

# **Agreement Between the Government of Republic of India and the Government of Republic of Korea on the Transfer of Sentenced Persons**

TREATY

India

## **Agreement Between the Government of Republic of India and the Government of Republic of Korea on the Transfer of Sentenced Persons**

### **Rule**

### **AGREEMENT-BETWEEN-THE-GOVERNMENT-OF-REPUBLIC-OF-INDIA of 2010**

- Published on 5 May 2010
- Commenced on 5 May 2010
- [This is the version of this document from 5 May 2010.]
- [Note: The original publication document is not available and this content could not be verified.]

Agreement Between the Government of Republic of India and the Government of Republic of Korea on the Transfer of Sentenced Persons Published vide Notification New Delhi, the 5th May, 2010 Ministry of Home Affairs (CS Division) G.S.R. 381(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 Republic of Korea and notifies the text of the treaty entered into between the Government of the Republic of India and the Government of Republic of Korea as follows, namely :- The Government of the Republic of India and the Government of the Republic of Korea 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 (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 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 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 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. The transfer of sentenced person may be requested by either of the Contracting states to the other, on receipt of such expression of willingness for transfer from the sentenced person.**

Article 3 Conditions 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 death penalty has not been imposed on the sentenced person; (c) the judgment is final; (d) any accompanying penalties including fine have been complied with; (e) no inquiry, trial or any other criminal proceeding is pending against the sentenced person in the transferring State; (f) 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; (g) that the acts or omissions for which that person was sentenced in the transferring State are those which would constitute a criminal offence in the receiving State; (h) the sentenced person has not been convicted for an offence under the military law; (i) 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; (j) 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 writing, in accordance with the law of the Contracting State; and (k) 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. If the sentenced person has expressed an interest to the transferring 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, 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 expression of interest 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 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.

**3. In case the sentenced person has expressed an interest for transfer to the receiving State, it shall inform the transferring state accordingly, which shall thereon act in accordance with the provisions of Article 4(1).**

Article 5Requests And Replies

**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 Republic of India, the Ministry of Home Affairs; and in relation to the Republic of Korea, 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 Consent & 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 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. Subject to the provisions of Article 10 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 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 Effect of Transfer/completion of Sentence For Transferring State

**1. The taking into charge of the sentenced person by the authorities of the Receiving State shall have the effect of discontinuing the enforcement of the sentence by the authorities in the Transferring State.**

**2. The Transferring State shall not enforce the sentence if the Receiving State considers enforcement of the sentence to have been completed.**

**3. 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 10 Pardon, Amnesty or Commutation And Review of Judgment

**1. The transferring State alone shall decide on any application for the review of the judgment.**

**2. Either of the Contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.**

Article 11 Termination of Enforcement of Sentence The receiving State shall modify or 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 is reduced or ceases to be enforceable. Article 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 and that the prisoner be prosecuted for committing an offence under the relevant law of the receiving State on escape of prisoner.

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

Article 13 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 14 Handing Over of Sentenced Person Delivery of the sentenced person by the authorities of the transferring State to those of the receiving State shall occur on a date, time and at a place within the jurisdiction of the transferring State as may be agreed upon by both the States. 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 in English or shall be accompanied by a translation into English or the official language of the other Contracting State. Article 17 Settlement of Disputes Any dispute arising out of the interpretation, application, or implementation of this Agreement shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach agreement. 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 Amendments Any amendments or modifications to this Agreement agreed by the Contracting States shall come into effect when confirmed by an exchange of diplomatic notes. Article 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 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, 2010, in the Hindi, Korean and English languages, all texts being equally authentic. In case of differences in interpretation, the English text shall prevail.

For the Government of the Republic of India

Sd/-

(S.M. Krishna)

Minister of External Affairs

For the Government of the Republic of  
Korea

Sd/-

(Yu Myung-hwan)

Minister of Foreign Affairs and Trade.