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**Italy
and
India**

Agreement between the Government of the Republic of Italy and the Government of the Republic of India on the transfer of sentenced persons. Rome, 10 August 2012

Entry into force: *1 April 2013, in accordance with article 20*

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**Italie
et
Inde**

Accord entre le Gouvernement de la République italienne et le Gouvernement de la République de l'Inde relatif au transfert des personnes condamnées. Rome, 10 août 2012

Entrée en vigueur : *1^{er} avril 2013, conformément à l'article 20*

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**Agreement between the Government of the Republic of India and
the Government of the Republic of Italy on the Transfer of
Sentenced Persons**

The Government of the Republic of India and the Government of the Republic of Italy, hereinafter referred to as “The Contracting States”,

DESIRING to develop their cooperation on the transfer of sentenced persons in order to facilitate their social rehabilitation;

HAVE AGREED as follows:

Article 1

Definitions

For the purpose of this Agreement:

- a) “sentence” shall be any punishment or measure involving deprivation of personal liberty ordered by a court for the commitment of a criminal offence for a determinate period of time or for life imprisonment;
- b) “judgment” shall be a decision of a court imposing a sentence;
- c) “Transferring State” shall be the State in which the sentence was imposed on the person who may be, or has been, transferred;
- d) “sentenced person” means a person undergoing a sentence of imprisonment under a judgement passed by a criminal court;
- e) “Receiving State” shall be the State to which the sentenced person may be, or has been, transferred in order to serve his sentence or remainder thereof.

Article 2

General principles

- 1) A person sentenced in the territory of one Contracting State may be transferred to the territory of the other, 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 or the Receiving State his willingness to be transferred under this Agreement.
- 2) Transfer may be requested by either the Transferring or the Receiving State.
- 3) Transfer may also be requested by any sentenced person who is a national of a Contracting State or by any other person who is entitled to act on his behalf in accordance with the law of the Contracting State.

- 4) The present Agreement shall not apply if the sentenced person has been convicted for an offence under the military law.

Article 3

Central Authorities

- 1) Requests for transfer shall be sent through the Central Authorities of the Contracting States.
- 2) The Central Authority for the Government of the Republic of India shall be the Ministry of Home Affairs. The Central Authority for the Government of the Republic of Italy shall be the Ministero della Giustizia - Dipartimento per gli Affari di Giustizia - Direzione Generale della Giustizia Penale (Ministry of Justice - Department for Justice Affairs - Directorate General for Criminal Justice).
- 3) In case a Contracting State changes its Central Authorities, it shall notify the other through diplomatic channels.

Article 4

Conditions for transfer

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

- a) the sentenced person is a national of the Receiving State;
- b) the judgment is final;
- c) no criminal proceedings are pending against the sentenced person in the Transferring State in which his presence is required.
- d) at the time of receipt of the request for transfer, the sentence still to be served by the sentenced person is at least one year;
- e) the transfer is consented to by the sentenced person or, where in view of his/her age or physical or mental condition, by any other person entitled to act on his behalf;
- f) the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the Receiving State or would constitute a criminal offence if committed on its territory; and
- g) the Transferring and Receiving States agree to the transfer.

Article 5

Obligation to provide information

Any sentenced person to whom this Agreement may apply shall be informed by the Transferring State of the substance of this Agreement and of the legal consequences of transfer.

Article 6

Request and supporting documents

- 1) Any sentenced person may request to be transferred under this Agreement submitting a written request to the authorities of either the Transferring or Receiving State.
- 2) If the request is submitted by the sentenced person to the Receiving State that State shall transmit it to the Transferring State.
- 3) The Transferring State shall transmit to the Receiving State the following:
 - a) in case the request is submitted to the Transferring State, a copy of that request;
 - b) name, date and place of birth and address in the Receiving State, if any, of the sentenced person, along with a copy of his passport or any other personal identification documents and fingerprints, as possible;
 - c) information on the nature, duration and date of commencement of the sentence;
 - d) a statement of the facts upon which the sentence was based;
 - e) a certified true copy of the final judgment;
 - f) a copy of the law provisions on which the sentence is based;
 - g) a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission of sentence or any other relevant element to the enforcement of the sentence;
 - h) whenever appropriate, any medical or social report on the sentenced person, any information on his/her treatment in the Transferring State and any recommendation for continuing his/her treatment in the Receiving State.
 - i) a statement from the Transferring State agreeing to the transfer of the sentenced person.
- 4) For the purpose 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 which provides that the acts or omissions on account of which the sentence has been imposed in the Transferring State constitute a criminal offence according to the law of the Receiving 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 Receiving State after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 3 of Article 9 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 still to be served;
 - e) any other information or document which the Transferring State may consider necessary.
- 5) Any request and any reply shall be made in writing and addressed to the Central Authorities of the Contracting States.

Article 7

Consent and its verification

- 1) The Transferring State shall ensure that the person required to give consent to the transfer 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) If the Receiving State makes express request, before the transfer is carried out, the Transferring State shall grant the other an opportunity to verify, through an official appointed in compliance with the law of the Receiving State, that the consent of the sentenced person is given voluntarily and with full knowledge of the legal consequences thereof.

Article 8

Decision

The authorities of the Contracting States, before deciding on the transfer of a sentenced person in compliance with the aims of this Agreement, in order to favour and facilitate the social rehabilitation of the convicted person shall consider, among other factors, the sovereignty, security and any other essential interest of the State, as well as the seriousness of the offence committed, any previous conviction, the social and family bonds with the environment of origin and health conditions.

Article 9

Continued enforcement of sentence

- 1) Save as provided under Article 11 of this Agreement, the Authorities of the Receiving State shall continue to enforce the sentence complying with the nature and duration of the sentence inflicted by the judgment of the Transferring State.
- 2) 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.
- 3) If the sentence is by its nature or duration or both, incompatible with the law of the Receiving State, that State may, with the prior consent of the Transferring State, 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.