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**PARLIAMENT OF INDIA
RAJYA SABHA**

**DEPARTMENT-RELATED PARLIAMENTARY
STANDING COMMITTEE ON HOME AFFAIRS**

ONE HUNDRED AND FORTY SEVENTH REPORT

ON

**THE REPATRIATION OF PRISONERS (AMENDMENT)
BILL, 2010**

**(PRESENTED TO RAJYA SABHA ON 10TH NOVEMBER, 2010)
(LAID ON THE TABLE OF LOK SABHA ON 10TH NOVEMBER, 2010)**

**RAJYA SABHA SECRETARIAT
NEW DELHI
NOVEMBER, 2010/KARTIKA, 1932 (SAKA)**

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NOVEMBER, 2010/KARTIKA, 1932 (SAKA)

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* RELEVANT MINUTES OF MEETINGS OF COMMITTEE

ANNEXURE

Repatriation of Prisoners (Amendment) Bill 2010

* To be appended at the stage of printing

**Department-related Parliamentary Standing
Committee on Home Affairs
(re-constituted w.e.f. 31st August, 2010)**

Rajya Sabha

1. Shri M. Venkaiah Naidu - Chairman
2. Shri Rishang Keishing
3. Dr. N. Janardhana Reddy
4. Shri S.S. Ahluwalia
5. Shri Naresh Chandra Agrawal
6. Shri Prasanta Chatterjee
7. Shri Javed Akhtar^f
8. Shri Tariq Anwar
9. Dr. V. Maitreyan
10. Shri D. Raja

Lok Sabha

11. Shri L.K. Advani
12. Dr. Rattan Singh Ajnala
13. Dr. Kakoli Ghosh Dastidar
14. Shri Ramen Deka
15. Shri L. Raja Gopal
16. Shri Mohd. Maulana Asrarul Haque
17. Shri Naveen Jindal
18. Shri Jitender Singh Malik (Sonapat)
19. Shri Lalubhai Babubhai Patel
20. Shri Natubhai Gomanbhai Patel
21. Dr. Nilesh N. Rane
22. Shri Bishnu Pada Ray
23. Adv. A. Sampath
24. Shri Hamdullah Sayeed
25. Shri Neeraj Shekhar
26. Dr. Raghuvansh Prasad Singh
27. Shri Ravneet Singh
28. Shrimati Seema Upadhyay
29. Shri Harsh Vardhan
30. Shri Bhausahab Rajaram Wakchaure
31. Shri Dinesh Chandra Yadav

^f Shri Javed Akhtar nominated w.e.f. 21 September 2010 *vice* Shri Tiruchi Siva, who has resigned from the Membership of the DRSC on Home Affairs w.e.f. 13th September, 2010.

SECRETARIAT

1. Shri Tapan Chatterjee, Joint Secretary
2. Shri P.P.K. Ramacharyulu, Director
3. Shri D.K. Mishra, Joint Director
4. Shri Bhupendra Bhaskar, Assistant Director
5. Shri Sanjeev Khokhar, Committee Officer

PREFACE

I, the Chairman of the Department-related Parliamentary Standing Committee on Home Affairs, having been authorized by the Committee to submit the Report on its behalf, do hereby present this One Hundred and Forty-seventh Report on the Repatriation of Prisoners (Amendment) Bill 2010.

2. In pursuance of the rules relating to the Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha, referred* the Repatriation of Prisoners (Amendment) Bill 2010 (**Annexure**), as introduced in the Lok Sabha on 16th August 2010 and pending therein, to the Committee on 15th September, 2010, for examination and report within three months i.e. by 14th December, 2010.

3. The Committee heard the Secretary and other representatives of the Ministry of Home Affairs on the Bill in its sitting held on 30th September, 2010. The Committee also took up clause-by-clause consideration of the Bill in the said meeting and as per practice, the Secretaries and senior officers of the Legislative Department and the Department of Legal Affairs were also present in that sitting to respond to the queries of the Members.

4. The Committee in its sitting held on the 30th September 2010 considered the draft report on the Bill and adopted the same with some minor modifications.

* vide Rajya Sabha Parliamentary Bulletin Part II No. 47661 dated 15th September, 2010.

5. The Committee has made use of the following documents in finalising the Report:-

- (i) Repatriation of Prisoners (Amendment) Bill, 2010:
- (ii) Background note on the Bill;
- (iii) The Repatriation of Prisoners Act, 2003:
- (iv) Oral evidence tendered before the Committee.

6. For facility of reference and convenience, observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

M. Venkaiah Naidu
Chairman

Department-related Parliamentary
Standing Committee on Home Affairs

30 September 2010/New Delhi

REPORT

1.0 The Repatriation of Prisoners (Amendment) Bill, 2010 as introduced in the Lok Sabha on 16th August 2010, was referred to the Department Related Parliamentary Standing Committee on Home Affairs on 15th September, 2010.

1.1 The Repatriation of Prisoners (Amendment) Bill, 2010 seeks to substitute the words "martial law" appearing in clause (c) of sub-section (2) of section 5 of the Repatriation of Prisoners Act, 2003, with the words "military law".

1.2 The Ministry of Home Affairs, in their background note, stated that there was no legal provision either in the Code of Criminal Procedure or any other law under which foreign prisoners could be transferred to the country of their origin to serve the remaining part of their sentence and prisoners of Indian origin convicted by foreign courts, to serve their sentence in India. Accordingly, the Repatriation of Prisoners Act, 2003 was enacted by Parliament which came into force with effect from 1.1.2004.

1.3 The Ministry further stated that for the repatriation of a prisoner from one country to another, certain conditionalities have been prescribed in the Act. Section 5 of the Act, which deals with 'Consideration of request by the Central Government', reads as follows:

" 5(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.

(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 **martial 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 ”

1.4 Explaining the reasons for bringing forward the Bill, the Ministry stated that the term "martial law" is not found relevant in Indian context and it should be replaced with the words "military law". It was also stated that the Ministry of Law & Justice was consulted in the matter and that Ministry advised that the proposed change should be made in the Act. It was further added that the approval of Cabinet was, accordingly, obtained for the aforesaid amendment in the Repatriation of Prisoners Act, 2003

1.5 The Committee heard the oral evidence of the Home Secretary on the Bill, in its sitting held on 30th September, 2010. When the Committee sought to know from the Home Secretary the difference between 'martial law' and 'military law', he explained that 'military law' means the law

applicable to Armed Forces, and 'martial law' is the law which is declared by the Army when it takes over a country. The Home Secretary further explained that the present Bill and the original Act pertain to repatriation of prisoners, who are convicted for various offences under 'civil law' or 'criminal law' or under 'military law' (when some one is court-martialled). The Home Secretary argued that 'martial law' in the strict sense of the term is not desirable in the Repatriation of Prisoners Act, 2003. He also stated that due to an oversight, the original Act contained those words. On a query by a Member of the Committee, the Home Secretary responded that there was no other reason for bringing forward the Bill and it was only to rectify the clerical error.

Observations and recommendations

2.0 The Committee agrees that the term 'martial law', in the strict sense of the term, is not desirable in the Repatriation of Prisoners Act, 2003. Since the Home Secretary has averred that the present Bill has been brought forward only to rectify a clerical mistake and there is no other reason for bringing the Amendment Bill, the Committee has agreed to the proposed amendment.

2.1 The Committee took up clause-by-consideration of the Bill, in its sitting held on 30th September, 2010.

Clause 2

2.2 The clause seeks to amend clause (c) of sub-section (2) of Section 5 of the Repatriation of Prisoners Act, 2003 by substituting the words "martial law" with the words "military law".

2.3 **In view of the position enumerated in para 1.5, the clause is adopted without any change.**

Clause 1, Enacting Formula and Title

2.4 **Clause 1, Enacting Formula and Title are adopted without any change.**

2.5 **The Committee adopts the Bill and recommends that it be passed.**
