

Treaty between the Republic of India and the People's Republic of Bangladesh Relating to Extradition

UNION OF INDIA

India

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Rule

TREATY-BETWEEN-THE-REPUBLIC-OF-INDIA-AND-THE-PEOPLE-S-R of 2016

- Published on 7 September 2016
- Commenced on 7 September 2016
- [This is the version of this document from 7 September 2016.]
- [Note: The original publication document is not available and this content could not be verified.]

Treaty between the Republic of India and the People's Republic of Bangladesh Relating to Extradition Published vide Notification No. G.S.R. 860(E), 7th September, 2016 Ministry of External Affairs G.S.R. 860(E). - Whereas, the Treaty between the Republic of India and the People's Republic of Bangladesh relating to Extradition was signed at Dhaka, Bangladesh on 28th day of January, 2013 and the Instruments of Ratification of the said Treaty were exchanged at Dhaka, Bangladesh on 23rd October, 2013; And whereas, the said Treaty entered into force with effect from the 23rd October, 2013 in accordance with the provisions of paragraph (2) of Article 21 of the Treaty; And whereas, the said Treaty is specified in the Schedule to this Order; Now, therefore, in exercise of the powers conferred by sub-section (2) of section 12 of the Extradition Act, 1962 (34 of 1962), the Central Government hereby directs that the provisions of the said Act, other than Chapter II, shall apply to the People's Republic of Bangladesh with effect from the date of entry into force of the said Treaty.

Schedule

"Treaty between the Republic of India and the People's Republic of Bangladesh Relating to Extradition" The Government of the Republic of India and of the People's Republic of Bangladesh; Desiring to make more effective the cooperation of the two countries in the suppression of crime by making further provision for the reciprocal extradition of offenders; Recognizing that concrete steps are necessary to combat terrorism; Have agreed as follows: Article 1

1. Obligation to Extradite

1. The Contracting States agree to extradite to each other, subject to the provisions of this Treaty, persons found in the territory of one of the Contracting States who have been proceeded against for or have been charged with or have been found guilty of, or are wanted for the enforcement of a judicially pronounced penalty for committing an extraditable offence, as described in Article 2, by the judicial authority of the other Contracting State.

2. With respect to an extraditable offence committed outside the territory of the Requesting State, the Requested State shall grant extradition, subject to the provisions of this Treaty, if its laws would provide for the punishment of such an offence in comparable circumstances.

Article 2

2. Extradition Offences

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

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

3. In determining whether an offence is an offence punishable under the laws of both Contracting States, it shall not matter whether the law of both Contracting States place the act or omission constituting the offence within the same category of offence or denominate the offence by same terminology.

4. Extradition shall also be granted in respect of an attempt to commit or aiding, abetting, inciting or participating as an accomplice in the commission of an extraditable offence.

Article 3

3. 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 State, if under the law of that State this conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence in the territory of the Requesting State. Article 4

4. Central Authority

The Central Authority for the Republic of India shall be the Ministry of External Affairs and the Central Authority for the People's Republic of Bangladesh shall be the Ministry of Home Affairs. Each Contracting State shall inform the other Contracting State of any change of the Central Authority through diplomatic channels. Article 5

5. Extradition of Nationals

Nothing in this Treaty shall preclude the extradition by the Requested State of its nationals either in respect of a territorial offence or in respect of an extraterritorial offence. Article 6

6. 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) any acts or omissions which are punishable as a criminal offence according to the obligations under multilateral treaties to which both Contracting States are Party; (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 person's 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 7

7. Extradition and Prosecution

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

2. Where the Requested State refuses a request for extradition for the reason set out in paragraph 1 of this Article, it shall submit the case to its competent authorities so that prosecution may be considered. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.

3. 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 8

8. Grounds for Refusal of Extradition

1. A person may not be extradited if:

(a) he satisfies the Requested State that it would, having regard to all the circumstances, be unjust or oppressive to extradite him by reason of: (i) the trivial nature of the offence of which he is accused or was convicted; or (ii) the passage of time since he is alleged to have committed it or to have become unlawfully at large, as the case may be; or (iii) the accusation against him not having been made in good faith in the interests of justice; or (b) the offence of which he is accused or convicted is a military offence which is not also an offence under the general criminal law.

2. A person who has been convicted of an extradition offence may not be extradited therefore unless he was sentenced to imprisonment or other form of detention for a period of four months or more.

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

Article 9

9. Temporary Surrender

To the extent permitted by its law, where a person serving a sentence in the Requested State has been found extraditable, the Requested State may temporarily surrender the person sought for the purpose of prosecution to the Requesting State in accordance with conditions to be determined between the Contracting States. A person who is returned to the Requested State following a temporary surrender may be finally surrendered to the Requesting State to serve any sentence imposed, in accordance with the provisions of this Treaty and existing law of the requested country. Article 10

10. Extradition Procedures

1. The request for extradition under this Treaty shall be made through the diplomatic channel.

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, and (c) the text, if any, of the law : (i) defining that offence; and (ii) prescribing the maximum 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 State, 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. If the Requested State considers 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 State shall require.

Article 11

11. Provisional Arrest

1. In case of urgency, one Contracting State may request the other Contracting State to provisionally arrest the person sought. Such request shall be made in writing and transmitted to the Central Authority of the Requested State through diplomatic channels.

2. The application for provisional arrest shall contain:

(a)an indication of intention to request the extradition of the person;(b)a statement about the reason for urgency;(c)information concerning identity, nationality and probable location and a description of the person;(d)a brief description of the offence and the punishment prescribed there under;(e)a brief statement of the facts of the case, including, if possible, the time and the location of the offence;(f)a statement of the existence of a warrant of arrest or a judgment of conviction against the person; and

3. The Requesting State shall be notified without delay of the result of its request.

4. 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

12. Rule of Specialty

1. Any person who is returned to the territory of the Requesting State under this Treaty shall not, during the period described in paragraph (2) of this Article, be dealt with in the territory of the Requesting State for or in respect of any offence committed before he was returned to that territory other than:

(a)the offence in respect of which he was returned;(b)any lesser offence disclosed by the facts proved for the purposes of securing his return other than an offence in relation to which an order for his return, could not lawfully be made; or(c)any other offence in respect of which the Requested Party may consent to his being dealt with other than an offence in relation to which an order for his return could not lawfully be made or would not in fact be made.

2. The period referred to in paragraph (1) of this Article is the period beginning with the day of his arrival in the territory of the Requesting State or his return under this Treaty and ending forty-five days after the first subsequent day on which he has the opportunity to leave the territory of the Requesting State.

3. The provisions of paragraph (1) of this Article shall not apply to offences committed after the return of a person under this Treaty or matters arising in relation to such offences.

4. A person shall not be re-extradited to a third State, except when, having had an opportunity to leave the territory of the State to which he has been surrendered, he has not done so within sixty days of his final discharge, or has returned to that territory after having left it.

Article 13

13. Evidence

1. The authorities of the Requested State shall admit as evidence, in any proceedings for extradition, any evidence 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 State; and(ii)either by oath of some witness or by being sealed with the official seal of the appropriate Minister of the Requesting State; or(b)In such other manner as may be permitted by the law of the Requested State.

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

Article 14

14. Competing Requests

If extradition of the same person whether for the same offence or for different offences is requested by a Contracting State and a third State with which the Requested State has an extradition arrangement, the Requested State shall determine to which contracting State it will surrender the

person. In making its decision, the Requested State shall consider all relevant factors, including but not limited to: (a) whether the requests were made pursuant to a treaty; (b) the place where such offence was committed; (c) the respective interests of the Requesting States; (d) the gravity of the offence; (e) the nationality of the victim; (f) the possibility of further extradition between the Requesting States; and (g) the chronological order in which the requests were received from the Requesting State. Article 15

15. Languages

While complying with the present Treaty, the Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English language. Article 16

16. Surrender

1. If extradition is granted, the person sought shall be sent by the authorities of the Requested State to such convenient point of departure from the territory of that State as the Requesting State shall indicate.

2. The Requesting State shall remove the person sought from the territory of the Requested State within one month or such longer period as may be permitted under the law of the Requested State. If he is not removed within that period, the Requested State may refuse to extradite him for the same offence.

Article 17

17. Surrender of Property

1. When a request for extradition is granted, the Requested State shall, upon request and so far as its law allows, hand over to the Requesting State articles (including sums of money) which may serve as proof or evidence of the offence.

2. If the articles in question are liable to seizure or confiscation in the territory of the Requested State, the latter may, in connection with pending proceedings, temporarily retain them or hand them over on condition that they are returned.

3. These provisions shall not prejudice the rights of the Requested State or any person other than the person sought. When these rights exist the articles shall on request be returned to the Requested State without charge as soon as possible after the end of the proceedings.

Article 18

18. Mutual Legal Assistance in Extradition

Each Contracting State shall, to the extent permitted by its law, afford the other the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested. Article 19

19. Documents and Expenses

1. If in any particular case the Requested State so requires, the Requesting State shall supply a translation of any document submitted in accordance with the provisions of this Treaty.

2. Expenses incurred in the territory of the Requested State by reason of the request for extradition shall be borne by that State.

3. The Requested State shall make all the arrangements which shall be requisite with respect to the representation of the Requesting State in any proceedings arising out of the request.

Article 20

20. Obligations under International Conventions/Treaties

The present Treaty shall not affect the rights and obligations of the Contracting States arising from International Conventions/Treaties to which they are parties. Article 21

21. Final provisions

1. The present Treaty shall apply to requests made after its entry into force, even if the relevant acts or omissions occurred prior to that date.

2. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged at as soon as possible. It shall enter into force on the date of the exchange of instruments of ratification.

3. Either of the Contracting States may terminate this Treaty at any time by giving notice to the other through the diplomatic channel; and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty. Done in duplicate at Dhaka this the Twenty Eight day of the month of January of the year Two Thousand and Thirteen, in Hindi, English and Bangla, all languages being equally authentic. In case of any divergence of interpretation, the English text shall prevail." On behalf of the Government of the Republic of India On behalf of the Government of the People's Republic of Bangladesh