining on oath; requiring the discovery and production of any document; and issuing commissions for examination of any witness.²¹
- v) *Detention:* Foreign nationals charged and convicted of criminal offences are required to serve their sentence in a prison. Those who have completed their sentences are then required to be formally released from prisons and can be kept in appropriate places with restricted movement pending their deportation/repatriation. Section 3(2)(e) of the Foreigners Act 1946 empowers the central government to issue orders requiring foreigners to reside in a particular place and impose restrictions on his/her movement. These powers have been delegated to certain state governments in 1958.²² In 1998, the Ministry of Home Affairs sent a letter suggesting, to the state governments/UT administrators who were delegated powers under section 3(2)(e) of the Foreigners Act 1946, that they may exercise these powers to restrict the movement of foreign nationals awaiting deportation after completion of the sentence pending confirmation of their nationality.²³ It also said therein that the movement of such foreign nationals should be restricted in one of the detention centres/camps of foreigners to ensure their physical availability at all times for expeditious repatriation/deportation as soon as travel documents are ready.

²⁰ The Foreigners (Tribunals) Order, 1964, The Foreigners (Tribunal) Amendment Order 2012.

²¹ Initially, 11 nos. of Illegal Migrant Determination Tribunals (IMDT) were functioning. After the repeal of IMDT Act, the government of Assam has newly established 21 nos. of Foreigner Tribunals (FT) in 2005. In the year 2009, another 4 nos. of FTs had been established. In the year 2014 additional 64 nos. of FTs had been established for disposal of Pending Cases in FTs, <https://homeandpolitical.assam.gov.in/portlets/foreigners-tribunal>.

²² These foreigner tribunals are not free from problems, both in manner of adjudication and process. However, this has not been discussed here due to paucity of space.

²³ vide Notification issued by the Ministry of Home Affairs dtd. 19th April 1958 [No. 4/3/56-(I)FI] The president in exercise of its powers under Article 253(1) of the Constitution of India entrusted the governments of Andhra Pradesh, Assam, Bihar, Bombay, Jammu and Kashmir, Kerala, Madhya Pradesh, Madras, Mysore, Orissa, Punjab, Rajasthan, Uttar Pradesh and West Bengal the functions of the central government (i) under section 5 of the Indian Passport Act 1920; (ii) 2 and 4 of the Indian Passport Rules 1950; (iii) under rule 3 of the Registration of Foreigners Rules, 1939; (iv) in making orders of the nature specified in clauses (c), (cc), (d), (e) and (f) of sub section (2) of section 3 of the Foreigners Act 1946 and under the Foreigners Order 1948.

²⁴ Letter no. 25019/3/97-F.III dtd. 2.7.1998.

The power to confine foreign prisoners to detention centres has also been affirmed by the Supreme Court of India in *Bhim Singh vs Union of India and others*,²⁴ wherein the court stated,

“Whatever may be the reason for delay in confirmation of their nationality, we have not even slightest doubt that their continued imprisonment is uncalled for...It is true that unless their nationality is confirmed, they cannot be repatriated and have to be kept in India but until then, they cannot be confined to prison and deprived of basic human rights and human dignity”.

Subsequent to this order the Ministry of Home Affairs has sent a number of letters, in 2012,²⁵ 2014,²⁶ 2018²⁷ to states seeking the establishment of detention centres, and the basic minimum standards that they must adhere to. These include:

1. Detention centres/holding centres/camps should be set up outside the jail premises.
2. All basic amenities like electricity an generator, drinking water (including water coolers), hygiene, accommodation with beds, sufficient toilets/baths with provision of running water, provision for kitchen, round the clock security arrangements, sentry posts and guard room etc are provided.
3. There should be sufficient open space within the compound for detainees to move around in a secure environment.
4. There should be properly segregated accommodation for male and female detainees.
5. There should be proper boundary wall with dense barbed wire fencing above the boundary wall.
6. The staff posted should be well trained to ensure that the detainees are treated with due dignity.
7. Provision may also be made for medical insurance of detainees.

However, even with these directives in place, not all states have set up detention centres. And where they have, they are essentially a part of the central or district prison, with a common boundary, like Goalpara, Kokrajhar, Silchar, Alwar etc. In other places, they continue to be confined in prisons (e.g. West Bengal) or in an extended part of police lock ups (e.g. Bhopal).

- vi) *Deportation/Repatriation*: Once a person completes his sentence he must be released from prison. However, in the absence of requisite documents permitting their stay in India, as was explained above, FNPs are usually not released from prison upon completion of their sentences. Instead, they continue to remain in detention, either in a prison or a detention centre, till their repatriation cannot be completed.

²⁵ WP (CrI) No. 310 of 2005 Order dtd. 28th February 2012.

²⁶ Letter No. 28020/90/2009-F-III(VoIIV) dtd. 7th March 2012 sent to all Principal Secretary(Home) and DGPs for all states/ union territories.

²⁷ Letter No. 25022/32/2014-F I dtd. 10th September 2014 sent to all Principal Secretary(Home) and DGPs for all states/union territories.

²⁸ Letter No. 25022/32/2014-F I dtd. 7th September 2018 sent to Chief Secretary, Assam.

There seems to exist no centralised time-bound procedure assisting the states in ensuring that prisoners are timely repatriated. The Ministry of Home Affairs has issued some letters,²⁸ laying down the procedure for deportation, along with circulating some nationality based Standard Operating Procedures (SOPs) for Bangladeshis,²⁹ and Pakistanis³⁰ but these also do not provide a comprehensive framework detailing the procedures for repatriation in its entirety.

The existing process of repatriation of a prisoner envisages coordination of multiple stakeholders at various levels of the government both in India and the country of the prisoner. This often results in a long-winded trail of preparation of documents and seeking permissions. The repatriation of a foreign prisoner requires the involvement of both central and state governments, specifically, two divisions of Ministry of External Affairs (MEA), viz. Consular, Passport and Visa division and the respective territorial division³¹; Foreigners division of the Ministry of Home Affairs (MHA) and State Home Department; Home Secretary or Jail Secretary; Bureau of Immigration (BoI) and Foreign Registration Regional Officer (FRRO) of the state; Criminal Investigation Department (CID), Intelligence Bureau (IB); Superintendent of Police of the district where the prisoner was arrested; and Superintendent of the prison where the prisoner is lodged. A corresponding procedure similar to the one mentioned above also exists in the country of the prisoner which is followed to complete the nationality verification process of an individual.

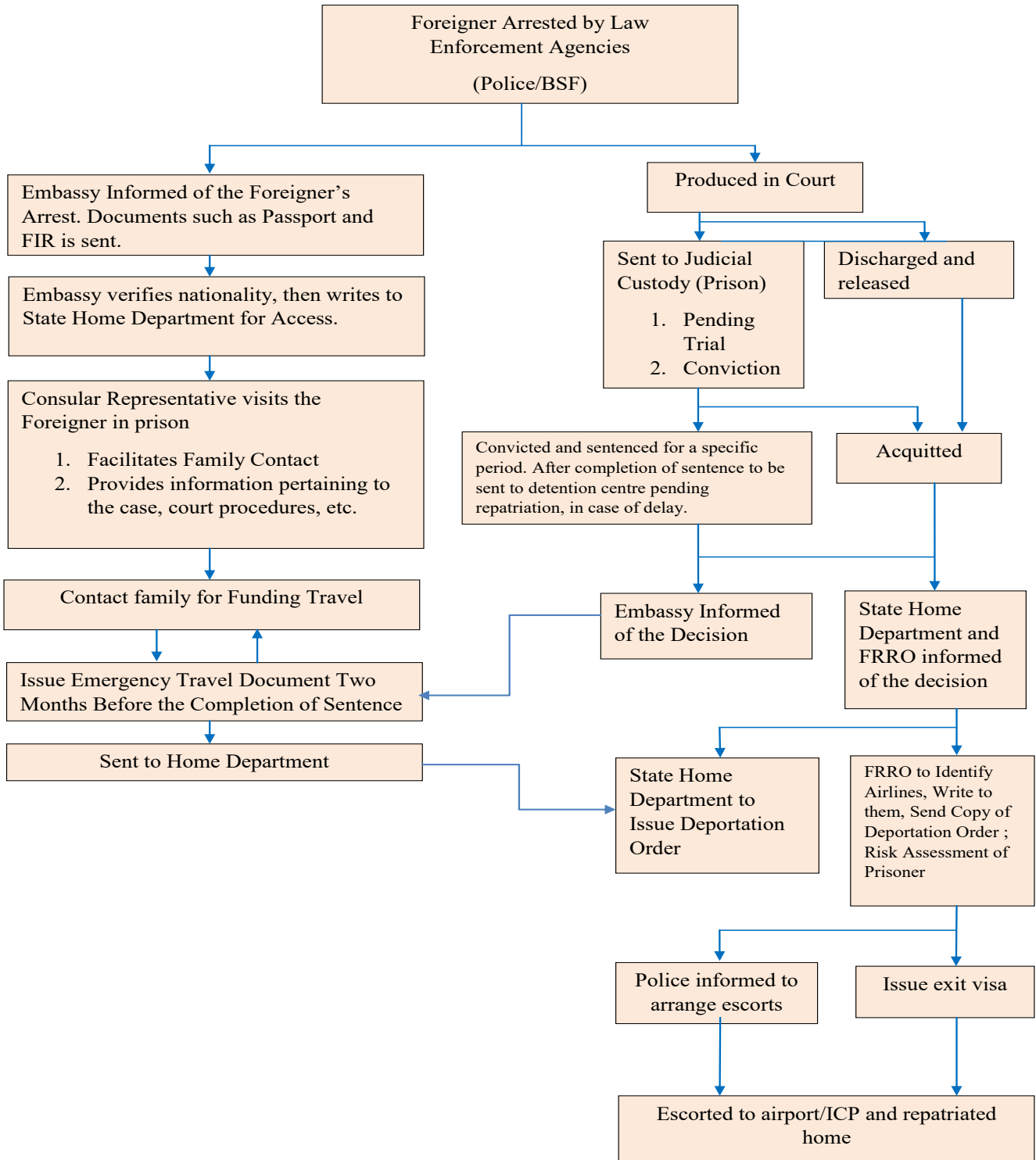
²⁹ Letters No. 14011/B/96-FVI dated 16th September 1997 and 9th September 1998.

³⁰ F.14011/55/09 – F.VI dated 25 November 2009 – Procedure of Deportation of Bangladeshi Nationals – Revised Instructions Regarding.

³¹ A circular was issued by Ministry of Home Affairs in February 2012 for Pakistanis. Details of this circular could not be confirmed, thus are not mentioned here.

³² The Ministry of External Affairs has separate division representing a particular region. For more information please visit <http://www.mea.gov.in/divisions.htm>.

PROCEDURAL FLOWCHART IN THEORY



*All communication to the embassy made through ministry of external affairs, consular, visa and passport division for consular access or the territorial division for repatriation process.

II. Data on Foreign National Prisoners

Recent global prison trends report a continued rise in the number of FNPs in most regions.³² The number of FNPs globally is around 460,000.³³ They make up more than a quarter of prison populations in 38 countries.³⁴ In Monaco, Andorra, United Arab Emirates, Liechtenstein, Luxembourg, Qatar and Switzerland, they constitute over 70% of the total prison population³⁵ (Table 2).

Table 2. Top 10 countries with high percentage of foreign national prisoners

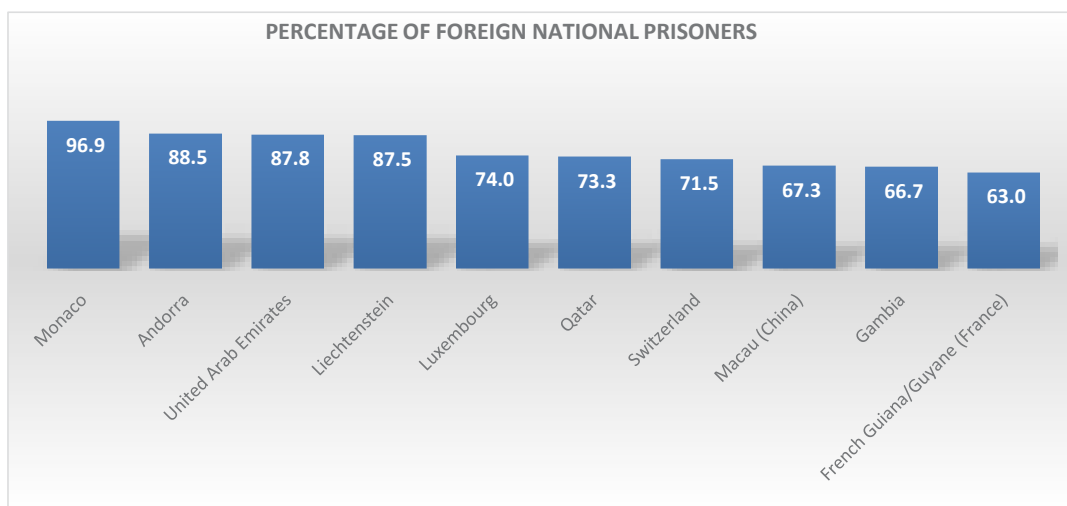
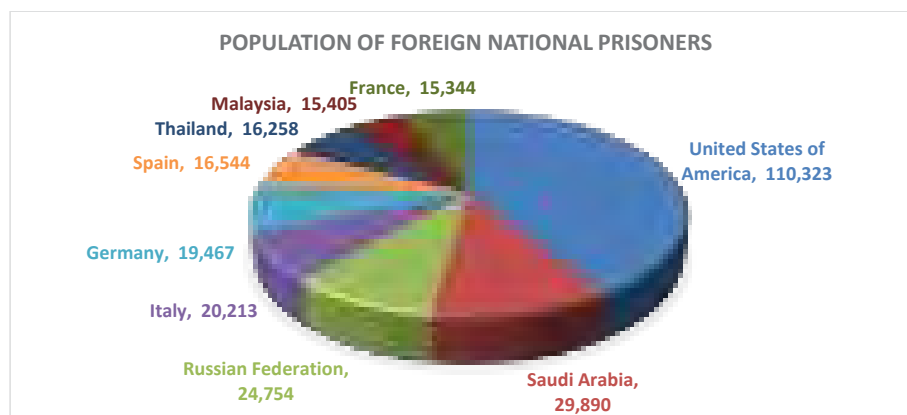


Table 3. Top 10 countries with high populations of FNPs



³³ Penal Reform International (2017), Global Prison Trends 2017 <https://www.penalreform.org/resource/global-prison-trends-2017/> and Penal Reform International (2018), Global Prison Trends 2018 <https://www.penalreform.org/resource/global-prison-trends-2018/>.

³⁴ World Prison Brief, Highest to Lowest - Foreign prisoners (percentage of prison population): http://www.prisonstudies.org/highest-to-lowest/foreign-prisoners?field_region_taxonomy_tid=All as on 28 November 2018.

³⁵ *ibid.*

³⁶ *ibid.*

In India, at the end of 2015, there were 6,185 FNPs confined in prisons.³⁶ However, there is a high likelihood that these figures do not account for those detained in detention centres. They also may not account for prisoners who have completed their sentences but await repatriation. Despite this, West Bengal alone accounts for more than 50% of FNPs.

A. Data received in response to RTI requests

In order to substantiate the outcomes of our experience in dealing with cases of foreign nationals, we filed right to information (RTI) requests to state prison departments to collect data on foreigners in prisons across the country.³⁷ These requests were filed in January 2018, while responses kept on trickling in till July 2018. After meticulous follow ups, we received 26 responses. Some states collated the data themselves for all prisons and sent across, like Karnataka, while others asked prisons to send their data directly to us like West Bengal. Some sent us data in vernacular languages, which was then translated. State wise details of foreign national prisoners, has been collated and provided in Chapter V.

Numbers too had a tale to tell. And it highlights the key issues concerning the detention and deportation of foreign national prisoners in India. As per the data, there are 3908 foreign nationals confined in prisons across India. (Table 4) Of these 1647 are undertrials, 1377 are convicts while an astonishing 871 are reported to be awaiting repatriation. (Table 5) These refer to those foreign nationals who have completed their terms of sentence, yet remain in prison pending the repatriation process.

Another glaring fact is that 522 of these prisoners are categorised as ‘persons whose nationality is not provided’, essentially meaning that they do not belong to any country. The remaining others belong to 58 countries. (Table 6).

The figures on consular access were even more disturbing, with only 5.7% of the total population having received consular access i.e. 222 out of the 3908. (Table 7) Among these only 83 of the 1657 undertrials had ever received consular access, which amounts to a mere 5%.

Of the 3908 FNPs for whom we received information from states, the details of offences charged with was asked only for undertrials. Among these 1657 under trial prisoners, 38.5% (638) were charged under Foreigners act/ Foreigners Registration Act or Passport Act alone, whereas those charged under other penal laws such as Indian Penal Code, The Narcotic Drugs and Psychotropic Substances Act, 1985 etc. were 444, and those charged with both offences were 361. (Table 8)

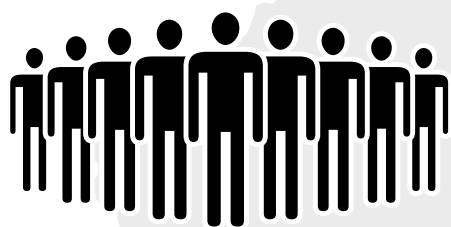
³⁷ National Crime Records Bureau (2016), Prison Statistics India 2015. <http://ncrb.gov.in/statpublications/psi/Prison2015/Full/PSI-2015-%2018-11-2016.pdf>.

³⁸ Annexure A.

Armed with these figures, and while we prepared this study, we also initiated discussions with the embassies of Bangladesh, South Africa, Nigeria, Iran, Somalia, Sri Lanka, Afghanistan, Liberia, Sierra Leone, Nepal and Austria. These interactions informed us of the various issues surrounding consular access, including indifference of embassies towards consular access, issues of delay in getting permissions, non-intimation of arrests etc. Pursuant to our interactions, wherein we emphasised upon the need to provide consular access, we have been able to ensure consular access to more than 500 prisoners. We are also engaged in facilitating the repatriation of more than 80 prisoners.

Table 4. Population of Foreign National Prisoners

States	No. of Foreign National Prisoners (Source: RTI responses 2018)	Prison Statistics India 2015
Andaman and Nicobar Islands	33	369
Andhra Pradesh	10	13
Arunachal Pradesh	N.R.	0
Assam	492	30
Bihar	N.R.	34
Chandigarh	18	9
Chhattisgarh	N.R.	13
Dadra and Nagar Haveli	N.R.	0
Daman and Diu	N.R.	0
Delhi	93	342
Goa	2	35
Gujarat	76	43
Haryana	45	53
Himachal Pradesh	27	60
Jammu and Kashmir	110	105
Jharkhand	4	6
Karnataka	88	68
Kerala	99	0
Lakshadweep	N.R.	0
Madhya Pradesh	20	35
Maharashtra	434	575
Manipur	N.R.	52
Meghalaya	22	41
Mizoram	17	3
Nagaland	1	1
Odisha	2	14
Puducherry	1	1
Punjab	N.R.	130
Rajasthan	68	66
Sikkim	0	0
Tamil Nadu	0	92
Telangana	37	36
Tripura	56	114
Uttar Pradesh	N.R.	420
Uttarakhand	N.R.	10
West Bengal	2153	3415
Total	3908	6185



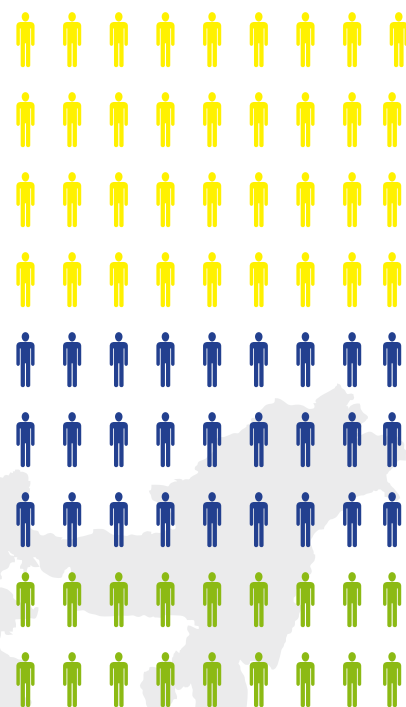
**WEST BENGAL
ALONE CONFINES**

55%

OF FNPs.

Table 5. Distribution of Foreign National Prisoners by Type

States	Under Trials	Convicts	Awaiting Repatriation	Total
Andaman and Nicobar Islands	1	30	2	33
Andhra Pradesh	9	1	0	10
Assam	135	16	341	492
Chandigarh	11	7	0	18
Delhi	67	26	0	93
Goa	2	0	0	2
Gujarat	67	8	1	76
Haryana	29	16	0	45
Himachal Pradesh	25	2	0	27
Jammu and Kashmir	48	19	43	110
Jharkhand	1	3	0	4
Karnataka	87	1	0	88
Kerala	29	33	37	99
Madhya Pradesh	5	15	0	20
Maharashtra	260	174	0	434
Meghalaya	19	3	0	22
Mizoram	7	10	0	17
Nagaland	0	0	1	1
Odisha	2	0	0	2
Puducherry	1	0	0	1
Rajasthan	47	20	1	68
Sikkim	0	0	0	0
Tamil Nadu	0	0	0	0
Telangana	27	10	0	37
Tripura	36	10	10	56
West Bengal	742	978	433	2153
Total	1657	1382	869	3908



42%
UTP

35%
CONVICT

22%
AWAIT
REPATRIATION

Table 6. Distribution of Foreign National Prisoners by Nationality

Nationality	UT	Convict	A.R.	Total
Afghanistan	12	4		16
Austria	1			1
Bahrain	2			2
Bangladesh	929	1045	568	2542
Belgium	1			1
Benin		1		1
Bolivia	2			2
Brazil	3			3
Bulgaria	1			1
Cameroon	4	1		5
China	3			3
Colombia	3			3
Congo	4			4
Ethiopia	1	4		5
France	2			2
Germany	1			1
Ghana	4			4
Guinea	1			1
Indonesia	1	1		2
Italy	1			1
Ivory Coast	1	3	1	5
Jordan	2			2
Kenya	3	1		4
Lesotho	1			1
Malayasia	2			2
Mali	1			1
Myanmar	36	43	30	109
Namibia	1			1
Nepal	85	25		110
Nicaragua		1		1
Nigeria	194	45	4	243
Pakistan	79	29	8	116
Palestine		1		1
Paraguay	1			1
Peru	1			1
Poland	1	1		2
Romania	1			1
Russia	2			2

Rwanda	1			1
Sierra Leone			1	1
Singapore		1		1
Somalia		112		112
South Africa.	8	4		12
Spain	1			1
Sri Lanka	8	1		9
Sudan	1			1
Taiwan	2			2
Tanzania	8	1		9
Thailand		1		1
Turkmenistan	3			3
Uganda	1			1
UK, England, Britain	8	1		9
Ukraine			1	1
USA	3	1		4
Uzbekistan	1			1
Venezuela	2			2
Zambia	3			3
Zimbabwe	2			2
Myanmar/Bangladesh			5	5
Venezuela/America	1			1
Not Provided	216	55	251	522
Total	1657	1382	869	3908



522
PRISONERS
NATIONALITIES
ARE 'NOT KNOWN'

65%
FNPs
ARE FROM
BANGLADESH

Table 7. No. of Foreign National Prisoners provided Consular Access



**ONLY
5.7%
PRISONERS
HAVE RECEIVED
CONSULAR
ACCESS**

Name of State/UT	No. of prisoners provided consular access	Total no. of FNPs
Andaman and Nicobar Islands	0	33
Andhra Pradesh	0	10
Assam	99	492
Chandigarh	0	18
Delhi	2	93
Goa	0	2
Gujarat	60	76
Haryana	0	45
Himachal Pradesh	5	27
Jammu and Kashmir	0	110
Jharkhand	0	4
Karnataka	4	88
Kerala	69	99
Madhya Pradesh	3	20
Maharashtra	0	434
Meghalaya	0	22
Mizoram	0	17
Nagaland	0	1
Odisha	0	2
Puducherry	0	1
Rajasthan	0	68
Sikkim	0	0
Tamil Nadu	0	0
Telangana	5	37
Tripura	0	56
West Bengal	28	2153
Total	222	3908

Table 8. Foreign Prisoners by type of offence*

States	Foreigner Act/ Passport Act etc.	Other Penal Laws (IPC NDPS etc.)	Both	Not Known	Total
Andaman And Nicobar Islands	1				1
Andhra Pradesh		6	3		9
Assam	119	1	4	11	135
Chandigarh				11	11
Delhi	2	32	3	30	67
Goa		1	1		2
Gujarat	8	2	54	3	67
Haryana	9	7	13		29
Himachal Pradesh		24	1		25
Jammu and Kashmir				48	48
Jharkhand	1				1
Karnataka	8	44	10	25	87
Kerala	8	13	7	1	29
Madhya Pradesh		5			5
Maharashtra	73	152	5	30	260
Meghalaya	7	2	9	1	19
Mizoram	2	3	1	1	7
Nagaland					0
Odisha		2			2
Puducherry			1		1
Rajasthan	1	11	2	33	47
Sikkim					0
Tamil Nadu					0
Telangana		16	11		27
Tripura	5	6	20	5	36
West Bengal	394	117	216	15	742
Total	638	444	361	214	1657

*Data for 1657 undertrial foreign national prisoners.



III. Barriers to Justice

The legislative framework set out in the preceding chapter that governs the entry, stay and removal of foreign nationals is further complemented by provisions under the Code of Criminal Procedure 1973 and Indian Penal Code 1860. They are also guided by the provisions in various state police and prison manuals. This framework, and its implementation, however contains numerous barriers, that affect FNPs in many ways. These are discussed below.

There are certain rules and restrictions that apply to the stay of a person visiting a foreign country. In India, the Foreigners Division, Ministry of Home Affairs, periodically issues the '*General Policy Guidelines Relating to Indian Visa*'³⁸ which offers guidance for the stay of foreigners visiting India. Contraventions of these provisions or involvement in any criminal act punishable under any other law can make a foreign national liable to be prosecuted for their actions. Since the incidence of bail being granted to foreign nationals is low, they often find themselves imprisoned, pending completion of their court proceedings.

Irrespective of the reason for their detention, all prisoners are required, under the international human rights framework, to be treated with dignity. While all prisoners are vulnerable to a certain degree, there are certain groups, such as FNPs, that are particularly vulnerable and require additional care and protection. Some could be at risk of abuse from other prisoners and prison staff, or 'could suffer from humiliation, physical and psychological abuse and violence, due to their ethnicity, nationality, gender and sexual orientation.'³⁹ The UNODC Handbook on Prisoners with Special Needs⁴⁰ thus classifies FNPs as a group that has special needs.

Once imprisoned, FNPs often face problems that arise due to their being 'strangers' in an unknown land. They are often discriminated against and considered outsiders by other prisoners and prison staff. Language barriers and inadequate understanding of the legal system can further worsen this situation. The absence of or delayed consular access, severance of familial ties due to restrictions on making international phone calls/sending letters, and lack of effective legal representation further underline the susceptibility of such prisoners to discrimination and human right violations. This chapter discusses the barriers faced by FNPs at different stages: arrest, adjudication, imprisonment, and deportation/repatriation.

³⁹ Some of these policies are available at www.mha.gov.in/PDF_Other/AnnexI_01022018.pdf and www.boi.gov.in/sites/default/files/ForeigD-FRRO_version223.6.11.pdf.

⁴⁰ United Nations Office on Drugs and Crime (2009), Handbook on Prisoners with special needs: New York, https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf.

⁴¹ *ibid.*

A. Arrest of foreign nationals

A foreign national can be arrested if he is found to be in violation of any rule or order made under any law regulating his stay in India or for the commission of a criminal act during his stay in the country. The Central government has been authorised to pass orders for the arrest and detention of foreign nationals under section 3(2)(g) of the Foreigners Act 1946, for ‘prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence therein’. The power to arrest can also be found in section 4 of the Passport (Entry into India) Act 1920.⁴¹

Barrier I: Lack of intimation to Consulate/Diplomatic Mission at arrest

Obligation on police to inform consulate

Very few state police manuals contain provisions that obligate the police to inform the concerned embassy of the arrest of their national, so as to ensure prompt consular access. The Model Police Manual prepared by the Bureau of Police Research and Development, Ministry of Home Affairs⁴² contains an entire chapter on foreigners. Rule 565 provides that, *‘when foreign nationals are arrested on major criminal or civil charges, it is possible that the Foreign Diplomatic/ Consular Missions in India may wish to assist the nationals of their countries in regard to their defence before a court of law and/ or take such other action, as they may deem appropriate in accordance with diplomatic practice. Therefore, as soon as a foreign national (including Pakistan national) is arrested in a major crime, the fact, with a brief description of the offence should be brought to the notice of the Ministry of External Affairs through the State Government by the DGP/ CP concerned. Government of India, who decides about the necessary action, should bring these cases to the notice of the Foreign Diplomatic/ Consular missions concerned. The report of the arrest of a foreign national in a major crime, together with a brief description of the offence, should be communicated to the Director General of Police, Addl. DGP, CID and Addl. DGP Intelligence and Security’.*

While not all states have adopted the model manual, police manuals of Andhra Pradesh and Sikkim reproduce these provisions verbatim. The Mizoram Police Manual also provides that 1111. (b). *In the case of foreigners, interrogators should be conversant with the political complexions, customs and traditions of the country of the person interrogated. He must have a good grasp of the regulations applicable to foreigners and be aware generally of the activities of foreigners in India.*

⁴² It states that, ‘(1) Any officer of police, not below the rank of a Sub-Inspector, and any officer of the Customs Department empowered by a general or special order of the Central Government in this behalf may arrest without warrant any person who has contravened or against whom a reasonable suspicion exists that he has contravened any rule or order made under section 3.’ (2) Every officer making an arrest under this section shall, without unnecessary delay, take or send the person arrested before a Magistrate having jurisdiction in the case or to the officer-in-charge of the nearest police station, and the provisions of section 57 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply in the case of any such arrest.’

⁴³ Bureau of Police Research & Development (2016) Model Prison Manual <https://mha.gov.in/MHA1/PrisonReforms/New-PDF/PrisonManual2016.pdf>

However, we found during our interactions with embassy representatives that in most cases, they do not receive information about arrests of their nationals from the police. Thus, they are forced to rely on newspaper reports to track cases and contact the concerned prisons for consular access. This claim was further corroborated by our interactions with FNPs. Further, prisoners are not allowed to inform their family about their arrest. Denying a prisoner access to a consular officer or family is in violation of the Model Police Manual rules, and can lead to the alienation of the prisoner from their family. For example, a Palestinian prisoner in a West Bengal prison had not contacted his family in 26 years or received consular access.⁴³

An important point to be noted here is that police officers are prohibited from entering into direct correspondence with ‘their counterparts or with private companies, investors or manufacturers in such foreign countries. All correspondence intended for such persons in foreign countries must be routed through the Director General of Police, who will address the person through the state government’.⁴⁴ This entails that even in cases where police officers might be prompt in informing the Director General of Police, there can be delays or lapses in communicating the information on arrest.

B. Adjudication process

Barrier II: Lack of nationality verification process at the time of trial

A peculiar aspect regarding the adjudication of claims of nationality lies in the reversal of the principle of burden of proof, wherein the individual -- and not the state -- is required to prove the nationality of the individual. This is provided under Section 9 of the Foreigners Act 1946, which states that, ‘whether any person is or is not a foreigner or is or is not a foreigner of a particular class or description the onus of proving that such person is not a foreigner or is not a foreigner of such particular class or description, as the case may be, shall notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), lie upon such person.’

This reversal of the burden of proof is unduly onerous for the prisoner. From a legal perspective, the reversal, while permissible, is an exception to the norm that it must be the prosecuting authorities who prove an allegation against the accused. Where such reversal can be justified on the basis that the accused possesses the best information to prove the material fact, it should be accompanied by procedural safeguards to ensure due process and fairness. However, there are very few, if any, checks and balances to the authorities’ wide

⁴⁴ Mrinal Sharma and Madhurima Dhanuka (2017) “A Long Night’s Journey into day”, The People’s Beacon – Odisha Human Rights Commission.

⁴⁵ Rule 430 Model Police Manual Vol. 2, BPR&D, <http://bprd.nic.in/WriteReadData/userfiles/file/6798203243-Volume%202.pdf>.

powers to determine nationality under the relevant acts.⁴⁵ A determination of nationality by the authorities is typically conclusive, leaving very little room for rebuttal by the accused.

This reversal of burden of proof also means that there is no onus on the prosecution to verify the actual nationality of the accused. Thus, once convicted, a foreign national is merely a non-Indian, and no efforts may be taken to verify his true nationality. This poses endless difficulties in ensuring consular access, later leading to delays at the time of repatriation, and in some cases, even leading to indefinite detention, as their only next of kin (the embassy) stays completely unaware of their presence in the country. Sometimes prisoners also misuse this, and hide their nationality. For instance, Peter⁴⁶ originally claimed to be from Sierra Leone, but after months of pursuing the embassy (in China), his claim turned out to be a false. Ironically, the individual then claimed to be from Liberia, and now awaits nationality confirmation. This process has already stretched his detention to 16 months beyond his actual sentence. Similarly, Nico⁴⁷ claimed to be from the Kingdom of Lesotho, but the embassy rejected his claim. He continued in detention for five more years beyond his actual sentence, before being verified as a Nigerian national, and subsequently deported.

At this juncture, it is important to discuss the fate of cases where the embassy refuses to acknowledge the accused a citizen or where no documents exist verifying his nationality. All such persons would, as per the *Convention Relating to the Status of Stateless Persons 1954*, be defined as *stateless persons*, i.e. as a person who is not considered as a national by any State under the operation of its law.⁴⁸ Though there are two United Nations conventions on statelessness⁴⁹, but India has not acceded or ratified or adopted or signed the conventions. Some guidance on procedures for declaring a person stateless can be found in orders of the Delhi High Court in *Sheikh Abdul Aziz v. State of NCT of Delhi*,⁵⁰ but the central government is yet to prepare guidelines to deal with such cases. In absence of these, a large number of persons find themselves incarcerated infinitely.

This would include cases where the embassy refuses to acknowledge the accused a citizen or where no relevant documents can be procured proving the nationality of the accused. These guidelines must include special procedures to be followed by courts in adjudication of such cases, and appropriate remedies put in

⁴⁶ In 1964 the Central Government issued the Foreigners (Tribunals) Order under the Foreigners Act 1946. Under the Order, the Central Government is empowered to constitute tribunals to determine “the question as to whether a person is or is not a foreigner within the meaning of the Foreigners Act, 1946”. Paragraph 3 of the Order prescribes a nominal due process regime: “The Tribunal shall serve on the person to whom the question relates, a copy of the main grounds on which he is alleged to be a foreigner and give him a reasonable opportunity of making a representation and producing evidence in support of his case and after considering such evidence as may be produced after hearing such persons as may deserve to be heard, the Tribunal shall submit its opinion to the officer or authority specified in this behalf in the order of reference.” The validity of the procedures prescribed under the said Order has been upheld by the Supreme Court in its judgment in *Sarbananda Sonowal v. Union of India* (2005) 5 SCC 665.

⁴⁷ Name changed.

⁴⁸ Name changed.

⁴⁹ Available at https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&lang=_en.

⁵⁰ Other being Convention on the reduction of statelessness (1961). Available at <https://www.ohchr.org/Documents/ProfessionalInterest/statelessness.pdf>.

⁵¹ WP (CrI) 1426/2013.

place to prevent unnecessary and infinite detention of such persons. There are many prisoners in prisons or detention centres in India, whose sentences have completed years ago, but in absence of nationality verification, remain in prison indefinitely. For them, certainly imprisonment is, or rather should not be the answer.

C. Confinement in prisons

Prisons in each state are governed by their individual prison manuals⁵¹. There are presently no special provisions or comprehensive guidelines governing detention of or providing for special facilities for FNPs. Even the recently framed Model Prison Manual 2016⁵² does not contain a dedicated chapter on treatment of FNPs or set out a separate regime for them. FNPs are mentioned only with reference to contact with the outside world -- mainly permission to send letters to their families at their own cost, and making contact with their consulates.⁵³

Very few state prison manuals include provisions which relate to foreign prisoners specifically, but none are comprehensive. (See next page for compilation of standards)

However, special provisions for FNPs do find mention under the *Ministry of Women and Child Development, Government of India's report published in June 2018 – titled ‘Women in Prisons – India’*⁵⁴ This report was a result of jail visits conducted by the National Commission for Women. They are reproduced below:

5.13.1 Inmates who are foreign nationals are inherently at a more vulnerable position. They face issues not just due to their gender-specific needs, but also because of language barriers, lack of ties in the country and the difficulty in adjusting to the culture and society of a foreign land.

5.13.2 Their respective consulates/embassies must be informed about details of their incarceration and contact must be established with the inmates appropriately.

5.13.3 Foreign inmates must be provided with translators to help them communicate with prison officials and other inmates for easy understanding of rules and procedures and to communicate their grievances and complaints easily.

5.13.4 For effective post-release transition and psychological well-being, it is essential for them to be able to communicate with their families/friends regularly. Video-conferencing facilities through new technological tools may be provided to facilitate such communication.

⁵² Prisons is a matter of state subject under the Constitution of India.

⁵³ Bureau of Police Research & Development (2016) Model Prison Manual <https://mha.gov.in/MHA1/PrisonReforms/NewPDF/PrisonManual2016.pdf>

⁵⁴ Bureau of Police Research & Development (2016) Model Prison Manual – Chapter VIII <https://mha.gov.in/MHA1/PrisonReforms/NewPDF/PrisonManual2016.pdf>

⁵⁵ Ministry of Women and Child Development, Government of India's report published in June 2018 – ‘Women in Prisons– India’ http://wcd.nic.in/sites/default/files/Prison%20Report%20Compiled_0.pdf.

5.13.5 Foreign prisoners may also be provided with added food provisions to meet their dietary requirements. Children of foreign nationals must be removed from their mothers' care with utmost sensitivity and only after consultation with their consular representatives.

Assam – Assam Prison Act, 2013.

Sec 62 - Provisions shall be made in the prison for:

- a) an inmate, who is a foreign national to communicate through prescribed channel with the diplomatic or consular representative in India of the country to which he belongs;
- b) an inmate, who is a national of a country having no diplomatic or consular representative in India, or who is a refugee or a stateless person, to communicate through prescribed channel with any recognized national or international authority taking charge of the interests of such nationals, refugees or stateless persons.

Bihar – Bihar Prison Manual, 2012.

Rule 328 - Details of any foreign prisoner admitted in the prison shall be communicated to the Inspector General, Prisons & Correctional Services and Assistant Inspector General, Prisons (Region) immediately. In case, the foreign prisoner wants to communicate with the embassy, then the communication shall be sent to embassy through appropriate channels. In case any official from embassy requests meeting with the foreign prisoner for any purpose or for providing legal assistance, the Superintendent shall permit the same if the prisoner is of same nationality as that of the embassy. In other cases, the request shall be forwarded to the Inspector General, Prisons & Correctional Services, and through him to the State Government. Upon the concurrence of the State Government he/she shall be allowed to meet the foreign prisoner.

Gujarat – Gujarat State Jail Manual & Maharashtra – Maharashtra Jail Manual.

Rule 15- Interviews by Consular Officials

1). Subject to the provisions of rules 9, 12, and 13, consular officials may, on obtaining permission in writing from the Ministry of External Affairs, Government of India, visit nationals of their countries who are in prison, custody or detention for the purpose of conversing with them and arranging for their legal representation. They may also, after obtaining similar permission visit such nationals who are undergoing imprisonment in jails. In-case of urgency, the consular officials may visit foreign nationals, on obtaining permission in writing from the Chief Secretary to the Government of Gujarat. Whenever such permission is granted intimation shall be sent in that behalf to the Ministry of External Affairs.

Explanation.- The facility to visit prisoners conferred by this sub-rule dos not connote interviews in private or inspection of the accommodation in which prisoners are detained.

2). Every interview of a foreign national in the prison by the consular officials shall take place in the presence and hearing of the Superintendent, the Deputy Superintendent or Senior Jailor.

Kerala – Kerala Prisons & Correctional Services (Management) Act 2014

828. Foreign Nationals-Communication with or visit to-

- (1) With a view to facilitating the exercise of consular functions relating to nationals of a foreign country:
- (i) The Superintendent shall without any delay inform the State Government through the Director General, the admission of Foreign National with a brief description of the offence.
 - (ii) The State Government on the receipt of such information inform the Ministry of External Affairs, Government of India of the detention of Foreign Nationals involved in major crimes including forger of passports and visas.
 - (iii) Reports about the arrest of Foreigners who are Government Servants regardless of the nature of the crime committed by them shall be given to the concerned Foreign Mission by the Ministry of External Affairs.
 - (iv) The incoming and outgoing letters of the detained Foreign Nationals shall be censored by the Jail authorities if found necessary and the act of censoring the outgoing letters shall be intimated to the State Government for the transmission to the External Affairs Ministry.
 - (v) Foreign Prisoners may be permitted to use internet facilities at their own cost for legal assistance and also to contact their Embassies in India.
- (2) Consular officials shall have the right to visit nationals of their country who is on prison, custody or detention for the purpose of conversing with him and arranging for his legal representations. They shall also have the right to visit any national of their country who is in prison, custody or detention in this State in pursuance of a judgement:
- (3) Provided the right provided in sub-rule (1) and (b) above shall be exercised in conformity with the laws and regulations in force in the State subject to the condition, however, that the said laws and regulations shall not nullify these rights.

Tamil Nadu – The Tamil Nadu Prison Manual, 1983.

Rule 532 Foreign Nationals-Communication with or visit to-

- (1) The Superintendent shall, without any delay inform the Government if a foreign national is committed to the prison or to custody pending trial or is detained in any other manner. Any communication, addressed to the Consulate by the person in prison custody or detention shall be forwarded to the Consulate concerned without undue delay, subject to censorship according to rules. The particulars of the incoming and the outgoing letters of a foreign national, if found objectionable and censored, shall be furnished to Government.
- (2) The Superintendent shall, without any delay, inform the Government whenever Consulate Officials of foreign countries seek permission to visit the nationals of the states they represent who are in prison custody or detention for the purpose of conversing with them and arranging for their legal representation. Only on receipt of orders from the Government permitting such a visit, the Superintendent shall permit such consulate officials to visit such nationals.
- (3) The above right is merely the right of interview, and not of private interview and does not include the right to inspect the accommodation of a national of a foreign State who is in a prison, custody or detention and is subject to the general regulations regarding interviews in prisons.”

West Bengal – The West Bengal Jail Code

688B.

(a) As soon as a prisoner of a foreign nationality is admitted into a jail, the Superintendent of the jail shall send a report of such admission together with a descriptive roll of the prisoner to the State Government and copies thereof to the Inspector-General for intimation of the fact of imprisonment of the foreign national to the consular representative of his State.

(b) The interviews with and communications of or to a prisoner of a foreign nationality shall be governed, without prejudice to his being a foreign national, by the relevant rules of this code.

NOTE:—For the purpose of this rule the consular officers of a prisoner's own State shall be deemed to be his friends who shall have the right of interview with the prisoner. But this right of interview does not include the right of private interview i.e., interview out of the hearing of a Police or Jail officer nor the right to inspect the accommodation of the prisoner.

Barrier III: Lack of consular access while in prison

Obligation to facilitate consular access

Some prison manuals contain provisions that ensure that whenever a foreign national is admitted, intimation be sent to the chief of prisons. For instance, Rule 8.23 of the Model Prison Manual prepared by the Bureau of Police Research and Development⁵⁵ states that 'if any foreign national is committed to prison, or to custody pending trial, or is detained in any other manner, the Superintendent of Prison shall, immediately inform the Inspector General of Prisons. Any communication addressed to a Consulate, by a prisoner or detainee, shall be forwarded to the Ministry of External Affairs through proper channel without undue delay. Such communication shall be subject to scrutiny/ censorship as per rules. The particulars of incoming and outgoing letters of a foreign national, if found objectionable shall be censored and also furnished to the government.'

It further goes on to say in Rule 8.24 that 'whenever Consulate Officials of a foreign country seek permission to visit or interview a prisoner for arranging legal representation for them, or for any other purpose, the Superintendent of Prison shall inform the Government of such request from the Consulate. Only on receipt of orders from the government the Superintendent of Prison shall permit Consulate officials to visit the prisoner.'

The West Bengal Jail Code, The Tamil Nadu Prison Manual, Kerala Prisons and Correctional Services Act, Bihar Prison Manual and Assam Prison Act provide that the information of the admission of a foreign national in the prison shall be notified to the head of the prison department along with some information about the case so it may be communicated to the embassy through proper channels.

⁵⁶ Bureau of Police Research & Development (2016) Model Prison Manual <https://mha.gov.in/MHA1/PrisonReforms/New-PDF/PrisonManual2016.pdf>.

The Gujarat State Jail Manual and Maharashtra Jail Manual go a step further and contain special provisions for foreign nationals. They provide that during urgent times, consular officials may visit foreign nationals after obtaining permission in writing from the Chief Secretary to the state government. The intimation of such permission shall be made to the Ministry of External Affairs.

Even with these provisions in place, prompt and regular access to consular representatives remains a distant reality. Over the years, CHRI found that consular access was provided in very few cases. On probing further, we found that an intimation to the consular representative cannot be sent directly to the embassy by police or prison and must be routed through the relevant state home departments, and subsequently, to the Ministry of External Affairs, which may only then be permitted to share the information with the embassy. This causes serious delays in sharing information. Moreover, after receiving intimation, embassies do not acknowledge the prisoner as their own national without first conducting a nationality verification test. Each embassy/ high commission conducts nationality verification by different means in the absence of nationality verification documents. Some require pictures, some require fingerprints while others require an address. Hence, barriers to consular access urgently needs addressing. The same may be done in the format prescribed by us in our recommendations, as it would help surpass this barrier.

Barrier IV: Lack of contact with family and friends

Obligation to ensure contact with family

The importance of maintaining contact with family for prisoners is well established. In *Francis Coraille Mullin vs. The Administrator, Union Territory of Delhi*,⁵⁶ the Supreme Court of India had categorically said, “As part of the right to live with human dignity and therefore, as a necessary component of the right to life, he would be entitled to have interviews with the members of his family and friends and no prison regulation or procedure laid down by prison regulation regulating the right to have interviews with the members of the family and friends can be upheld as constitutionally valid under Article 14 and 21, unless it is reasonable, fair and just.” In *Sunil Batra v Delhi Administration*⁵⁷ too, the importance of family contact was highlighted. The court said that ‘subject to such considerations of security and discipline, liberal visits by family members, close friends and legitimate callers, are part of the prisoners’ kit of rights and shall be respected.’ Prisoners’ contact with family members is an indispensable right. This is even more important in the context of FNPs, as they can barely ever avail their right to *mulaqaat*.

While the Prisons Act, 1894, and the state jail manuals contain straightforward provisions to facilitate contact with family members for prisoners in general, the procedures for foreign nationals either do not exist or are tedious. Similar to the restrictions on police, the prison departments are also unable to communicate directly with embassies without permission of the Ministry of External Affairs (MEA) and state home departments.

⁵⁷ AIR 1981 SC 746a.

⁵⁸ (1978) 4 SCC 494.

FNPs generally have no means to contact their families apart from relying on their embassies, which may or may not be responsive. For example, Nancy⁵⁸, a Bolivian has not been able to speak to her family even after a year of her incarceration. We informed her family and her embassy after four months, when the superintendent of the concerned prison approached us for assistance. On the other hand, a Canadian national we interacted with during our field visit informed us that he communicates with his family through his embassy. He makes calls to the Canadian High Commission in Delhi who then conference him to his family back home.

Alternatively, many state governments permit prisoners to write letters, given that they bear the cost themselves. However, sending letters abroad can be expensive, can take months to reach family members, and face the risk of getting lost – and therefore, are not the most ideal method of communication. Some states permit telephone calls⁵⁹ -- again, only if the prisoner or their family are willing to bear the expenses. Some other states offer video conferencing facilities using the e-prison portal,⁶⁰ but only in very select prisons.⁶¹ For example, in West Bengal a South African national was recently permitted to communicate with his family via video conferencing application linked to the e-prisons portal.

The situation is worse where more than one member of a family is imprisoned, or where children have been sent to shelter homes, and parents are in prison. For example, once a female FNP in West Bengal was separated from her seven children. Due to gender and age differences they had to be sent to five different shelter homes across the state. She was unable to meet them till her release.

In most cases, such restrictions or the lack of proper means to communicate makes the prisoner lose touch with their family. In one case, we found that the family of an imprisoned South African national was unaware of his whereabouts for almost three years.⁶² When contact with a family is lost, the process of nationality verification and subsequent repatriation gets stretched even longer.

⁵⁹ Name changed.

⁶⁰ Delhi. The Director General of Prisons, Tihar issued a circular on 29th January 2017 (F. No. (22240)/CJ/Legal/2016/247-50.

⁶¹ <https://eprisons.nic.in/NPIP/public/Home.aspx>.

⁶² West Bengal, Himachal Pradesh etc.

⁶³ Madhurima Dhanuka, Broken Ties: in Custody (8 March 2018) <http://www.humanrightsinitiative.org/blog/broken-ties-in-custody>

Delhi Prisons – Circular dated 09/08/2016

Sub: Telephone facility to FNPs.

In continuation to the earlier standing Orders/Circulars issued, the competent Authority has considered the request of foreign national convicts with regard to make call to their country origin and has been pleased to accept their request with the directions that once a week the telephone facility should be extended to such prisoners. Each conversation will be held under the personal supervision of Dy. Supt./Asstt. Supdt. Designated by the concerned Superintendent of the Jail and the maximum duration of the conversation would be upto 10 minutes.

The Superintendent Jail shall develop criteria for entertaining such requests and pass an order giving reasons in the event that such requests are not entertained. The Jail Superintendent will enter the details of the called numbers, the durations etc. for future references. The call made should be through speaker phone with a caller ID to ensure that the person called is the one in respect of whom the request is made by the prisoner. For keeping record of the call details it is suggested that a register should be maintained against the concerned in accordance with law.

The facility can be withdrawn if any offence is committed by a prisoner during his stay inside the jail and/or if the telephone facility is found to be misused appropriate actions will be initiated against the concerned in accordance with law.

This issues with the prior approval of the Competent Authority.

Model Prison Manual 2016, Arunachal Pradesh – Arunachal Pradesh Prison Manual, Goa – Goa Prison Rules, Mizoram – Mizoram Prison Manual & Sikkim – Manual 2010 for the Superintendence and Management of Prisons in the State of Sikkim

The contents of all letters shall be limited to private matters. Postage stamps may be allowed to be purchased for letters addressed by prisoners to their relatives in foreign countries at their cost. If the prisoners have no cash or credit, it shall be supplied at government cost in deserving cases, and at reasonable intervals, at the discretion of the Superintendent of Prison....

Barrier V: Lack of provisions to meet special needs

Obligation to afford a humane prison environment

Like all prisoners, foreign nationals must also be detained in humane conditions. However, issues such as language barriers, specific dietary requirements, cultural differences, and the lack of recreational or rehabilitative activities can often make it difficult for foreign prisoners to adapt to prison life.

Language: Language barriers are often responsible for FNPs' sense of isolation.⁶³ With absence of availability of prison rules in different languages, prisoners often do not understand their rights or obligations. Additionally, they may not be able to communicate with other prisoners or prison staff. Even simple things like making a

⁶⁴ United Nations Office on Drugs and Crime (2009), Handbook on Prisoners with special needs: New York, https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf.

request for medical assistance can go unheard if one cannot communicate in the local language. For example, a Bolivian lady was unable to explain her medical condition to the prison officials as she only spoke Spanish. The prison authorities ultimately resorted to using web-based translation services to assist her.

Communication is key, but the difference in languages can lead to misunderstandings, which can in turn, attract or strengthen prejudices based on the colour of one's skin or religion, etc. Other rights also get restricted due to the language struggle. An accused's ability to understand court proceedings is an indispensable right to fair trial. The absence of good interpreters during the course of trial can render the prosecution and trial of a foreign prisoner futile. Linguistic difference can also lead to exclusion from different vocational and educational program. These can cause severe mental anguish to the prisoner.⁶⁴ For example, a prisoner in Alwar Detention Centre (situated in the Alwar District Jail), who had been moved to detention after completing his sentence in 2009, could hardly communicate, and was always found staring at the boundary wall. In the Rajasthan heat, he eventually suffered sunburns, but according to other inmates, continued sitting in the sun all day.

Information on processes: Lack of knowledge of the legal framework, legal procedures and lack of resources to hire services of competent lawyers further impacts the stay of FNPs in prison. Often, they are misled by lawyers and forced to plead guilty without understanding the consequences. Their lack of knowledge is further exploited when there is no consular access or contact with family members. Further securing bail is difficult and parole rules generally do not apply to them, this can inculcate anger within and leads to a tendency to resort to violence.

Diet, cultural differences and discrimination: The religious, dietary, spiritual or other specific needs of a foreign prisoner are very rarely addressed by the prison rules. "They are likely to have particular needs such as facilities for worship, special diets and hygiene requirements, due to their religion, which may be different to those of the majority prison population."⁶⁵ Diet patterns vary across states, thus restrictive diets, such as those which prohibit intake of meat can lead to discontentment in prisoners. Only few prisons provide special diets to foreigners⁶⁶, which also may not suffice for all foreign nationals, given the diversity in dietary intake globally.

These barriers can also lead to discrimination or disrespectful attitudes of prison staff or prisoners due to their nationality. This can also lead to actual physical or verbal abuse. For example in Haryana, foreign nationals have complained about food, and even alleged racism and discrimination by other prisoners. The lack of sensitivity among the prison population and prison officials is one of the biggest contributing factor to the challenges faced by FNPs.

⁶⁵ Magali Barnoux and Jane Woods "The specific needs of foreign national prisoners and the threat to their mental health from being imprisoned in a foreign country" <https://www.sciencedirect.com/science/article/pii/S1359178912001267>.

⁶⁶ United Nations Office on Drugs and Crime (2009), Handbook on Prisoners with special needs: New York, https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf.

⁶⁷ Haryana Prison Manual, 1894 <http://haryanaprison.gov.in/haryana-jail-manual>.

D. Repatriation upon completion of sentence

Once a prisoner completes their sentence, they must be released from prison. In the case of foreign nationals,⁶⁷ this entails traveling back to their home country. This process, however, is tedious, with a number of sub-processes: nationality verification, issuance of emergency travel certificate, securing funds for travel, the assignment of escorts for transfer, approval from airlines (in case of travel by air) or approval by border security forces (in case of travel by road), among others.

As explained in the preceding chapter, repatriation requires the involvement of both central and state governments, specifically, two divisions of Ministry of External Affairs – the consular, passport and visa division and the respective territorial division; the foreigners division of the Ministry of Home Affairs and State Home Department; the Home Secretary or Jail Secretary; Bureau of Immigration and Foreign Registration Regional Officer of the state; Criminal Investigation Department, Intelligence Bureau; Superintendent of Police of the district where the prisoner was arrested; and Superintendent of the prison where the prisoner is lodged. A corresponding procedure, similar to one mentioned above, also exists in the country of the prisoner and needs to be followed to complete the nationality verification process.

Repatriation can also be of two kinds, depending on whether the individual possesses a valid travel document such as passport, or not (if they never possessed valid travel documents or their documents had expired). The process is simpler in the former case; unless the person has insufficient funds for travel, there are usually no delays in repatriation. In the latter case, however, there are several barriers that can delay the process.

Barrier VI: Delay in nationality verification

The first step towards initiating the repatriation process is to verify the nationality of the person. For this, the prison departments write to the embassy of the country where the person is purported to belong. These requests are then routed through the prison headquarters, state home departments, ministry of external affairs before it reaches the embassy. This communication is required to contain all relevant details of the prisoner, including copies of any identification documents he might possess. In absence of any identification documents, embassies are often reluctant to take any steps. However, in many cases, the identification documents are not available with the prisoner.

When a person gets arrested, he may be searched and his belongings may be seized by the police.⁶⁸ In case of foreign nationals, these belongings also include their passports and other identification documents. These are then stored as evidence or seized items in the *police malkhana*, and remain there indefinitely. For example, in the case of a Ukrainian individual, the passport was traced to the police station 12 years after his arrest.

⁶⁸ This would exclude those who are seeking asylum or are not willing to go back due to justified reasons.

⁶⁹ Code of Criminal Procedure 1973, Section 51.

Similarly, in the case of a Palestinian person, it took almost a year to get a copy of the passport from the police station that was seized 23 years ago. Such issues result in inordinate delays in nationality verification with some embassies refusing to take any steps without a copy of the passport. Processes have to be initiated to procure the documents from the court or police *malkhana*.

However, this is not the only hindrance; in the absence of travel documents or identification records, it takes a long time for nationality to get verified by the consulate in question. They must also send the information to the respective government, which then initiates verification processes from their end. This too takes time. For example, in the case of an alleged Sierra Leone national, it took almost a year for the embassy (which was located in China) to confirm that the person was not its national.

Barrier VII: Delay in obtaining Emergency Travel Certificate

Section 3 of the Passports Act, 1967, clearly specifies that ‘no person shall depart from, or attempt to depart from India unless he holds in this behalf a valid passport or travel document.’ Therefore, once the embassy verifies the nationality of the foreign prisoner, it must issue the person with an Emergency Travel Certificate (ETC) or a Travel Permit, which has the same value as that of a passport. This document permits the person to travel back to his country. However, as explained above, this process can take time. An ETC is generally valid for a month, while a Travel Permit stays valid for 3 months, within which the outbound travel is to be made. Sometimes, there can be delays at the prison’s end or the foreigner regional registration office, or there can be a lack of funds due to which arrangements are not made for the travel. In such cases, the travel document has to be issued again, pushing back the process by a few more months. For example, in the case of some Nigerian persons, despite being issued ETCs, they could not be repatriated because they had insufficient funds to pay for their travel.

Barrier VIII: Insufficient funds to support travel

Section 3(2)(cc) of the Foreigners Act 1946 requires foreigners to “meet from any resources at his disposal the cost of his removal from India”. Further, Para 14 of the Foreigners Order 1948 allows the Central Government to “apply any money or property of the foreigner in payment of the whole or any part of the expenses of or incidental to the voyage from India...until departure...” The law clearly places the responsibility of securing funds for travel on the prisoner, but in reality, this is difficult.

After long periods of incarceration, FNPs are left with little or no money. Sometimes, their travel may be sponsored by family members, but in a lot of cases, families too are incapable of offering funds. In some cases, embassies intervene to assist the process, but this is not a uniform practice. Countries with on-going humanitarian crises allocate budgets for voluntary repatriation of their nationals from other countries, which they often use to fund the deportation of their nationals as well (this is a practice in Afghanistan and

Palestine). Others contact the family of the prisoners or seek such funds from the prisoner. Sometimes, prison departments also concede to requests for sponsoring travel, but again, this is not a uniform practice. For the most part, expecting funds from FNPs is unrealistic since they are not allowed to work in detention⁶⁹. For example, the entire travel of a Palestinian prisoner was sponsored by the embassy, but in the case of Nigerians or South Africans, the embassies offer no financial support. Thus, some prisoners spend months or years waiting for charity money from others to enable them to return back.

Barrier IX: Logistical arrangements, approvals, etc.

Once the prison department receives the ETC and funds for travel are secured, there remain a number of processes to be completed before the repatriation. This includes fixing the date of repatriation in consultation with the Foreigner Regional Registration Office (FRRO), issuance of deportation or removal order by FRRO, purchasing ticket for travel (in case of travel by air), requisition of escorts for transfer to the airport or integrated check post (ICP),⁷⁰ securing approval from airlines or border security forces as the case may be, handing over belongings including valuable items and any wages earned to the person.⁷¹ Once the process is completed, a report is sent from the prison to the prison headquarters and state home department.

With no guidelines making the process timebound, there can be delays at every step of this process. In certain cases, where the prisoners' families provide tickets, they might do it without consulting the FRRO. It could be that during those days, escorts are not available or that the time for processing documents and receiving requisite approvals is insufficient. Thus, it is necessary to obtain consent from both FRRO and prison authorities before finalising the transfer date. For example, a Bangladeshi prisoner could not be sent to the ICP because of lack of escorts.

The same goes for the requirement for approval by airlines. To seek requisite permission, the following documents should be made available: a copy of the deportation order, a risk-assessment report by the state and/or any other pertinent information that would help the aircraft operator assess the risk to the security of the flights, and the names and nationalities of escorts.⁷² After the FRRO representative or other competent authority on its behalf provides the copy of the ETC, deportation order, medical certificate and airline reservation, the airlines need at least 10 days to provide clearance. However, there are often delays in

⁷⁰ Section 14 of Foreigners Act that criminalizes undocumented entry, visa overstay or entry into a restricted area provides for simple imprisonment. Simple imprisonment does not involve working inside prison.

⁷¹ ICPs have been setup at major entry points on India's land borders and house all regulatory agencies like Immigration, Customs, Border Security etc. together with support facilities in a single complex equipped with all modern amenities and serve as a single window facility as is prevalent at Airports and Seaports. Read more at <http://www.lpai.gov.in/content/>.

⁷² While persons convicted of offences under the Foreigners Act are not required to work, some FNPs are convicted of other criminal offences which may entail rigorous imprisonment.

⁷³ Convention on International Civil Aviation Facilitation International Standards and Recommended Practices, 5.19, Deportees, Chapter 5, Annex 9.

receiving clearance, wherein clearance comes only 24-36 hours prior to the flight, leaving the FRRO limited time to purchase tickets, coordinate with the jail and procure escorts. There have also been instances where airlines refuse to allow boarding at the last moment leading to confusion, delay and loss of flight ticket money, adding to the woes of the prisoners. For example, a Palestinian prisoner could not board a flight as the airlines did not give clearance. He ended up being sent back to prison, pending his repatriation, which occurred after a month by another airline.

These barriers, singularly or collectively, effect the rights of FNPs. Our data received from states indicates a sad state of affairs, especially where consular access and detention pending repatriation is concerned. These facts and figures are discussed in the next chapter.

IV. Recommendations

The United Nations Office on Drugs and Crime (UNODC) Handbook on Prisoners with Special Needs states that ‘foreign nationals are often disadvantaged in the criminal justice system due to increasingly punitive measures applied to foreign national offenders in many countries, to discrimination, limited awareness of legal rights, lack of access to legal counsel, lack of social networks and economic marginalization. There is a need, therefore, for States to examine their criminal justice policies and law enforcement practices to identify shortcomings and to take steps to improve foreigners’ access to justice throughout the criminal justice process.’

It further states that ‘comprehensive management strategies need to be developed, and mechanisms put in place to ensure that they are implemented, to guarantee that prisoners with special needs are treated in accordance with the requirements of international human rights standards, while their prospects of social reintegration are enhanced’.⁷³ This is true in the Indian context as well. There is indeed an urgent need to examine our policies and practices to secure effective access to justice for foreign prisoners.

The problems that foreign nationals face in Indian prisons, as discussed in preceding chapters, stretch from their time of arrest to the point of repatriation to their home country. A ubiquitous concern across prisons is the lack of effective communication with embassies after arrest, which interferes with many concurrent rights such as their right to consular notification and access, the right to contact family, the right to language, and thus causes prolonged delays in repatriation after completion of their prison terms. This study has highlighted many barriers that foreign prisoners face; however, remedial action must be taken to overcome these barriers. Some suggested action points follow.

A. Arrest

Barrier I: Lack of intimation to Consulate/Diplomatic Mission at arrest

Possible solutions:

1. The Ministry of Home Affairs (MHA) and Ministry of External Affairs (MEA) should revise their guidelines prohibiting direct contact of police officers with the embassies. Instead, police officers should be permitted to send email intimations in a standard format whenever a foreign national is arrested anywhere in the country. It can be made mandatory to carbon copy (CC) relevant ministries and departments for documentation purposes. This could reduce the time taken at present considerably.

⁷⁴ United Nations Office on Drugs and Crime - Handbook on Prisoners with Special Needs – accessed on 03/12/2018 – available at - https://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf.

2. Alternatively, the MHA and MEA along with the Bureau of Immigration (BoI) can prepare a web-portal where information can be centrally uploaded by police officers and then automatically sent to the concerned embassy. This portal can be made on similar lines as that of the IVFRT (Immigration Visa Foreigner Registration Tracking) or can be an additional module to it.
3. The BoI should prepare a brochure with basic details about the right to consular access and contact details of the diplomatic missions of all countries. It can also contain information on the criminal processes that follow an arrest. It can be in the form of frequently asked questions, similar to one prepared by CHRI.⁷⁴
4. In case an arrested person waives his right to consular access, this should be recorded in writing, by way of statement, counter-signed by an independent witness.
5. Where the arrested person does not understand the language, a translator must be hired to ensure that every part of the proceeding is communicated to them.
6. A copy of the first information report (FIR), and other additional documents should be made available in the language understandable by them. The embassy can be contacted for assistance in translation of these documents.

B. Adjudication

Barrier II: Lack of nationality verification at the time of trial

Possible solutions:

1. Given the reversal of burden of proof in cases of FNPs for offences under the Foreigners Act 1948, special provisions must be made for ensuring effective representation is provided to all such accused persons. These can include:
 - a. Specialised training courses on defending FNPs which can be initiated by the Bar Council of India or by the National Legal Services Authority⁷⁵ for both private and legal aid lawyers.
 - b. Mandatory *in-camera* hearing of such persons by the judicial officer adjudicating the matter to record the version of the accused. This can prevent them from being coerced into pleading guilty.⁷⁶
2. The adjudicating court should put on record all communications received from the embassy in response to requests by the police or prison authorities for consular access. This would ensure that any communication confirming or denying nationality of accused are on record and form part

⁷⁵ 'Frequently Asked Questions by Foreign Nationals in Indian Prisons, CHRI 2017, Available at <http://www.humanrightsinitiative.org/publication/frequently-asked-questions-by-foreign-nationals-in-indian-prisons>.

⁷⁶ The nodal body which regulates provision of state funded legal aid services to persons as per the Legal Services Authorities Act 1987.

⁷⁷ In one case, an Indian national, who was mentally ill at the time of arrest, was convicted on a plead guilty application for being a non-national. After receiving treatment for her mental ailments in prison, when she was considerably cured of her ailment, she informed that she was a resident of Assam. The prison authorities made contact with her family and filed petition in the Calcutta High Court. However, the court refused to intervene as her original conviction was by pleading guilty.

of court proceedings. If where the nationality is not verified, the court may pass orders upon the police to further investigate the matter and ascertain the true nationality of the accused prior to proceeding against him.

3. Guidelines must be formulated by MHA and MEA on proceeding with cases where nationality cannot be ascertained. This would include cases where the embassy refuses to consider the accused their citizen or where no relevant documents could be procured to prove nationality. All such persons should be declared as stateless, as per the *Convention Relating to the Status of Stateless Persons 1954*, which defines a *stateless person* as a person who is not considered as a national by any State under the operation of its law.⁷⁷ These guidelines must include special procedures to be followed by courts in adjudication of such cases, and appropriate remedies put in place to prevent unnecessary and infinite detention of such persons.

C. Confinement in prisons

Barrier III: Lack of consular access in prison

1. The MHA should issue an advisory to state home departments and prisons to initiate the process of nationality verification on the day a person is arrested, or sent to judicial custody. This would not only ensure prompt consular access, but also protect other due process rights of FNPs.
2. The MHA, MEA and BoI should revise procedures for the intimation of detention of FNPs to concerned embassies. The concerned prisons should be permitted to send email intimations in a standard format⁷⁸ whenever a foreign national is admitted to a prison. It can be made mandatory to carbon copy (CC) the relevant ministries and departments, including the prison headquarters and state home department, for documentation purposes. This would reduce waste of time.
3. Alternatively, similar to the suggestion for the police, the MHA, MEA and BOI can prepare a web-portal where information can be centrally uploaded by prisons and then automatically sent to the embassy in question. This portal can be made on similar lines as that of the IVFRT (Immigration Visa Foreigner Registration Tracking) or can be an additional module to it, thus integrating both police and prison intimation modules in it.

⁷⁸ Available at https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=_en. For more information read 'India and the Challenge of Statelessness' – A review of the legal framework relating to nationality', National Law University, New Delhi 2012.

⁷⁹ See Sample Form 1.

4. To reduce delay in granting permission to embassies for consular access, the MEA or BoI can prepare a standard format of application or a web-portal to ease the application process and standardise and speed up the procedure. The MEA and BoI should also communicate to all embassies the procedure for requests for consular access.
5. The MEA can, as part of the streamlining of procedures for consular access, allow certain embassies to make multiple visits to prisons during a specified period. The MEA can also permit these embassies to meet all such nationals detained in the region or prison during the same visit, thus helping those embassies that may have scarce resources.
6. The MEA may also consider permitting consular access by video conferencing or telephone calls to ensure prompt access across vast geographies.

SAMPLE FORM 1
REQUEST FOR CONSULAR ACCESS BY FOREIGN NATIONAL

I _____ s/o _____, aged _____, resident of _____
_____ - town _____ - state _____ - country _____
_____, request consular access from my embassy. My national ID number/ passport number/ other
native identity document number _____.

Photo	Left Thumb Impression	Right Thumb Impression

Case reference no./sections charged/concerned court:

I am detained at _____ prison in _____ city _____ state of India.

I would also request that you may inform my family of my detention,

Name. _____ Relationship: _____

Contact No. _____ Email Address: _____

Address- _____

Date _____ Signature _____

-----OFFICIAL USE-----

Signature of Superintendent _____

Date _____

Place _____

CC - Director General of State

CC - Home Department (concerned office)

CC - Ministry of Home Affairs (concerned office)

CC - Ministry of External Affairs (concerned office)

Barrier IV: Lack of contact with family and friends

1. The MHA and MEA should provide guidelines to ensure proper channels of communication to FNPs for contacting their families. These may include:
 - i) Promoting the use of the e-prisons suite for video conferencing sessions: Where available, facilities for video-conferencing should be extended to FNPs. For example in West Bengal, FNPs can have video conference sessions once a week with their family members in other countries. Appointments can be booked using *e-prison suite* – the prison management software developed by National Informatics Centre, India.⁷⁹
 - ii) Allowing prisoners to make international calls where such telephone facilities are available: They can either be permitted to make calls on their own, or their family members can call prisoners once every week at their own cost.
 - iii) Enabling prisoners to call their family through their embassy where international calls are not permitted in prisons: FNPs may be permitted to make domestic calls to their embassy representative, who can then connect to the families via conference calls.
 - iv) Offering the option to send emails: FNPs can be permitted to send emails on pre-verified or pre-registered email addresses to their family members. General rules of censorship may be allowed as applicable for letters under the prison rules. Alternatively, letters written by prisoners can be scanned and shared with their family by the prison department. Similarly, family members may also write to the prisoner on the same email address, which can be conveyed by prison authorities.

Barrier V: Lack of provisions to meet special needs

1. To overcome language barriers, prison authorities may use innovative tools such as a *Picture it in Prison - FNPs Picture Dictionary*.⁸⁰ This tool has been developed for FNPs and prison staff to overcome language obstacles. The booklet consists of over 450 pictures which are classified per theme and translations of 60 basic words and sentences in 20 frequently spoken languages in prison -- English, Arabic, Spanish, Portuguese, Chinese, French, Russian, German, Turkish, Romanian, Italian, Dutch, Albanese, Greek, Japanese, Swedish, Swahili, Persian, Hindi and Polish. Such tools can be prepared and kept in prison libraries across the country.
2. Similar to the one given at the time of arrest, the MHA, MEA and BoI may prepare a pamphlet with basic guidance on prison rules and regulations. It can contain information on facilities for contact with family members, and should be provided to FNPs upon admission to prison.

⁸⁰ See <https://eprisons.nic.in/NPIP/public/MyVisitRegistration.aspx>.

⁸¹ Prepared by Prison Watch-The Netherlands, 2015. Available at <http://www.prisonwatch.org/picture-it-in-prison.html>.

3. Another document with information on booking appointments for visits, calls or interview by video-conferencing, can be uploaded on the website of Ministry of External Affairs for the benefit of family members. This document can also be made available on embassy websites.
4. Prison authorities should take into account the dietary preferences of FNPs. Diets may vary considerably across geographies, and this warrants the attention of prison authorities.

D. Repatriation upon completion of sentence

Barrier VI: Delay in nationality verification

1. The process of nationality verification, as discussed earlier, should be initiated at the time of admission of an FNP to prison. Further, the process of repatriation should be initiated at least six months before the completion of the sentence, to avoid any delays. The prison authorities should notify all stakeholders regarding the subsequent completion of sentence of FNPs. A standardised format can be prepared for this. (See Form 2).
2. The MHA should draft a time-bound Standard Operating Procedure that sets forth a robust system ensuring the timely repatriation of FNPs. It should specify duties for each stakeholder involved in the process and where possible, assign time limits to prevent inordinate delays in the process.
3. Prisoners of specific countries with whom India has entered into Sentence Transfer Agreements, as per the provisions of the Repatriation of Prisoners Act, 2003, should be informed of the procedures to apply for transfer. This would encourage transfer of prisoners to serve their remaining sentences in their home countries, negating any delays that can occur in the repatriation process after completion of sentence.
4. Prison authorities should ascertain that when an FNP is admitted to prison, his belongings -- including his passport and other identification documents -- are transferred with him from the *police malkhana* to the prison. Where possible, a photocopy of the passport should be given to the prisoner for safe-keeping. Prison authorities should also ascertain, in the event of transfer of FNPs to another prison or to a detention centre, that their belongings and identification documents are safely transferred. This can help avoid delays at the time of nationality verification and other processes.
5. Prison authorities may consider transferring FNPs who have completed their terms of sentence to one particular central jail, wherein a suitably trained prison officer may be deputed to deal with such matters in an efficacious manner.

SAMPLE FORM 2
INTIMATION OF COMPLETION OF SENTENCE

I _____ s/o _____, aged _____, address - _____
_____ town _____ - state _____ - country _____, will
complete my sentence on _____ and request you to arrange for my repatriation. My national ID
number/ passport number/ other native identity document number _____. I have sufficient
funds/do not have funds to arrange for my travel.

Photo	Left Thumb Impression	Right Thumb Impression

I am currently detained at _____ prison in _____ city _____ state of
India.

I also request that you may inform my family of my completion of sentence:

Name- _____ Relationship: _____

Contact No. - _____ Email: _____

Address- _____

Date _____

Signature _____

-----OFFICIAL USE-----

Signature of Superintendent _____

Date _____

Place _____

CC - Director General of State

CC - Home Department (concerned office)

CC - Ministry of Home Affairs (concerned office)

CC - Ministry of External Affairs (concerned office)

Barrier VII: Delay in obtaining Emergency Travel Certificate

1. Once the nationality verification process is initiated upon the admission of a FNP, delays in obtaining emergency travel certificate will automatically be taken care of. Additionally, a switch-over to an integrated online portal will also help to counter any delays.

Barrier VIII: Insufficient funds to support travel

1. Prison authorities may permit FNPs to work within the prison premises to help them secure funds for their travel, as well as to pay any fines that are part of their sentence.
2. The government may also consider setting up a welfare fund to assist FNPs who are unable to pay for their travel. They may specify certain criteria for the allocation of funds to prevent any misuse.

Barrier IX: Logistical arrangements, approvals, etc.

1. **A Foreign National Prisoners Portal:** To streamline the process of repatriation and integrate solutions within the system to many of the barriers listed above, the MHA, MEA and BoI, in consultation with police and prison departments, should prepare an online portal to catalogue all cases of FNPs. Data can be uploaded by police and prison authorities whenever an FNP is arrested or admitted. This portal can be programmed to send automatic emails to each stakeholder, including embassies, the MHA, MEA, BoI, FRRO, etc., regarding the status of the FNP. Requests for consular access by both prisoners (through prison authorities) and embassies can also be submitted via the portal. It can be further programmed to send alerts in cases of inaction on requests, completion of sentence, delays in other processes, etc. This will help not only streamline the entire process but also improve monitoring, thus increasing the efficacy of the system. Alternative, this portal can be an additional module on the *e-prisons suite* – prison management system or the IVFRT (Immigration Visa Foreigner Registration Tracking).

Overstay by prisoners only translates into an added burden on state funds, which are eventually part of tax payers' money. Unnecessary detention of FNPs is thus neither beneficial to the prisoner nor to the system.

V. State-wise Infographic Representation of Data

Andaman & Nicobar Islands

S. No.	Jail Type	No. of Jails	RTI Responses
1	District Jail	1	1
2	Sub Jail	3	0
3	Special Jail	1	0
Total		5	1

District Jail Prothrapur, in Andaman & Nicobar Islands responded to the RTI Application & furnished complete details about FNPs.

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UTs	1	Nil
2	Convicts	30	Nil
3	Awaiting Repatriation	2	Nil
Total		33	Nil

In response to our question about consular access, the prison authorities responded with “Not pertinent to Prison Department of this Union Territory”.



⁸² Jail figures in all state summaries are as per the Prison Statistics of India 2015.

Andhra Pradesh

S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	4	4
2	District Jail	7	0
3	Sub Jail	99	0
4	Open Jail	1	0
5	Women Jail	1	0
Total		112	4

The data for the state was collated by the Prison Headquarters (PHQ) and sent to the applicant, hence the data can be said to be complete for the state. As per the response received, the FNPs are kept in Central Jails in the State of Andhra Pradesh.

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UTs	9	0
2	Convicts	1	0
3	Awaiting Repatriation	0	0
Total		10	0

The Embassy of Sri Lanka, China and Nigeria had been informed of the detention of their citizens, yet consular access was not provided.

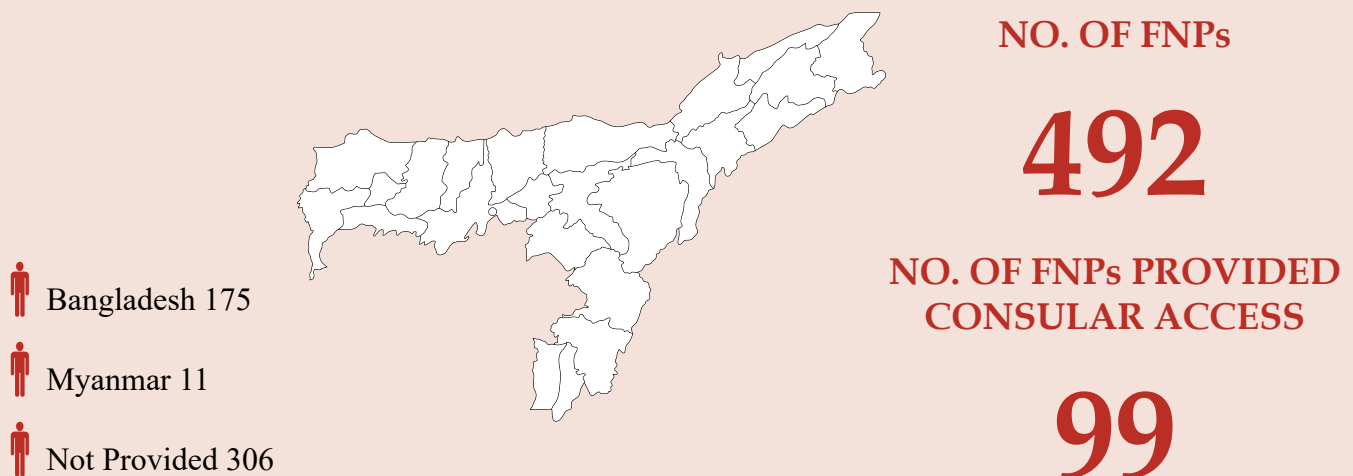


Assam

S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	6	6
2	District Jail	22	15
3	Sub Jail	1	0
4	Open Jail	1	1
5	Special Jail	1	1
Total		31	23

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UTs	135	0
2	Convicts	16	7
3	Awaiting Repatriation	341	91
Total		492	98

Consular access was provided by the Bangladesh Assistant Mission in Guwahati, but not by the Embassy of Myanmar.



Chandigarh

S. No.	Jail Type	No. of Jails	RTI Responses
1	Model Jail	1	1

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UTs	11	0
2	Convicts	7	0
3	Awaiting Repatriation	0	0
Total		18	0

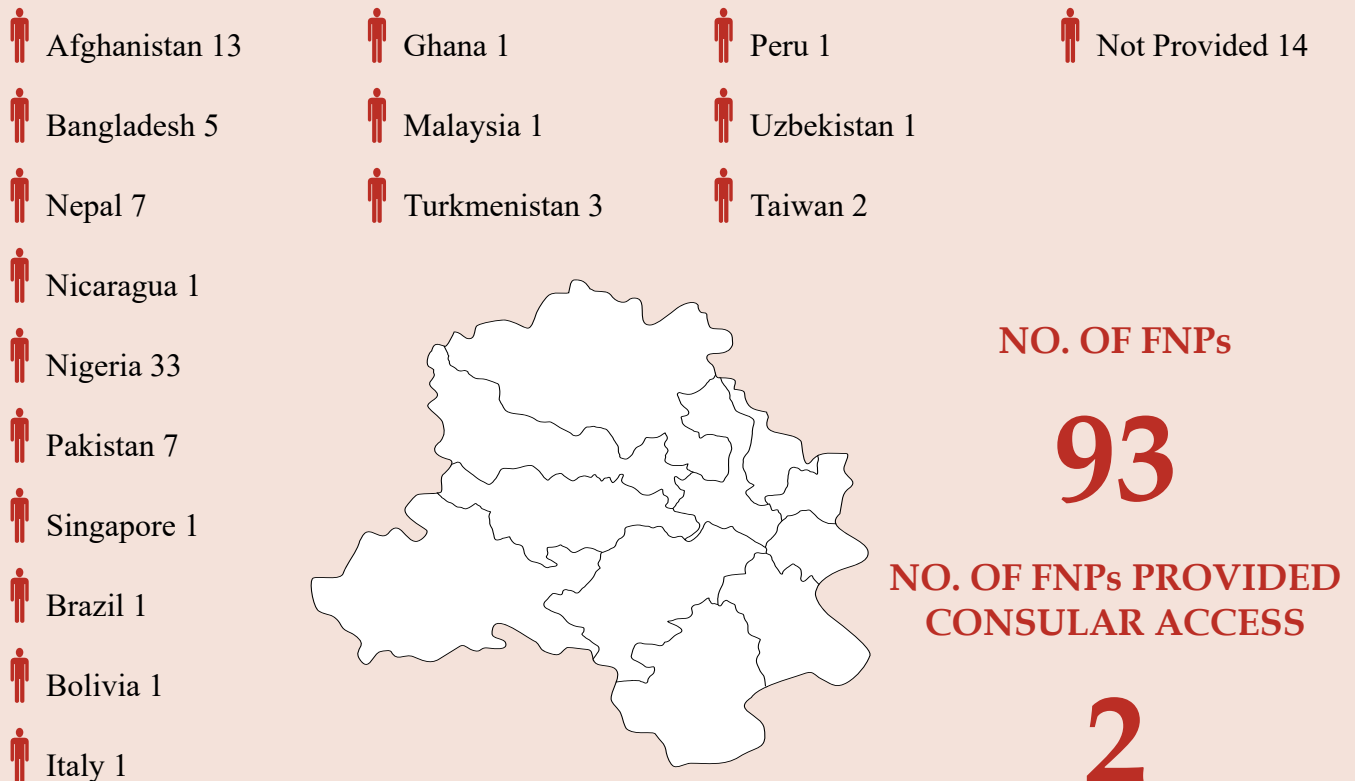
The information received by the applicant was partial, i.e. only the number of foreign national prisoners and their category was sent over, the rest of the information was rejected.

Delhi

S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	8	14
2	District Jail	1	0
3	Women Jail	1	1
Total		10	15

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UTs	67	0
2	Convicts	26	2
3	Awaiting Repatriation	0	0
Total		93	2

The data for the consular access to the rest of the foreign national prisoners was either negative or not provided to the RTI applicant by the authorities. The various jails under Delhi administration, replied differently, some provided complete information, some partial and rest rejected. Even after an order from the appellate authority, only some jails complied.



Goa

S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	1	0
2	Sub Jail	1	1
Total		2	1

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UTs	2	0
2	Convicts	0	0
3	Awaiting Repatriation	0	0
Total		2	0



NO. OF FNPs

2

NO. OF FNPs PROVIDED
CONSULAR ACCESS

0

 Kenya 1

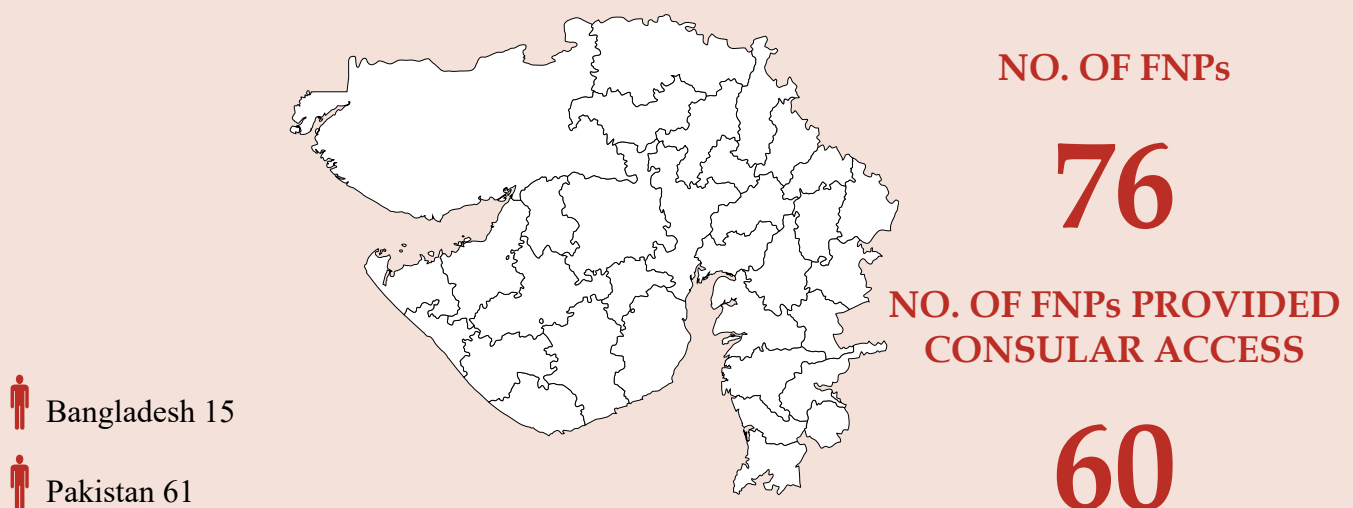
 France 1

Gujarat

S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	4	2
2	District Jail	7	8
3	Sub Jail	11	4
4	Open Jail	2	0
5	Special Jail	2	1
6	Women Jail	1	0
Total		27	15

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UTs	67	56
2	Convicts	8	3
3	Awaiting Repatriation	1	1
Total		76	60

All the Pakistan nationals who had been provided consular access, was during their consinement at Jaipur central jail, but not in Gujarat.

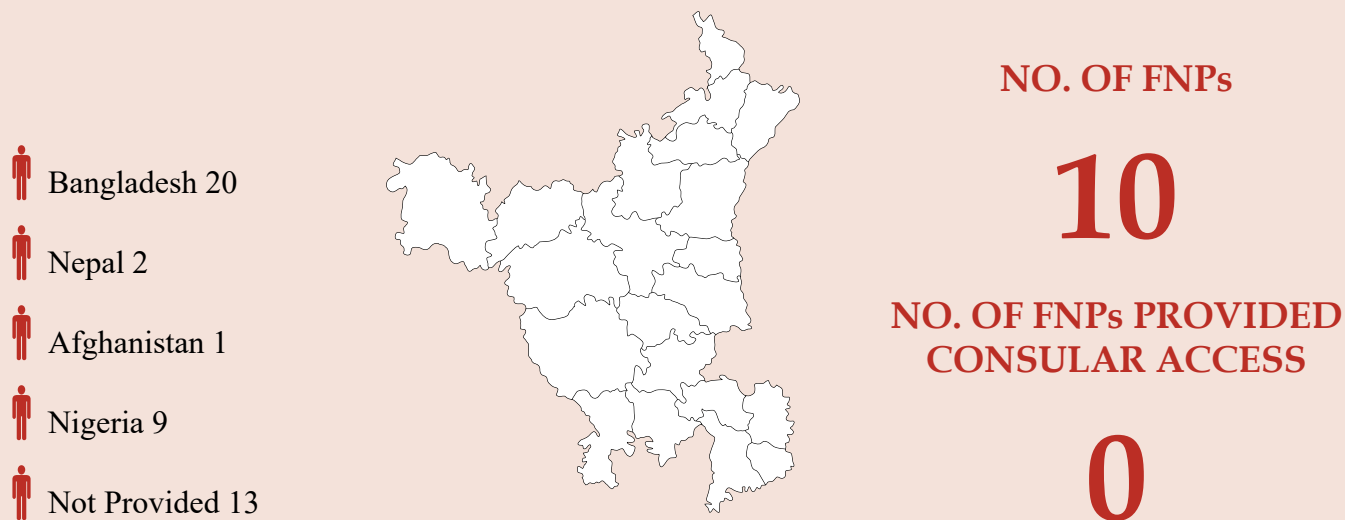


Haryana

S. No.	Jail Type	No. of Jails	RTI Responses
1	District Jail	16	15
2	Central Jail	3	3
Total		19	18

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UTs	29	0
2	Convicts	16	0
3	Awaiting Repatriation	0	0
Total		45	0

Two prisons, Kurukshetra and Ambala, rejected the RTI partially, they only gave the number and categories of FNPs.













Himachal Pradesh

S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	2	2
2	District Jail	2	8
3	Sub Jail	8	2
4	Borstal School	1	0
5	Open Jail	1	0
Total		14	12

Table 2

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UTs	25	5
2	Convicts	2	0
3	Awaiting Repatriation	0	N/A
Total		27	5

-  America 2
-  Austria 1
-  Germany 1
-  Nepal 9
-  Nigeria 8
-  Palestine 1
-  Russia 1
-  South Africa 2
-  Tanzania 1
-  Venezuela/America 1



NO. OF FNPs

27

NO. OF FNPs PROVIDED
CONSULAR ACCESS

5

Jammu and Kashmir

S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	2	2
2	District Jail	10	7
3	Sub Jail	2	1
Total		14	10

The data has been collated by the PHQ and sent to the applicant.

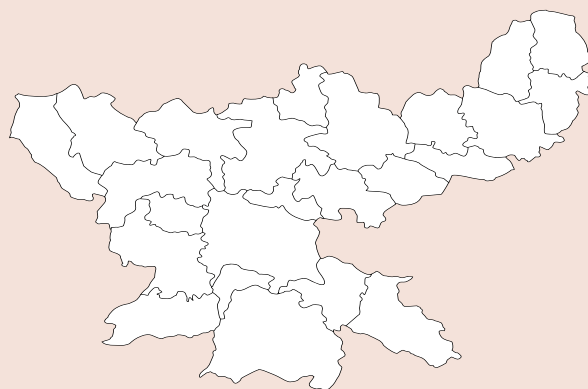
S. No.	Categories of FNP	No. of FNP	No. of FNP provided Consular Access
1	UTs	48	0
2	Convicts	19	0
3	Awaiting Repatriation	43	0
Total		110	0

Only partial information was provided to the applicant, i.e. only the number of FNPs was provided.

Jharkhand

S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	5	5
2	District Jail	17	12
3	Sub Jail	5	1
4	Borstal School	1	0
5	Open Jail	1	0
Total		29	18

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UTs	1	0
2	Convicts	3	0
3	Awaiting Repatriation	-	0
Total		4	0



NO. OF FNPs

4

**NO. OF FNPs PROVIDED
CONSULAR ACCESS**

0


Karnataka

S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	8	6
2	District Jail	19	1
3	Sub Jail	70	0
4	Borstal School	1	0
5	Open Jail	1	0
6	Other Jail	1	0
7	Special Jail	2	0
Total		102	7

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UTs	87	4
2	Convicts	1	0
3	Awaiting Repatriation	0	0
Total		88	4


 Bangladesh 36

 Cameroon 1

 Congo 4

 Jordan 1

 Kenya 1

 Namibia 1

 Nepal 30

 Nigeria 9

 Pakistan 4

 Rwanda 1



NO. OF FNPs

88

NO. OF FNPs PROVIDED
CONSULAR ACCESS






4

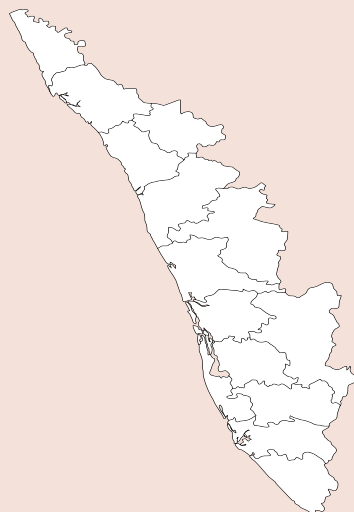
Kerala

S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	3	3
2	District Jail	11	6
3	Sub Jail	16	11
4	Borstal School	1	0
5	Open Jail	3	3
6	Other Jail	1	0
7	Special Jail	16	11
8	Women Jail	3	2
Total		54	36

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access	
			Before 2017	2017
1	UTs	29	1	2
2	Convicts	33		29
3	Awaiting Repatriation	37		37
Total		99	69	

 America 1
 Bangladesh 75
 Cameroon 3
 Ethiopia 1
 Ghana 1
 Mali 1
 Nepal 3
 Nigeria 5
 Paraguay 1
 Romania 1

 Sri Lanka 1
 South Africa 2
 Venezuela 1
 Myanmar 1
 Not Provided 2



NO. OF FNPs

99

NO. OF FNPs PROVIDED
CONSULAR ACCESS

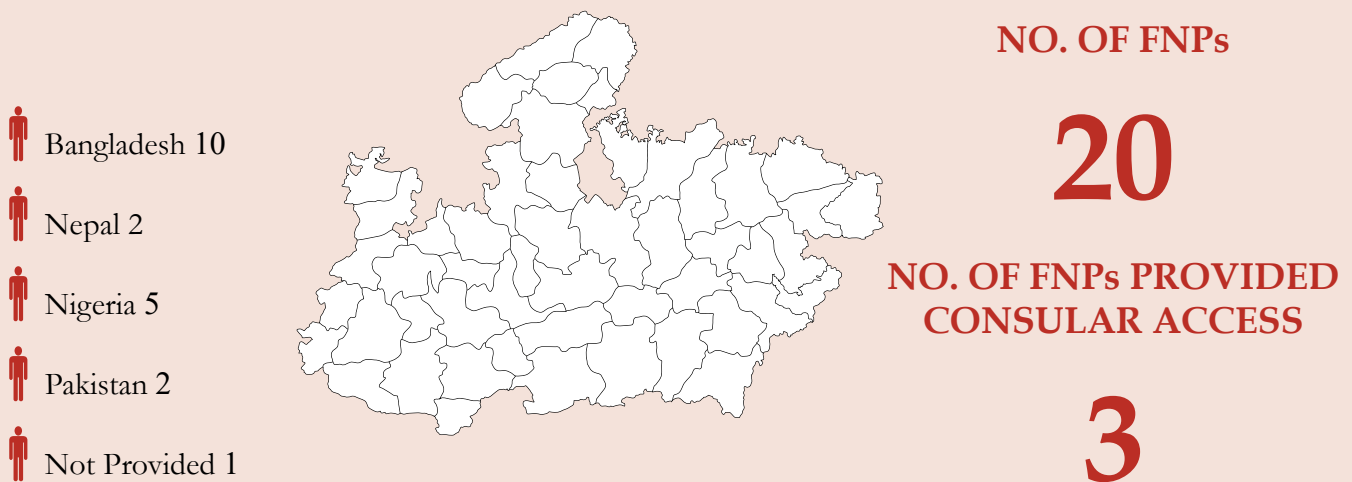
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Madhya Pradesh

Type of Jail	Number Of Jails	RTI Responses
I. Central Jails	11	8
		1. Central Jail, Indore
		2. Central Jail, Gwalior
		3. Central Jail, Jabalpur
		4. Central Jail, Bhopal
		5. Central Jail, Datiya
		6. Central Jail, Hoshangabad
		7. Central Jail, Rewa
		8. Central Jail, Satna
II. District Jails	39	2
		1. District Jail, Chhatarpur- Satna Circle
		2. District Jail, Shivpuri- Gwalior Circle
III. Sub Jails	72	6
		1. Sub Jail, Bijawar- Satna Circle
		2. Sub Jail, Chachaura- Gwalior Circle
		3. Sub Jail, Pohari- Gwalior Circle
		4. Sub Jail, Patan- Jabalpur Circle
		5. Sub Jail, Karera- Gwalior Circle
		6. Sub Jail, Pichhori- Gwalior Circle
IV. Open Jail	1	0
Total	123	16

- 8 out of 12 Central jails have replied to the RTI Application.
- 6 out of 12 confirmed that they have provided data from all the jails within their Circle (Central Jail Bhopal & Satna are yet to confirm).
- Central Jail Barwani, Narsinghpur, Sagar, & Ujjain have not replied to the RTI Request.

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UTs	5	2
2	Convicts	15	1
3	Awaiting Repatriation	0	0
Total		20	3



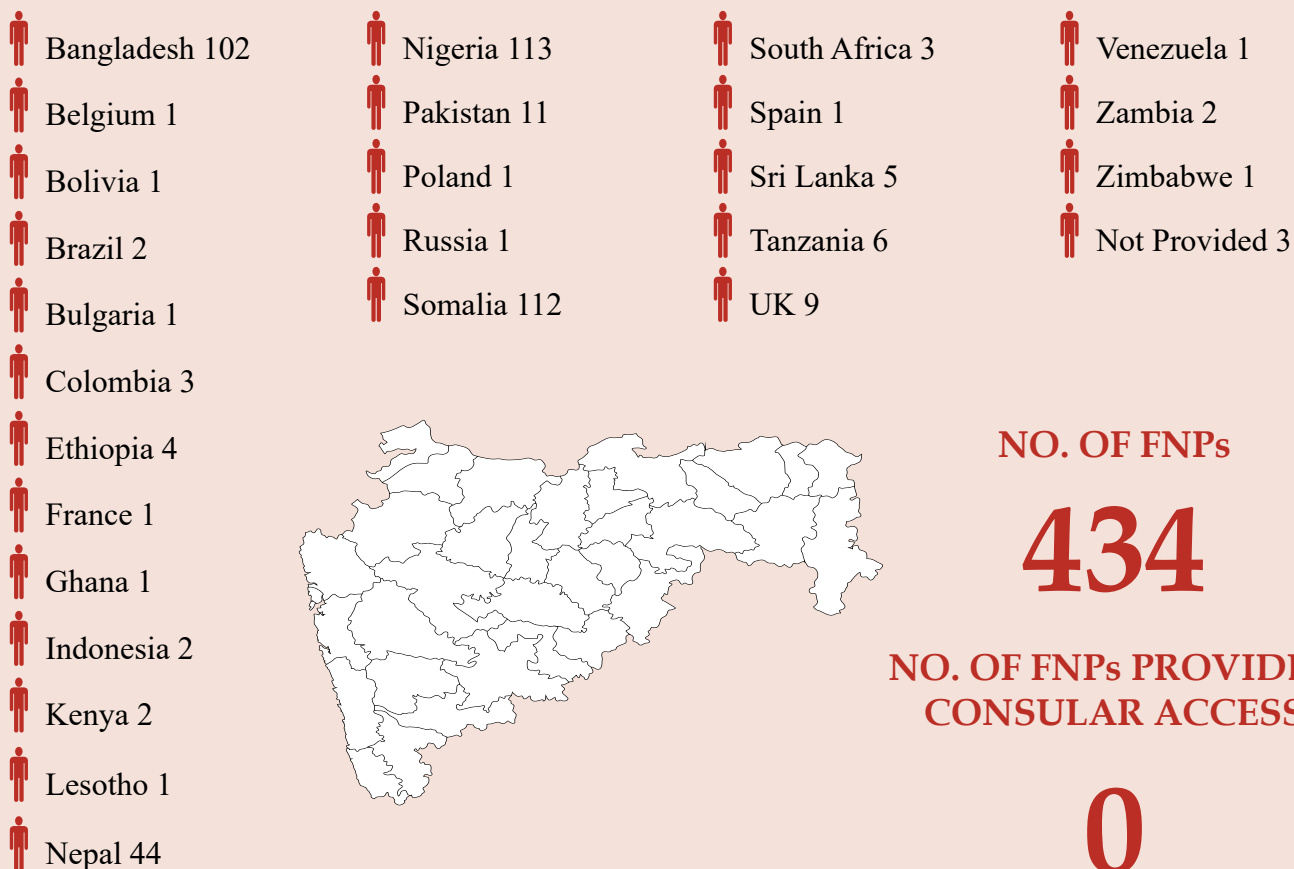
Maharashtra

S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	9	-
2	District Jail	28	-
3	Sub Jail	100	-
4	Borstal School	1	-
5	Open Jail	13	-
6	Other Jail	1	-
7	Special Jail	1	-
8	Women Jail	1	-
Total		154	-

The data was collated and sent by the PHQ to the applicant.

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UTs	260	0
2	Convicts	174	0
3	Awaiting Repatriation	-	0
Total		434	0

The details about consular access were not provided.



Meghalaya

S. No.	Jail Type	No. of Jails	RTI Responses
1	District Jail	4	5
Total		4	5

The data was collated and sent by PHQ to applicant.

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UTs	19	0
2	Convicts	3	0
3	Awaiting Repatriation	0	0
Total		22	0

NO. OF FNPs

22

NO. OF FNPs PROVIDED
CONSULAR ACCESS

0

 Bangladesh 20

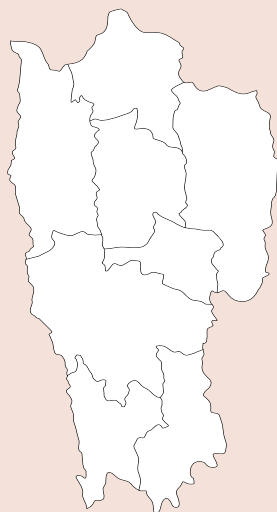
 Not Provided 2

Mizoram

S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	1	1
2	District Jail	6	2
Total		7	3

The data has been collated by the PHQ and sent to the applicant.

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UTs	7	0
2	Convicts	10	0
3	Awaiting Repatriation	0	-
Total		17	0



NO. OF FNPs

17

NO. OF FNPs PROVIDED
CONSULAR ACCESS

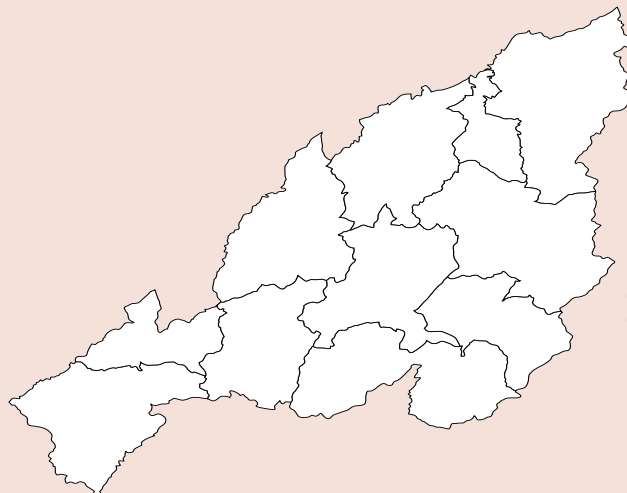
0

Nagaland

S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	1	0
2	District Jail	10	1
Total		11	1

The data was collated and sent to the applicant.

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UT	0	0
2	Convict	0	0
3	Awaiting Repatriation	1	0
Total		1	0



NO. OF FNPs

1

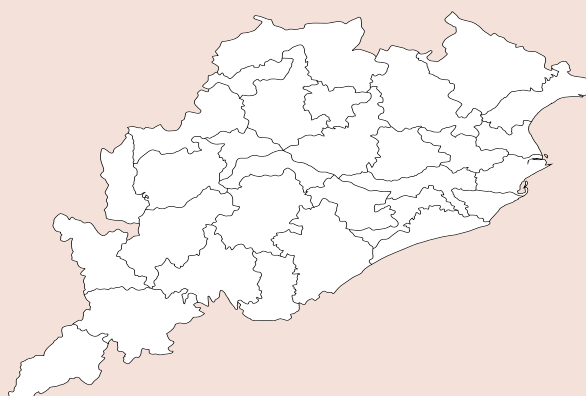
NO. OF FNPs PROVIDED
CONSULAR ACCESS

0

Odisha

S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	5	3
2	District Jail	9	6
3	Sub Jail	73	17
4	Women Jail	1	1
5	Open Jail	1	1
6	Special Jail	2	3
Total		91	31

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UT	2	0
2	Convict	0	0
3	Awaiting Repatriation	0	0
Total		2	0



NO. OF FNPs

2

**NO. OF FNPs PROVIDED
CONSULAR ACCESS**

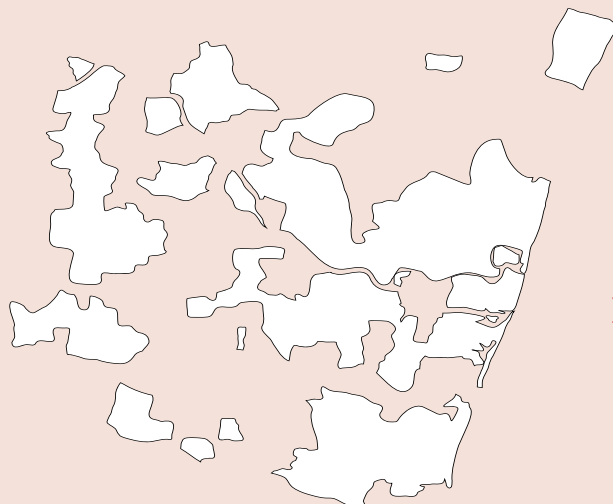
0

Puducherry

S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	1	1
2	Sub Jail	1	1
3	Special Jail	2	2
Total		4	4

The PHQ in Puducherry collated the data from all its prisons and sent it.

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UTs	1	0
2	Convicts	0	0
3	Awaiting Repatriation	0	0
Total		1	0




NO. OF FNPs

1

**NO. OF FNPs PROVIDED
CONSULAR ACCESS**

0

 Bangladesh 1




Rajasthan

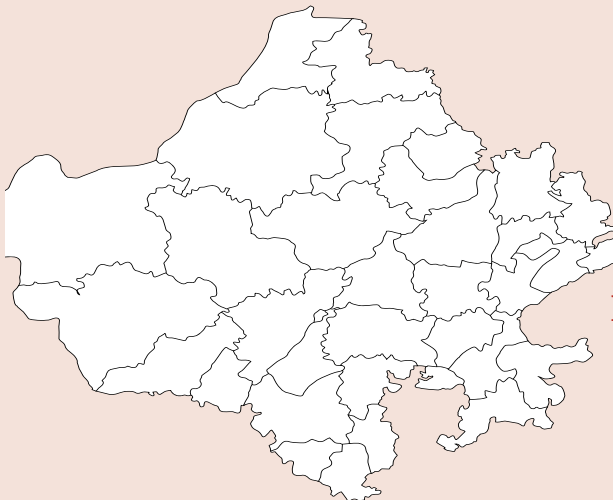
S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	9	-
2	District Jail	24	-
3	Sub Jail	60	-
4	Borstal School	1	-
5	Open Jail	29	-
6	Special Jail	1	-
7	Women Jail	2	-
Total		126	-

The PHQ had collated the data and sent it to the applicant.

S. No.	Categories of FNP	No. of FNP	No. of FNP provided Consular Access
1	UTs	47	-
2	Convicts	20	-
3	Awaiting Repatriation	1	-
Total		68	-

Details regarding consular access to any of the FNPs was not provided.

-  Bangladesh 29
-  Cameroon 1
-  Myanmar 2
-  America 1
-  Afghanistan 1
-  South Africa 1
-  Nepal 6
-  Nigeria 7
-  Pakistan 17
-  Tanzania 2
-  Not Provided 1



NO. OF FNPs

68

**NO. OF FNPs PROVIDED
CONSULAR ACCESS**

0

Sikkim

S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	1	-
2	District Jail	1	-
Total		2	-

The Prison PHQ replied for the entire state with “No foreign nationals in the prisons of the Sikkim, charged under Foreigners’ Act 1946”.

Tamil Nadu

S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	9	5
2	Special Jail	5	4
3	Open Jail	3	0
4	Borstal School	12	1
5	District Jail	9	0
6	Sub Jail	96	0
7	Women Jail	3	0
Total		137	10

Of the responses received there are no FNP's in Tamil Nadu.

Telangana

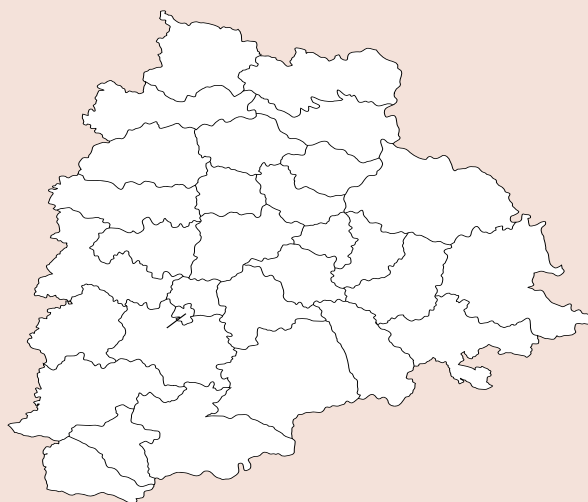
S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	3	1
2	District Jail	7	0
3	Sub Jail	33	0
4	Borstal School	1	0
5	Open Jail	1	0
6	Special Jail	4	3
7	Women Jail	1	0
Total		50	4

The data has been collated by the PHQ and sent to the applicant.

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access	
			Before 2017	2018
1	UTs	27	1	1
2	Convicts	10	2	1
3	Awaiting Repatriation	0	-	-
Total		37	5	

Details regarding Consular Access to FNPs is not provided completely.

	Bangladesh 3
	Bahrain 2
	Benin 1
	Myanmar 6
	Thailand 1
	South Africa 3
	Uganda 1
	Nigeria 17
	Pakistan 3

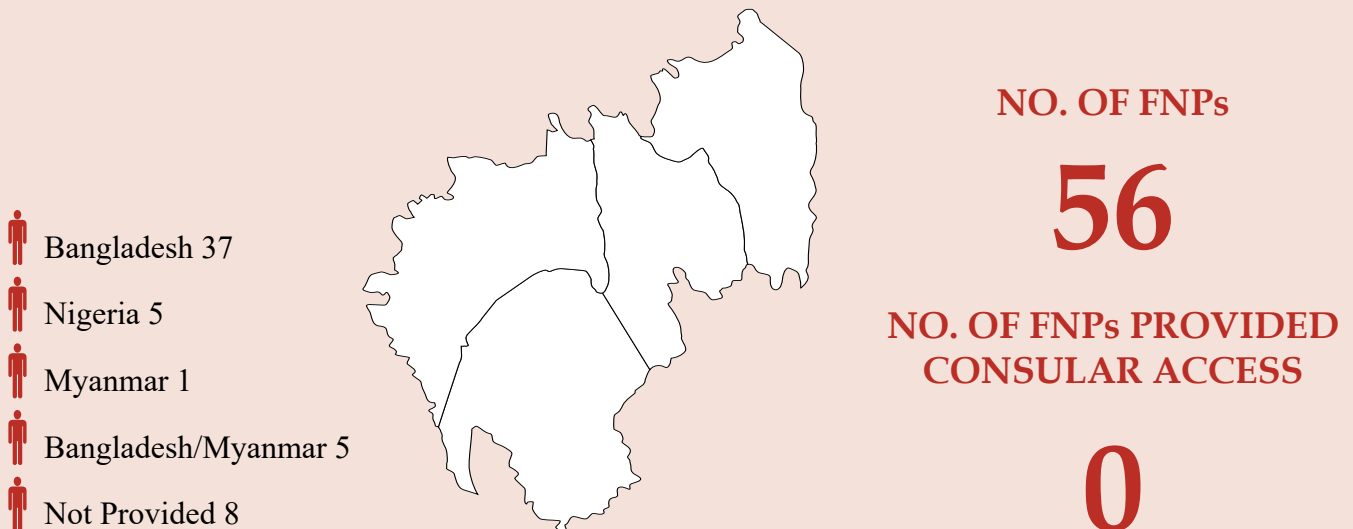


NO. OF FNPs
37
NO. OF FNPs PROVIDED
CONSULAR ACCESS
5

Tripura

S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	1	1
2	District Jail	2	2
3	Sub Jail	10	8
4	Detention Centre	-	1
Total		13	12

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UTs	36	0
2	Convicts	10	0
3	Awaiting Repatriation	10	0
Total		56	0

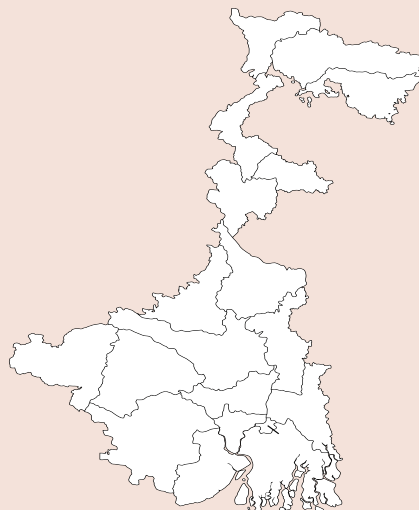


West Bengal

S. No.	Jail Type	No. of Jails	RTI Responses
1	Central Jail	7	-
2	District Jail	12	-
3	Sub Jail	33	-
5	Open Jail	2	-
7	Special Jail	3	-
8	Women Jail	1	-
9	Correctional Homes	-	18
Total		58	18

S. No.	Categories of FNP	No. of FNP	No. of FNPs provided Consular Access
1	UTs	742	12
2	Convicts	978	13
3	Awaiting Repatriation	433	3
Total		2153	28

 Afghanistan 1	 South Africa 1
 Bangladesh 2009	 Ukraine 1
 Ghana 1	 Zambia 1
 Guinea-Bissau 1	 Zimbabwe 1
 Ivory Coast 5	
 Malaysia 1	
 Myanmar 41	
 Nepal 7	
 Nigeria 26	
 Not Provided 44	
 Pakistan 11	
 Poland 1	
 Sierra Leone 1	



NO. OF FNPs

2153

NO. OF FNPs PROVIDED
CONSULAR ACCESS

28

From,

Palak Chaudhari
55A, 3rd Floor Siddharth Chambers,
Kalu Sarai
New Delhi – 110016

To,

The Deputy Inspector General of Prisons
The Public Information Officer
Assam Prison Headquarters
O/o I.G of Prisons Assam, Khanapara, Guwahati
781 001, Assam

Dear Sir/ Madam,

Sub: Application for information under section 6(1) of the Right to Information Act, 2005.

I request you to provide me with the following information:

- 1) Name, address and telephone number of all prisons which have been designated as detention centres which detain foreign nationals pending their repatriation/ deportation.
- 2) Certified copy of the prison rules/ order/ circular/ notification/ guidelines in regard to foreign nationals to contact their families.
- 3) Details of **Under trial prisoners** detained in all the central jails, district jails and sub-jails and detention centers under your supervision who are either foreign nationals, or persons whose nationality is not known yet, or persons whose nationality is disputed, or persons charged under Foreigners Act 1946, as on 10/01/2018, preferably, as per the table below:

a. Name and Fathers' name.	b. Age	c. Date of Admission to Jail and Name of Jail. (Mention all jails in case of transfer cases)	d. Case Details – Case Reference Number/s, Offence charged with, current status of case	e. Whether has a lawyer? Please specify whether private or legal aid.	f. Nationality and Address in their Home country (Please specify if nationality is disputed).	g. Had the Embassy been contacted and was consular access provided? If yes, dates on which access provided.	h. Are they in touch with their family?
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- 4) Details of **convicted prisoners** housed in all the central jails, district jails and sub-jails and detention centers under your supervision who are foreign nationals, or persons whose nationality is not known yet, or persons whose nationality is disputed, or persons charged under Foreigners Act 1946, as on 10/01/2018, preferably, as per the table below:

a. Name and Fathers' name	b. Age	c. Date of Admission to Jail and Name of Jail. (Mention all jails in case of transfer cases)	d. Date of conviction & Details of sentence awarded.	e. Date when sentence will be completed	f. Whether any appeal pending in the High Court or Supreme Court? If yes then please provide details.	g. Nationality and Address in their Home country (Please specify if nationality is disputed).	h. Do they have valid travel documents? a. Passport b. Visa c. Emergency Travel Certificate d. other	i. Had the Embassy been contacted and was consular access provided? If yes, dates on which access provided.	j. Are they in touch with their family?
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5) List of prisoners who have **completed their term of sentence, yet are detained awaiting repatriation** who are foreign nationals, or persons whose nationality is not known yet, or persons whose nationality is disputed, or persons charged under Foreigners Act 1946, as on 10/01/2018, preferably, as per the table below:

a. Name and Fathers' name.	b. Age	c. Date of Admission to Jail and Name of Jail. (Mention all jails in case of transfer cases)	d. Date of conviction & Details of sentence awarded.	e. Date when sentence was completed	f. Whether any appeal pending in the High Court or Supreme Court? If yes then please provide details.	g. Nationality and Address in their Home country (Please specify if nationality not verified yet).	h. Do they have valid travel documents? a. Passport b. Visa c. Emergency Travel Certificate d. other	i. Do they have funds to pay for their return ticket?	j. Had the Embassy been contacted and was consular access provided? If yes, dates on which access provided.	k. Are they in touch with their family?
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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.

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 or by email at the email address mentioned below. Kindly inform me of any additional fees payable towards obtaining this information.

Thanking You,
Yours Sincerely,

Place: New Delhi
Date: 15/01/2018

Signature of Applicant:
Phone Number: +91-11- 43180249
Email Address: palak@humanrightsinitiative.org

NOTES

CHRI PROGRAMMES

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:

1. 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 focused 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.

2. 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 latter CHRI 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.

3. 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.

Sayed Bibi, 38 yrs

Bangladesh, Overstay: 2 yrs

Sayed Bibi waited for two years before seeing Shama and Bilal, her five and seven year old children, after she migrated to India. Since she suffered from mental illnesses at the time, a court sent her to a Shelter Home where she began to recover with professional help. But she could only return home because of efforts by Bangladesh media, counsellors and CHRI. An exhausted Sayeda had once remarked, "coming here is easy, it is going back that is difficult".

Yazid, 50 yrs

Palestine, Overstay: 3 yrs

After spending 26 years in jail, Yazid's Emergency Travel Certificate was issued and tickets were booked on Emirates Airlines by the Embassy of Palestine. He was escorted to Kolkata Airport but was refused permission to board the Emirates Aircraft considering his deportee status. Eventually, he had to be taken back to jail. He waited another few months before he could finally go back.

Antonio Barga, 45 yrs

Cameroon, Overstay: 2 yrs

Antonio Barga had already spent time in prison as an undertrial before he was convicted of committing forgery in 2015. However, he still spent two years in Alwar Detention Centre in Rajasthan, unable to contact his embassy because the Cameroon regional diplomatic mission is in China. At the end, through joint efforts by his sister, CHRI, the Ministry of External Affairs, the Rajasthan government and the Cameroon government, Antonio could finally go home.

Alan Bernard, 32 yrs

Nigeria, Overstay: 3 months +

Alan continues to be in a prison in WB despite having completed his sentence. He does not have funds to fly back to Nigeria. Although the Nigerian High Commission in New Delhi has verified his nationality and issued him an Emergency Travel Certificate, till he secures funds from his family, embassy or the government he will continue to remain detained in prison.

Valerio, 52 yrs

Ukraine, Overstay: 16 yrs+

Valerio came to India in 2003 to practice Buddhism in West Bengal. He was arrested for overstayed visa and sentenced to one year in jail. He refuses to go back to Ukraine since he no longer has family ties, and has repeatedly sought asylum, but in vain. Had he been able to contact his family earlier in his sentence, he might not have been so afraid of going back home.



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