

Extradition Treaty Between The Republic of India and The Kingdom of Spain

UNION OF INDIA

India

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EXTRADITION-TREATY-BETWEEN-THE-REPUBLIC-OF-INDIA-AND-TH of 2003

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Extradition Treaty Between The Republic of India and The Kingdom of SpainPublished vide Notification No. G.S.R. 930(E), dated 18th November, 2003Ministry of External AffairsG.S.R. 930(E). - whereas the Extradition Treaty between the Government of the Republic of India and the Kingdom of Spain was signed at Madrid on 20th June 2002 and the Instruments of Ratification exchanged at Madrid on February 25, 2003 and which Treaty provides as follows:The Republic of India and the Kingdom of Spain hereinafter referred to as Contracting States;Desiring to make more effective the co-operation of the two countries in the prevention and suppression of crime, especially with regard to Organized Crime and Terrorism by making provision for the reciprocal extradition of offenders;Have agreed as follows:Article 1Duty to Extradite

1. Each Contracting State undertakes to extradite to the other, in the circumstances and subject to the conditions specified in this Treaty, any person who, being accused or convicted of an extradition offence as described in Article 2, committed within the territory of the one State, is found within the territory of the other State.

2. Extradition shall also be available in respect of an extradition offence as described in Article 2 committed outside the territory of the Requesting State but in respect of which it has jurisdiction if the Requested State would, in corresponding circumstances, have jurisdiction over such an offence. In such circumstances the Requested State shall have regard to all the

circumstances of the case including the seriousness of the offence.

Article 2 Extradition Offences

1. Extradition shall be granted in respect of offences punishable under the laws of the Requesting State and of the Requested State by deprivation of liberty for a period of at least one year or by a more severe penalty. Where a conviction and prison sentence occur in the territory of the Requesting State, the punishment awarded must have been for a period of at least six months.

2. If the request for extradition includes several separate offences each of which is punishable under the laws of the Requesting State and the Requested State by deprivation of liberty, but of which some do not fulfil the condition with regard to the amount of punishment which may be awarded, the Requested State shall also have the right to grant extradition for the latter offences.

Article 3 Political Offences

1. Extradition may be refused if the offence for 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)an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at the Hague on 16 December, 1970;(b)an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September, 1971;(c)an offence within the scope of the Convention on the Prevention and Punishment of Crimes against internationally Protected Persons, including Diplomatic Agents, opened for Signature at New York on 14 December, 1973;(d)an offence within the scope of the International Convention against the Taking of Hostages, opened for signature at New York on 18 December, 1979;(e)murder;(f)manslaughter or culpable homicide;(g)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;(h)the causing of an explosion likely to endanger life or cause serious damage to property;(i)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;(j)the possession of a firearm or ammunition by a person who intends either himself or through another persons to endanger life;(k)the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person;(l)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;(m)kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;(n)incitement to murder;(o)any other offence related to terrorism which at the time of the request is, under the law of the Requested State, not to be regarded as an offence of a political character;(p)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.

3. The taking or attempted taking of the life of a Head of State, Head of Government or a member of his or her family shall not be deemed to be a political offence for the purposes of this Treaty.

4. This Article shall not affect any obligations, which the Contracting States may have undertaken or may undertake under any other international convention of a multilateral character.

Article 4Military OffencesExtradition for offences under military law which are not offences under ordinary criminal law is excluded from the application of this Treaty.Article 5Fiscal OffencesExtradition shall be granted in accordance with the provisions of this Treaty for offences of a fiscal character including duties, customs and exchange.Article 6Extradition of nationals

1. The nationals of a Contracting State may be extradited to the other Contracting State. In the event that extradition is not granted, on the request of the Requesting State, the Requested State shall submit the case to its competent authorities for prosecution if the act committed is also considered an extradition offence under the law of the Requested State. For this purpose, the files, information and exhibits relating to the offence shall be transmitted without charge by the means provided for in Article 12, paragraph 1. The Requesting State shall be informed of the result of its request.

2. For the purpose of this Treaty, nationality shall be determined as at the time of the commission of the offence.

Article 7Place of Commission

1. The Requested State may refuse to extradite a person claimed for an offence which is regarded by its law as having been committed in whole or in part in its territory or in a place treated as its territory.

2. Extradition may be granted 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 laws 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 8 Pending proceedings for the same offences The Requested State may refuse to extradite the person claimed if the competent authorities of such State are proceeding against him in respect of the offence or, offences for which extradition is requested. Article 9 Non bis in idem Extradition shall not be granted if final judgment has been passed by the competent authorities of the Requested State upon the person claimed in respect of the offence or offences for which extradition is requested. Extradition may be refused if the competent authorities of the Requested State have decided either not to institute or to terminate proceedings in respect of the same offence or offences. Article 10 Period of Limitations Extradition shall not be granted when the person claimed has, according to the law of either the Requesting or the Requested State, become immune by reason of period of limitations from prosecution or punishment. Article 11 Capital Punishment If the offence for which extradition is requested is Punishable by death under the law of the Requesting State, and if in respect of such offence the death-penalty is not provided for by the law of the Requested State or is not normally carried out, extradition shall be refused unless the Requesting State gives such assurance as the Requested State considers sufficient that the death-penalty will not be carried out. Article 12 The request and supporting documents

1. The request for extradition under this Treaty shall be made through the diplomatic channels. Other means of communication may also be used after consultation between the two States.

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 or offences for which extradition is requested, and c) the text of the applicable law or laws: i. defining the offence or offences; ii. prescribing the maximum punishment for the offence or offences; and iii. regulating the period of limitations of the offence or offences and their punishments.

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.

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

i. by a certificate of the conviction and sentence;-ii. by a statement that the person is not entitled to appeal against the conviction;iii. by a statement indicating how much of the sentence has not been carried out.

Article 13Supplementary informationIf the information communicated by the Requesting State is found to be insufficient to allow the Requested State to make a decision in pursuance of this Treaty, the latter State shall request the necessary supplementary information and may fix a reasonable time limit for the receipt thereof in consultation with the Requesting State.

Article 14Authentication of DocumentsThe warrants, the certificates of conviction and any other judicial document on which the extradition is based, shall be authenticated:a) (i) in the case of a warrant by 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)by being sealed with the official seal of the Competent Ministry or Competent Authority of the Requesting State; Orb) In such other manner as may be permitted by the law of the Requested State;

Article 15Rule of speciality

1. A person who has been extradited shall not be proceeded against, sentenced or detained with a view to the carrying out of a sentence for any offence committed prior to his surrender other than that for which he was extradited, nor shall he be for any other reason restricted in his personal freedom, except in the following cases:

(a)When the State which surrendered him consents. A request for consent shall be submitted, accompanied by the documents mentioned in Article 12 and a legal record of any statement made by the extradited person in respect of the offence concerned. Consent shall be given when the offence for which it is requested is itself subject to extradition in accordance with the provisions of this Agreement;(b)when that person, having had an opportunity to leave the territory of the State to which he has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it.

2. When the description or the punishment of the offence charged is altered in the course of trial proceedings, the extradited person shall only be proceeded against or sentenced in so far as the offence under its new description is shown by its constituent elements to be an offence which would allow extradition.

Article 16Re-extradition to a Third StateExcept as provided for in Article is, paragraph 1 (b), the Requesting State shall not, without the consent of the Requested State, surrender to another Party or to a third State a person surrendered to the Requesting State and sought by the said other Party or third State in respect of offences committed before his surrender. The Requested State may request the production of the documents mentioned in Article 12, paragraph 2.

Article 17Provisional arrest

- 1. In case of urgency the competent authorities of the Requesting State may request the provisional arrest of the person sought. The competent authorities of the Requested State shall decide the matter in accordance with its law.**
- 2. The request for provisional arrest shall state that one of the documents mentioned in Article 12 exists and that it is intended to send a request for extradition. It shall also state for what offence extradition will be requested and when and where such offence was committed and shall so far as possible give a description of the person sought.**
- 3. A request for provisional arrest shall be sent to the competent authorities of the Requested State either through the diplomatic channel or through the International Criminal Police Organization (Interpol) or by any means affording evidence in writing or accepted by the Contracting States.**
- 4. The requesting authority shall be informed without delay of the result of its request.**
- 5. Provisional arrest may be terminated if, within a period of 60 days after the arrest, the Requested State has not received the request for extradition and the documents mentioned in Article 12. In exceptional circumstances, this time limit may be extended to 90 days from the date of such arrest. The possibility of provisional release at any time is not excluded, but the Requested State shall take any measures which it considers necessary to prevent the escape of the person sought.**
- 6. Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.**

Article 18 Conflicting requests If extradition is requested concurrently by more than one State, either for the same offence or for different offences, the Requested State Shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition to another State.

Article 19 Surrender

- 1. The Requested State shall inform the Requesting State by the means mentioned in Article 12, para 1, of its decision with regard to the extradition.**
- 2. Reasons shall be given for any complete or partial rejection.**
- 3. If the request is agreed to, the Requesting State shall be informed of the place and date of surrender and of the length of time for which the person claimed was detained with a view to surrender.**
- 4. Subject to the provisions of paragraph 5 of this Article, if the person claimed has not been taken over on the appointed date, he may be released after the expiry of days. If he is not removed within that period, the Requested State may refuse to extradite him for the same offence.**
- 5. If circumstances beyond its control prevent a State from surrendering or taking over the person to be extradited, it shall notify the other State. The two States shall agree a new date for surrender and the provisions of paragraph 4 of this Article shall apply.**

Article 20 Postponed or conditional surrender

- 1. The Requested State may, after making its decision on the request for extradition, postpone the surrender of the person claimed in order that he may be proceeded against by that State or, if he has already been convicted, in order that he may serve his sentence in the territory of that State for an offence other than that for which extradition is requested.**
- 2. The Requested State may, instead of postponing surrender, temporarily surrender the person claimed to the Requesting State in accordance with conditions to be determined by mutual agreement between the States.**

Article 21 Handing over of Property

- 1. The Requested State shall, in so far as its law permits and at the request of the Requesting State, seize and hand over property:**

(a) which may be required as evidence, or (b) which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person claimed or is discovered subsequently.

2. The property mentioned in paragraph 1 of this Article shall be handed even if extradition, having been agreed to, cannot be carried out owing to the death or escape of the person claimed.

3. When the said property is liable to seizure or confiscation in the territory of the Requested State, the latter may, In connection with pending criminal proceedings, temporarily retain it or hand it over on condition that it is returned.

4. Any rights which the Requested State or third parties may have acquired in the said property shall be preserved. Where these rights exist, the property shall be returned without charge to the Requested State as soon as possible after the trial.

Article 22 Transit

1. Transit through the territory of one of the Contracting States shall be granted on submission of a request by the means mentioned in Article 12, para 1, provided that the offence concerned is not considered by the State requested to grant transit as an offence of a political or purely military character having regard to provisions of this Treaty.

2. Transit of a national, within the meaning of Article 6, of a country requested to grant transit may be refused.

3. Subject to the provisions of paragraph 4 of this Article, it shall be necessary to produce the documents mentioned in Article 12.

4. If air transport is used, the following provisions shall apply:

a) when it is not intended to land, the Requesting State shall notify the State over whose territory the flight is to be made and shall certify that one of the documents mentioned in Article 12 exists. In the case of an unscheduled landing, such notification shall have the effect of a request for provisional arrest as provided for in Article 17, and the Requesting State shall submit a formal request for transit;b) when it is intended to land, the Requesting State shall submit a formal request for transit.Article 23Applicable LawsThe procedure with regard to extradition and provisional arrest shall be governed solely by the law of the Requested State.Article 24LanguageWhile complying with the present Treaty, the Contracting States shall use their national language attaching the translation in the national language of the other Contracting State or in the English language;Article 25Expenses

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

2. Expenses incurred by reason of transit through the territory of a State requested to grant transit shall be borne by the Requesting State.

Article 26 International Obligations 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 27 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 28 Entry into Force and Termination

1. This Treaty shall enter into force on the last day of the month following that of the latest communication through diplomatic channels between the parties indicating fulfillment of the respective internal legal requirements for its entry into force.

2. The provisions of the this Treaty shall be applicable to the extradition requests presented after the entry into force of the Treaty, irrespective of the date of commission of the offence or offences.

3. Either of the Contracting States may terminate this Treaty at any time by giving notice to the other through the diplomatic channels, 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 at _____ Madrid _____ this the _____ 20th _____ day of _____ June _____ 2002 (Two Thousand and Two) in two originals each, in Spanish, Hindi and English, all texts being equally authentic. However, in case of difference, the English text shall prevail. Now, therefore, in exercise of the powers conferred by sub-section(2) of section 12 of the Extradition Act, 1962 (34 of 1962), and in suppression of notification of the Government of India, if any existing, relating to extradition treaty or arrangement applicable in respect of the Kingdom of Spain, the Central Government hereby directs that the provisions of the said Act, other than Chapter II, shall apply to the Kingdom of Spain with effect from the date of the publication of this notification.