

The Repatriation of Prisoners Act, 2003

(ACT NO. 49 OF 2003)

[*As on the* 27*th September,* 2026]

AMENDING ACT

The Repatriation of Prisoners (Amendment) Act, 2011 (6 of 2011).

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LIST OF ABBREVIATIONS USED

Cl., cls.	*for*	Clause, clauses.
Ins.	,,	Inserted.
Notifn.	,,	Notification.
S., ss.	,,	Section, sections.
Sch.	,,	Schedule.
Subs.	,,	Substituted.
w.e.f.	,,	with effect from.

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ARRANGEMENT OF SECTIONS

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THE REPATRIATION OF PRISONERS ACT, 2003

ACT NO. 49 OF 2003

[28*th September*, 2003.]

An Act to provide for the transfer of certain prisoners from India to country or place outside India and reception in India of certain prisoners from country or place outside India.

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

1. Short title and commencement.—(*1*) This Act may be called the Repatriation of Prisoners Act, 2003.

(*2*) It shall come into force on such date[1] as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) "contracting State" means a Government of any country or place outside India in respect of which arrangement has been made by the Central Government with the Government of such country or place through a treaty or otherwise for transfer of prisoners from India to such country or place and *vice versa* and includes any other Government of such country or place specified by the Central Government, by notification in the Official Gazette, under sub-section (*1*) of section 3;

(*b*) "prescribed" means prescribed by rules made under this Act;

(*c*) "prisoner" means a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in contracting States;

(*d*) "warrant" means a warrant issued under sub-section (*1*) of section 7 or sub-section (*2*) of section 12, as the case may be;

(*e*) words and expressions used herein and not defined but defined in the Code of Criminal Procedure, 1973 (2 of 1974) have the meanings respectively assigned to them in that Code.

3. Application of Act.—(*1*) The Central Government may, by notification in the Official Gazette, direct that the provisions of this Act shall apply to a country or place outside India as may be specified in the notification.

(*2*) If the notification under sub-section (*1*) relates to a country or place outside India with which a treaty has been entered into by India for the transfer of prisoners between that country and India, then, such notification shall also set out the full text of the said treaty and shall in no case remain in force longer than the period of the said treaty.

(*3*) If the Central Government is of the opinion that, with respect to a country or place outside India, provisions of this Act require to be modified to give effect to a treaty in relation to such country, it may, by notification in the Official Gazette, direct that the application of this Act to such country shall be subject to such conditions, exceptions and modifications specified in the notification.

4. Application for transfer by a prisoner.—Any prisoner who is a citizen of a contracting State may make an application to the Central Government for transfer of his custody from India to that contracting State:

Provided that if a prisoner is not able to make an application himself because of his ill health, mental condition, old age or being a minor, then, the application may be made by any other person entitled to act on his behalf.

5. Consideration of request by Central Government.—(*1*) On receipt of the application under section 4, the Central Government shall direct the officer in charge of the prison, where the prisoner is confined, to furnish such information which in the opinion of that Government is relevant for the purpose of transfer.

1. 1st January, 2004, *vide* notification No. S.O. 1464(E), dated 24th December, 2003, *see* Gazette of India, Extraordinary, Part II, sec. 3(*ii*).

(*2*) On receipt of the information under sub-section (*1*), if the Central Government is satisfied that—

(*a*) no inquiry, trial or any other proceeding is pending against the prisoner;

(*b*) death penalty has not been awarded to the prisoner;

(*c*) the prisoner has not been convicted for an offence under the [1][military law]; and

(*d*) transfer of custody of the prisoner to the contracting State shall not be prejudicial to the sovereignty, security or any other interest of India,

it shall pass an order for forwarding the application of the prisoner to the contracting State.

6. Comments of contracting State.—(*1*) The application of the prisoner shall be forwarded by the Central Government through prescribed means to the Government of the contracting State to deal with such application along with the following information, namely:—

(*a*) a copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the prisoner;

(*b*) the nature, duration and date of commencement of the sentence of the prisoner;

(*c*) medical report or any other report regarding the antecedents and character of the prisoner, where it is relevant for the disposal of his application or for deciding the nature of his confinement; and

(*d*) any other information which the Central Government may consider necessary.

(*2*) Where any application of a prisoner forwarded by the Central Government has been accepted by the contracting State, the Central Government may seek from such contracting State, all or any of the following information or documents before taking decision to transfer the prisoner to the contracting State, namely:—

(*a*) a statement or document indicating that the prisoner is a citizen of the contracting State;

(*b*) a copy of the relevant law of the contracting State constituting the act or omission as the offence, on account of which the sentence has been passed in India, as if such act or omission was an offence under the law of that State;

(*c*) a statement of the fact or any law or regulation relating to the duration and enforcement of the sentence of the prisoner in the contracting State upon his transfer;

(*d*) the willingness of the contracting State to accept the transfer of the prisoner and an undertaking to administer the remaining part of the sentence of the prisoner;

(*e*) an undertaking to comply with the conditions, if any, specified by the Central Government; and

(*f*) any other information or document which the Central Government may consider necessary.

7. Consideration of request by Central Government.—(*1*) If the Central Government, on receipt of a communication from the concerned contracting State,—

(*a*) expressing its willingness to accept the transfer of the prisoner; and

(*b*) undertaking to comply with the conditions specified in the warrant,

is satisfied that the prisoner should be transferred to the said State, the Central Government may, notwithstanding anything contained in any other law for the time being in force, issue a warrant in accordance with the provisions of section 8 in such form as may be prescribed.

(*2*) Where a warrant is issued under sub-section (*1*), the Central Government shall inform the contracting State accordingly and request that State to specify the person to whom and the place within India where custody of the prisoner shall be delivered.

8. Provision to issue warrant for transfer.—(*1*) The Central Government shall authorise an officer not below the rank of a Joint Secretary to a State Government, within the limits of whose jurisdiction the

1. Subs. by Act 6 of 2011, s. 2, for "martial law" (w.e.f. 1-4-2011).

place of imprisonment of the prisoner is situated, to issue a warrant on behalf of the Central Government under sub-section (*1*) of section 7 directing the officer in charge of the prison therein to deliver the custody of the prisoner to the person authorised by the contracting State to which the prisoner is to be transferred, presenting such person a copy of the warrant together with all the records relating to the prisoner and the personal effects taken from the prisoner at the time of his admission in the prison.

(*2*) Upon the presentation of a warrant referred to in sub-section (*1*), the officer incharge 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 the personal effects relating to the prisoner to be removed from the prison is given.

(*3*) After delivery of the prisoner to the person authorised by the contracting State under sub-section (*2*), the officer in charge of the prison transferring the prisoner shall forward a copy of the warrant to the court which committed the prisoner to the prison, along with a statement that the prisoner has been delivered to the person authorised by the contracting State under sub-section (*1*).

(*4*) The delivery of the prisoner in compliance of the warrant issued under sub-section (*1*) shall discharge the officer in charge of the prison from the responsibility of keeping the prisoner in his custody.

9. Operation of warrant and retaking prisoner.—It shall be lawful for the person authorised by the contracting State to whom the custody of a prisoner is delivered under the provisions of sub-section (*2*) of section 8 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, the prisoner may be arrested without warrant by any person who shall without undue delay deliver such prisoner to the officer in charge of the nearest police station and the prisoner so arrested shall be liable for committing an offence under section 224 of the Indian Penal Code (45 of 1860) 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.

10. Transfer of record.—Where a prisoner is or is to be transferred to a contracting State under the provisions of this Act, the Central Government may requisition the records of any proceeding, including judicial proceedings relating to that prisoner from any court or office, and may direct that such records shall be sent to the Government of the contracting State.

11. Power of court and Central Government shall not be affected.—The transfer of a prisoner from India to a contracting State shall not affect the power of the court which passed the judgment to review its judgment and power of the Central Government or State Government to suspend, remit or commute the sentence in accordance with any law for the time being in force.

12. Transfer into India.—(*1*) The Central Government may accept the transfer of a prisoner, who is a citizen of India, from a contracting State wherein he is undergoing any sentence of imprisonment subject to such terms and conditions as may be agreed to between India and that State.

(*2*) If the Central Government accepts the request for a transfer under sub-section (*1*), then, notwithstanding anything contained in any other law for the time being in force, it may issue a warrant to detain the prisoner in prison in accordance with the provisions of section 13 in such form as may be prescribed.

13. Determination of prison and issue of warrant for receiving transfer in India.—(*1*) The Central Government shall, in consultation with a State Government, determine the prison situated within the jurisdiction of such State Government where the prisoner with respect to whom a warrant has been issued under sub-section (*2*) of section 12, shall be lodged and the officer who shall receive and hold him in custody.

(*2*) The Central Government shall authorise any officer not below the rank of a Joint Secretary to that Government to issue a warrant under sub-section (*2*) of section 12 and to direct the officer referred to in sub-section (*1*) to receive and hold the prisoner, with respect to whom the warrant is issued, in custody.

(*3*) It shall be lawful for the officer referred to in sub-section (*1*) to receive and hold in custody any prisoner delivered to him under the direction made in the warrant issued under sub-section (*2*) of section 12 and to convey such prisoner to any prison determined under sub-section (*1*) for being dealt with in accordance with the said warrant and if the prisoner escapes from such custody, the prisoner may be arrested without warrant by any person who shall without undue delay deliver such prisoner to the

officer in charge of the nearest police station and the prisoner so arrested shall be liable for committing an offence under section 224 of the Indian Penal Code (45 of 1860) and shall also be liable to be dealt with in accordance with the said warrant.

(*4*) A warrant under sub-section (*2*) of section 12 shall provide for—

(*a*) the bringing of the prisoner into India from a contracting State or a place outside India;

(*b*) the taking of such prisoner in any part of India being a place at which effect may be given to the provisions contained in the warrant;

(*c*) the nature and duration of imprisonment of the prisoner in accordance with the terms and conditions referred to in sub-section (*1*) of section 12 and the imprisonment of such prisoner in India in such manner as may be contained in the warrant; and

(*d*) any other matter which may be prescribed.

(*5*) Notwithstanding anything contained in any other law for the time being in force, the imprisonment of a prisoner in compliance with a warrant issued under sub-section (*2*) of section 12 shall be deemed to be imprisonment under a sentence of a court competent to pass such a sentence of imprisonment in India.

(*6*) If the sentence of imprisonment passed against the prisoner in the contracting State is incompatible with the Indian law as to its nature, duration or both, the Central Government may, by order, adapt the sentence of such punishment as to the nature, duration or both, as the case may be, as is compatible to the sentence of imprisonment provided for a similar offence had that offence been committed in India:

Provided that the sentence so adapted shall, as far as possible, correspond with the sentence imposed by the judgment of the contracting State to the prisoner and such adapted sentence shall not aggravate the punishment, by its nature, duration or both in relating to the sentence imposed in the contracting State.

14. Power to make rules.—(*1*) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(*a*) the means through which an application may be forwarded under sub-section (*1*) of section 6;

(*b*) the form in which a warrant may be issued under sub-section (*1*) of section 7;

(*c*) the form in which a warrant may be issued under sub-section (*2*) of section 12; and

(*d*) any other matter which may be prescribed under clause (*d*) of sub-section (*4*) of section 13.

15. Laying of rules, etc.—Every notification issued under sub-sections (*1*) and (*3*) of section 3 and every rule made under section 14 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule or both Houses agree that the notification or rule should not be made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

16. Power to remove difficulties.—(*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act, as appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(*2*) Every order made under sub-section (*1*) shall be laid, as soon as may be after it is made, before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

Long detention of foreign prisoners in Indian Jails has been causing considerable concern to the Government of India and the foreign Governments concerned. It was, therefore, felt that if foreign convicted nationals were transferred to their home countries to serve their remaining jail terms, it would take care of the human aspect inasmuch as the said convicts would be near their families and have better chances of social rehabilitation. Further, it would also take care of the problems which the Indian jail authorities are facing in keeping these prisoners. There is presently no legal provision either in the Code of Criminal Procedure, 1973 or any other law under which a foreign prisoner could be transferred outside India. The Bill proposes legislation, in conjunction with bilateral treaties to enable the Central Government to transfer foreign convicted persons to their country and *vice versa*.

2. The salient features of the proposed legislation, *inter alia*, are as follows:

(i) a request for transfer will have to be made by the convicted prisoner or a person entitled to act on his behalf in view of his age or physical or mental condition;

(ii) the request for transfer will have to be agreed upon by the transferring State and the receiving State;

(iii) the transfer will be effected if the judgment awarding the sentence is final in India, i.e, no appeal or revision against the judgment is pending in any court;

(iv) the transfer will be made if the convicted prisoner is a citizen of the receiving State notwithstanding that he may also be a citizen of any other foreign State;

(v) the enforcement of the sentence shall be governed by the law of the receiving State. However, the receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State;

(vi) the enforcement of the sentence in the receiving State, to the extent that it has been enforced in the transferring State, shall have the effect of discharging the sentence;

(vii) the transferring State alone shall be competent to decide any application for review of the judgment and grant pardon, amnesty or commutation in accordance with its Constitution or other laws; the convicted person shall not be transferred if —

(*a*) the transferring State is of the opinion that the request would prejudice its sovereignty, security, national interest or other essential interests;

(*b*) any other case is pending in the transferring State against the convicted prisoner;

(*c*) he is convicted of an offence under military law not being an offence under the ordinary criminal law of the transferring State; and

(*d*) the death penalty has been awarded to the convicted prisoner in the transferring State.

3. The Bill seeks to achieve the above objects

L.K. ADVANI

New Delhi, dated the 15*th* April, 2002

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