

Agreement between the Government of the Republic of India and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on Transfer of Sentenced Persons

UNION OF INDIA

India

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AGREEMENT-BETWEEN-THE-GOVERNMENT-OF-THE-REPUBLIC-OF-INDIA-AND-THE-GOVERNMENT-OF-THE-HONG-KONG-SPECIAL-ADMINISTRATIVE-REGION-OF-THE-PEOPLE'S-REPUBLIC-OF-CHINA-ON-TRANSFER-OF-SENTENCED-PERSONS-2015

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Agreement between the Government of the Republic of India and the Government of the Hong Kong Special Administrative Region of the People's Republic of China on Transfer of Sentenced Persons Published vide Notification No. G.S.R. 758(E), dated 1st October, 2015 Ministry of Home Affairs (CS Division) G.S.R. 758(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 having ratified the Agreement on the 11th March, 2015, hereby directs that the provisions of the said Act shall apply to the Hong Kong Special Administrative Region of the People's Republic of China with effect from the 1st July, 2015, and notifies the full text of the treaty entered into between the Government of the Republic of India and Hong Kong Special Administrative Region of the People's Republic of China for the transfer of prisoners between that country and India as follows, namely :- The Government of the Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong Special Administrative Region") having been duly authorised to conclude this Agreement by the Central People's Government of the People's Republic of China, and the Government of the Republic of India (hereinafter referred to as "the Contracting Parties"); Desiring to facilitate the social rehabilitation of sentenced persons; and Considering that this objective should be fulfilled by giving sentenced persons, who have been convicted and sentenced as a result of their

commission of criminal offences, the opportunity to serve their sentences within their own society; Have agreed as follows:

Article 1 Definitions For the purposes of this Agreement: (a) "judgement" means a decision or order of a court or tribunal imposing a sentence; (b) "receiving Party" means the Contracting Party 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 tribunal 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 a judgement passed by any court or tribunal established under the law for the time being in force in the Contracting Parties; (e) "transferring Party" means the Contracting Party in which the sentence was imposed on the sentenced person who may be, or has been, transferred.

Article 2 General Principles (1) A person sentenced in the Jurisdiction of one Contracting Party may be transferred to the jurisdiction of the other Contracting Party in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. (2) A request for transfer may be made by the transferring Party or the receiving Party to the other Party. A sentenced person may express to the transferring Party or the receiving Party his willingness to be transferred under this Agreement by making an application for transfer to that Party. The application for transfer may be made by sentenced person or by any other person who is entitled to act on his behalf in accordance with the law of the Contracting Party to which the application is made. The application shall be made in accordance with the law of the Contracting Party and in the manner prescribed by the Government authorities of that Contracting Party.

Article 3 Conditions for Transfer (1) A sentenced person may be transferred under this Agreement only on the following conditions: (a) where the Hong Kong Special Administrative Region is the receiving Party the sentenced person is a permanent resident of the Hong Kong Special Administrative Region as defined in Article 24 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China; (b) where the Republic of India is the receiving Party the sentenced person is a national of the Republic of India; (c) the death penalty has not been imposed on the sentenced person or, if imposed, has been commuted; (d) the judgement is final; (e) no inquiry, trial or any other criminal proceeding is pending against the sentenced person in the transferring Party; (f) the acts or omissions for which that person was sentenced in the transferring Party constitute an offence under the law of the receiving Party or would constitute an offence according to the law of the receiving Party if it had been committed on its jurisdiction; (g) at the time of receipt of the request for transfer, the sentenced person still has at least one year of the sentence to serve or is undergoing a sentence of life imprisonment; (h) the sentenced person has not been convicted for an offence under the military law where the Republic of India is the transferring party; (i) the transfer of the sentenced person is not prejudicial to, in the case of the Hong Kong Special Administrative Region, the sovereignty, security or any other interest of the People's Republic of China, and, in the case of the Republic of India, the sovereignty, security or any other interest of the Republic of India; (j) consent to the transfer has been given by the sentenced person, or, where in view of his age or physical or mental condition either Contracting Party considers it necessary, consent may be given by any other person entitled to act on his behalf in accordance with the law of that Contracting Party; and (k) the transferring and receiving Parties agree to the transfer. (2) In exceptional cases, the transferring Party and receiving Party may agree to a transfer even if the remaining period to be served by the sentenced person is less than one year.

Article 4 Obligation to Furnish Information (1) If the sentenced person has expressed an interest in being transferred under

this Agreement, the transferring Party shall send the following information and documents to the receiving Party unless either the receiving Party or the transferring Party has already decided that it will not agree to the transfer: (a) the name, nationality and residence status, date and place of birth of the sentenced person; (b) his address, if any, in the receiving Party; (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 judgement and a copy of the relevant provisions or statement 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 nature of his confinement; (g) any other information which the receiving Party may specify as required 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 application for Transfer by the sentenced person or by a person entitled to act on his behalf in accordance with the law of the Contracting Party to which the application is made; and (i) the termination date of the sentence, if applicable, and 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 Party shall send the following information and documents to the transferring Party unless either the receiving Party or the transferring Party has already decided that it will not agree to the transfer: (a) a statement or document indicating that the sentenced person is a permanent resident of the Hong Kong Special Administrative Region where the Hong Kong Special Administrative Region is the receiving Party or a national of the Republic of India where the Republic of India is the receiving Party; (b) a copy of the relevant provisions or statement of the law of the receiving Party under which the acts or omissions on account of which the sentence has been passed in the transferring Party constitute an offence under the law of the receiving Party or would constitute an offence if committed on its Jurisdiction; (c) a statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the receiving Party after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 2 of Article 9 of this Agreement on his transfer; (d) the willingness of the receiving Party 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 Party may consider necessary.

Article 5 Central Authorities and Channels of Communication (1) For the purpose of this Agreement, the Central Authority for the Hong Kong Special Administrative Region shall be the Secretary for Justice or an officer authorised by him and, for the Republic of India, it shall be the Ministry of Home Affairs. Either Contracting Party may change its Central Authority after notifying the other Contracting Party of the change. (2) Request for transfer shall be made in writing and forwarded by the Central Authority of the requesting Party to the Central Authority of the requested Party. (3) The requested Party shall promptly inform the requesting Party of its decision whether or not to agree to the requested transfer. (4) The Central Authorities shall communicate with each other either directly or through the Consulate General of the Republic of India in the Hong Kong Special Administrative Region.

Article 6 Consent and its Verification (1) The transferring Party shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(j) 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 Party. (2) The transferring Party shall afford an opportunity to the receiving Party to

verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

Article 7 **Handing Over of Sentenced Person** The handing over of the sentenced person by the competent authorities of the transferring Party to those of the receiving Party shall occur on a date and at a place to be agreed upon between the Contracting Parties.

Article 8 **Effect of Transfer for the Receiving Party** (1) The competent authorities of the receiving Party shall continue the enforcement of the sentence through a court or administrative order, as may be required under its domestic law, under the conditions set out in Article 9 of this Agreement. (2) Subject to the provisions of Articles 10 and 11 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving Party and that Party alone shall be competent to take all appropriate decisions in this regard.

Article 9 **Continued Enforcement of Sentence** (1) Subject to paragraph 2 of this Article and Article 13 of this Agreement, the receiving Party shall be bound by the legal nature and duration of sentence as determined by the transferring Party. (2) If the sentence is by its nature or duration, or both, incompatible with the law of the receiving Party, that Party may, with the prior consent of the transferring Party, by court or administrative order, adapt the sentence to a sentence prescribed by its own law for a similar offence. As to its nature and duration, the adapted sentence shall, as far as possible, correspond with that imposed by the judgement of the transferring Party. It shall, however, not aggravate, by its nature or duration, the sentence imposed by the transferring Party.

Article 10 **Pardon, Amnesty or Commutation of Sentence** Either of the Contracting Parties may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.

Article 11 **Review of Judgement** The transferring Party alone shall decide on any application for the review of the judgement.

Article 12 **Effect of Completion of Sentence for the Transferring Party** When the receiving Party notifies the transferring Party under paragraph 1(a) of Article 14 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging the sentence in the transferring Party.

Article 13 **Modification or Termination of Enforcement of Sentence** The receiving Party shall modify or terminate enforcement of the sentence as soon as it is informed by the transferring Party of any decision or measure taken in accordance with the provisions of this Agreement as a result of which the sentence is reduced or ceases to be enforceable.

Article 14 **Information on Enforcement of Sentence** (1) The receiving Party shall notify the transferring Party: (a) when the enforcement of the sentence has been completed; or (b) if the sentenced person escapes from custody before enforcement of the sentence has been completed. In such cases the receiving Party shall make every effort to have the sentenced person arrested so that the sentenced person serves the remainder of his sentence, and that he may be prosecuted for committing an offence under the law of the receiving Party for unlawful escape from custody. (2) The receiving Party shall furnish a report concerning the enforcement of the sentence, if so required by the transferring Party.

Article 15 **Transit** (1) If either Contracting Party has arrangements for the transfer of sentenced persons with any third party or state, the other Contracting Party shall co-operate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such arrangements. (2) The Contracting Party intending to make such a transfer shall give advance notice to the other Contracting Party of such transit. (3) A Contracting Party may refuse to permit transit if in the case of the Hong Kong Special Administrative Region, the sentenced person is a permanent resident of the Hong Kong Special Administrative Region or, in the case of the Republic of India, the sentenced person is a national of the Republic of India. (4) A Contracting Party may also refuse to permit transit if the transit is prejudicial to, in the case of the Hong Kong Special Administrative Region, the sovereignty, security or any other interest of the People's

Republic of China, and, in the case of the Republic of India, the sovereignty, security or any other interest of the Republic of India. Article 16 Language Requests and supporting documents shall be in English, or shall be accompanied by a translation into English. Article 17 Costs Any costs incurred in the application of this Agreement shall be borne by the receiving Party, except for costs incurred exclusively in the jurisdiction of the transferring Party. The receiving Party may, however, seek to recover all or part of the costs of transfer from the sentenced person or from some other source. Article 18 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 19 Settlement of Disputes (1) The Central Authorities shall endeavour to mutually resolve any dispute arising out of the interpretation, application or implementation of this Agreement. (2) If the Central Authorities are unable to resolve the dispute mutually, it shall be resolved through diplomatic channels. Article 20 Amendments Any amendments to this Agreement agreed by the Contracting Parties shall come into effect in the same manner as for the entry into force of this Agreement. Article 21 Final Provisions (1) Each Contracting Party shall notify the other Contracting Party in writing as soon as possible upon completion of its internal procedures required for entry into force of this Agreement. This Agreement shall enter into force on the first day of the second month following the date of the second notification. (2) This Agreement shall continue to remain in force for an indefinite period. It may, however, be terminated by either of the Contracting Parties by giving written notice to the other Contracting Party of its intention to terminate it. Notwithstanding such notice, this Agreement shall continue to remain in force until six months from the date of such notice. (3) Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of sentenced persons who have been transferred under this Agreement before the date on which such termination takes effect. In witness whereof, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement. Done in duplicate at . Hong Kong, on the 20th day of January Two thousand and Fifteen in the Chinese, English and Hindi languages, all texts being equally authentic. In case of divergence in interpretation, the English text shall prevail. {| -| For the Government of the Republic of India || For the Government of the Hong Kong Special Administrative Region of the People's Republic of China -| Sd/-Prashant Agrawal Consul General of India | Sd/-Lai Tung-Kwok Secretary for Security | }