

Coming home to jail: on the Repatriation of Prisoners Act, 2003

Two cases of repatriation of Indian nationals, the first being 52-year-old Ismail Samma of Gujarat, and the second, of a sick 21-year-old, Jetendaera Arjanwara of Madhya Pradesh, highlight the tribulations of being imprisoned in a foreign prison.

While Ismail's imprisonment in Karachi, Pakistan, came to light last January after being given up for dead for nine years by his family, Jetendaera's case became known in May after five years of detention. In this time, the young man's physical and mental health had deteriorated and he suffered from a rare blood disease. Both men had accidentally crossed the border with Pakistan and were sentenced for illegal entry. They were detained well past their terms as a result of delayed consular attention and nationality verification.

Global conventions

The right to return to one's home country is assured under Article 12(4) of the International Covenant on Civil and Political Rights. A sentence served in a foreign land, far away from family, familiar food and language, has been globally perceived to be more onerous than one served at home. Therefore, the Vienna Convention on Consular Relations, 1963, provides for information to consulate, consular protection and consultation upon arrest, detention and during trial in a foreign country including entitlement to travel documents.

Similarly, the UN Model Agreement on the Transfer of Foreign Prisoners and Recommendations on the Treatment of Foreign Prisoners 1985, lays emphasis on the social rehabilitation of foreign prisoners through early repatriation to their home countries to serve their remaining sentence. The legacy of transfer of sentenced prisoners lies in the post-war humanitarian exchange of prisoners of war and in two UN Conventions of 2004 (against transnational organised crime and against corruption) which have laid emphasis on the issue of inter-country transfer of prisoners. Both anticipate, under Articles 17 and 45, respectively, that state parties may consider entering into bilateral or multilateral agreements for transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for completion of their sentences.

In consonance with these international humanitarian commitments, most countries have legislated on a Repatriation of Prisoners Act. The transfer framework under the Act is premised on the principles that an offence committed abroad is also an offence in the home country and the sentence implemented upon transfer shall not be aggravated.

Indian conditions

India legislated its Repatriation of Prisoners Act in 2003, which came into force on January 1, 2004. The first part deals with the transfer of sentenced foreign national prisoners from India, while the second deals with the transfer of sentenced Indian nationals into India. It explains the eligibility for transfer, the transfer process and obligations upon the transferring and receiving states with regard to consent, communication and custody of a prisoner.

Every sentenced foreign prisoner in an Indian prison and every Indian national in a prison abroad is technically eligible for repatriation to a prison in their home country under these conditions: they are willing; have no pending appeals; the offence is not an offence under military law; the sentence is not a death sentence; they have at least six months of their sentence still left to serve, and their transfer has the consent of both treaty countries.

The Act is a significant one for a country such as India which sees considerable outflow and inflow

annually by blue- and white-collar workers, fishermen, students, stateless persons and other groups. Several come into conflict with the law. The Minister of State for External Affairs told Parliament in March 2018 that there were as many as 7,850 Indian nationals in the prisons of 78 countries. Data on detentions from India's National Crime Records Bureau showed that at the end of 2015 there were 6,185 foreign national prisoners; 66% of them were from Bangladesh alone. While more than 2,095 Indian nationals (2017) were known to be sentenced abroad (in Saudi Arabia, the United Arab Emirates, Kuwait, the U.K., the U.S., Canada, Nepal, Bhutan, Sri Lanka, Bangladesh, China, France, Germany, Indonesia, Myanmar and Thailand), 2,363 foreign nationals were sentenced prisoners in India at the end of 2015. They would be eligible for repatriation subject to nationality verification.

On its part, India has taken steps for reciprocal transfers under the Act by developing a Standard Draft Agreement, signing 30 bilateral transfer agreements and entering into transfer arrangements with signatories of the Inter-American Convention on Serving Criminal Sentences Abroad and the Council of Europe's Convention on the Transfer of Sentenced Persons. This brings at least 50 more countries into a co-operative administration of justice framework.

However, despite the call of alarming numbers and the scope of treaties, there were only nine foreign prisoners repatriated from India in 2015, six from the U.K. and one each from France, Germany and the UAE. Between 2003 and March 2018, only 63 of 171 prisoner applicants abroad have been transferred to India.

Effecting transfers under the Repatriation of Prisoners Act, presents a win-win situation for India as it need not spend unduly on the housing of foreign national prisoners. It can also save the cost of providing consular services abroad by bringing back Indian prisoners. It can simultaneously satisfy the public expectation of bringing nationals home and the meeting of international humanitarian commitments.

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