

EXCHANGE OF PRISONERS ACT, 1948

58 of 1948

[10th September, 1948]

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STATEMENT OF OBJECTS AND REASONS "On account of the wholesale exodus of non-Muslims from West Punjab, North-West Frontier Province, and certain other areas of West Pakistan, it became necessary to arrange for an exchange of prisoners from these areas. Negotiations were started with Pakistan and a general agreement was arrived at. The agreement worked for sometime and a large number of non-Muslim prisoners were received from West Punjab and all Muslim prisoners except about 300 were returned to Pakistan from East Punjab. To implement and validate this exchange of prisoners, the Governor-General passed an Ordinance (Exchange of Prisoners Ordinance, No. VI of 1948) which was promulgated on 20th April, 1948. The exchange of prisoners has not been completed yet and some of the provisions of the Ordinance will have to be kept in force even after such exchange is completed, for example, sections 5 and 8. It is, therefore, considered desirable to re-enact all the provisions of the Ordinance in the form of an Act of the Legislature. The present Bill, therefore,

seeks to replace the Ordinance which expires on the 20th October, 1948, by an Act".- Gazette of India, 1948, Part V, page 631.

1. Short title and extent :-

(1) This Act may be called the Exchange of Prisoners Act, 1948.

(2) It extends to the whole of India ¹ [* * *].

1. The words "except the State of Hyderabad" were omitted by the Part B States (Laws) Act, 1951 (3 of 1951), S. 3 and Sch.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context,-

(a) "prison" includes any subsidiary jail, judicial lock-up or police lock-up, and any place used for the custody of persons who are ordered to be detained under any law for the time being in force;

(b) "prisoners" means any person committed to custody in a prison on or before the 1st day of August, 1948 under the writ, warrant or order of any Court or authority other than a civil Court or Court-martial.

¹[(c) * * * * *].

(d) "transferable prisoner" means -

(i) in the State of Punjab ² [as it existed before the 1st November, 1956], any prisoner who, being a Muslim, is willing to be transferred to Pakistan under the provisions of this Act, and

(ii) in any other part of India, any prisoner of such category as the Central Government may specify by notification in the Official Gazette who, being a Muslim, is willing to be transferred to Pakistan under the provisions of this Act.

1. Clause (c) was omitted by A. L. O., 1950.

2. Inserted by 3 A. L. O., 1956.

3. Issue of warrants for transfer of prisoners :-

The State Government may issue a warrant addressed to the officer in charge of a prison to deliver to the person presenting the warrant any transferable prisoner confined or detained in the prison, together with all the records relating to such prisoner and the personal effects taken from him at the time of his admission into the prison.

4. Removal and delivery of prisoners :-

Upon the presentation of a warrant issued under section 3 , the officer in charge of the prison shall forthwith comply with the warrant and obtain thereon the signature of the person to whom delivery of the prisoner, records and articles is made in pursuance of the warrant; and that person shall cause the prisoner, records and articles to be removed from the prison and delivered at such place, and to such authorised officer of Pakistan, as the State Government may, by general or special order, specify in this behalf.

5. Cesser of jurisdiction of Indian Courts and authorities over prisoners :-

Upon the delivery of custody of a prisoner to an officer of Pakistan in accordance with the provisions of section 4 , all Courts and authorities in India shall, save as otherwise provided in section 8 or for the purposes of that section, cease to have or exercise, in relation to the prisoner, any jurisdiction in respect of the offence or other matter which the cause of his confinement or detention in the prison.

6. Lawfulness of custody and retaking upon escape :-

It shall be lawful for any officer of Pakistan to whom the custody of a prisoner is delivered under the provisions of section 4 to receive and hold in custody such prisoner and to convey him out' of India, and if the prisoner escapes from such custody within India he may be retaken as a person accused of an offence may be retaken upon an escape.

7. Transfer of records relating to transferable prisoners :-

Where a prisoner is or is to be transferred to Pakistan under the provisions of this Act, the State Government may requisition the record of any proceedings, including judicial proceedings, relating to that prisoner from any Court or office, and may direct that such record shall be sent to the Government of Pakistan or the Government of any ¹ Province in Pakistan.

1. The word "Province" stands unmodified, see A.L.O., 1950.

8. Prohibition of return of India of transferred prisoners :-

(1) No person who has been transferred to Pakistan under the provisions of this Act shall return to India except with the permission in writing of the Central Government.

(2) If any person contravenes the provisions of sub-section (1), he

shall be punishable with imprisonment for a term which may extend to three years, and if at the time of his transfer to Pakistan, he was undergoing a sentence of imprisonment in India, he shall further be sentenced to undergo the unexpired portion of such sentence without taking into account any period for which he may have been detained or confined in Pakistan after the transfer.

(3) If at the time of his transfer to Pakistan, the person contravening the provisions of sub-section (1) was undergoing trial in any Court in India for any offence, he shall, without prejudice to the provisions of sub-section (2), be liable to be tried for such offence by the same or any other Court having jurisdiction : Provided that if such person has, before his return to India, been tried for the offence by a Court of competent jurisdiction in Pakistan and convicted or acquitted of the offence, he shall not be liable to be tried again for the same offence by any Court in India.

9. Reception in India of prisoners transferred from Pakistan

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(1) The Central Government may, by general or special order, specify the place or places at which, and the officer or officers to whom, the custody of prisoners confined or detained in Pakistan is to be delivered in pursuance of the agreement reached in this behalf between the Government of India and the Government of Pakistan.

(2) It shall be lawful for any such officer as aforesaid to receive and hold in custody any prisoner so delivered and to convey such prisoner to any prison in a State of India for being dealt with in accordance with law; and if the prisoner escapes from such custody he may be retaken as a person accused of an offence against an Indian law may be retaken upon an escape.

10. Repeal of Ordinance 6 of 1948 :-

(1) The Exchange of Prisoners Ordinance. 1948 is hereby repealed.

(2) The repeal by this Act of the said Ordinance shall not affect the previous operation thereof, and any order made, action taken, or thing done, in the exercise of any powers conferred by or under the said Ordinance shall for all purposes be deemed to have been made, taken or done in the exercise of powers conferred by this Act as if this Act had commenced on the 20th day of April, 1948.

