

Treaty on Extradition Between the Republic of India and the Republic of Belarus

UNION OF INDIA

India

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Rule

TREATY-ON-EXTRADITION-BETWEEN-THE-REPUBLIC-OF-INDIA-AND of 2008

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Treaty on Extradition Between the Republic of India and the Republic of BelarusPublished vide Notification No. G.S.R. 602(E), 19th August, 2008Ministry of External AffairsG.S.R. 602(E). - Whereas the Extradition Treaty between the Republic of India and the Republic of Belarus was signed at New Delhi on 16th April, 2007; and the exchange of the Instrument of Ratification of the Treaty took place at Minsk on 17th April, 2008 and has entered into force from 17th April, 2008 in terms of Article 21, and which Treaty provides as follows :The Republic of India and the Republic of Belarus, hereinafter referred to as the 'Parties';Desirous of making more effective the corporation of the two countries in the suppression of crime by making further provision for the reciprocal extradition offenders;Recognising that concrete steps are necessary to combat crime including terrorism;Have agreed as follows :Article 1Duty to ExtraditeThe Parties agree to extradite to each other, pursuant to the provisions of this Treaty, any person, who is accused or charged with or convicted of any extraditable offence, by the competent authorities of the Requesting Party, whether such offence was committed before or after the entry into force of this Treaty, as well as if it is committed in a third State by a national of the Requesting Party and the Requesting Party bases its jurisdiction on the nationality of the offender.Article 2Competent AuthorityThe competent authority for the Republic of India shall be the Ministry of External Affairs and for the Republic of Belarus shall be the Prosecutor's Office.Article 3Extradition Offences

1. An extradition offence for the purposes of this Treat is constituted by conduct, which under the laws of each Party is punishable by a term of imprisonment for a period of at least one year.

2. A person who has been convicted of an extradition offence may be extradited if he was sentenced to imprisonment or other form of detention for a period of six months or more.

3. An offence may be an extradition offence notwithstanding that it relates to taxation or revenue or is one of purely fiscal character.

Article 4 Composite Offences Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested Party, if this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence under the laws of both the Contracting Parties. Article 5 The Political Offence Exception

1. Extradition may be refused if the offence of which it is requested is an offence of a political character.

2. For the purpose of this Treaty the following offences shall not be regarded as offences of a political character:

(a) offences provided under international treaties/conventions to which both countries are parties; (b) murder; (c) manslaughter or culpable homicide; (d) assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm whether by means of a weapon, a dangerous substance or otherwise; (e) the causing of an explosion likely to endanger life or cause serious damage to property; (f) the making or possession of an explosive substance by a person who intends either himself or through another person to endanger life or cause serious damage to property; (g) the possession of a firearm or ammunition by a person who intends either himself or through another persons to endanger life; (h) the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person; (i) damaging property whether used for public utilities or otherwise with intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered; (j) kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage; (k) incitement to murder; (l) any other offence related to terrorism which at the time of the request is, under the law of the Requested Party, not to be regarded as an offence of a political character; (m) an attempt or conspiracy to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence. Article 6 Grounds for Refusal of Extradition

1. A person may not be extradited it:

(a) he is a national/citizen of the Requested Party; (b) according to the legislation of the Requested Party, the person sought to be extradited has become immune from the criminal prosecution or carrying out of a sentence by reason of lapse of time; (c) the accusation against him not having been made in good faith in the interests of justice; (d) the offence of which he is accused or convicted is a

military offence which is not also an offence under the general criminal law;(e)the grant of extradition is contrary to the laws of the Requested Party.

2. A person may not be extradited if he would, if proceeded against in the territory of the Requested Party for the offence for which his extradition is requested, be entitled to be discharged under any rule of law of the Requested Party relating to previous acquittal or conviction.

3. The request for extradition may be refused by the Requested Party if the person whose extradition is sought may be tried for the extradition offence in the courts of the Requested Party.

Article 7Obligation to prosecute

1. Where the Requested Party refuses a request for extradition for the reason set out in paragraph 3 of Article 6 of this Treaty, it shall submit the case to its competent authorities for prosecution.

2. If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

Article 8Consequences of non-extradition of own citizensIf according to paragraph 1(a) of Article 6 of this Treaty, extradition is refused, the Requested Party shall initiate criminal prosecution against such person for the same offence according to its laws. For this the Requesting Party shall transfer to the Requested Party the relevant documents and evidence.Article 9Postponement of extradition and temporary extradition

1. If the person sought to be extradited is being prosecuted or serving his sentence for another offence in the territory of the Requested Party, the extradition may be postponed till the completion of proceedings, completion of sentence or his release, which shall be advised to the Requesting Party.

2. If the postponement of extradition may cause lapse of time or impede the investigation, the person can be temporarily extradited at the request of the Requesting Party.

3. The temporarily extradited person must be returned to the Requested Party immediately after the end of the proceedings of the case.

Article 10Extradition Procedures

1. The request for extradition under this Treaty shall be made in writing through the diplomatic channels or the competent authorities.

2. The request shall be accompanied by :

(a) as accurate a description as possible of the person sought, together with any other information which would help to establish his identity, nationality and residence; (b) a statement of the facts of the offence for which extradition is requested including information about the nature and size of damage caused by the offence for which extradition is requested; and (c) the text, if any, of the law : (i) defining that offence; and (ii) prescribing the punishment for that offence.

3. If the request relates to an accused person, it must also be accompanied by a warrant of arrest issued by a judge, magistrate or other competent authority in the territory of the Requesting Party and by such evidence as, according to the law of the Requested Party, would justify his committal for trial if the offence had been committed in the territory of the Requested Party, including evidence that the person requested is the person to whom the warrant of arrest refers.

4. If the request relates to a person already convicted and sentenced, it shall also be accompanied:

(a) by a certificate of the conviction and sentence; (b) by a statement that the person is not entitled to question the conviction or sentence and showing how much of the sentence has not been carried out.

5. In relation to a convicted person who was not present at his trial, the person shall be treated for the purposes of paragraph 4 of this Article as if he had been accused of the offence of which he was convicted.

6. If the Requested Party considers that the evidence that the evidence produced or Information supplied for the purposes of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within such time as the Requested Party shall require.

7. Upon receipt of the request for extradition, the Requested Party shall, in accordance with its laws and the provisions of this Treaty, take urgent measures for arrest of the person sought.

Article 11 Provisional Arrest

- 1. In urgent cases the person sought may, in accordance with the law of the Requested Party, be provisionally arrested on the application of the competent authorities of the Requesting Party, made either through diplomatic channels or the National Central Bureau of International Criminal Police Organization - INTERPOL. The application shall contain an indication of intention to request the extradition of that person and statement of the existence of a warrant of arrest or a conviction against him, and, if available, his description and such further information, if any, as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought been convicted, in the territory of the Requested Party.**
- 2. The Requested Party shall inform without delay the Requesting Party about such provisional arrest.**
- 3. A person arrested upon such an application shall be set at liberty upon the expiration of 60 days from the date of his arrest if request for his extradition shall not have been received. This provision shall not prevent the institution of further proceedings for the extradition of the person sought if a request is subsequently received.**

Article 12 Rule of Speciality

- 1. The extradited person may not without consent of the Requested Party, be prosecuted or punished in the Requesting Party for the offence other than that for which extradition has been granted and any lesser offence disclosed by the fact proved for the purposes of securing his extradition, nor may such a person, without consent of the Requested Party, be extradited to a third State.**
- 2. The consent of the Requested Party is not required if the extradited person :**
 - (a) has not left though had the opportunity, the territory of the Requesting Party within 45 days after termination of the criminal prosecution, serving of the sentence or release on any legal ground. Such period shall not be deemed to include the period of time during which the extradited person is unable to leave the territory of the Requesting Party for reason beyond his control;
 - (b) once having left the territory of the Requesting Party, voluntarily returns there

3. The provisions of paragraph 1 of this Article shall not apply to offences committed after the return of the person to the Requesting Party or matters arising in relation to such offences.

Article 13 Recognition of Documents and Evidence

1. The authorities of the Requested Party shall admit in any proceedings for extradition, any evidence and related documents taken on oath or by way of affirmation, any warrant and any certificate of, or judicial document stating the fact of, a conviction, if it is authenticated:

(a)(i) in the case of a warrant being signed, or in the case of any original document by being certified, by a judge, magistrate or other competent authority of the Requesting Party; and (ii) either by oath of some witness or by being sealed with the official seal of the appropriate Minister of the Requesting Party; or (b) in such other manner as may be permitted by the law of the Requesting Party.

2. The evidence described in paragraph 1 of this Article shall be admissible in extradition proceedings in the Requested Party whether sworn or affirmed in the Requesting Party or in some third Party.

3. Documents considered as public in the territory of one Party shall have the evidential force of public documents also in the territory of the other Party.

Article 14 Competing Requests If extradition of the same person whether for the same offence or for different offences is requested by a Contracting Party and a third Party with which the Requested Party has an extradition arrangement, the Requested Party shall determine to which Party the person shall be extradited, and shall not be obliged to give preference to the Contracting Party.

Article 15 Capital Punishment If under the law of the Requesting Party the person sought is liable to the death penalty for the offence for which his extradition is requested, but the law of the Requested Party does not provide for the death penalty in a similar case, extradition may be refused unless the Requesting Party gives such assurance as the Requested Party considers sufficient that the death penalty will not be carried out.

Article 16 Surrender

1. If extradition is granted, the Requested Party shall notify the Requesting Party of the time and place of delivery of the extradited person.

2. The Requesting Party shall remove the person sought from the territory of the Requested Party within 45 days or such longer period, which may not exceed 60 days. If he is not removed within that period, the Requested Party may refuse to extradite him for the same offence and release the person.

Article 17 Surrender of Property

- 1. When a request for extradition is granted, the Requested Party shall, upon request and so far as its law allows, seize and hand over to the Requesting Party articles (including sums of money) which may serve as proof or evidence of the offence.**
- 2. The articles mentioned in paragraph 1 of this Article shall also be delivered in case the extradition of a person cannot be carried out owing to his death, escape or other reasons.**
- 3. If the articles mentioned in paragraph 1 of this Article are needed in the territory of the Requested Party in connection with pending criminal proceedings, their transfer may be postponed till the completion of the proceedings or they shall be handed over on the condition that they will be returned.**
- 4. These provisions shall not prejudice the right of the Requested Party or any person other than the person sought. When these rights exist the articles shall be returned to the Requested Party without charge as soon as possible after the end of the proceedings.**

Article 18 Expenses

- 1. Expenses incurred in the territory of the Requested Party by reason of the request for extradition shall be borne by that Party.**
- 2. The expenses incurred by reason of transit of the extradited person shall be borne by the Requesting Party.**

Article 19 Languages While complying with this Treaty, the Parties shall use their national language attaching the translation in the national language of the other Party or in the English

language. Article 20 Obligations under International Conventions/Treaties The present Treaty shall not affect the rights and obligations of the Parties arising from International Conventions/Treaties to which they are Parties. Article 21 Ratification and Termination

- 1. This Treaty shall be subject to ratification and shall enter into force on the date of the exchange of instruments of ratification.**

2. Either Party may terminate this Treaty at any time by given a written notice to the other Party through the diplomatic channel of its intention to terminate the Treaty and the same shall cease to have effect six months after the receipt of the notice by the other Party.

In witness whereof, the undersigned being duly authorized, have signed this Treaty. Done at New Delhi on the 16th day of April 2007, in two originals, each in Hindi, Russian and English, all languages being equally authentic. In case of any divergence of interpretation, the English text shall prevail. Now, therefore, in exercise of the powers conferred by sub-section 1 of the Section 3 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to the Republic of Belarus from the dated of the publication of this notification.