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**Spain
and
India**

Agreement between the Kingdom of Spain and the Republic of India on the transfer of sentenced persons. Madrid, 30 May 2017

Entry into force: *23 May 2018, in accordance with article 21*

Authentic texts: *English, Hindi and Spanish*

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**Espagne
et
Inde**

Accord entre le Royaume d'Espagne et la République de l'Inde relatif au transfert des personnes condamnées. Madrid, 30 mai 2017

Entrée en vigueur : *23 mai 2018, conformément à l'article 21*

Textes authentiques : *anglais, hindi et espagnol*

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**AGREEMENT BETWEEN
THE KINGDOM OF SPAIN AND THE REPUBLIC OF INDIA
ON THE TRANSFER OF SENTENCED PERSONS**

The Kingdom of Spain and the Republic of India and 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 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 own society;

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this Agreement:

- (a) “judgment” means a decision or order of a court or tribunal imposing a sentence;
- (b) “receiving 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) “sentence” means any punishment or measure involving deprivation of liberty ordered by a court or tribunal in the exercise of its criminal jurisdiction;
- (d) “sentenced person” means a person undergoing a sentence of imprisonment under a judgment passed by a criminal court including the courts established under the law for the time being in force in the 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 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 receiving State his willingness to be transferred under this Agreement.
2. Transfer may 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 by making an application to the Contracting State and in the manner prescribed by the Government of that Contracting State.

ARTICLE 3

Central 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 Kingdom of Spain: 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 4

Conditions for transfer

1. A sentenced person may be transferred under this Agreement on the following conditions:
 - (a) the person is a national of the receiving State;
 - (b) the death penalty has not been imposed on the sentenced person except in the case where the sentence has been commuted;
 - (c) the judgment is final;
 - (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 except in circumstances where the Contracting States agree otherwise;
 - (f) at the time of receipt of the request for transfer, the sentenced person still has at least one year of the sentence to serve;
 - (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 receiving State, or would constitute a criminal offence if committed on its territory;
 - (h) transfer of custody of the sentenced person to the receiving State shall not be to the detriment of 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 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 specified in paragraph 1 (f).