

THE PAKISTAN (EXCHANGE OF PRISONERS) ORDINANCE,
1948

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THE PAKISTAN (EXCHANGE OF PRISONERS) ORDINANCE, 1948
ORDINANCE NO. XII OF 1948
[19" March, 1948]

An Ordinance to implement an agreement with |* * * India regarding the exchange of certain classes of prisoners between |* * * Pakistan and |* * * India.

WHEREAS an agreement has been reached between the two '[countries]' to exchange certain classes of prisoners;

AND WHEREAS an emergency has arisen which makes it necessary immediately to implement the said agreement in so far as Pakistan is concerned;

NOW, THEREFORE, in exercise of the powers conferred by section 42 of the Government of India Act, 1935 (26 Geo. 5, c. 2.), as adapted by the Pakistan (Provisional Constitution) Order, 1947, the Governor-General is pleased to make and promulgate the following Ordinance:—

PART I
PRELIMINARY

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

?(2) It shall extend to the Punjab, the North-West Frontier and Baluchistan, in the first instance, but may at any time by notification in the Gazette of Pakistan be extended to any other part of Pakistan.

(3) It shall come into force in the Punjab, the North-west Frontier and Baluchistan at once, and in any other part of Pakistan on such date as the Government of the Province concerned may by notification in the official Gazette specify.]

2. The provisions of this Ordinance shall have force and operation notwithstanding anything contrary or repugnant thereto in any other law for the time being in force.

PART II
OF THE TRANSFER OF PRISONERS

3. Power of the Provincial Government to order removal of transferable prisoners. A Provincial Government may issue a warrant for the custody and removal of any transferable prisoner from any prison or other place of detention, and for his delivery at a place and to a person specified in the warrant:

Provided that such person specified in the warrant shall be an official of '* * * India, or of any Province thereof, or of any State that has acceded thereto, who has been duly authorised in writing by name or designation of office, to receive such prisoner.

‘Omitted and subs. by A.O. 1961 (with effect from the 23rd March, 1956).

*Subs. by the Central Laws (Statute reform) Ordinance No. XXI of 1960 (with effect from the 14th October

4. Officer-in-Charge of prison or place of detention to deliver custody of transferable prisoner. Upon presentation of a warrant issued under section 3 the Officer-in-Charge of the prison or other place of detention where the transferable prisoner named in the warrant is confined shall cause him to be delivered to the person to whom the warrant is directed together with the warrant of commitment, the history sheet and all other documents relating to him, and personal effects taken from him at the time of his admission, and such person shall furnish to such Officer-in-Charge a written receipt in respect of such delivery.

5. Avoidance of jurisdiction of Courts and authorities over transferable prisoners.—(1) Upon the delivery of custody of a transferable prisoner in compliance with a warrant issued under section 3 to the person, being an official of ' * * * India or of any Province thereof or of any State that has acceded thereto, all Courts and authorities whatsoever in Pakistan shall cease to have and exercise jurisdiction in relation to such prisoner, in respect of the offence or other matter which was the cause of his confinement or detention in any Province of Pakistan.

(2) The Provincial Government may requisition the record of any proceedings (including judicial proceedings) relating to any transferable prisoner for whose removal a warrant has been issued under section 3, from any court or office where such record may be kept, and may direct that such record shall be delivered along with such prisoner to the person being an official of ' * * * India or of any Province thereof or of any State that has acceded thereto specified in the aforesaid warrant, or otherwise forwarded to an appropriate authority in ! * * * India.

6. Examination of witnesses on commission —(1) If in relation to any criminal matter pending before a Court in ! * * * India against any transferable prisoner who has been transferred to '[that country] under this Part, a letter of request issued by such Court is produced before the District Magistrate of any district in Pakistan for the examination of any witness residing in such district, the District Magistrate shall issue a commission for the purpose to any Magistrate subordinate to him.

(2) Such Magistrate shall summon and examine the witness in the presence of a duly authorised police or law officer of '[Pakistan or] the concerned Provincial Government and so far as may be possible, an agent of the accused or of ! * * * India or of the Government of the concerned Province of 'Tthat country], and in respect of such examination, the Magistrate shall exercise all *[the powers for the examination of witnesses under law Code of Criminal Procedure, 1908 (Act V of 1908)].

(3) When the commission has been duly executed, it shall be returned, together with the evidence taken under it to the District Magistrate, and the District Magistrate shall then transmit the papers so received along with the letter of request, to the issuing Court, through such channel as may be prescribed.

‘Omitted and subs. by A.O. 1961 (with effect from the 23rd March, 1956).

*Subs. by the Federal Laws (Revision and Declaration) Ordinance No. XXVII of 1981, s. 3 and Sch. II.

PART III OF THE REPATRIATION OF PRISONERS

7. Custody and removal of repatriated prisoners.—(1) The Provincial Government or any District Magistrate, Additional District Magistrate or Sub-Divisional Magistrate specially authorised in this behalf by the Provincial Government may issue warrants for the custody and removal of repatriated prisoners.

(2) A warrant under sub-section (1) may be directed to an official, by name or designation of office, and shall specify the place at which custody of the repatriated prisoner, together with any property and documents which may have been sent along with him, shall be received, and the prison to which he is to be removed.

8. Delivery of repatriated prisoner at prison. Upon presentation of a warrant issued under section 7, the Officer-in-Charge of the prison specified therein shall receive such repatriated prisoner and any property and documents which may be produced along with him, and

(a) Detention where warrant is received with prisoner. where a warrant, writ or order of commitment to any prison or place of detention in which he was held immediately before repatriation is produced along with such prisoner, shall detain him according to the exigency of such warrant, writ or order, subject to any warrant, writ or order which may be issued thereafter in respect of such prisoner by any Court or authority exercising jurisdiction under the provisions of this Part, and

(b) Detention where no warrant is received with prisoner. where no warrant, writ or order of commitment is produced along with such prisoner, such Officer-in-Charge shall forthwith report the case, with all necessary details, to the District Magistrate and to the High Court, and shall in the meantime detain such prisoner.

9. Missing warrant to be reconstructed.—(1) Upon receipt of a report under clause (b) of section 8, the District Magistrate shall, with all convenient speed, procure the records (including judicial records) relating to such prisoner, and after such enquiry as he deems necessary, shall determine the nature and term of the detention which such prisoner was undergoing immediately before his repatriation, and shall draw up a warrant accordingly, committing such prisoner to the prison where he is detained for the balance of such term, or until further orders are received from any Court or authority having jurisdiction in the case.

(2) Report to High Court. Such warrant of commitment shall be forwarded to the Officer-in-Charge of the said prison, and the District Magistrate shall, at the same time, forward the original record, or a complete copy of his proceedings to the High Court.

(3) Bail in case of delay. If any enquiry under sub-section (1) is prolonged beyond a period of two months from the date on which the repatriated prisoner was received at the prison, the District Magistrate shall release such prisoner on bail, unless he has reason to believe that such prisoner has been convicted of a prescribed offence and is undergoing a sentence of which the balance exceeds two years.

(4) The bail bond required under sub-section (3) may be with or without sureties and shall be in such form as may be prescribed.

10. High Court's jurisdiction. The High Court shall have, in relation to a repatriated prisoner, the same jurisdiction which it has in relation to a person who has been arrested or detained within the limits of its appellate jurisdiction, in the same circumstances in which such prisoner was arrested or detained in * * * India immediately before his repatriation.

11. Entrustment of case to Courts sub-ordinate to the High Court.—(1) The Provincial Governments may, in respect of any repatriated prisoner or any class or group of repatriated prisoners by order specify the Court, other than the High Court, which shall have or exercise jurisdiction in any case or cases which may have been pending against such prisoner or prisoners, immediately before his or their repatriation:

Provided that such Court shall be a Court which would have had jurisdiction to enquire into or try such case or cases, if the offence or offences involved had been committed within its jurisdiction.

(2) On the making of an order under sub-section (1) every case mentioned in such order shall be deemed to have been transferred for disposal to the Court specified in such order, and such Court shall proceed to hear and decide upon such case according to law, as if the offence to which it relates had been committed within the local limits of its jurisdiction, and all the provisions of the Code of Criminal Procedure (V of 1898) (including the provisions relating to appeal and revision) and of all other laws in force in the Province * * * shall apply to such proceedings.

(3) Evidence already recorded to be evidence in the case. In any proceedings under sub-section (2), all evidence, both oral and documentary, which has been duly received in the earlier proceedings against the repatriated prisoner held prior to his repatriation may, if duly authenticated, be received as evidence, for the same purposes as it may have been received if it had been recorded by a Court exercising similar jurisdiction in ! * * * Pakistan.

(4) Exhibits, depositions and copies thereof shall be deemed to be duly authenticated if they purport to be duly signed, verified or certified by a judge or Magistrate having jurisdiction at the place, where the earlier proceedings against the repatriated prisoner, prior to his repatriation, were held.

12. Treatment of prisoners who are repatriated while in police custody—(1) The Provincial Governments may, in respect of any repatriated prisoner who, immediately before repatriation was held under arrest or detention in police custody, during or after completion of a police investigation, specify a Magistrate of the first class who shall have and exercise jurisdiction.

(2) Every repatriated prisoner, in respect of whom an order has been made under sub-section (1) shall be produced without delay before the Magistrate specified in the order, and such Magistrate may take cognizance of any offence that such repatriated prisoner may be reported by a police officer to have committed, and may grant him bail.

'Omitted by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956).

Omitted by the Federal Laws (Revision and Declaration) Ordinance No. XXVII of 1981, s. 3 and Sch. II.

(3) Where the repatriation was effected before completion of the police investigation, or the Magistrate is of the opinion that the evidence is deficient, the repatriated prisoner shall be released upon his entering into a bond with or without sureties as the Magistrate may direct, to appear if and when so required, and in the meantime, the Magistrate may order such further enquiry into the substance of the allegations as he thinks fit.

(4) In every case falling under sub-section (3), the Magistrate may, if he is satisfied at any stage that there is no prospect of securing sufficient evidence to justify commencement of proceedings against the repatriated prisoner, direct that such prisoner be discharged from his bond.

13. Bar to proceedings.—(1) No proceedings shall be taken against a repatriated prisoner unless the offence for which he has been arrested or detained is also an offence under the law in force in Pakistan or in the Province thereof to which he has been repatriated.

(2) Prior sanction for prosecution. Where the offence charged against a repatriated prisoner is one for which a prosecution could not have been instituted in India or, if the offence had been committed in Pakistan, in any Court in Pakistan, without the sanction of an authority specified by the relevant laws, no prosecution shall be instituted against such prisoner, nor shall any proceedings be commenced or continued against him without the sanction of the authority specified for the purpose by the law in force in the Province or, failing such authority, of the [Federal Government] or the Provincial Government.

14. Power of provincial Governments in relation to prisoners detained for reasons of security. In relation to any repatriated prisoner whose detention immediately before his repatriation had been ordered under any law authorising preventive detention for reasons connected with public order the [Federal Government] or the Provincial Government shall have the same power in respect of extension or reduction of the term of detention as it possesses in relation to persons detained for reasons of security or under any law for the time being in force for preserving the public safety or security.

15. Power of Government to suspend, remit or commute sentences. The [Federal Government] or Provincial Government shall have the same power to suspend, remit or commute a sentence of punishment awarded to a repatriated prisoner, whether before or after his repatriation, as it possesses in relation to persons who have been sentenced in [Pakistan] or the Province for offences committed within [Pakistan] or the Province.

16. Power of Courts to grant bail. The High Courts and every Court specified by the Provincial Government under section 11 shall have, in respect of any repatriated prisoner who is rendered subject to the jurisdiction of such Court under the provisions of this Part, the same power of granting bail under the Code of Criminal Procedure (V of 1898), as such Courts would have had if such prisoner had been arrested or detained in the first instance in Pakistan.

‘Omitted and subs. by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956).

*Subs. by F.A.O., 1975.

+Subs. by the Federal Laws (Revision and Declaration) Ordinance No. XXVII of 1981, s. 3 and II Schedule.

PART IV GENERAL

17. Lawfulness of custody and retaking upon escape. It shall be lawful for any person to whom a warrant under section 3 or section 7 is directed, to receive, hold in custody, convey and deliver the transferable or repatriated prisoner named in the warrant as directed therein, and if any such prisoner escapes out of any custody to which he may be delivered in pursuance of any such warrant, he may be rearrested and taken in custody as a person accused or convicted of an offence against the law of ' * * * Pakistan or of any Province thereof.

18. Power to make rules.—(1) The 7[Federal Government] may make rules to carry out the purposes of this Ordinance.

(2) Without prejudice to the generality of the power conferred by sub-section (1), such rules may provide for the following matters, namely: —

(a) the channel through which communication and return of letters of request to District Magistrates under section 6 shall be effected;

(b) the specification of offences for the purposes of sub-section (3) of section 9; and

(c) any other matter which may or ought to be prescribed.

19. Definitions. In this Ordinance, unless the subject or context otherwise requires—

(a) the expression “prison” includes a central, district or subsidiary jail, a judicial lock-up, a police lock-up, and every place which is used as a place of detention for persons who have been arrested or detained under any law for the time being in force;

(b) the expression “prisoner” includes every person who is detained in a prison by order of a competent authority;

(c) the expression “transferable prisoner” means any Hindu, including any member of a Scheduled Caste, or any Sikh who is in custody in any prison in Pakistan under lawful orders of a duly empowered Court or other authority and who is willing to be transferred to ' * * * India under the provisions of Part II;

(d) the expression “repatriated prisoner” means a member of any of the classes specified in the first column of the Schedule who being in custody in a prison or other place of detention in a Province or State specified in the second column of the said Schedule is conveyed and delivered by a duly authorised official of I * * * India or of the Government of any Province thereof or of any State that has acceded thereto in compliance with the orders of such Government to an official of ' * * * Pakistan or of the Government, of any Province thereof; and

(e) “prescribed” means prescribed by rules made under this Ordinance.

'Omitted by A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956).

*Subs. by F.A.O., 1975.

SCHEDULE
(Section 19)

Class

Province or state

Members of a _ Civil Service of the
'TGovernment] in Pakistan and Personnel of the
Pakistan Land, Naval and Air Forces.

All the Provinces of '* * * India and all States
that have acceded to ![India].

Muslims

The Province of East Pubjab, the States of Alwar
and Bharatpur and the States Previously known
as the Punjab States excluding 7*, Bahawalpur
and Khairpur.

Muslims (convicted or under trial or under
detention on or after 15th August 1947).

Delhi.

'Subs. and omitted by A.O., 1961, Art. 2 and Sch., (with effect from the 23rd March, 1956).

Omitted by Act No. LIV of 1950, s. 2.