

Agreement Between the Republic of India and Federal Republic of Brazil on the Transfer of Sentenced Persons

UNION OF INDIA

India

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AGREEMENT-BETWEEN-THE-REPUBLIC-OF-INDIA-AND-FEDERAL-REPUBLIC-OF-BRAZIL-ON-THE-TRANSFER-OF-SENTENCED-PERSONS-2019

- Published on 2 April 2019
- Commenced on 2 April 2019
- [This is the version of this document from 2 April 2019.]
- [Note: The original publication document is not available and this content could not be verified.]

Agreement Between the Republic of India and Federal Republic of Brazil on the Transfer of Sentenced Persons Published vide Notification No. G.S.R.282(E), dated 2.4.2019 Ministry of Home Affairs (Women Safety Division) G.S.R.282(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 Federal Republic of Brazil. The full text of the Agreement on Transfer of Sentenced Persons signed by the Republic of India and the Federal Republic of Brazil on 15.10.2013 is given below. The Agreement was ratified by the Republic of India on 1.1.2014 and by Federal Republic of Brazil on 24.10.2018. The Instruments of Ratification were exchanged on 24.1.2019. The Republic of India and the Federative Republic of Brazil hereinafter referred to as the Contracting States; Desiring to facilitate the social rehabilitation of sentenced persons into their own countries; and 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; 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 tribunal 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 tribunal for a determinate period of

time, in the exercise of its criminal jurisdiction;(d)"Sentenced person" means a person who is serving a definitive and enforceable sentence in the transferring State under a judgment passed by a criminal court 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)The States agree to maintain highest possible mutual cooperation in all matters related to the transfer to sentenced persons pursuant to the terms and provisions of this Agreement;(2)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 and to that end, may express to the transferring State or to the receiving State his or her wish to be transferred under the terms of this Agreement;(3)Transfer may be requested by any sentenced person who is a national of a Contracting State or by any other person who is entitled to act on his behalf in accordance with the law of the Contracting State(s).Article 3

3. Conditions for Transfer.

(1)A sentenced person may be transferred under this Agreement only on the following conditions:(a)the sentenced person is a national of the receiving State;(b)the death penalty has not been imposed on the sentenced person;(c)the judgment is final;(d)no inquiry, trial or any other proceeding is pending against the sentenced person in the transferring State;(e)at the time of receipt of the request for transfer, the sentenced person still has at least one year of the sentence to serve;(f)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;(g)the sentenced person has not been convicted for an offence under the military law;(h)transfer of custody of the sentenced person to the receiving State shall not be prejudicial to the sovereignty, security or any other interest of the transferring State;(i)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(j)Both the transferring and the receiving State 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 one year.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, the transferring 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 or his relative(s) 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 nature of 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 written 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)Documents presented by the Contracting States pursuant to the provision of this Agreement shall be exempt from Consular Authentication.(3)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 which provides that 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 offense 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 after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 2 of Article 8 of this Agreement on his transfer;(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.

4. The convicted person shall be informed of any decision made by the Contracting States.

Article 5

5. The Central Authorities.

(1)Requests for transfer shall be made in writing in the prescribed proforma, if any, 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 the Republic of India, the Ministry of Home Affairs; and in relation to the Federative Republic of Brazil, 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.Article 6

6. Consent and its Verification.

(1)The transferring State shall ensure that the person is 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. 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 8 of this Agreement.(2)A Sentenced person who has been transferred under the provisions of this Agreement shall not be arrested or put on trial or sentenced by the receiving State for the same offence for which he has already been sentenced in the transferring State.(3)Subject to the provisions of Article 10 & 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 8

8. 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.Article 9

9. Physical Transfer & Costs.

(1)Upon approval of the transfer of the sentenced person, the transferring State shall handover the sentenced person to the Receiving State on the date and venue agreed upon by the competent authorities of the Contracting States.(2)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 10

10. Pardon, Amnesty or Commutation and Review of Judgment.

(1)The transferring State alone shall decide on any application for review of the judgment.(2)Only the transferring State may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.Article 11

11. Termination of Enforcement of Sentence.

(1)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.(2)On being notified of any change in the sentence, the receiving State shall immediately adopt the necessary measures to put them into effect.Article 12

12. 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.(2)The receiving State shall furnish a special report concerning the enforcement of the sentence, if so required by the transferring State.Article 13

13. Effect of Completion of Sentence for the Transferring State.

When the receiving State notifies the transferring State under paragraph 1(a) of Article 12 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging that sentence in the transferring State.Article 14

14. Transit.

(1)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.(2)The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit.(3)The advance notice as mentioned in 14(2) above, for transit of sentenced persons will not be necessary, in case of an unforeseen landing in the territory of the transit State, except in the case of military aircraft.(4)The transit State may or may not permit the passage of the sentenced person through its territory, and so inform the other Contracting State.Article 15

15. Language.

Requests and supporting documents shall be accompanied by a translation into the language or one of the official languages of the requesting State. For the Federative Republic of Brazil, the official language shall be Portuguese and for the Republic of India, it shall be English.Article 16

16. 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 17

17. Settlement of Disputes.

Any dispute between the Contracting States regarding the interpretation of the provisions set forth in this Agreement shall be settled by means of negotiations between the respective Central Authorities. In case of not reaching an agreement, the dispute shall be resolved through diplomatic channels. Article 18

18. Amendments.

Any amendments or modifications to this Agreement agreed to by the Contracting States shall come into force in the same manner as the Agreement itself. Article 19

19. Final Provisions.

(1) This Agreement shall be subject to ratification and shall enter into force thirty days after the date on which instruments of ratification are exchanged. (2) The Agreement shall remain in force for an indefinite period. It may, however, be terminated by either of the Contracting State by giving a written notice of termination. The termination shall take effect six months after 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 authorized thereto by their respective Governments, have signed this Agreement. Done in duplicate at Brasilia on this 15th day of October of the two thousand and thirteen in the Hindi, Portuguese and English languages, all texts being equally authentic.

For the Republic of India For the Federative Republic of Brazil