

Agreement on Transfer of Sentenced Persons Between The Government of The Republic of India And The Government of The United Arab Emirates

TREATY

India

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Rule

AGREEMENT-ON-TRANSFER-OF-SENTENCED-PERSONS-BETWEEN- of 2012

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Agreement on Transfer of Sentenced Persons Between The Government of The Republic of India And The Government of The United Arab Emirates Published vide Notification New Delhi, the 1st February, 2012 Ministry of Home Affairs (CS Division) G.S.R. 58(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 United Arab Emirates and notifies the text of the treaty entered into between the Government of the Republic of India and the Government of the United Arab Emirates 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 United Arab Emirates (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 citizens of Contracting States, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve the sentence within their own society Article 1

1. Definitions

(a) "judgment" 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; (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 criminal court including the courts established under the law for the time being in force in the Sentencing State;(e)"Sentencing State" means the State in which the sentence was imposed on the person who may be, or has been transferred.Article 2

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 Sentencing 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 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 3

3. Condition for Transfer

A sentenced person may be transferred under this Agreement only 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 judgment is final and executable,(d)no inquiry, trial or any other proceeding is pending against the sentenced person in the Sentencing 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 is undergoing a sentence of life imprisonment, unless otherwise agreed mutually between the Contracting States,(f)that the acts or omissions for which that person was sentenced in the-Sentencing State are those which are punishable as a crime in the Administering 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 Administering State shall not be prejudicial to the sovereignty, security or any other interest of the Sentencing 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 that Contracting State, and(j)the Sentencing and Administering States agree to the transferArticle 4

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 Sentencing State shall send the following information and documents to the Administering State unless either the Administering or the Sentencing 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 Administering 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 or any other report concerning the sentenced person, if necessary, and any information regarding the treatment he has been Administering in the Sentencing State and any recommendation in respect of which such treatment is followed in the Administering State, where it is relevant for the disposal of his application or for deciding the nature of his confinement,(g)any other information which the Administering 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 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 Sentencing 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 Administering State shall send the following information and documents to the Sentencing State unless either the Administering or the Sentencing 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 Administering State,(b)a copy of the relevant, law of the Administering State constituting the acts or omissions, on account of which the sentence has been passed in the Sentencing State, ,as if such acts or omissions were an offence under the law of the Administering 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 Administering 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 Administrator Sate to accept the transfer of the sentenced person and an undertaking to administrator the remaining part of the sentence of the sentence person and,(e)any other information or document which the Sentence Sate may consider necessary.Article 5

5. Requests and Replies

(1)Requests for transfer shall be made in writing in the prescribed proforma and supporting document if any and addressed by the central authority 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)Transfer requests and supporting documents shall be accompanied by a translation in the official language of the requested Contracting State or in English.(3)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 India to the UAE shall be Ministry of Justice.(4)The requested state shall promptly inform the requesting State of its decision whether or not to agree to the requested transfer.Article 6

6. Consent and its Verification

(1)The Sentencing State shall ensure, that the person required to give consent to the transfer in accordance with paragraph (i) of Article 3 of this agreement, does so voluntarily and with full

knowledge of the legal consequences thereof. The procedure forgiving such consent shall be governed by the law of the Sentencing State:(2)The Sentencing 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 7

7. 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 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 Administering State and that State alone shall be competent to take all appropriate decisions.Article 8

8. Continued Enforcement of Sentence

(1)The Administering State shall be bound by the legal nature and duration of the sentence as determined by the Sentencing State.(2)if, however, the sentence is by its nature or duration or both incompatible with the law of the Administering 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 Sentencing State it shall however not aggravate, by its nature or duration, the sentence imposed in the Sentencing State.Article 9

9. Effect of Completion of Sentence for the Sentencing State

When the Administering State notifies the Sentencing 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 Sentencing State.Article 10

10. Pardon, Amnesty or Commutation and Review of Judgment

(1)The Sentencing 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 and with the consent of the Sentencing State.Article 11

11. Termination of Enforcement of Sentence

The Administering State shall terminate enforcement of the sentence as soon as it is informed by the Sentencing State of any decision or measure as a result of which the sentence ceases to be enforceable.Article 12

12. Information on Enforcement of Sentence

(1)The Administering State shall notify the Sentencing 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 Administering 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 Administering State on escape of prisoner(2)The Administering State shall furnish a special report concerning the enforcement of the sentence, if so required by the Sentencing StateArticle 13

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

14. 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 Sentencing State. The Administering State may, however, seek to recover all or part of the costs of transfer from the sentenced person or from some other source.Article 15

15. Settlement of Conflicts:

Any conflict regarding the interpretation or execution of this Agreement shall be settled by discussions between both Contracting States through diplomatic channels.Article 16

16. 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 17

17. Amendments

This Agreement may be amended or revised as deemed necessary by mutual written consent of the Contracting States 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 18

18. Entry into Force and Termination

(1) This Agreement shall enter into force on the date of the last notification where one Party informs the other Party through diplomatic channels of the completion of its internal procedures necessary for its entry into force. (2) Either Party may at any time terminate this Agreement by giving six months advance written notice to the other Party indicating its intention to terminate the Agreement. (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. The undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement. Done at New Delhi on 23 November 2011 in two originals each in Hindi, Arabic and English languages, All the three texts being authentic, in the case of any divergence in interpretation, the English text shall prevail.

Government of the Republic of
India

Sd/-

(P. Chidambaram) Minister of
Home Affairs

Government of the United Arab Emirates

Sd/-

(Lt. Gen. Saif Bin Zayed Al Nahyan) Deputy Prime Minister and
Minister of interior