

Extradition Treaty between the Republic of India and the State of Kuwait

TREATY

India

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EXTRADITION-TREATY-BETWEEN-THE-REPUBLIC-OF-INDIA-AND-THE-STATE-OF-KUWAIT-2007

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Extradition Treaty between the Republic of India and the State of KuwaitPublished vide Notification No. G.S.R. 634(E), dated 26th September, 2007G.S.R. 634(E). - Whereas the Extradition Treaty between the Republic of India and the State of Kuwait was signed at New Delhi on 25th August, 2004; and the Treaty has entered into force from 7th August, 2007 in terms of Article 24 on receipt of information from the State of Kuwait regarding the completion of legal procedure for the entry into force of the Treaty, and which Treaty provides as follows :The Government of the Republic of India and the Government of the State of Kuwait and, hereinafter referred to as the "Contracting Parties",Being desirous to promote the bonds of fruitful cooperation between the Contracting Parties;Recognising that concrete steps are necessary to combat terrorism and other crimes.Determined to make more effective the cooperation between the Contracting Parties in combating crime by entering into an extradition treaty;Have agreed as follows:-Article 1The Contracting Parties shall extradite any person found in their respective territories who is accused or convicted of an extraditable offence in the territory of the other Contracting Party, in accordance with the rules and stipulations contained in the subsequent Articles, whether such offence was committed before or after the entry into force at this Treaty.Article 2The following persons shall be extradited :(a) Persons accused of an offence punishable under the laws at both the Contracting Parties by imprisonment for a period of at least one year or more; and(b) Persons sentenced by the courts of the, Requesting Party with, imprisonment for at least six months in respect of an extraditable offence.Article 3

1. For offences in connection with taxes, fiscal charges and customs duties, extradition shall be effected in accordance with the provisions of this Treaty only if the said offence corresponds to an offence at a similar nature under the law of the Requested Party.

2. An attempt or conspiracy to commit or incite or participate in the commission at an extraditable offence shall also be regarded as an extraditable offence.

Article 4

1. Extradition shall be granted in respect at an extraditable offence committed outside its territory but within the jurisdiction as asserted by the Requesting Party, if the Requested Party would, in circumstances, have jurisdiction over such an offence. In such cases, the Requested Party shall have regard to all the circumstances at the case including the seriousness of the offence.

2. Extradition shall be available for an extraditable, offence if committed in a third State by a national at the Requesting Party who is present in the Requested Party and provided that it would be an extraditable offence under the laws of the Requested Party, had the offence been committed in the Requested Party.

3. Extradition shall also be available for an extraditable offence, notwithstanding that the conduct at the person sought occurred wholly or partly in, the Requested Party, if under the law at that Party his conduct and its effects or its intended effects, taken as a whole, would be regarded as constituting the commission of an extraditable offence in the territory of the Requesting Party.

Article 5

1. The nationals of either of the two Contracting Parties shall not be extradited to the other Contracting Party. In this case the Requested Party shall submit the case for prosecution to the competent authority, if the act committed or omission is considered as an offence under the law of the Requested Party.

2. Nationality shall be determined as at the time at the commission of the offence.

Article 6 Extradition may be refused:

1. If the offence for which the extradition is requested is a political offence or connected with a political offence. In the application of this Treaty, the following shall not be regarded as political offences:

(a) assault against the President, Vice President or Prime Minister of either Contracting Party; (b) murder, culpable homicide not amounting to murder or robbery; (c) offences relating to terrorism, including murder, culpable homicide not amounting to murder, culpable homicide causing bodily harm; kidnapping, hostage-taking, offences involving serious damage to property or disruption of public facilities, and offences relating to firearms or other weapons, or explosives, or dangerous substances; (d) any offence within the scope at international conventions to which both Contracting Parties are parties and which obligate the Parties to grant extradition or prosecute; or (e) an attempt or conspiracy to commit or incite or participate in the commission of any of the above offences.

2. Extradition may also be refused if:

(a) the person sought to be extradited was previously tried for the same offence for which extradition is requested and was, acquitted or was convicted and had completed the sentence or is, undergoing it; (b) the criminal proceedings had expired of the sentence lapsed by time, in pursuance at the law of the Requesting Party, when the request for extradition was received; (c) the offence was committed outside the territory of the Requesting Party by an alien and if is not an offence under the law of the Requested Party; (d) the offence for which extradition is requested was committed in the Requested Party, provided the Requested Party prosecutes the person; (e) a person whose extradition is sought is being investigated or tried in the Requested Party for the same offence for which his extradition is requested; or (f) The sentence remaining to be served by a person convicted of an extraditable offence is less than six month. Article 7

1. When the Requested Party refuses a request for extradition for the reason set out under this Treaty, it shall submit the case to its competent authorities for prosecution. Those authorities shall take their decision in the same manner as in the case of any offence of a similar nature under the law of that Party.

2. If, after refusing extradition, prosecution is not found feasible in the Requested Party for whatever reason, the Requested Party shall re-consider the extradition request, and may extradite the person sought to the

Requesting Party.

Article 8

1. The request for extradition shall be made in writing and dispatched through the diplomatic channels with the under-mentioned documents and particulars appended :

(a)if the request relates to a person already convicted and sentenced, an official copy of the sentence passed against the person to be extradited;(b)the warrant of arrest, or remand or any document having the same effect, issued by competent authority, if the person to be extradited is under investigation;(c)particulars as to identity, description and a photograph of the person to be extradited, if possible;(d)the date, the place of the commission of the acts for which extradition is requested, the legal characterisation of those offences, and a certified copy of the applicable legal provisions, and a statement by the prosecuting authorities as to evidence against the person to be extradited;(e)in case of the person not yet sentenced, such other evidence, as according to the laws of the Requested Party, would justify his arrest and committal for trial had the offence been committed within the jurisdiction of the Requested Party.

2. All document referred to above shall be translated into English and authenticated by the Requesting Party.

Article 9

1. In case of urgency, a person to be extradited may be provisionally arrested and remanded in custody until the request for extradition, together with the documents referred to in the preceding Article, is received.

2. The request for provisional arrest and remand shall be communicated in writing to the competent authority of the Requested Party either directly or through the International Criminal Police Organization (INTERPOL) channels.

3. The same request shall be confirmed through the diplomatic channels, and shall contain a reference to the existence of any of the documents enumerated in the preceding Article, and intimating the intention of the Requesting Party to transmit a request for extradition a statement of the offence for which extradition is requested the sentence specified for that offence or the sentence imposed the time and place of the commission of the offence and a detailed description of the person to be extradited. The Requesting Party shall forthwith be notified of any action taken in respect of

the request.

4. The provisional arrest and remand shall be made in accordance with the legal procedures of the Requested Party.

Article 10

1. The competent authority in the Requested Party may, if the documents required under this Treaty are not delivered within 45 days from the date of the arrest of the person to be extradited, release that person.

2. The period of the provisional detention shall not, in any case, exceed 60 days from the date of its commencement.

3. The person to be extradited may at any time be released on bail, if the Requested Party takes all necessary measures to prevent his escape. The release of such person shall not prevent his re-arrest and extradition, if the request for extradition is received afterwards.

Article 11 If the Requested Party needs additional clarifications/evidence to ensure the compliance with the conditions embodied in this Treaty, it shall notify the Requesting Party through diplomatic channels, before rejecting the request, and may fix a date for receiving such clarifications/evidence. Article 12

1. If numerous requests from more than one state for extradition are made for the same offence, priority shall be given to the State whose security or interest or national a or their interests are affected by the offence, and then to the State on whose territory the offence is committed, and lastly to the State of which the person to be extradited is a national.

2. If the circumstances are identical then the State which made the first request shall have preference. If the requests for extradition are for several offences, then preponderance is accorded to the circumstances of the offence and its gravity.

Article 13 Without prejudice to the rights of others acting in good faith, and to the laws in force in the Requested Party, everything found in possession of the person to be extradited, at the time of his arrest or remand or at a later stage, whether being the proceeds of the offence or used in the commission of, or connected with it, or relevant as evidence, shall be attached and may be handed over to the Requesting Party, even if the offender is not extradited due to his death or his

absconding.Article 14

- 1. The competent authorities in each Contracting Party shall determine the request for extradition in accordance with the laws in force at the time of the request.**
- 2. In the event of granting the extradition request, the Requesting Party shall be notified of the date and place of extradition.**
- 3. In case the request is rejected, the Requested Party shall communicate to the Requesting Party, through diplomatic channels, the decision taken, giving reasons thereof.**
- 4. The Requesting Party shall, within thirty days from the date of its notification of the extradition, receive the person to be extradited, otherwise the Requested Party may discharge him, and in such event no second request for extradition may be accepted for the same offence.**
- 5. If exceptional circumstances prevent a Contracting Party from surrendering or taking delivery of the person sought within the stipulated time, it shall notify the other Contracting Party prior to the expiration of the time limit. In such a case, the competent authorities of the Contracting Party may agree upon a new date for the surrender.**

Article 15

- 1. If the person to be extradited is under investigation or standing trial or is convicted in the Requested Party for an offence other than that for which his extradition is Requested, then the Requested Party shall decide on the request and communicate the decision made to the Requesting Party.**
- 2. If the request for extradition is granted, then the surrender of the person concerned shall be postponed until his trial in the Requested Party is complete and the punishment awarded is executed.**
- 3. The provisions of this Article shall not preclude the possibility of the provisional surrender of the person concerned to appear before the judicial authorities of the Requesting Party, provided that the Requesting Party expressly undertakes to between him to the other Contracting Party, after the**

completion of the judicial proceedings pertaining thereto, subject to the law of the Requested Party.

Article 16

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

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

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

Article 17

1. The person to be extradited shall not be tried or punished in the Requested Party except for the offence for which his extradition is sought or for offences connected therewith, or offences committed after his extradition. If the characterization of the offence is modified during the proceedings taken against the person extradited he shall not be charged or tried unless the ingredients of the offence in its new characterisation, permit extradition in conformity with the provisions of this Treaty.

2. If the person extradited had the liberty and means to leave the territory of the party to which he was extradited and he did not leave within 30 days subsequent to his final release or left during that period, but voluntarily returned he may be tried for any other offence.

Article 18

- 1. The Contracting Party to which the person is extradited shall not extradite him to a third State, without the consent of the other Contracting Party.**
- 2. The person may be extradited to a third State if the conditions under Article 17(2) exist.**

Article 19 The term of provisional remand shall be remitted from any sentence passed in the Requesting Party against the person to be extradited. Article 20

- 1. Transit of a person who is the subject of extradition from a third State through the territory of a Contracting Party to the territory of the other Contracting Party shall be granted on submission of a request provided that the offence concerned is an extraditable offence under Article 2, and that the Contracting Party requested to grant transit does not consider the offence to be one covered by Article 6.**
- 2. Transit of a national of the Requested Party may be refused if, in the opinion of that Party, it is inadmissible under its law.**
- 3. The request for transit must be accompanied by documents as mentioned in article 8 of this Treaty.**

Article 21

- 1. Each Contracting Party shall reciprocally bear all the expenses necessitated by the extradition of the concerned person except transportation expenses which shall be borne by the Requesting Party.**
- 2. Transit Requesting Party shall pay the expenses of the return of the extradited person to the place he was in at the time of his extradition if commission of the offence by him or his complicity therein is not proved.**

Article 22 Each Contracting Party shall, in accordance with national laws and bilateral agreements, afford the other the widest measures of mutual assistance in criminal matter in connection with the offence for which extradition has been requested. Article 23 The present Treaty shall not affect the rights and obligations of the Contracting Parties arising from international conventions/treaties to which they are parties. Article 24 This Treaty shall be subject to ratification in accordance with the constitutional procedures in force in both Contracting Parties. It shall become effective from the date of the last intimation by which either contracting party shall inform the other that all the necessary legal procedures for the enforcement of the Treaty have been fulfilled. Article 25 This

Treaty has been concluded for an indefinite period of time. Either of the contracting parties may terminate this Treaty by giving six month notice thereof through diplomatic channels. Upon the expiry of such notice, the Treaty shall cease to have any force or effect. In witness whereof, the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty. Done at New Delhi on this the 25th Day of August 2004 in two originals each in the Hindi, Arabic and English languages all the text being equally authentic. In the event of any difference the English text shall prevail. Now, therefore, in exercise of the powers conferred by sub-section 1 of section 3 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other Chapter III, shall apply to the State of Kuwait from the date of the publication of this notification.