

EAST PUNJAB (EXCHANGE OF PRISONERS) ACT, 1948

1948: East Pbe Act XIN.) EXCHANGE OF PRISONERS 183 THE EAST PUNJAB (EXCHANGE OF PRISONERS) ACT, 1948. TABLE OF CONTENTS. Sections. 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15

16. Short title and commencement. Interpretation. Removal of transferable prisoners. Bamination of witnesses on Commission. Custody and removal of repatriated prisoners. Convicted prisoners. Prisoners undergoing trial before repatriation. Prisoners repatriated while in police custody. D31legation of Powers. Power of Central Government in relation to prisoners detained for reasons of security. Jurisdiction of the High Court. Power of Central Government to suspend, remit or commute sentences. Lawfulness of custody and retaking upon escape. Operation of Ordinance. Power to make rules. Repeal of Ordinance No. 1 of 1948. 1948: East Pb Act XIII] EXCHANGE OF PRISONERS 195 I THE EAST PUNJAB (EXCHANGE OF PRISONERS) ACT, 1948. East Punjab Act No. XIII of 1948 [Received the assent of His Excellency the Governor- General of India on 3rd April, 1948 ; and was first published in the East Punjab Government Gazette (Extraordinary) of April 5, 1948.] 1 Year 2 No. 1948 .. xm 3 Short title The East Punjab (Exchange of Prison- ers)Act, 1948 4 Whether repealed or otherwise affected by legislation Amended in part by the Adaptation of Laws Order, 1950 Amended in part by the Adaptation of Laws (Third Amendment) Order 1951 Amended by Punjab Act 25 of 1964•2 Amended by the Punjab Reorganisation (Chandigarh) (Adaptation of laws on State and Concurrent Subjects) order, 1968 An Act to provide for the Exchange of Prisoners with 3[Punjab in Pakistan]. IT is hereby enacted as follows

PART 1 Preliminary and Interpretation. 1. (1) This Act may be called the East Punjab (Ex- Short title extent, change of Prisoners) Act, 1948. iFor Statement of Objects and Reasons, see East Punjab Government Gazette, 1948, page 149 ; for proceedings in Assembly, see East Punjab Legislative Assembly Debates, Volume 11, 1948, pages, 116—18. 2For Statement of Objects and Reasons, see Punjab Government Gazette (Extraordinary), 1964, pages 935—87. 8Substituted for the words "West Punjab" by the Adaptation of Laws (Third Amendment) Order, 1951. and Interpretation. 186 EXCHANGE OF PRISONERS [1948 ; East Pbs Act (2) It shall extend to the whole of the IIUnion territory of Chandigarh]

2. In this Act unless there is anything rePUgnant in the subject or context—(a) the expression "Prison" includes a central, dis. trict or subsidiary jail, a judicial lock-up, and every place which is used as a place of deten- tion for persons who have been arrested or de- tained under any law for the time being in force ; (b) the expression "prisoner" includes every per. son who is detained in a prison by order of a competent authority not being a Civil Court ; (c) the expression "transferable prisoner" means any Muslim prisoner who is in custody in any prison in 2IUnion territory of Chandigarh] under lawful orders of a duly empowered Court or other authority, and who is willing to be transferred to Pakistan under the provisions of Part 11 ; and (d) the expression "repatriated prisoner" means a person who being in custody in a prison or other place of detention in 4Lthe Province of Punjab in Pakistan or in any State whichbe- ing adjacent to that Province, has acceded to Pakistan is conveyed and delivered by a duly authorised official of the Government iSubstituted for the words "State of Punjab" by the Punjab Reorganisation (Chandigarh) (Adaptation of Laws on State and Concurrent Subjects) Order, 1968. 2Substituted for the word "Punjab " by ibid. 3The words "the Dominion of" omitted by the Adaptation •sof Laws (Third Amendment) Order, 1951. 'Substituted for the words "the Province of West Punjab or in any State whiCd being adjacent to that Province has acceded to the Dominion Of Pakistan, is conveye. and delivered by a duly authorised official of the Dominion of Pakistan or the Govern ment of West Punjab " by the Adaptation of Laws (Third Amendment) Order, 1951• 1 1948: East Pb, Act XIII,] EXCHANGE OF PRISONERS 187 of Pakistan or the Government of Punjab in Pakistan] in compliance with the orders of such Government to an official of the I[Central Government]

PART 11 THE TRANSFER OF PRISONERS 3. (1) The 2[Central Government] may issue a warrant Removal of trans- addressed to the officer in charge of a prison to deliver ferable prisoners. any transferable prisoner confined therein, along with all the records relating to such prisoner and the personal effects taken from him at the time of his admission to a prison to the person authorised in that behalf in the afore- said warrant. (2) The officer in charge of the prison shall forth- with comply with the warrant issued

under sub-section (1), and the person to whom delivery of the prisoner and any record or article is made shall furnish to such officer in charge a written receipt in respect of such delivery. (3) The person taking such delivery shall deliver the transferable prisoner and any records or article relating to that prisoner at such place as the 2[Central Government] may specify, and to such official 3[of the Government of Pakistan or of the Government of Punjab in Pakistan], as the 2[Central Government] may by general or special order and either by name of designation provide ; and thereupon all Courts, Tribunals or authorities whatsoever in 4[Union territory of Chandigarh] shall cease to have jurisdiction in relation to such prisoner in respect of the offence or other matter which was the cause of his confinement or detention in 4[Union Territory of Chandigarh]. (4) The 2[Central Government] may requisition the record of any proceedings (including judicial proceedings) in relation to a prisoner transferred under sub-section (3) iSubstituted for the words "Punjab Government" by the Punjab Reorganisation (Chandigarh) (Adaptation of Laws on State and Concurrent subjects) Order, 1968. 2Substituted for the words "state Government" by ibid. 8Substituted for the words " of the Dominion of Pakistan or of the Government Of West by the Adaptation of Laws (Third Amendment) Order, 1951, 'Substituted for the word ' ' Punjab " by the Punjab Reorganisation (Chandigarh) (Adaptation of Laws on State and Concurrent Subjects) order, 196g;., EXCHANGE OF PRISONERS [1948: East Pb. Act 188 from any Court or office where such record may be kept and may direct that such record shall be sent to any official or authority l[of the Government of Punjab in Pakistan or of the Government of Pakistan]

4. If in regard to any criminal proceeding pending witnesses on come before a court 2[in Pakistan] against a transferable prisoner who has been transferred to 3[Pakistan] under section 3, mission.a letter of request issued by such Court is received by the District Magistrate of any district in 4[Union Territory of Chandigarh] for the examination of any witness residing in such district, the District Magistrate shall appoint for the purpose any magistrate subordinate to him and thereupon the provisions of Chapter XL of the Code of Criminal Pro- cedure (V of 1898) shall so far as may be applicable in regard to the compliance with such letter of request Provided that any person duly authorised in that be- half 5[by the Government of Pakistan or by the Government of Punjab in Pakistan] shall be entitled to be present at the examination of such witness

PART 111 THE REPATRIATION OF PRISONERS 5. The 6[Central Government] may by general or Custody and re- moval of repatri- special order specify the place at which and, either by name ated prisoners. or designation, the official by whom, custody of a repatria- ted prisoner, together with any article or records which may have been sent along with him, shall be received and the prison to which he is to be removed, and the officer in charge of such prison shall thereupon receive such prisoner and any article or records which may be produced along with him. Substituted for the words "of the Government of West Punjab or Of the Dominion of Pakistan" by the Adaptation of Laws (Third Amendment) Orden 1951. *Substituted for the words "in the Dominion of Pakistan " by ibid. Laws (Third Amendment) Order, 1951. Substituted for the words "that Dominion" by ibid. (Amendment) Order, 1951. 'Substituted for the word "Punjab" by the Punjab Reorganisation (Chandigarh) (Adaptation of Laws on State and Concurrent subjects) Order, 1968. 'Substituted for the words ' 'of the Dominion of Pakistan cr of the Domi- nion of Pakistan or of the Government of ' 'Wet Punjab" bj: Ibid. 'Substituted for the words ' ' State. Governmept " by the Punjab Reorgani- (Chandigarh) Adaptation of LAWS QI) •State arid C0ncurrent subjeéts) 1898, 187 1948 : East Pb. Act XIII.] EXCHANGE OF PRISONERS 189 6, The officer in charge of the prison shall detain in Convicted priso- custody a repatriated prisoner who, before his repatriation, ners, was a convict undergoing a sentence in a prison,— (a) according to the tenor of the warrant, writ, or order of commitment to prison, if any, relating to such prisoner, or (b) failing such warrant, writ or order as aforesaid in accordance with the order of the ITCentral Government]. 7. (1) The 1[Central Government] may direct any Prisoners under- Court, other than the High Court, to enquire into or try going trial before repatriation. any case which may have been pending against a repatriat- ed prisoner immediately before his repatriation : Provided that— (a) the offence charged against such prisoner is also an offence under the law in force in 21 Union Territory of Chandigarh] ; and (b) such Court would have been competent to try such offence if it had been committed within the local limits of its jurisdiction. (2) On the making of an order under sub-section (1) the Court specified in the order shall proceed to enquire into or try 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) and of all other laws in

force in 21 Union territory of Chandigarh] shall so far as may be, apply to such proceedings. (3) In any proceedings under sub-section (2), all evidence, both oral and documentary, which has been duly received in the proceedings against the repatriated prisoner held prior to his repatriation, or the copies of such evidence certified under section 76 of the Indian Evidence Act, 1872 (I of 1872), may be treated as evidence in the case for all purposes subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872). iSubstituted for the words "State Government" by the Punjab Reorganisation (Chandigarh) (Adaptation of Laws on State and Concurrent subjects) Order, 1968. *Substituted for the word "Punjab" by ibid. 190 EXCHANGE OF PRISONERS [1948 : East Pb. Act 8. (1) The i[Central Government] may in resDect of any repatriated prisoner, who, immediately before Prisoners repatri- ated while in Police patriation, was held under arrest or detention in police custody. custody during or after completion of a police investigation specify a 2[Judicial Magistrate] Of the first class who shali 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. (3) Where the repatriation was effected before com. pletion 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 sub- stance 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 com- mencement of proceedings against the repatriated prison- er, direct that such prisoner be discharged from his bond. Delegation of 9. The 1[Central Government] may, by notification, power. delegate all or any of its powers under sections 5, 6, 7 and 8 to any public servant, either by name or by designation, Power of Central 10. In relation to any repatriated prisoner whose de- Government in relation to priso_ tention immediately before his repatriation had been ners detained for ordered under any law authorising preventive detentiOn reasons for reasons connected with public order, the 1[Central Government] shall have the same power in respect Of extension or reduction of the term of detention as it possesses iSubstituted for the words " state Government " by the Punjab Reorganisation (Chandigarh) (Adaptation of Laws on state and concurrent Subjects) Order, 1968• *Substituted for the word "Magistrate" by Punjab Act No. 25 of 1964. 1948 : East Pb. Act XIII.] EXCHANGE OF PRISONERS 191 in relation •to person detained under section 3 of the Ipunjab Public safety Act, 1947 [Punjab Act 11 of 1947] Act as in force in 21 Union territory of Chandigarh]. of 1947

11. The 31 High Court of Punjab and Haryana] shall, Jurisdiction of the have, in relation to a repatriated prisoner, the same High Court.jurisdiction which it has in relation to a person who has been arrested or detained within the limie of its appellate jurisdiction, in the same circumstances in which such prisoner was arrested or detained immediately before his repatriation

12. The 4[Central Government] shall have the same power to suspend, remit or commute a sentence of punish- Government Power of Central ment awarded to a repatriated prisoner, whether before or remit or after his repatriation as it possesses in relation to persons commute sentences.who have been sentenced In the 5[State] for offences com- mitted within the 5[State]

PART IV GENERAL 13, It shall be lawful for any person to whom a war- Lawfulness of rant or order under section 3 or under section 5 or sec- custody and re taking upon escape. tion 6 is directed to receive, hold in custody, convey and deliver the transferable or repatriated prisoner, named in the warrant or order as directed therein and if any such prisoner escapes out of any custody to which he may be delivered in pursuance of any warrant, he may be retaken as a person accused or convicted of an offence against the law of the 21 Union Territory of Chandigarh] may be retaken an escape

14. The provisions of this Act shall have force and Operation of Ordinance.operation notwithstanding anything contrary or repug- nant thereto in any other law for the time being in force. Power to make 15. The 4[Central Government] may make rules to rules. carry out the purposes of this Act. ISee now the the Punjab Security of the State Act, 1953 (Punjab Act XII of 1953). 2Substituted for the word "Punjab" by the Punjab Reorgmisation (Chandigarh) (Adaptation of Laws on State and Concurrent Subject) Order, 1968. 3Substituted for the words "High Court of Judicature for the state of Punjab" by ibid. 'Substituted for

the words "State Government" by the Punjab Reorganisation (Chandigarh) (Adaptation of Laws on State and Concurrent subjects) Order, 1968. 6Substituted for the word "Province" by the Adaptation of Laws Order, 1950. Repoi of nnnco No. 1948. 192 EXCHANGE OF PRISONERS t 1948 : East Vb. Act 16. The East Punjab (Exchange of Prisoners) Ordi- 1 of e ; and any rules notification issued, anything done and any actio n taken?nr exercise of any power conferred by or under the Ordinance shall be deemed to have been made, issue} erred by or under' this Act as if this Act had commenced on the 12th day of January, 1948.

