JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,

JUDICIAL DEPARTMENT

W.P. No. 3480-2022
Aman Ullah Khan
versus
Federation of Pakistan, etc.

W.P. No. 1175-2023
Ibrar Hussain
versus
Federation of Pakistan, etc.

W.P. No. 2167-2023
Ghazala Shaheen
versus
Federation of Pakistan, etc.

Petitioners by:	Ms. Farah Rana, Advocate for petitioners.
Respondents by:	Mr. Usman Rasool Ghumman, AAG. Mr. Asad Khan Burki, Legal Advisor, M/o Foreign Affairs. Muhammad Taimoor Janjua, State Counsel.
Assisted by:	Ms. Aymen Azeem, Law Clerk, I.H.C.
Date of Decision:	03.12.2024.

MOHSIN AKHTAR KAYANI, J: By way of this order I intend to decide all three writ petitions, whereby, the petitioners sought indulgence of this Court for passing of direction in order to get returned to Pakistan prisoners from United Kingdom under Transfer of Offenders Ordinance, 2002, who were convicted by the courts in United Kingdom and serving their sentence in UK prisons.

1. In WP No.3480 of 2022 the petitioner Amanullah Khan, seeks the transfer of his son, Muhammad Hammad, who is serving life sentence in the UK. Muhammad Hammad is imprisoned under reference number A3338DMHMP at

Long Lartin Prison, South Littleton, Evesham, Worcestershire, UK. The petitioner submitted the necessary documents and affidavits for repatriation under the Transfer of Offenders Agreement. However, despite official correspondence, including verbal as well as letters of consent from Ministry of Foreign Affairs, the office of Her Majesty's Prisoners and Probation Services informed the son of Petitioner that the process has delayed for want of information form Pakistani Authorities. The ministry of interior put a hold on all transfer of sentenced prisoners due to alleged legal gaps in the Transfer of Prisoners Ordinance, 2002. Hence, this petition whereby the petitioner prayed to direct the respondents to dispose of the application of son of petitioner for his repatriation from the UK to Pakistan.

2. In WP No. 1175 of 2023, petitioner Ibrar Hussain, seeks the repatriation of his brother, Muhammad Shafi who was imprisoned at HMP Garatree, Gallowfeild Road, Market Harborough, Leicestershire, UK, under prisoner number A2684CP, HMP, applied for repatriation in 2019 after serving nine years of his life sentence. Also, Respondent No. 4 / MOFA confirmed the receipt of application of Petitioner's brother. Correspondence from the UK authorities has indicated that the delay is due to a lack of information from Pakistani officials. Despite submitting all necessary documents and affidavits, the transfer has been delayed due to legal gaps in the Transfer of Offenders Ordinance, 2002. Hence, this petition whereby the petitioner prayed to direct the respondents to dispose of the application of brother of petitioner for his repatriation from the UK to Pakistan.

3. In WP No. 2167 of 2023, Petitioner Ghazala Shaheen, seeks the repatriation of her son, Muhammad Awais Durani. He is imprisoned in HMP High Down Prison, High Down Lane, Sutton, UK, under prisoner number A7545EF.

Muhammad Awais was convicted for multiple offences and sentenced to 23 years imprisonment by the Crown Court in the UK case no. T20187218. Petitioner approached the Respondent authorities and met with the same response as the others did in similar petitions. Hence, the petitioner prayed to direct the respondents to dispose of the application of son of petitioner for his repatriation from the UK to Pakistan.

4. Learned counsel Ms. Farah Rana, Advocate High Court representing the petitioners contends that all requirements in terms of Transfer of Offenders Ordinance, 2002 have been fulfilled in these cases but the Government of Pakistan is not serious to complete the requirements raised by the United Kingdom Border Agency and other official departments and unless the satisfaction has not been achieved by the United Kingdom Government with respect to the process, procedures and legal framework, the offenders / petitioners will not be transferred to Pakistan.

5. On the other hand the learned AAG, Mr. Usman Rasool Ghuman, along with the legal advisor of Respondent No. 4, the Ministry of Foreign Affairs (MOFA) Asad Khan Burki and Officials of Respondent No. 2, the Ministry of Interior as well as Jail authorities claimed that they have fulfilled the requirements in proper manner, however, transfer of offenders requires time for a policy decision by the United Kingdom and unless the other country is not agreed, the offenders will not be transferred to Pakistan.

6. During the course of proceedings of these cases, the Legal Advisor of Respondent No. 4 appeared and submitted a concise report and contended that the UK authorities need two documents; one is the assurance on the sentence enforcement of prisoner on his return to Pakistan and release date of prisoner. He further submitted that issuance of both the documents fall within the domain

of Respondent no. 2 the MoI. Pursuant to the order of this court dated 19-09-2022 Respondent no. 4 wrote to the Deputy High Commissioner vide letter no UK-9/5/2022- (E-II) dated 06-10-2022 to arrange consular access to the son of petitioner Muhammad Hammad. On 19-10-2022 the Third Secretary from Pakistan High Commission met Muhammad Hammad and he was provided Consular access. The MOFA placed on record the report of provision of Consular access and also placed the report dated 14-11-2022 issued by the Superintendent, Central Jail Adyala given by Ministry of Interior to MOFA whereby the probable release date of Muhammad Hammad is 01-03-2037 including ordinary remission and good conduct remission. The said report of Superintendent, Central Jail Adyala was sent to the UK authorities by the MOFA. Another request for Consular access to Mr. Hammad has been forwarded to British Authorities by Pahic London vide its letter dated 16-02-2023. The mission also requested the response on the subject that "*whether any early release arrangement would apply to Mr. Hammad's case or whether he only be release on 1st March 2037.*"

7. Learned counsel for the Petitioners after lapse of two more dates of hearing brought this to the knowledge of the court that the case of Muhammad Hammad has not reached to any conclusion. On the contrary, the legal advisor for the Respondent No. 4 contended that the delay was on the part of Respondent no. 2 who has not submitted the reciprocity report qua the prisoners who has already been transferred to Pakistan from the UK. To speed up the matter of repatriation the court directed the Ministry of Interior to prepare a detailed reciprocity report of the offenders who have been released from the UK prisons. The other aspect in the delay was the "*probable date of release*" of the offenders as the UK authorities have been asking for the probable date of release and also the final date of release in the reciprocity reports.

8. Respondent no. 2 the MoI shared its reciprocity report dated 25-10-2023 of the offenders who has been released from the prisons in Pakistan or about to be released with Respondent no 4 including the **probable date of release** of the current petitioner namely Muhammad Awais Durrani, Muhammad Shafi, and Muhammad Hammad along with other prisoners in similar matters including Imran Khan AKA Azeem Khan, Irshad Mehmood, Mohammad Ayub Khan, and Naeem Mehmood after verification of their data from Nadra, which was sent to Pahic London on 30-10-2023 vide Fax message no. UK-1/7/2023.

9. Respondent No. 2 shared another report dated 14-11-2013 with Respondent no. 4 containing the ***final date of release*** of prisoners namely, Muhammad Hammad (WP No. 3480/2022), Muhammad Awais Durrani (WP No. 2167/2023), and Muhammad Shafi (WP no. 1175/2023). The said report was shared by Respondent no. 4 with the Mission in Pahic London vide Fax No. UK-5/2/2023 dated 16-11-2023. The mission forwarded the reports to his Majesty's Prison and Probation services and the HMPPS has highlighted the contradictions in the date of release of prisoners in both faxes.

10. As a result of this court's efforts and issuance of repeated judicial orders as reminder for providing the consular access to the sentenced prisoners in the UK prisons and with the collaboration and assistance of the Pakistani authorities and UK authorities, the sentenced prisoners landed in Pakistan on different dates one by one. The HMPPS requested to share details of the officials and officers who will take the prisoners in custody from Islamabad Airport also the court passed an order dated 03-07-2024 to nominate officials to receive the prisoners from the airport. In compliance of this order and request, Respondent no. 3 the immigration department at FIA, HQs in Islamabad has shared the complete details of all the officers and officials who will take the prisoners in custody at

Islamabad airport with the Mission at Pahic London. The details of the correspondence are available on record. For the travelling of prisoners' ETDs were issued and all the expenses were borne by the UK authorities for their transfer to Pakistan. From the report placed on record by the MOFA, the kin of the petitioners namely, Muhammad Hammad, Muhammad Shafi and Muhammad Awais Durrani have been repatriated to Pakistan on 10th September 2024, 06 August 2024 and 4th October 2024 respectively.

11. This Court has also noticed during the course of proceedings that multiple correspondences took place between prisoners as well as Pakistan and UK authorities which is commendable. From the available record it is apparent that Rebecca Wlaker (Hub Manager) Offender Management Unit HMP LING Lartin has remained in contact with the prisoners and updated them regarding the status of their repatriation case. Whereas, Nalini Hussain (Prisoner Transfer and Delivery Lead) Foreign National Offenders HMPPS remained in contact with the Pakistani Mission in London and assisted with the transfer of sentenced prisoners from the UK to Pakistan.

12. In the view of the above facts and circumstances of the case the essential question arises: *why would states choose to transfer foreign prisoners abroad or repatriate their nationals to serve their sentences at home?* To answer this question along with other sources assistance was sought from the Handbook on the International Transfer of Sentenced Persons by the UNODC. When a sentence is imposed, the fundamental objectives of sentencing—retribution, deterrence, rehabilitation, and incapacitation—are presumed to have been duly considered. Judges and courts are expected to weigh these objectives within the framework of the sentencing jurisdiction's established rules. However, the priorities governing the implementation of a sentence often differ from those that informed

its initial imposition. These shifting priorities frequently come into play when the transfer of a sentenced individual is contemplated. For the sentencing state, prisoner transfer programs offer the advantage of transferring foreign nationals at the expense of the administering state, bypassing the complexities and costs associated with deportation. This also allows the sentencing state to allocate its resources more effectively towards the needs and rehabilitation of its own prisoners.

13. A fundamental yet often understated requirement in international prisoner transfer frameworks is the **safeguarding of the human rights** of the individual being transferred. States are prohibited from transferring individuals where there is a significant risk to their lives or where they may be subjected to torture, inhuman, or degrading treatment or punishment in the receiving country.

(i) Article 3 of the **UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** expressly forbids the transfer of individuals to states where there are substantial grounds to believe they would face torture. Similarly, Article 2 of the **International Covenant on Civil and Political Rights (ICCPR)** requires states to refrain from extraditing, deporting, expelling, or otherwise removing a person where there are substantial risks of irreparable harm, including those highlighted in Articles 6 and 7 of the Covenant. These articles address the risks to life and exposure to cruel, inhuman, or degrading treatment or punishment.

(ii) **Addressing Mental Health:**

In addition to above, mentally challenged prisoners represent a particularly vulnerable category whose transfer requests demand compassionate consideration on humanitarian grounds. However, these

cases underscore the challenges posed by prisoners who may not be capable of freely consenting to their transfer, necessitating additional safeguards and scrutiny.

(iii) **Promoting Rehabilitation and Reintegration:**

In the enforcement of prison sentences, rehabilitation plays a critical role in preparing offenders for resocialization and reintegration into society. Over time, the rehabilitative objective often assumes greater significance than it did during the sentencing phase. The transfer of foreign prisoners to their home countries provides an alternative means of implementing their sentences. Research indicates that individuals serving sentences in their home countries are better positioned to rehabilitate, resocialize, and reintegrate into their communities.[1] Incarceration in a foreign jurisdiction, far from family and friends, can be counterproductive, as families often serve as a critical source of social support. Such support has been shown to significantly improve the likelihood of successful reintegration.[2]

(iv) **Humanitarian Concerns:**

Another compelling argument for the transfer of prisoners is rooted in humanitarian considerations. Even in cases where the prospects for successful rehabilitation and reintegration are uncertain, it is often more humane for individuals to serve their sentences in their home countries[3]. Furthermore, humanitarian considerations extend to the family and dependents of incarcerated individuals. Families left behind in the prisoners' country of origin face emotional and logistical challenges when

[1] See Van Zyl Smit, "International imprisonment," International and Comparative Law Quarterly, vol. 54, No. 2 (2005), pp. 357–386).
[2] See La Vigne et al., "Examining the effect of incarceration and in-prison family contact on prisoners' family relationships," Journal of Contemporary Criminal Justice, vol. 21, No. 4 (November 2005)
[3] See Dirk Van Zyl Smit, "International imprisonment," p. 364; Płachta, Transfer of Prisoners under International Instruments and Domestic Legislation, pp. 166–167, 206

their loved ones are held in foreign prisons. Facilitating transfers mitigates these hardships, fostering greater familial stability.

14. **International Legal Instruments Governing Transfers:**

Keeping in view the above considerations of rehabilitation, protection of human rights and humanitarian principles states have given consensus for the transfer of international sentenced prisoners/offenders to their home state. The international transfer of sentenced prisoners gained significant momentum following the **Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders** in 1975. Since then, the United Nations has actively promoted the transfer of sentenced persons as part of its broader initiatives to combat organized crime, drug trafficking, and corruption.

(A) Pakistan is a signatory to **three key UN conventions** that include mechanisms for transfer of prisoners and extradition; however, it has placed reservations on extradition provisions within these conventions.

i. **United Nations Convention against Transnational Organized Crime:** Pakistan signed the *United Nations Convention against Transnational Organized Crime* on December 14, 2000, and ratified it on January 13, 2010. Article 17 of this convention provides for the transfer of prisoners, and Pakistan has raised no reservations regarding this provision. The article states:

> "*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.*"[4]

ii. **United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances:**

[4] See text at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=_en

Pakistan became a party to the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* by signing it on December 20, 1989, and ratifying it on October 25, 1991. Paragraph 12 of Article 6 encourages the adoption of bilateral or multilateral agreements for the transfer of prisoners. It states:

> "*The Parties may consider entering into bilateral or multilateral agreements, whether ad hoc or general, on the transfer to their country of persons sentenced to imprisonment and other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentences there.*"[5]

iii. **United Nations Convention against Corruption:**

Pakistan signed the *United Nations Convention against Corruption* on December 9, 2003, and ratified it on August 31, 2007. While Pakistan has expressed reservations about Article 44, which pertains to extradition, Article 45 encourages the transfer of sentenced prisoners. Article 45 provides:

> "*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.*"[6]

(B) European Convention on the Transfer of Sentenced Persons:

In addition to the UN convention, another most prominent multilateral instrument in this area is the ***European Convention on the Transfer of Sentenced Persons***, which came into effect on July 1, 1985. Although initiated by the Council of Europe, the convention is open to non-European states as well.

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[5] See text at: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=vi-19&chapter=6

[6] See text at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-14&chapter=18&clang=_en

Articles 18 and 19 of the convention detail its provisions. A notable feature of this agreement is the requirement of the sentenced person's consent for transfer, except in cases outlined in Articles 2 and 3 of the Additional Protocol. These articles allow for the transfer of individuals without their consent if they have fled the sentencing state or would face deportation or expulsion upon completing their sentence.

(C) Commonwealth Scheme for the Transfer of Convicted Offenders:

For the Commonwealth the ***Scheme for the Transfer of Convicted Offenders within the Commonwealth*** mirrors many provisions of the European Convention. It is open to all Commonwealth countries that choose to adopt it. These **schemes**[7] **are not binding treaties** but serve as flexible arrangements to facilitate cooperation between Commonwealth nations. The key Commonwealth schemes related to criminal matters include:

i. London Scheme for Extradition within the Commonwealth (1966);

ii. Revised Scheme Relating to Mutual Legal Assistance in Criminal Matters (Revised Harare Scheme, 1986);

iii. Scheme for the Transfer of Convicted Offenders (1986);

iv. Framework for the Commonwealth Network of Contact Points (2005).

These schemes provide a practical framework for collaboration while remaining adaptable to the specific needs of member states.[8]

(D) Inter-American Convention on Serving Criminal Sentences Abroad:

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[7] Commonwealth Schemes for International Cooperation in Criminal Matters, the Commonwealth Office of Civil and Criminal Justice Reform, https://production-new-commonwealth-files.s3.eu-west-2.amazonaws.com/migrated/key_reform_pdfs/P15370_13_ROL_Schemes_Int_Cooperation.pdf

[8] See Commonwealth Database on International Cooperation in Criminal Matters, https://thecommonwealth.org/our-work/commonwealth-database-international-cooperation-criminal-matters

For America the ***Inter-American Convention on Serving Criminal Sentences Abroad,*** adopted on September 6, 1993, and effective from December 4, 1996, offers another model for the transfer of sentenced persons. Although its structure differs from the European Convention, it shares a similar objective. As of January 31, 2012, 17 states, including non-American countries like the Czech Republic, India, and Saudi Arabia, had ratified or acceded to this convention[9].

15. **Implementation into Domestic Law: Transfer of Offenders Ordinance 2002:**

Irrespective of the fact that the transfer agreement was adopted, National legislation is essential for states to ensure that multilateral and bilateral agreements have legal effect within domestic law. For this purpose, Pakistan enacted the ***Transfer of Offenders Ordinance, 2002***. The ***Transfer of Offenders Ordinance, 2002*** provides a detailed framework for the repatriation of Pakistani citizens imprisoned abroad. It establishes that a prisoner must be a Pakistani citizen, with a finalized sentence and a remaining term of at least six months or an indefinite sentence, to be eligible for transfer. Consent is a critical requirement, either directly from the prisoner or, in cases where physical or mental incapacity exists, through a designated representative. The process is initiated upon receipt of a formal request from the foreign country's authority, accompanied by certified sentencing details. **The Competent Authority in Pakistan, usually the Secretary of the Ministry of Interior**, evaluates the application and issues a warrant if all conditions are satisfied. Upon transfer, the prisoner's sentence is enforced in Pakistan under domestic laws, and adjustments may be made to align with local legal standards. **The President retains discretionary powers to grant pardons or remissions.** This legal

[9] See https://www.oas.org/juridico/english/sigs/a-57.html

mechanism ensures that international obligations are seamlessly integrated into Pakistan's domestic legal system, promoting cooperation and humanitarian considerations in the treatment of offenders.

16. **Bilateral Agreement Between the UK and Pakistan of 2007 and 2018 additional protocol:**

Bilateral agreements for the transfer of sentenced prisoners continue to be a significant tool in international cooperation, even as regional multilateral agreements gain prominence. States often adopt bilateral transfer agreements for reasons similar to those underlying multilateral arrangements, allowing for more tailored provisions and a broader range of partnerships. The United Kingdom, despite being a party to the *European Convention on the Transfer of Sentenced Persons*, the *Scheme for the Transfer of Convicted Offenders Within the Commonwealth*, and subject to *Framework Decision 2008/909/JHA*, has entered into bilateral agreements with a diverse range of states, including Pakistan.[10] Pakistan is not a party to any multilateral treaty for the transfer of prisoners particularly. Being a Commonwealth Country, the scheme of Commonwealth was also adopted by Pakistan, however not completely, yet the ***2007 Agreement on the Transfer of Prisoners***[11] between the United Kingdom and Pakistan exemplifies such bilateral collaboration. It provides a structured mechanism for the transfer of international sentenced prisoners, outlining conditions and processes that ensure their sentences are served in their home countries. This agreement draws heavily from the ***"Scheme for the Transfer of Convicted Offenders Within the Commonwealth"***, itself influenced by the ***European Convention on transfer of***

[10] United Nations Office on Drugs and Crime, *Handbook on the International Transfer of Sentenced Persons* (2012) https://www.unodc.org/documents/organized-crime/Publications/Transfer_of_Sentenced_Persons_Ebook_E.pdf accessed [09-12-2024]

[11] Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Islamic Republic of Pakistan on the Transfer of Prisoners (Islamabad, 24 August 2007) https://assets.publishing.service.gov.uk/media/5a7caa5d40f0b6629523b07d/7494.pdf

Sentenced Prisoners". Based on this agreement in the instant petition the petitioners were transferred from the UK to Pakistan.

17. The agreement underscores the shared goal of encouraging social rehabilitation by enabling prisoners to serve their sentences closer to their communities. The agreement also covers the "***post-transfer considerations***" as well. Key conditions include the mutual consent of both states, the finality of the sentence, a minimum of six months remaining in the sentence (with exceptions for special cases), and the prisoner's consent unless incapacitated. Furthermore, the offense for which the prisoner was convicted must be recognized as a criminal act in both jurisdictions. The transfer process is facilitated through central authorities, namely the Ministry of the Interior for Pakistan as mentioned in article 3 of the 2007 agreement and the relevant prison services for the UK. Under article 9 of the 2007 agreement the law of receiving state (Pakistan) shall govern the continued enforcement of sentence after the transfer and it is equating with the section 12 of the 2002 Ordinance-domestic legislation of Pakistan. However, only the transferring state has the power to review the judgment.

18 Additional Protocol of 2018:

In 2018, a protocol was introduced to enhance the original agreement's implementation mechanisms, particularly the assurance framework[12]. Article 11 of the 2007 Agreement was replaced with new provisions requiring the establishment of a Joint Working Group on prisoner transfers. This group oversees the assurance mechanisms to ensure compliance with the terms of transfer, which include:

[12] Protocol to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Islamic Republic of Pakistan on the Transfer of Prisoners Islamabad, 27 December 2018 https://assets.publishing.service.gov.uk/media/5cac743040f0b670003a6746/TS_3.2019_Prot_Pakistan_Prisoner.pdf accessed [10-12-2024]

a. Biannual or requested status reports on prisoners, including custody status, location, and release dates.
b. Prevention of unauthorized international travel through border management systems.
c. Notification of any unauthorized releases or deviations from anticipated release dates.
d. Access for verification purposes, including obtaining biometric evidence.

19. While dilating upon the mechanism of 2007 agreement and its AP of 2018 it became evident that the whole mechanism of transferring of sentenced prisoners between states is regulated by the Consular/Diplomatic channel. The 2018 AP emphasizes the continuous Consular access. The request and replies and consent of the prisoners and other allied communications are obtained through the Consular access.

20. Pakistan is a party to **Vienna Convention on Diplomatic Relations 1961** and its article 3 provides the duties of a Diplomatic Mission towards the sending state, it states that:

Article 3

1.The functions of a diplomatic mission consist, inter alia, in:

(b) Protecting in the receiving State the interests of the sending State and of its nationals, within the limits permitted by international law;

(c) Negotiating with the Government of the receiving State;

Vienna Convention on Consular Relations 1963 *in* ***article 5*** *explains the Consular functions as follows;*

Consular functions consist in:

(a) protecting in the receiving State the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law

(e) helping and assisting nationals, both individuals and bodies corporate, of the sending State

(i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the laws and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests;

(j) transmitting judicial and extrajudicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State;

(m) performing any other functions entrusted to a consular post by the sending State which are not prohibited by the laws and regulations of the receiving State or to which no objection is taken by the receiving State or which are referred to in the international agreements in force between the sending State and the receiving State.

For the domestication of above Vienna Conventions, Pakistan has legislated ***The Diplomatic and Consular Privileges Act, 1972*** and the Consular functions, as mentioned above, are *mutatis mutandis* applicable under the 1972 Act as written in The Second Schedule under section 2(1) of the Act.[13]

21. While dealing with these cases this Court has considered multiple issues, measures and questions raised which were answered on the executive side by MOFA as well as by the Ministry of Interior and this Court has noticed that primary concern of the transferring state with the receiving state is with reference to the legal nature and duration of sentence, though the agreement in

[13] The Diplomatic and Consular Privileges Act, 1972

terms of clause (d) of Article 1 defines 'sentence' as "***any punishment or measure involving deprivation of liberty ordered by a Court for a limited or unlimited period of time, in the course of the exercise of its criminal jurisdiction***", and the meaning becomes clear but usually the sentence is by its nature or duration incompatible with the law of the receiving state, that state may, by a court or administrative order and with the agreement of the transferring state prior to transfer, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. It shall not, however, aggravate, by its nature or duration, the sanction imposed in the transferring state, nor exceed the maximum penalty prescribed by the law of the receiving state which is an obligation in terms of clause-9 of the agreement.

22. It is pertinent to mention here that the UK authorities has been asking for "reciprocity report" from Pakistani authorities for the transfer of sentenced prisoner. To dilate upon the need of reciprocity report it is beneficial to first define that what it actually is. This court couldn't really find a definition of reciprocity report thus, to define it I sought help from Black's Law Dictionary, 11th edition, by Bryan A. Garner which says "reciprocity" means "*1. Mutal or bilateral action. Or 2. The Mutual concession of advantages or privileges for purposes of commercial or diplomatic relations.* "And "report" means "*a formal oral or written presentation of facts or a recommendation for action"* and "official report" means "*the government approved set of reported cases within a given jurisdiction"*. In addition to that Black's Law Dictionary enlists a lot of categories of reports including; committee report, consumer report, earnings report, informational report, majority report, minority report, officer's report, government report and search report. These reports are treated as admissible evidence and considered a type of evidence. Similarly, according to the Organization of American States the

principle of reciprocity involves permitting the application of the legal effects of specific relationships in law when these same effects are accepted equally by foreign countries. In international law, reciprocity means the right to equality and mutual respect between states.[14]

23. Based on these definitions a ***"reciprocity report"*** that was demanded by the UK authorities from the Pakistani jail authorities involve the required information or assurances regarding the sentence completion of offenders who have been previously or earlier repatriated to Pakistan in order to ensure compliance and their willingness for the implementation of foreign judgment in Pakistan. The UK authorities demanded reciprocity report to ensure themselves the state practice of Pakistan towards the implementation of foreign sentencing regimes in Pakistan. It is settled that a foreign judgment is given recognition in international law on the basis of principle of reciprocity and comity that gives rise to rights and obligations as held in ***PLD 2016 SC 174 (Muhammad Ramzan (Deceased) Vs Nasreen Firdous).***

24. Therefore, to remove the trust deficit existing among the UK authorities and their reluctance to repatriate sentenced Pakistani prisoners to Pakistan this court passed an order dated 26-10-2023 to place the record of Asad Javed's case before the court. The wisdom behind provision of Asad Javed's case record was to restore the trust of UK authorities on Pakistani authorities and also to draw their attention that the provisions of the law of transfer of Offenders Ordinance 2002 and the UK-Pakistan bilateral agreement of 2007 on Transfer of Prisoners have been complied with. Asad Javed case has settled guidance on **post-arrival consideration** and treatment of the offenders. It is settled position that the

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[14] The Organization of American States, *Principle of Reciprocity, Ven_multla_otros_eng* https://www.oas.org/ext/Portals/33/Files/MLA/Ven_multla_otros_eng.pdf#:~:text=The%20principle%20of%20reciprocity%20involves%20permitting%20the,of%20the%20principle%20of%20territoriality%20of%20laws accessed [04-02-2025].

offenders will be treated as per the law of the receiving state after their arrival under section 9(2) of the 2002 Ordinance. Also, as per section 12 of the Ordinance the offender after transferred to Pakistan will be subject to remission and pardon. Asad Javed has been convicted on 23-07-2004, for 25 years, he was transferred to Pakistan on 20-08-2010. And as per UK documents his release date was 22-08-2030. However, he was released on parole on 11-03-2022. Moreover, the question that whether Asad Javed was entitled to claim remission or not under Pakistani law has been discussed in detail and the concept of remissions has been duly recognized in ***2017 SCMR 1514 (Asad Javed versus FOP and others)*** as:

> *"the petitioner has to be dealt with under the law of the land to serve out his remaining sentence as provided in section 9(2) of the Transfer of Offenders Ordinance, 2002 (XXXVII of 2002) which also makes him entitled for grant of pardon or remission of sentence by the President of Pakistan under Article 45 of the Constitution of Islamic Republic of Pakistan or by any other authority under any law of Pakistan for the time being in force as provided in Section 12(2) of the Transfer of Offenders Ordinance, 2002 (XXXVII of 2002) but for that purpose he has to approach the concerned authority as defined in the Law to ask for the relief."*

25. I have gone through number of queries raised by the United Kingdom authorities in their questions with Respondent no. 4 which gave rise to interpretational questions related to probable date of release or final date of release. In this regard I have gone through the judgment reported as **PLD 2016 [Islamabad] 53 *(Federation of Pakistan Vs. Asad Javed and others),*** which highlights the mechanism and processes including but not limited to the benefits available in Pakistan to all convicted prisoners which is in shape of remissions, either granted by the President of Pakistan in exercise of powers under article 45 of the Constitution of Islamic Republic of Pakistan, 1973, or by any other authority under the law. In this scenario I have also been guided with the Chapter 8 of the Pakistan Prisons Rules, 1978, whereby, Rule 199 defines remission system as an arrangement by which a prisoner sentenced to

imprisonment, whether by one sentence or by consecutive sentences, for a period of 04 months or more may by "good conduct" become eligible for release when a portion of sentence ordinarily not exceeding one-third of the whole sentence has yet to run. Rule 200 further provides that the remission under the Rules is of two kinds i.e. 'ordinary' or 'special'. The ordinary remissions have been described in Rules 201 to 205. Rules 206 to 209 prescribe the procedure for awarding and calculating the remission. Rules 211 to 213 further enumerate various other ordinary remissions. Special remissions and the grounds for seeking the same have been enumerated in Rule 214. Rule 215 provides for remissions on the basis of education and enhanced education. The Rules have prescribed limitations and restriction in case of granting remissions. Remissions, therefore, involve the exercise of discretion by the competent authority e.g. the latter has to form an opinion as to whether or not on account of 'good behavior' a prisoner/offender is entitled to be granted remission, or to any other kind of remission under the law. Therefore, this concept outrightly reflects that at the time of correspondence between United Kingdom authorities and Government of Pakistan under Transfer of Offenders law as well as the agreement executed between the states, the Pakistani authorities are bound to refer date of release as fixed by the foreign country in the judgment of conviction or notified by the transferring state to be used as a final date of release in their own country, however, the question relating to application of remission under the law of the receiving state comes into play when the offender stands transferred to Pakistan prison being a receiving state.

26. This Court is mindful to the fact that the special arrangements for transfer of offenders have been achieved in terms of the international commitments and obligations in order to settle different issues and disputes through negotiation

mechanism and for this purpose the agreement has already been signed with different states, even otherwise any doubt or interpretation of any clause of the agreement is also to be resolved by the two sovereign countries through negotiations as specified in Article 17 thereof. The transfer of the offender is not a vested right but is solely based on the consent of the two sovereign States as well as the offender.

27. Keeping in view the above documents this Court appreciated the serious efforts put by Ministry of Foreign Affairs as well as by the different individuals from Offender Management Unit including United Kingdom authorities who put serious efforts to ensure the implementation of agreements executed between two states being their international commitment, however, considering the role and responsibility, this Court recommends following directions to Pakistan Authorities:

i. Keeping in view the slow process of repatriation and the apparent unwillingness of the authorities to speed up the process of transfer of sentenced prisoners under the Prisoner Transfer agreement from the UK to Pakistan this court direct the Secretaries of Ministries of Interior and Foreign Affairs as well as to the Pakistani High Commission authorities in the Uk to arrange a designated telephone number with a notified officer for weekly contact with prisoners whose repatriation cases are pending.

ii. Consular access must be given to every prisoner and report be transmitted through MOFA to the concerned court or the Ministry of Interior to be placed before the

competent authority and copy thereof may also be transmitted to the family members of the prisoner who are pursuing for his transfer to Pakistan.

iii. The High Commission, Embassy, Foreign Mission of Pakistan in the foreign country shall compile data of every prisoner who is Pakistani citizen and must maintain the record for the purposes of information to the Ministry of Interior comprising of the health, legal services, and other psychological conditions of the prisoner including but not limited to the protection of human rights.

iv. In every case of transfer of offender, the date of release must be mentioned as date notified by the foreign court or by the authority based upon judgment passed by the competent court of Foreign jurisdiction as a date of release in the correspondence/reciprocity report.

v. Reciprocity report must be submitted within the time frame fixed in the law as well as in the agreement to ensure the confidence of the transferring state.

vi. The judgment of the foreign court shall be considered final and its vires cannot be challenged before any court of Pakistan after the transfer of prisoner to Pakistan. However, after the transfer, the prisoner shall be treated as per the law of Pakistan.

vii. The prisoners who have been transferred under transfer of offenders ordinance from any foreign territory must

be repatriated to the nearest prison of their permanent abode / place of residence in order to give easy access to the family members or on the request of the offender after reaching to Pakistan.

viii. In case of any transferred prisoner, jail authorities shall inform the MoI about exact date of release and in this regard a report may also be transmitted through MOFA to the transferring state who has transferred the prisoner under Transfer of Offenders Ordinance or under agreement.

28. Final report has been submitted by the Ministry of Foreign Affairs and Ministry of Interior that the prisoners namely Muhammad Hammad, Muhammad Awais Durrani and Muhammad Shafi have been transferred from United Kingdom and shifted to Pakistan (Central Prison Adyala) to serve their remaining sentence under the law, therefore all the captioned writ petitions are **DISPOSED OF**.

(MOHSIN AKHTAR KAYANI)
JUDGE

APPROVED FOR REPORTING.

A.Waheed/-