

Treaty Between The Republic of India and The Russian Federation on Transfer of Sentenced Persons

TREATY

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TREATY-BETWEEN-THE-REPUBLIC-OF-INDIA-AND-THE-RUSSIAN-FEDERATION OF 2015

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Treaty Between The Republic of India and The Russian Federation on Transfer of Sentenced Persons Published vide Notification No. G.S.R. 404(E), dated 22nd April, 2015 G.S.R. 404(E). - In exercise of the powers conferred by sub-sections d(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 01st January, 2014, hereby directs that the provisions of the said Act shall apply to the Russian Federation with effect from the 21st March, 2015, and notifies the full text of the treaty entered into between the Government of the Republic of India and the Russian Federation for the transfer of prisoners between that country and India as follows, namely :-The Republic of India and The Russian Federation, hereinafter referred to as the "Contracting States", Aspiring to facilitate the process of social rehabilitation of sentenced persons, Considering that this objective should be fulfilled by giving foreign nationals, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences in their country of nationality; Hereby have agreed as follows: Article 1 Scope of the Treaty

1. The Contracting States shall, in accordance with the terms and conditions of this Treaty, provide each other with the widest measure of assistance in matters related to transfer of sentenced persons.

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 Treaty in order to serve the sentence imposed. For that end such person or his/her legal representative may apply to either Transferring State or Receiving State for his/her transfer in accordance with the provisions of this Treaty.

3. The request for transfer may be submitted by either Transferring State or Receiving State.

Article 2 Definitions For the purposes of this Treaty, the following terms shall mean: (1) "judgement" - a final court decision imposing sentence for a crime committed. The term "judgement" shall also include final court decisions imposing death penalty, later substituted for a fixed term of deprivation of liberty or for life imprisonment in Transferring State; (2) "sentence" - any punishment including deprivation of liberty, imposed by judgement of criminal court; (3) "sentenced person" - a person serving a sentence in the form of deprivation of liberty, imposed by a judgement of criminal court; (4) "Transferring State" - a State, The court of which has sentenced a person that may be transferred or has been transferred; (5) "Receiving State" - a State, to which the sentenced person may be transferred or has been transferred in order to serve the sentence. Article 3 Conditions for Transfer

1. A sentenced person may be transferred under this Treaty only on the following conditions:

(1) the sentenced person is a national of the Receiving State; (2) the judgement is final, and there are no proceedings pending in respect of this person; (3) at the time of receipt of request for transfer, the part of sentence to be served by the sentenced person is not less than six months. In exceptional cases, the Contracting States may agree on transfer if the remaining term of sentence is less than that specified above; (4) there is a written consent by the sentenced person for his/her transfer for execution of sentence in the territory of the Receiving State and in case of his/her inability to freely express his/her will due to age, physical or mental condition - a written consent by his/her legal representative. The Transferring State shall provide a consular officer or any other official of the Receiving State with an opportunity to verify that the consent for transfer or rejection thereof was given voluntarily and with understanding of legal consequences of such transfer; (5) the crime for which the sentence was imposed are punishable by deprivation of liberty according to criminal laws of the Receiving State; (6) Transferring State and Receiving State have clearly given their consent for transfer.

2. The transfer may be rejected if:

(1) the Transferring State considers that transfer of the person would impair its sovereignty, security, public order or other essential interests; (2) the sentenced person cannot be transferred according to

the law of either of the Contracting States;(3)the sentenced person has not fulfilled any financial obligations arising from a court judgement, or if, in the opinion of Transferring State, the guarantees of fulfilment of such obligations are insufficient;(4)the death sentence has been imposed on the sentenced person;(5)the sentence cannot be executed in the Receiving State due to reasons stipulated in the laws of such State.Article 4Central Authorities

1. The Central Authorities in charge of the implementation of this Treaty are:

For the Republic of India - Ministry of Home Affairs of the Republic of India.For the Russian Federation - Ministry of Justice of the Russian Federation.

2. When implementing this Treaty, the Central Authorities shall communicate directly.

3. The Contracting State shall immediately notify the other Contracting State of any changes connected with its respective Central Authority through diplomatic channels.

Article 5Obligation to Provide Information

1. Any sentenced person to whom this Treaty may be applied shall be informed by the Transferring State of the contents of this Treaty as well as of legal consequences of such transfer.

2. If the sentenced person applies to the Transferring State for his/her transfer, that State shall promptly inform the Receiving State.

3. Such notice shall include:

(1)surname, name (patronymic), date and place of birth, nationality of the sentenced person;(2)information about permanent place of residence of the sentenced person in the Receiving state, if known;(3)a statement of the facts, upon which the sentence was based;(4)the nature, duration and date of commencement of the sentence;(5)a certified copy of the judgement;(6)the text of applicable provisions of the criminal laws;(7)report of the medical condition of the sentenced person and other relevant information.

4. If the sentenced person applies to the Receiving State for transfer pursuant to the provisions hereof, the Transferring State shall provide the Receiving State on request with the information specified in paragraph 3 of this Article.

5. The sentenced person shall be informed in writing of any action taken by the Receiving State or by the Transferring State under the preceding paragraphs as well as of any decision taken by either of The Contracting States on request for transfer.

Article 6 Requests and Responses

1. Requests for transfer and responses to them shall be made in writing and forwarded to the Central Authorities appointed in accordance with this Treaty.

2. The Requested State shall promptly inform the Requesting State of its decision to accept or reject the request of transfer.

3. The request shall contain information about the sentenced person (surname, name (patronymic), date and place of birth), and shall be accompanied by the documents indicating the nationality of the sentenced person and his/her permanent place of residence.

4. The Central Authority of the Transferring State shall also accompany the request with:

(1)certified copies of the judgement and all relevant court decisions and a document confirming that the judgement has become final;(2)the document pertaining to enforcement of the judgement including the part of sentence served in the form of deprivation of liberty and the part of sentence to be served as well as the document indicating sentenced person's behaviour while serving the sentence;(3)the text of provisions of the criminal law on account of which the person was sentenced;(4)a written consent of the sentenced person for his/her transfer for execution of a sentence in the territory of the Receiving State and in case of his/her inability to freely express his/her will due to age, physical or mental condition - a written consent of his/her legal representative;(5)The document indicating the financial implications imposed by the judgement on the sentenced persons;(6)A report on the medical condition of the sentenced person and on the ability of the sentenced person to be transferred to the territory of the Receiving State.

5. The Central Authority of the Receiving State in case of agreeing to the transfer request, may provide the following information:-

(1)a written consent to receive the sentenced person to serve the remaining sentence;(2)authenticated copy of decision by the court or any other Competent Authority regarding applicable laws relating to the duration and enforcement of sentence in the Receiving State after the sentenced persons transfer;(3)certified extracts from the laws on the basis of which the sentenced

person will serve the sentence;(4)a document confirming the nationality of the sentenced person.

6. If necessary, the Central Authorities of the Contracting States may request any additional documents or information.

Article 7ExpensesExpenses incurred in the transfer of the sentenced person, including the expenses on transit, shall be borne by the Receiving State, except expenses incurred in the territory of the Transferring State.Article 8Procedure of Transfer

1. The Central Authority of either Contracting State after receipt of all necessary documents shall promptly inform the Central Authority of the other Contracting State of its consent/rejection to transfer or receive the sentenced person, subject to the terms and conditions of this Treaty.

2. Place, time and procedure of transfer of the sentenced person shall promptly be determined by the Central Authorities of the Contracting States.

Article 9Enforcement of Sentence

1. The Receiving State shall ensure the continuing of enforcement of sentence in accordance with its laws and is bound by the legal nature and duration of the sentence as determined by the Transferring State.

2. The court or any other competent authority of the Receiving State, on the basis of the judgement of the Transferring State, shall, subject to and in accordance with the laws of its State, impose the same term of imprisonment as far as possible as that imposed in the judgement and shall not aggravate the sentence.

If, according to the laws of the Receiving State, the maximum term of imprisonment for the crime committed is less than that imposed by the judgement, the court or any other competent authority of the Receiving State shall impose the maximum term of imprisonment provided for by the laws of the Receiving State for committing the same crime.

3. The part of the sentence served in the territory of the Transferring State shall be deducted from the total term of the sentence.

4. Decision on enforcing any other punishment along with deprivation of liberty imposed by the judgement shall be taken by the court or any other competent authority of the Receiving State, if such punishment for the crime

committed is provided for by the laws of such State.

Article 10 Pardon, Amnesty, Commutation of Sentence and Review of Judgement

- 1. Either of the Contracting States may grant pardon, amnesty or commutation of sentence in accordance with its Constitution or other laws.**
- 2. Only the Transferring State shall have the jurisdiction to decide an appeal or review of the judgement.**

Article 11 Non bis in idem After transfer, the sentenced person shall not be prosecuted or proceeded against in Receiving State for the Same Criminal acts as the ones on account of which the sentence was imposed in the Transferring State. Article 12 Modification and Termination of Enforcement of Sentence

- 1. The Transferring State shall promptly notify the Receiving State of any decision which entail modification or termination of the enforcement of sentence.**
- 2. The Receiving State shall terminate enforcement of the sentence or part thereof as soon as it is informed by the Transferring State of any relevant decision.**

Article 13 Revision and Remission of Judgement

- 1. If, after the transfer of the sentenced person for serving the sentence, the judgement is revised by the court of the Transferring State, a copy of the judgement and other necessary documents shall be promptly submitted to the Central Authority of the Receiving State. The Receiving State shall resolve the issue of enforcing such decision as specified in Article 9 of this Treaty.**
- 2. If, after the transfer of the sentenced person for serving the sentence, the sentence is remitted in the Transferring state, a copy of the decision shall be promptly submitted to the Central Authority of the Receiving State.**

Article 14 Exchange of Information

- 1. The Central Authority of the Receiving State shall inform the Central Authority of the Transferring State of the decision taken by a court or competent authority in order to enforce the sentence, of granting pardon, amnesty or parole and in case of escape or death of the sentenced person.**
- 2. The Central Authority of the Receiving State on request of the Central Authority of the Transferring State shall provide information on the process of serving the sentence after the sentenced person's transfer.**
- 3. The Receiving State shall also inform the Transferring State when the enforcement of the sentence has been completed.**

Article 15 Transit

1. A Contracting State shall in accordance with its law satisfy a request for transit of a sentenced person through its territory if such request is made by the other Contracting State, which has agreed with a third State to the transfer of that person.

2. A Contracting State may refuse to permit transit if:

(1) the sentenced person is its national; (2) the crime for which the sentence was imposed is not considered as such under its law. (3) The request for transit shall include the information specified in Paragraph 3 of Article 6 and shall be accompanied by the documents specified in Paragraph 1 and subparagraphs "1" and "3" of Paragraph 4 of Article 6 of this Treaty.

4. The Contracting State requested to permit transit may hold the sentenced person in custody only for such time as transit through its territory requires.

5. A request for transit is not required if such transit is carried out by air and no landing in the territory of the other Contracting State is expected. However, that Contracting State has to be notified of any such transit over its territory.

Article 16 Languages The request and supporting documents, notifications and information shall be in the language of the requesting Contracting State and shall be accompanied with translation into the language of the requested Contracting State or into the English language and shall not be subject to legalization. Article 17 Temporal Application This Treaty shall be applicable to enforcement of sentences imposed both before and after its entry into force. Article 18 Settlement of Disputes Any disputes, arising between the Contracting States regarding interpretation and implementation of

this Treaty, shall be settled through consultations and negotiations by the Central Authorities of the Contracting States. Article 19 Amendments to the Treaty This Treaty may be amended by mutual consensus of the Contracting States. Article 20 Final Provisions

- 1. This Treaty shall remain in force for an indefinite period of time. The Treaty becomes binding upon expiry of 30 days from the date of receipt of the last written notice from the Contracting States through diplomatic channels on completion of all internal procedures as required for its commencement.**
- 2. This Treaty terminates upon expiry of 180 days from the date upon which either Contracting State gives written notice to the other Contracting State of its intention to terminate it through diplomatic channels.**
- 3. The termination of this Treaty shall not impede finalization of requests for transfer, received prior to the date of termination.**
- 4. Notwithstanding any termination, the provisions of this treaty shall continue to apply to persons who have already been transferred in accordance with this Treaty.**

Done in Moscow this 21st day of October 2013 in duplicate, each in English, Hindi and Russian languages, all texts being equally authentic. In case of discrepancies in interpretation, the English text shall prevail. For the Republic of India For the Russian Federation