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**PARLIAMENT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF
SRI LANKA**

**TRANSFER OF OFFENDERS
ACT, No. 5 OF 1995**

[Certified on 13th February, 1995]

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Transfer of Offenders Act, No. 5 of 1995

[Certified on 13th February, 1995]

L.D.—O. 17/92

AN ACT TO PROVIDE FOR THE TRANSFER TO A SPECIFIED COUNTRY OF A CITIZEN OF SUCH COUNTRY CONVICTED OF AN OFFENCE IN SRI LANKA ; TO PROVIDE FOR THE TRANSFER TO SRI LANKA OF ANY CITIZEN OF SRI LANKA CONVICTED OF AN OFFENCE IN A SPECIFIED COUNTRY ; AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

1. This Act may be cited as the Transfer of Offenders Act, No. 5 of 1995.

Short
title.

2. Where an agreement has been entered into between Sri Lanka and any other country, whether before or after the date of commencement of this Act, the Minister may by Order published in the Gazette declare that the provisions of this Act shall apply in respect of such country (in this Act referred to as a "specified country").

Application
of the Act.

3. (1) The Minister may make an application to an appropriate authority in a specified country, requesting the transfer to that country of any offender who is, or is suspected to be, a citizen of that country.

Minister
to make
an appli-
cation
requesting
the
transfer
of an
offender.

(2) Notwithstanding the provisions of subsection (1), any offender who claims to be a citizen of a specified country may, through the Commissioner of Prisons, make an application to the Minister, to be transferred to the specified country of which he claims to be a citizen and the Minister may where he considers it appropriate make a request on behalf of such offender under subsection (1) to the appropriate authority of such specified country.

(3) Every application for a request under this section shall be made in such form and be accompanied by such documents as may be prescribed for that purpose.

(4) Where the Minister, under subsection (2), makes an application at the request of any offender, he shall inform such offender in writing of the action or decision taken by both the Minister and the appropriate authority of the specified country, in relation to his request for a transfer.

Application
to be
made by a
specified
country.

4. (1) No application made to the Minister by an appropriate authority of a specified country for the transfer to Sri Lanka of an offender who claims to be a citizen of Sri Lanka, shall be entertained by the Minister, unless—

- (a) such application is made in the form prescribed for that purpose ; and
- (b) a copy of the order, decision or judgment as the case may be, by which such offender was sentenced to the term of imprisonment, certified as correct by the appropriate authority of such specified country, is attached to the application

(2) Where the Minister by Order, allows an application made under subsection (1), the copy of the order, decision, or judgment, as the case may be, attached to an application under subsection (1), shall be proof of the facts stated therein and shall have effect as if it were an order, decision or judgement, as the case may be, imposed by a court of competent jurisdiction in Sri Lanka.

Condition
of transfer.

5. The transfer of any offender on an application made under this Act, shall be subject to the following conditions:—

- (a) that the offender is a citizen of Sri Lanka or of the specified country, notwithstanding he may also be a citizen of any other country ;
- (b) that the order, decision or judgment, as the case may be, by which the sentence of imprisonment was imposed upon the offender, is a final order, decision or judgement ;
- (c) that at the time the application for the transfer is made, the offender concerned has more than six months left to serve of the term of imprisonment imposed upon him or that the term of imprisonment imposed was for an unspecified period ;
- (d) that the offender consents to the transfer or where, in view of the age or physical or mental status of the offender, he is unable to give his consent, the consent is given by any other person who is designated either by the Minister or the appropriate authority of a specified country as being competent to give consent on behalf of the offender ;
- (e) that both the Minister and the appropriate authority of the specified country, consent to the transfer.

6. (1) The Minister may, where he considers it appropriate and subject to the provisions of subsection (3), issue a warrant authorizing the transfer out of Sri Lanka to a specified country of any offender.

Issue of a
warrant by
the
Minister

(2) The warrant to be issued under subsection (1) shall be in the prescribed form under the hand of the Minister.

(3) The Minister shall not issue a warrant under subsection (1) unless he is satisfied that all reasonable steps have been taken to inform the offender being transferred, in writing, in his own language, of the effect and consequences of such transfer in relation to such offender.

(4) The Minister shall on the date of issuing of a warrant under subsection (1) cause a copy thereof to be served on the Commissioner of Prisons.

(5) A warrant issued under subsection (1), shall be deemed to be sufficient authority for the Commissioner of Prisons to deliver or cause the delivery of such offender to any person authorized to receive such offender and to keep him in custody and hand him into the custody of a person duly authorized by the appropriate authority of the specified country, to take the custody of such offender.

7. On and after the issue of a warrant under section 6, the consent given under paragraph (d) of section 5 by the offender in respect of whom such warrant was issued, shall not be capable of being withdrawn and accordingly, any purported withdrawal of a consent given after the issue of a warrant shall not affect the validity of such warrant or any directions given in relation to such warrant.

No with-
drawal of
consent
after issue
of warrant.

8. (1) Every offender being transferred to Sri Lanka from any specified country, upon an Order under section 4 shall be formally handed over to the Commissioner of Prisons and the Commissioner of Prisons shall have the authority to keep such offender in custody in any place as may appear to him to be appropriate for giving effect to the sentence of imprisonment imposed upon such offender in such specified country, for the period of the sentence, as if it were a sentence imposed by a court in Sri Lanka.

Commis-
sioner
of Prisons
to have the
custody of
an offender
transferred
to Sri
Lanka.

(2) The enforcement of the sentence of imprisonment imposed upon any offender who is transferred to Sri Lanka under subsection (1) shall be governed by the laws of Sri Lanka.

(3) Notwithstanding the provisions of subsection (2), the Minister shall, unless otherwise specified in the agreement, be bound by the legal nature and duration of the sentence of imprisonment imposed upon any offender transferred to Sri Lanka under subsection (1).

(4) Where the legal nature and duration of the sentence of imprisonment imposed upon any offender transferred under subsection (1), is incompatible with any law of Sri Lanka, it shall be lawful for a court of competent jurisdiction in Sri Lanka, to adapt such sentence to make it compatible with laws of Sri Lanka provided however that the sentence as adapted by such court of competent jurisdiction in Sri Lanka, corresponds as far as practicable to the sentence imposed upon such offender in the specified country from which such offender was transferred to Sri Lanka.

The effect
of any
warrant
issued by
the Minister.

9. The effect of a warrant issued by the Minister under section 6, shall be to authorize—

(a) the taking of the offender to any place within Sri Lanka and his delivery at a place of departure from Sri Lanka, into the custody of a person duly authorized by the appropriate authority of the specified country to which he is being transferred to take such custody of the offender; and

(b) the removal of the offender by the person into whose custody he was delivered, to any place outside Sri Lanka.

Removal
of an
offender in
custody to
any other
place in
Sri Lanka.

10. (1) Any offender committed to custody under section 8 or 9 of this Act escapes from such custody, who may be arrested in any place in Sri Lanka in like manner as a person escaping from custody under a warrant for his arrest issued in that place in respect of an offence committed therein.

(2) Where any offender being in custody under section 8 or 9 of this Act is required to be removed from the place where he is held in custody to any other place in Sri Lanka, he shall be deemed to continue to be in legal custody until he reaches the place to which he is required to be transferred.

Application
of Prisons
Ordinance.

11. The provisions of the Prisons Ordinance (Chapter 54) shall apply, *mutatis mutandis*, in respect of every offender who is transferred to or out of Sri Lanka under the provisions of this Act.

12. (1) An offender who is transferred to Sri Lanka in terms of section 3 of this Act, shall be subject to any remission of the sentence of imprisonment imposed upon him in the specified country where he was convicted, to which he may have become entitled to, on the date of his transfer, in accordance with the law relating to remission of a sentence, in force in such specified country.

Remission
and
President's
power to
grant
pardon.

(2) Nothing in this Act shall be so construed as to limit or take away the President's power to grant pardon or remission of sentence to any offender under Article 34 of the Constitution.

13. The sentence of imprisonment imposed in any specified country upon any offender who is a citizen of Sri Lanka, shall not be subject to any appeal or revision in any court in Sri Lanka, notwithstanding the fact that the order, decision or judgment imposing such sentence is deemed to be an order, decision or judgment imposed by a court of competent jurisdiction in Sri Lanka.

No appeal
or revision
of a
sentence of
imprisonment
imposed
upon an
offender
who is a
citizen of
Sri Lanka

14. (1) The Minister may make regulations for or in respect of all matters stated or required by this Act to be prescribed or in respect of which regulations are authorised or required to be made.

Regulation

(2) Every regulation made by the Minister shall be published in the Gazette and shall come into operation on the date of such publication or upon such later date as may be specified in the regulation.

(3) Every regulation made by the Minister under subsection (1), shall as soon as convenient after its publication in the Gazette, be brought before Parliament for approval. Any such regulation which is not so approved shall be deemed to be rescinded as from the date of disapproval but without prejudice to anything previously done thereunder. Notification of the date on which any regulation is deemed to be so rescinded shall be published in the Gazette.

15. In this Act, unless the context otherwise requires—
"agreement" means any agreement entered into, whether before or after the date of commencement of this Act, between Sri Lanka and any other country, relating to the mutual transfer of offenders between the two countries;

Interpreta-
tion.

"appropriate authority" in relation to a specified country, means a person or body of persons in any specified country who is referred to in the agreement as being the authority responsible for administering the transfer of offenders to and from such specified country;

"Commissioner of Prisons" means the person who is for the time being holding office as the Commissioner of Prisons and Probation Services appointed under section 6 of the Prisons Ordinance (Chapter 54) ;

"offender" means a person who is convicted of an offence whether committed before or after the date of commencement of this Act, and is for the time being serving a sentence of imprisonment by virtue of an order made either by any court in Sri Lanka or by a court or other institution exercising judicial powers which is empowered to make such order, in any specified country.

Sinhala
text to
prevail in
case of
inconsis-
tency

16. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

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