

**THE EAST PUNJAB (EXCHANGE OF PRISONERS)
ACT, 1948.**

TABLE OF CONTENTS.

Sections.

1. Short title and commencement.
2. Interpretation.
3. Removal of transferable prisoners.
4. Examination of witnesses on Commission.
5. Custody and removal of repatriated prisoners.
6. Convicted prisoners.
7. Prisoners undergoing trial before repatriation.
8. Prisoners repatriated while in police custody.
9. Delegation of Powers.
10. Power of Central Government in relation to prisoners detained for reasons of security.
11. Jurisdiction of the High Court.
12. Power of Central Government to suspend, remit or commute sentences.
13. Lawfulness of custody and retaking upon escape.
14. Operation of Ordinance.
15. Power to make rules.
16. Repeal of Ordinance No. 1 of 1948.

**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 | 2 | 3 | 4 |
|---------|------|---|--|
| Year | No. | Short title | Whether repealed or otherwise affected by legislation |
| 1948 .. | XIII | The East Punjab (Exchange of Prisoners) Act, 1948 | 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 I

Preliminary and Interpretation.

1. (1) This Act may be called the East Punjab (Ex-^{Short title and extent.}change of Prisoners) Act, 1948.

¹For Statement of Objects and Reasons, see East Punjab Government Gazette, 1948, page 149 ; for proceedings in Assembly, see East Punjab Legislative Assembly Debates, Volume II, 1948, pages, 116—18.

²For Statement of Objects and Reasons, see Punjab Government Gazette (Extraordinary), 1964, pages 935—87.

³Substituted for the words "West Punjab" by the Adaptation of Laws (Third Amendment) Order, 1951.

(2) It shall extend to the whole of the ¹[Union territory of Chandigarh].

Interpretation.

2. In this Act unless there is anything repugnant in the subject or context—

(a) the expression “Prison” includes a central, district or subsidiary jail, a judicial 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 not being a Civil Court ;

(c) the expression “transferable prisoner” means any Muslim prisoner who is in custody in any prison in ²[Union territory of Chandigarh] under lawful orders of a duly empowered Court or other authority, and who is willing to be transferred to * * * * *
³* * * * * Pakistan under the provisions of Part II ; and

(d) the expression “repatriated prisoner” means a person who being in custody in a prison or other place of detention in ⁴[the Province of Punjab in Pakistan or in any State which being adjacent to that Province, has acceded to Pakistan is conveyed and delivered by a duly authorised official of the Government

¹Substituted 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 of Laws (Third Amendment) Order, 1951.

⁴Substituted for the words “the Province of West Punjab or in any State which being adjacent to that Province has acceded to the Dominion of Pakistan, is conveyed and delivered by a duly authorised official of the Dominion of Pakistan or the Government of West Punjab ” by the Adaptation of Laws (Third Amendment) Order, 1951.

of Pakistan or the Government of Punjab in Pakistan] in compliance with the orders of such Government to an official of the ¹[Central Government].

PART II

THE TRANSFER OF PRISONERS

3. (1) The ²[Central Government] may issue a warrant addressed to the officer in charge of a prison to deliver 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 aforesaid warrant. Removal of transferable prisoners.

(2) The officer in charge of the prison shall forthwith 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)

¹Substituted 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.*

³Substituted for the words " of the Dominion of Pakistan or of the Government of West Punjab" by the Adaptation of Laws (Third Amendment) Order, 1951.

⁴Substituted for the word " Punjab " by the Punjab Reorganisation (Chandigarh) (Adaptation of Laws on State and Concurrent Subjects) Order, 1968.

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 ¹[of the Government of Punjab in Pakistan or of the Government of Pakistan].

Examination of witnesses on Commission.

4. If in regard to any criminal proceeding pending before a court ²[in Pakistan] against a transferable prisoner who has been transferred to ³[Pakistan] under section 3, 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 Procedure (V of 1898) shall so far as may be applicable in regard to the compliance with such letter of request :

V of 1898.

Provided that any person duly authorised in that behalf 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 III

THE REPATRIATION OF PRISONERS

Custody and removal of repatriated prisoners.

5. The ⁶[Central Government] may by general or special order specify the place at which and, either by name or designation, the official by whom, custody of a repatriated 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.

¹Substituted for the words "of the Government of West Punjab or of the Dominion of Pakistan" by the Adaptation of Laws (Third Amendment) Order, 1951.

²Substituted for the words "in the Dominion of Pakistan" by *ibid.* Laws (Third Amendment) Order, 1951.

³Substituted for the words "that Dominion" by *ibid.* (Amendment) Order, 1951.

⁴Substituted for the word "Punjab" by the Punjab Reorganisation (Chandigarh) (Adaptation of Laws on State and Concurrent Subjects) Order, 1968.

⁵Substituted for the words "of the Dominion of Pakistan or of the Dominion of Pakistan or of the Government of "West Punjab" by *ibid.*

⁶Substituted for the words "State Government" by the Punjab Reorganisation (Chandigarh) Adaptation of Laws on State and Concurrent Subjects) Order 1968.

6. The officer in charge of the prison shall detain in custody a repatriated prisoner who, before his repatriation, was a convict undergoing a sentence in a prison,—

Convicted prisoners.

(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 ¹[Central Government].

7. (1) The ¹[Central Government] may direct any Court, other than the High Court, to enquire into or try any case which may have been pending against a repatriated prisoner immediately before his repatriation :

Prisoners undergoing trial before repatriation.

Provided that—

(a) the offence charged against such prisoner is also an offence under the law in force in ²[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 ²[Union territory of Chandigarh] shall so far as may be, apply to such proceedings.

V of 1898.

(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 (I of 1872).

I of 187.

¹Substituted for the words "State Government" by the Punjab Reorganisation (Chandigarh) (Adaptation of Laws on State and Concurrent Subjects) Order, 1968.

²Substituted for the word "Punjab" by *ibid.*

Prisoners repatriated while in Police custody.

8. (1) The ¹[Central Government] 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 ²[Judicial 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.

(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.

Delegation of power.

9. The ¹[Central Government] may, by notification, 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 Government in relation to prisoners detained for reasons of security.

10. 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 ¹[Central Government] shall have the same power in respect of extension or reduction of the term of detention as it possesses

¹Substituted for the words "State Government" by the Punjab Reorganisation (Chandigarh) (Adaptation of Laws on State and Concurrent Subjects) Order, 1968.

²Substituted for the word "Magistrate" by Punjab Act No. 25 of 1964.

Act II of 1947. in relation to person detained under section 3 of the Punjab Public Safety Act, 1947 [Punjab Act II of 1947] as in force in ²[Union territory of Chandigarh].

11. The ³[High Court of Punjab and Haryana] 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 immediately before his repatriation. Jurisdiction of the High Court.

12. The ⁴[Central 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 the ⁵[State] for offences committed within the ⁵[State]. Power of Central Government to suspend, remit or commute sentences.

PART IV

GENERAL

13. It shall be lawful for any person to whom a warrant or order under section 3 or under section 5 or section 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 ²[Union Territory of Chandigarh] may be retaken an escape. Lawfulness of custody and retaking upon escape.

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

15. The ⁴[Central Government] may make rules to carry out the purposes of this Act. Power to make rules.

¹See now the the Punjab Security of the State Act, 1953 (Punjab Act XII of 1953).

²Substituted for the word "Punjab" by the Punjab Reorganisation (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.*

⁴Substituted for the words "State Government" by the Punjab Reorganisation (Chandigarh) (Adaptation of Laws on State and Concurrent subjects) Order, 1968.

⁵Substituted for the word "Province" by the Adaptation of Laws Order, 1950.

Repeal of Ordinance No. I of 1948.

16. The East Punjab (Exchange of Prisoners) Ordinance, 1948, is hereby repealed; and any rules made or notification issued, anything done and any action taken in exercise of any power conferred by or under the said Ordinance shall be deemed to have been made, issued, done or taken in exercise of powers conferred by or under this Act as if this Act had commenced on the 12th day of January, 1948.