

Agreement between the Government of the Republic of India and the Government of the Republic of France on the Transfer of Sentenced Person

UNION OF INDIA

India

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AGREEMENT-BETWEEN-THE-GOVERNMENT-OF-THE-REPUBLIC-OF-INDIA-AND-THE-GOVERNMENT-OF-THE-REPUBLIC-OF-FRANCE-ON-THE-TRANSFER-OF-SENTENCED-PERSON-2008

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Agreement between the Government of the Republic of India and the Government of the Republic of France on the Transfer of Sentenced Person Published vide Notification No. G.S.R. 406(E), 28th May, 2008 Ministry of Home Affairs (C.S. Division) G.S.R. 406(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 Republic of France and notifies the text of the agreement entered into between the Government of the Republic of India and the Government of the Republic of France as follows, namely :- The Government of the Republic of India and the Government of the Republic of France 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 Definitions For the purpose of this Agreement: (a) "Judgment" means a judicial decision or order imposing a sentence. (b) "sentence" means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a limited or unlimited period of time in the exercise of its criminal jurisdiction. For the implementation of the present Agreement, the expression "sentence" shall also cover final judicial decisions or orders of a court or a tribunal imposing capital punishment which have been subsequently commuted in the transferring State by amnesty or pardon into a sentence involving deprivation of liberty for a limited or unlimited period

of time;(c) "sentenced person" means a person undergoing a sentence of imprisonment under a decision or order passed by a criminal court or tribunal;(d) "receiving State" means the State to which the sentenced person may be, or has been, transferred in order to serve his sentence;(e) "transferring State" means the State in which the sentence was imposed on the person who may be, or has been transferred.Article 2General 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 or her. To that end, the sentenced person may express to the transferring State or the receiving State his or her willingness to be transferred under this Agreement.

2. Transfer may be requested either by the transferring State or the receiving State. The official request for transfer is sent to the requested State by the requesting State. If the sentenced person expresses his or her willingness to be transferred to the transferring State and if that State has a prescribed procedure, the application will be made according to the said procedure. The said application may also be made by any other person who is entitled to act on his behalf in accordance with the law of the transferring State.

Article 3Conditions 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 no inquiry, trial or other criminal proceedings are pending against the sentenced person in the transferring State;(c)at the time of receipt of the request for transfer, the remainder of the sentence to be served is at least six months.(d)the enforceable sentence involves deprivation of liberty and not death penalty.(e)that the acts or omissions for which that person was sentenced are those which are punishable as a criminal offence in the receiving State, or would constitute a criminal offence if committed on its territory.(f)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;(g)consent to the transfer is given by the sentenced person or, where in view of his or her age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his or her behalf in accordance with the law of the Transferring State; and(h)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 Obligation to furnish information

1. Any sentenced person to whom this Agreement may apply shall be informed by the transferring State of the substance of this Agreement.

2. For the purpose of enabling a decision to be made on a request under this Agreement, the transferring State shall send the following information and documents to the receiving State:

(a) the name and nationality, date and place of birth of the sentenced person; (b) his or her 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) whenever appropriate, any medical or social report of the sentenced person, information about his or her treatment in the transferring State, and any recommendation for his or her further treatment in the receiving State; (g) any other information which the receiving state may specify as being necessary in a given case 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 or her under its law. (h) the request of the sentenced person to be transferred or a declaration from him or her or, where in view of his or her age or physical or mental condition either Contracting State considers it necessary, any other person entitled to act on his or her behalf in accordance with the law of the transferring State, attesting his or her consent, 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.

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 establishing that the acts or omissions for which the sentenced person was sentenced in the transferring state are punishable as a criminal offence in the receiving state, or would constitute a criminal 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 or her transfer; (d) the statement of the willingness of the receiving State to accept the transfer of the

sentenced person and to administer the remaining part of the sentence of the sentenced person under the provisions of this Agreement;(e)any other information or document which the transferring State may consider necessary.Article 5Requests 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 the France, 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 6Consent and its verification

1. The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(g) of Article 3 of this Agreement, does so voluntarily and with to 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 7Effect 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. Subject to the provisions of Article 10 and 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 Continued enforcement of sentence

1. The receiving State shall be bound by the legal nature and duration of the sentence as determined in the transferring State.

2. If, however, the sentence is by its nature or duration 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 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, the sentence shall cease to be enforceable in the transferring State. Article 10 Review of Judgment The transferring State alone shall decide on any application for review of the judgment. Article 11 Pardon, amnesty or commutation Either of the contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws. Article 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 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 sentenced person escapes from custody before enforcement of the sentence has been completed. In such cases the receiving State shall make every effort to have the sentenced person arrested so that he or she serves the remainder of his or her sentence, in addition to the criminal offence committed under the relevant law of the receiving State on escape from prison.

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

Article 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 an arrangement.

2. The State intending to make such a transfer shall give advance notice to the other State. This notification shall convey any necessary information, including information allowing the application of the following paragraph.

3. The State over whose territory the transfer is to be made may refuse to grant transit if the sentenced person is one of its nationals or if the offence for which the sentence was imposed is not an offence under its own law;

4. The State requested to grant transit may hold the sentenced person in custody for the period of time that is strictly necessary for the transit on its territory;

5. No request for transit is required where air transportation is being utilized over the territory of a State and if no landing is scheduled. However, the State which makes the transit shall inform the State over whose territory the flight is to be made.

Article 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 Language Requests and supporting documents shall be accompanied by a translation into the language or one of the official languages of the requested State. Article 17 Temporal 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 Final provisions

1. This Agreement shall be subject to ratification. Each Contracting State shall notify the other as soon as possible, in writing, through diplomatic channels, upon the completion of its constitutional procedures required to allow this Agreement to come into force.

This Agreement shall come into force on the first day of the second month following the date of the second notification.

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 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 New Delhi on the 25th day of January 2008, in Hindi, English and French languages, the three texts being equally authentic.

For the Government of the Republic of India :

For the Government of the Republic of
France :