

Agreement Between the Government of Republic of India and the Government of the Islamic Republic of Iran on the Transfer of Sentenced Persons

TREATY

India

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AGREEMENT-BETWEEN-THE-GOVERNMENT-OF-REPUBLIC-OF-INDIA of 2011

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Agreement Between the Government of Republic of India and the Government of the Islamic Republic of Iran on the Transfer of Sentenced PersonsPublished vide Notification New Delhi, the 10th February, 2011Ministry of Home Affairs(CS Division)G.S.R. 84(E). - In exercise of the powers conferred by sub-sections (1) and (2) of section 3 of the Repatriation of Prisoners Act, 2003 (49 of 2003), the Central Government hereby directs that the provisions of the said Act shall apply to the Government of Islamic Republic of Iran and notifies the text of the treaty entered into between the Government of the Republic of India and the Government of Islamic Republic of Iran as follows, namely :-Agreement Between the Government of Republic of India and the Government of the Islamic Republic of Iran on the Transfer of Sentenced PersonsThe Government of Republic of India and the Government of Islamic Republic of Iran hereinafter referred to as the Contracting States;Desiring to facilitate the social rehabilitation of sentenced persons into their own countries;Considering that this objective should be fulfilled by giving foreigners, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences within their own society; andBelieving in the principles of national sovereignty and non-intervention in internal affairs of each other,Have agreed as follows:Article 1

1. Definitions

For the purpose of this Agreement:(a)"judgment" means a decision or order of a court or any other judicial authority imposing a sentence;(b)"receiving State" means a State to which the sentenced person may be, or has been, transferred in order to serve his sentence;(c)"sentence" means any punishment or measure involving deprivation of liberty ordered by a court or any other judicial authority for a determinate period of time or for life imprisonment, in the exercise of its criminal jurisdiction;(d)"sentenced person" means a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in the Contracting States;(e)"transferring State" means the State in which the sentence was imposed on the person who may be, or has been transferred.Article 2

2. General Principles

(1)A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. To that end, he may express to the transferring State or the receiving State his willingness to be transferred under this Agreement.(2)Transfer may be requested either by the transferring State or the receiving State or the sentenced person himself or any other person entitled to act on his behalf.Article 3

3. Condition for transfer

(1)A sentenced person may be transferred under this Agreement only on the following conditions:(a)the person is a national of the receiving State;(b)the judgment is final and enforceable;(c)no inquiry, trial or any other proceeding is pending against the sentenced person in the transferring State;(d)at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or is undergoing a sentence of life imprisonment;(e)that the acts or omissions for which that person was sentenced in the transferring State are those which are punishable as a crime in the receiving State, or would constitute a criminal offence if committed on its territory;(f)the sentenced person has not been convicted for an offence under the military law;(g)transfer of custody of the sentenced person to the receiving State shall not be prejudicial to the Constitution, sovereignty, security, public order or any other interest of the transferring State;(h)consent to the transfer is given by the sentenced person or, where in view of his age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his behalf in accordance with the law of the Contracting State; and(i)the transferring and receiving States agree to the transfer.(2)In exceptional cases, the transferring and receiving States may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months.Article 4

4. Obligation to furnish information

(1)If the sentenced person has expressed an interest to the sentencing State in being transferred

under this Agreement, that State shall send the following information and documents to the receiving State unless either the receiving or the transferring State has already decided that it will not agree to the transfer: (a) the name and nationality, date and place of birth of the sentenced person; (b) his address, if any, in the receiving State; (c) a Statement of the facts upon which the sentence was based; (d) the nature, duration and date of commencement of the sentence; (e) a certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the sentenced person; (f) a medical, social or any other report on the sentenced person, where it is relevant for the disposal of his application or for deciding the conditions which may accordingly be required for his confinement; (g) any other information which the receiving State may specify as required in all cases to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him under its law; (h) the request of the sentenced person to be transferred or of a person entitled to act on his behalf in accordance with the law of the transferring State; and (i) a Statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence. (2) For the purposes of enabling a decision to be made on a request under this Agreement, the receiving State shall send the following information and documents to the transferring State unless either the receiving or the transferring State has already decided that it will not agree to the transfer: (a) a Statement or document indicating that the sentenced person is a national of the receiving State; (b) a copy of the relevant law of the receiving State constituting the acts or omissions, on account of which the sentence has been passed in the transferring State, as if such acts or omissions were an offence under the law of the receiving State or would constitute an offence if committed on its territory; (c) a Statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the receiving State in respect of the offence for which the person concerned has been sentenced in the transferring State, particularly as to the effect of paragraph 2 of Article 9 of this Agreement; (d) the willingness of the receiving State to accept the transfer of the sentenced person and an undertaking to administer the remaining part of the sentence of the sentenced person; and (e) any other information or document which the transferring State may consider necessary. Article 5

5. Requests and replies

(1) Requests for transfer shall be made in writing and addressed through the central authority of the requesting State through diplomatic channels to the central authority of the requested State. Replies shall be communicated through the same channels. (2) For the purpose of paragraph 1 of this Article, the central authority shall be, in relation to India, the Ministry of Home Affairs; and in relation to Islamic Republic of Iran, the Ministry of Justice. (3) The requested State shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer. (4) Either of the contracting States may refuse the transfer of sentenced person without the need for any explanation. Article 6

6. Consent and its verification

(1)The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(i) of Article 3 of this Agreement, does so voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring State.(2)The transferring State shall afford an opportunity to the receiving State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.Article 7

7. Handing over of sentenced persons

The handing over of the transferred person by the transferring State to the receiving State shall occur at a place to be agreed upon between the transferring and the receiving State. The receiving State shall be responsible for the transport of the prisoner from the transferring State and shall also be responsible for custody of the sentenced person outside the territory of the transferring State.Article 8

8. Effect of transfer for the receiving State

(1)The competent authorities of the receiving State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 9 of this Agreement.(2)Subject to the provisions of Article 11 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions.Article 9

9. Continued enforcement of sentence

(1)The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.(2)If, however, the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that State may, by court or administrative order, adapt the sentence to a punishment or measure prescribed by its own law. As to its nature and duration the punishment or measure shall,as far as possible, correspond with that imposed by the judgment of the transferring State. It shall however not aggravate, by its nature or duration, the sentence imposed in the transferring State.(3)A sentenced person transferred under this Agreement shall not be tried or sentenced in the receiving State for the acts or omissions on account of which the sentence was imposed.Article 10

10. Effect of completion of sentence for the transferring State

When the receiving State notifies the transferring State under paragraph 1(a) of Article 13 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging that sentence in the transferring State.Article 11

11. Pardon, amnesty or combination and review of judgment

(1) Either of the Contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws. (2) The transferring State alone shall decide on any application for the review of the judgment. Article 12

12. Termination of enforcement of sentence

The receiving State shall terminate enforcement of the sentence as soon as it is informed by the transferring State of any decision or measure as a result of which the sentence ceases to be enforceable. Article 13

13. Information on enforcement of sentence

(1) The receiving State shall notify the transferring State: (a) when the enforcement of the sentence has been completed; or (b) if the prisoner escapes from custody before enforcement of the sentence has been completed. In such cases, the receiving State shall make every effort to have the prisoner arrested so that he serves the remainder of his sentence and take necessary action under its relevant law. (2) The receiving State shall furnish a special report concerning the enforcement of the sentence, if so required by the transferring State. Article 14

14. Transit

If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such arrangements, except that it may refuse to grant transit to any sentenced person who is one of its own nationals. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit. Article 15

15. Costs

Any costs incurred in the application of this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, seek to recover all or part of the costs of transfer from the sentenced person or from some other source. Article 16

16. Language

Requests and supporting documents shall be accompanied by a translation into the language of the requested State or into English. Article 17

17. Scope of Application

This Agreement shall be applicable to the enforcement of sentences imposed either before or after the entry into force of this Agreement. Article 18

18. Amendments

Any amendments or modifications to this Agreement, agreed by the Contracting States shall come into effect following the same procedure as applicable for entry into force of the Agreement itself. Article 19

19. Settlement of disputes

Any dispute regarding the interpretation and application of this agreement shall be resolved mutually by the Central authorities through diplomatic channels. Article 20

20. Final Provisions

(1) This Agreement shall be subject to ratification and shall enter into force on the date on which instruments of Ratification are exchanged. (2) The Agreement shall continue to remain in force until six months from the date upon which either Contracting State gives written notice to the other Contracting State of its intention to terminate it. (3) Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of prisoners who have been transferred under this Agreement before the date on which such termination takes effect. In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement. Done in duplicate at New Delhi on 9th July 2010 corresponding to 18th Tir 1389 of the Iranian Hijri-Shamsi calendar, in Hindi, Persian and English languages, the three texts being equally authentic. In case of differences in interpretation, the English text shall prevail.

Sd/-For the Republic of India Minister
of External Affairs Shri S.M. Krishna

Sd/-For the Islamic Republic of Iran Minister of Economic
Affairs & Finance H.E. Dr. Seyed Shamseddin Hosseini