

# **Agreement between the Government of the Republic of India and the Government of the Arab Republic of Egypt on the Transfer of Sentenced Persons**

TREATY

India

## **Agreement between the Government of the Republic of India and the Government of the Arab Republic of Egypt on the Transfer of Sentenced Persons**

### **Rule**

### **AGREEMENT-BETWEEN-THE-GOVERNMENT-OF-THE-REPUBLIC-OF-INDIA-AND-THE-GOVERNMENT-OF-THE-ARAB-REPUBLIC-OF-EGYPT-ON-THE-TRANSFER-OF-SENTENCED-PERSONS-2008**

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Agreement between the Government of the Republic of India and the Government of the Arab Republic of Egypt on the Transfer of Sentenced Persons Published vide Notification No. G.S.R. 377(E), dated 14th May, 2008 Ministry of Home Affairs (CS Division) G.S.R. 377(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 the Arab Republic of Egypt and notifies the text of the agreement entered into between India and the Egypt as follows, namely :- The Government of the Republic of India and the Government of the Arab Republic of Egypt, hereinafter referred to as the Contracting States; Desiring to facilitate the social rehabilitation of sentenced persons into their own countries; and Believing that in order to achieve the above mentioned goals it is necessary to give to persons who committed criminal offences and were sentenced to deprivation of liberty the opportunity to serve their sentence in the State of their Citizenship. 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 state" means the State to which the convicted offender 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 judgement for a limited or unlimited period of time on account of a criminal offence; (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 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 Obligations

**1. The Contracting States shall mutually undertake to afford each other, according to the provisions of this Agreement, the widest measure of cooperation in respect of the transfer of sentenced persons to the State of their Citizenship in order to serve the remaining part of their sentences.**

**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. To that end, he may express to the transferring State or the receiving State his willingness to be transferred under this Agreement.**

**3. Transfer may be requested either by the transferring State or the receiving State.**

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) 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 six months of the sentence to serve or the sentence is indeterminate; (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) the 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 according to the laws of the Contracting States; and (j) 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 sentencing State in being transferred under this Agreement, the transferring State shall send the following information and documents to the receiving State, as soon as practicable after the judgement becomes final, unless either the receiving State 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 judgement 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 regarding the antecedents and character of 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/her 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;(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 act or omission as the offence, on account of which the sentence has been passed in the transferring State as if such act or omission was an offence under the law of the receiving State or would constitute a criminal offence if committed on its territory;(c)a statement of fact, or any law or regulation relating to the duration and enforcement of the sentence of the sentenced person in the receiving State upon his transfer including, if applicable, a statement of the effect of Article 9 (2) on the sentenced person;(d)the willingness of the receiving State to accept the transfer of sentenced person and an undertaking to administer the remaining part of the sentence of sentenced person;(e)any other information or document which the transferring State may consider necessary.

**3. The sentenced person may be informed in writing of any decision taken on the request for transfer by either State.**

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 transferring State through diplomatic channels to the Central Authority of the receiving 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 Arab Republic of Egypt it shall be the "Department of International cooperation, Ministry of Justice".**

**3. The receiving State shall promptly inform the transferring 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 to provide any explanation.**

#### Article 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 above.**

#### Article 7 Handing over of Sentenced Persons

**1. 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 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 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 conditions set out in Article 9.**

**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 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 laws of the receiving State, or its laws so require, it 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 judgement 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 in the transferring State and shall not be detained for those acts or omissions except in accordance with this Agreement.**

Article 10 Effect of Completion of Sentence for the Transferring State

**1. The taking into charge of the sentenced person by the authorities of the receiving State shall have the effect of suspending the enforcement of the sentence in the transferring State.**

**2. The transferring State may no longer enforce the sentence if the receiving State considers enforcement of the sentence to have been completed.**

Article 11 Pardon, Amnesty or Commutation

**1. Unless both the contracting states otherwise agree, the transferring State alone 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 review of the judgement.**

Article 12 Termination of Enforcement

**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.**

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 take the 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 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 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 an advance notice to the other Contracting State of such transit.**

Article 15 Costs

**1. Any cost 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 cost of transfer from the sentenced person or from some other**

**source.**

Article 16Language

**1. Requests and supporting documents shall be accompanied by a translation into the language of the receiving State or into English.**

Article 17Temporal Application

**1. This Agreement shall be applicable to the enforcement of sentences imposed either before or after its entry into force.**

Article 18Amendments

**1. 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 19Settlement of Disputes

**1. Any dispute regarding the interpretation and application of this Agreement shall be resolved mutually by the Central Authorities through diplomatic channels.**

Article 20Final 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 present Agreement shall continue to remain in force until six months from the date on which either Contracting State gives written notice to the other Contracting State of its intention to terminate it.**

**3. This agreement shall, however, continue to apply to the sentenced persons who have been transferred in conformity with its provisions before the date of its termination.**

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement. Done in duplicate at Egypt on the 8th day of January, 2008, in the Hindi, Arabic and English languages, all texts being equally authentic. In case of differences in

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interpretation the English text shall prevail.