

Agreement Between the Government of the Republic of India and the Government of the State of Kuwait on Transfer of Sentenced Persons

TREATY

India

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AGREEMENT-BETWEEN-THE-GOVERNMENT-OF-THE-REPUBLIC-OF-India of 2015

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Agreement Between the Government of the Republic of India and the Government of the State of Kuwait on Transfer of Sentenced Persons Published vide Notification No. G.S.R. 578(E) dated 22nd July, 2015 Ministry of Home Affairs (CS Division) G.S.R. 578(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 having ratified the Agreement entered into between the Government of the Republic of India and the Government of the State of Kuwait on the 7th January, 2014, hereby directs that the provisions of the said Act shall apply to the State of Kuwait with effect from the 3rd April, 2015, and notifies the full text of the Agreement entered into between the Government of the Republic of India and the State of Kuwait for the transfer of prisoners between that country and India as follows, namely :- The Government of the Republic of India and the Government of the State of Kuwait hereinafter referred to as the "Contracting States", Desiring to facilitate the social rehabilitation of the sentenced persons into their own countries; and Considering that this objective should be fulfilled by giving citizens/ nationals of the Contracting States, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences in their own society; Have agreed as follows: Article 1 Definitions For the purpose of this Agreement: (a) "judgement" means a decision or order of a court or tribunal imposing a sentence; (b) "Administering State" means a State to which the sentenced person may be, or has been, transferred in order to serve his sentence or remainder thereof; (c) "Transferring State" means the State in which the sentence was imposed on the person who may be, or has been transferred. (d) "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;(e) "sentenced person" means a person undergoing a sentence of imprisonment under a judgement passed by a criminal court including the courts established under the law for the time being in force in the Contracting States;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. To that end, he may express to the Transferring State or the Administering State his willingness to be transferred under this Agreement.

2. Transfer may be requested by any sentenced person who is a national/ citizen of the Administering State or by any other person who is entitled to act on his behalf by making an application in the manner prescribed.

3. Subject to the provisions of this Agreement, a request for transfer may also be made by the Sentencing State or the Administering State subject to the condition that the consent of the sentenced person has been obtained before a request for transfer is made.

Article 3Central Authorities

1. Authorities in charge of the implementation of this Agreement for the Contracting States are:

- For the Republic of India: Ministry of Home Affairs.- For the State of Kuwait: International Relations Department, Ministry of Justice.

2. In case either Contracting State changes its competent authorities, it shall notify the other State of the same through diplomatic channels.

Article 4Conditions For Transfer

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

(a)the person is a national of the Administering State;(b)the death penalty has not been imposed on the sentenced person;(c)the judgement is final and executable;(d)no criminal proceedings are pending against the sentenced person in the Transferring State in which his presence is required;(e)the sentenced person has not been convicted for an offence under the military law;(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 are punishable as a crime in the Administering State, or would constitute a criminal offence if committed on its territory;(h)transfer of custody of the sentenced person to the Administering State shall not be prejudicial to the sovereignty, security or any other essential 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)the Transferring and Administering States agree to the transfer.

2. In exceptional cases, the Transferring and Administering States may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months.

Article 5Obligation 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 Administering State unless either the Administering 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 and his address, if any, in the Administering State along with a copy of his passport or any other personal identification documents, and fingerprints of the sentenced person, as possible;(b)a statement of the facts upon which the sentence was based;(c)the nature, duration and date of commencement of the sentence;(d)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;(e)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;(f)any other information which the Administering State may specify as required, 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;(g)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; and(h)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.(i)a statement from the Transferring State agreeing to the transfer of the sentenced person.

2. For the purposes of enabling a decision to be made on a request under this Agreement, the Administering 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 citizen/ national of the Administering State; (b) a copy of the relevant law of the Administering State which provides that the acts or omissions on account of which the sentence has been imposed in the Transferring State constitutes a criminal offence according to the law of the Administering 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 Administering State after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 2 of Article 9 of this Agreement on his transfer; (d) the willingness of the Administering 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.

Article 6 Requests and Replies

1. Requests for transfer shall be made in writing in the prescribed proforma, if any, and addressed by the Central authority of the Transferring State through diplomatic channels to the Central Authority of the Administering State. Replies shall be communicated through the same channel.

2. The Administering State shall promptly inform the Transferring State of its decision whether or not to agree to the requested transfer.

Article 7 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 4 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 Administering State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

Article 8 Effect of Transfer for the Administering State

1. The competent authorities of the Administering 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 9 of this Agreement.

2. Subject to the provisions of Article 11 of this Agreement, the enforcement of the sentence shall be governed by the law of the Administering State and that State alone shall be competent to take all appropriate decisions.

Article 9 Continued Enforcement Of Sentence

1. The Administering State shall be bound by the legal nature and duration of the sentence as determined by the Transferring State.

2. If the sentence is by its nature or duration, or both, incompatible with the law of the Administering State, that State may, with the prior consent of the Transferring State, by court or administrative order, adapt the sentence to a sentence prescribed by its own law for a similar offence. As to its nature and duration, the adapted sentence 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 by the Transferring State.

Article 10 Effect of Completion of Sentence for the Transferring State When the Administering State notifies the Transferring State under paragraph 1(a) of Article 13 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging the sentence in the Transferring State. Article 11 Review of Judgement and Pardon, Amnesty or Commutation

1. The Transferring State alone shall decide on any application for review of the judgement.

2. 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

1. The Transferring State shall promptly notify the Administering State of any decisions taken in its territory which entails terminating the enforcement of the sentence or part thereof.

2. The Administering State shall terminate enforcement of the sentence or part thereof 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 Administering 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 Administering State shall take measures to secure his arrest for the purposes of serving the remainder of his sentence and to render him liable for committing an offence under the relevant law of the Administering State.

2. The Administering 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 arrangements, except that it may refuse to grant transit

(a) if the sentenced person is one of its own citizen/nationals. (b) if the request may infringe upon the sovereignty, safety, public order or any other essential interest of the Contracting State.

2. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit.

Article 15 Costs Any costs incurred in the application of this Agreement shall be borne by the Administering State, except costs incurred exclusively in the territory of the Transferring State. The Administering State may, however, demand or 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. Article 17 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 18 Settlement of Disputes (1) The Central Authorities shall endeavour to mutually resolve any dispute arising out of the interpretation, application or implementation of this Agreement. (2) If the Central Authorities are unable to resolve the dispute mutually, it shall be resolved through diplomatic channels. Article 19 Handing over of Sentenced Persons The handing over of the transferred person by the Transferring State to the Administering State shall occur at a place to be agreed upon between the Transferring and Administering State. The Administering State shall be responsible for the transport of the prisoner

Agreement Between the Government of the Republic of India and the Government of the State of Kuwait on Transfer of Sentenced Persons from the Transferring State and shall also be responsible for custody of the sentenced person outside the territory of the Transferring State. Article 20 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 21 Final Provisions

1. This Agreement shall be subject to ratification in accordance with the Constitutional procedures in force in both Contracting States. It shall become effective after thirty (30) days from the date of last notification by which either Contracting State shall inform the other Contracting State in writing, through diplomatic channels, that all the necessary legal procedures for entry into force of the Agreement have been completed.

2. This Agreement shall continue to remain valid after it enters into force in accordance with paragraph 1 of this Article, unless either Contracting State gives the other a written notice, through the diplomatic channels, of its intention to terminate it. Such termination shall be effective after six (6) months from the date of notice.

3. Notwithstanding any termination, this Agreement shall continue to apply to the enforcement of sentences of prisoner who have been transferred under this Agreement before the date on which such termination takes effect.

Done at New Delhi on this Eight (8th) day of November 2013 in two originals, each in Hindi, Arabic 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/- (Sushil Kumar
Shinde) Minister of Home Affairs

For the Government of the State of Kuwait Sd/- (Sabah
Khaled Al-Hamad Al-Sabah) Deputy Prime Minister and
Minister of Foreign Affairs