

Treaty on Extradition between the Republic of India and the Republic of Korea

UNION OF INDIA

India

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Rule

TREATY-ON-EXTRADITION-BETWEEN-THE-REPUBLIC-OF-INDIA-AND of 2005

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Treaty on Extradition between the Republic of India and the Republic of KoreaPublished vide Notification No. G.S.R. 607(E), dated 20th September 2005Ministry of External AffairsOrderG.S.R. 607(E). - Whereas the Treaty on Extradition between the Republic of India and the Republic of Korea was signed at New Delhi, on 5th October, 2004; and the instruments of ratification exchanged at Seoul on 8th June, 2005 and which treaty provides as follows:The Republic of India and the Republic of Korea (hereinafter referred to as "the Parties"),Desiring to strengthen their bilateral relations and to make more effective their cooperation in the prevention and suppression of crime by concluding a treaty on extradition,Have agreed as follows:Article 1Obligation to ExtraditeEach Party agrees to extradite to the other, in accordance with the provisions of this Treaty, any person who is wanted in the Requesting Party for prosecution/trial, or imposition or enforcement of punishment for an extraditable offence.Article 2Extraditable Offences

1. For the purpose of this Treaty, extraditable offences are offences which, at the time of the request, are punishable under the laws of both Parties by deprivation of liberty for a period of at least one year or by a more severe penalty.

2. Where the request for extradition relates to a person sentenced to deprivation of liberty by a court of the Requesting Party for any extraditable offence, extradition shall be granted only if a period of at least six (6) months of the sentence remains to be served.

3. For the purpose of this Article, in determining whether an offence is an offence against the laws of both Parties:

(a) it shall not matter whether the laws of the Parties place the conduct constituting the offence within the same category of offence or denominate the offence by the same terminology; and (b) the totality of the conduct alleged against the person whose extradition is sought shall be taken into account and it shall not matter whether, under the laws of the Parties, the constituent elements of the offence differ.

4. Where extradition of a person is sought for an offence against a law relating to taxation, customs duties, foreign exchange control or other revenue matters, extradition may not be refused on the grounds that the law of the Requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, customs or exchange regulation of the same kind as the law of the Requesting Party.

5. Where the offence has been committed outside the territory of the Requesting Party, extradition shall be granted where the law of the Requested Party provides for the punishment of an offence committed outside its territory in similar circumstances. Where the law of the Requested Party does not so provide, the Requested Party may, in its discretion, grant extradition.

6. If the request for extradition refers to several offences each of which is punishable under the laws of both Parties, but some of which do not fulfil the other conditions set out in paragraphs 1 and 2 of this Article, extradition may be granted for the offences provided that the person is to be extraditable for at least one extraditable offence.

Article 3 Mandatory Grounds for Refusal Extradition shall not be granted under this Treaty in any of the following circumstances: (a) when the Requested Party determines that the offence for which extradition is requested is a political offence or an offence connected with a political offence.

Reference to a political offence shall not include the following offences: (i) the taking or attempted taking of the life or an assault on the person of a Head of State or Head of Government or a member of his or her family; (ii) an offence in respect of which the Parties have the obligation to extradite or submit the case to their competent authorities for prosecution, by reason of a multilateral international treaty/convention to which they are both parties; (iii) murder or culpable homicide/manslaughter; (iv) an offence, involving firearms, explosives, incendiaries, destructive devices or substances, causing death, grievous bodily harm or serious damage to property; or (v) a conspiracy or attempt to commit, or participation in, any of the foregoing offences; (b) when the

person sought is being proceeded against or has been tried and convicted or acquitted in the territory of the Requested Party for the offence for which his extradition is requested;(c)when the prosecution or the punishment for the offence for which extradition is requested would have been barred by lapse of time under the law of the Requested Party had the same offence been committed in the Requested Party. Acts or circumstances that would suspend the lapse of time under the law of the Requesting Party shall be given effect by the Requested Party, and in this regard the Requesting Party shall provide a written statement of the relevant provisions of its law relating to the lapse of time;(d)when the Requested Party has well-founded reasons to suppose that the request for extradition has been presented with a view to prosecuting or punishing the person sought, by reason of race, religion, nationality, sex or political opinion, or that the person's position may be prejudiced for any of those reasons.

Article 4 Optional Grounds for Refusal Extradition may be refused under this Treaty in any of the following circumstances:(a)when the offence for which extradition is sought is regarded under the law of the Requested Party as having been committed in whole or in part within its territory. If extradition is refused solely on this ground, the Requested Party within its territory. If extradition is refused solely on this ground, the Requested Party shall, at the request of the Requesting Party, submit the case to its authorities for prosecution. Where extradition is refused on that ground and subsequently prosecution is not found feasible in the Requested Party for whatever reason, the Requested Party shall so inform the Requested Party. In such circumstances, the Requesting Party may again request the extradition of that person. The Requested Party shall reconsider the request;(b)when the person sought has been finally acquitted or convicted in a third State for the same offence for which extradition is requested and, if convicted, the sentence imposed has been fully enforced or is no longer enforceable;(c)when, in exceptional cases, the Requested Party, while also taking into account the seriousness of the offence and the interests of the Requesting Party, deems that the extradition would be incompatible with humanitarian considerations, particularly the age or health of the person sought;(d)when the offence for which extradition is requested is an offence under military law, which is not also an offence under ordinary criminal law.

Article 5 Postponement of Extradition When the person sought is being proceeded against or is serving a sentence in the Requested Party for an offence other than that for which extradition is requested, the Requested Party may surrender the person sought or postpone surrender until the conclusion of the proceeding or the service of the whole or any part of the sentence imposed. The Requested Party shall inform the Requesting Party of any postponement.

Article 6 Extradition of Nationals

1. Neither of the Parties shall be bound to extradite its own nationals under this Treaty, but the Requested Party shall have the power to extradite such person if, in its discretion, it is deemed proper to do so.

2. If extradition is refused solely on the basis of the nationality of the person sought, the Requested Party shall, at the request of the Requesting Party, submit the case to its authorities for prosecution.

3. Nationality shall be determined at the time of the commission of the offence for which extradition is requested.

Article 7 Extradition Procedures and Required Documents

1. The request for extradition shall be submitted in writing through diplomatic channels.

2. The request for extradition shall be accompanied by:

(a) documents which describe the identity, and, if possible, the nationality and location of the person sought; (b) a statement of the facts of the case; (c) a statement of the laws describing the essential elements and the designation of the offence; (d) a statement of the laws describing the punishment for the offence; and (e) a statement of the laws relating to the time limit on the prosecution or the execution of punishment of the offence.

3. When the request for extradition relates to a person who is wanted for prosecution/trial, it shall be accompanied by:

(a) a copy of the warrant of arrest issued by a judge or other competent authority of the Requesting Party; (b) information establishing that the person sought is the person to whom the warrant of arrest refers; and (c) a statement regarding the conduct alleged to constitute the offence such as would provide reasonable ground to believe that the person sought has committed the offence for which extradition is requested.

4. When the request for extradition relates to a person tried and convicted, it shall be accompanied by:

(a) a certified copy of the judgement setting out the conviction and the sentence imposed; (b) information establishing that the person sought is the same person who has been convicted; and (c) a statement regarding the conduct constituting the offence for which the person was convicted.

5. The extradition request and all supporting documents to be presented pursuant to the provisions of this Treaty shall be authenticated and accompanied by a translation thereof into the English language for a request to be made to the Republic of India and into the Korean language for a request to be made to the Republic of Korea.

6. A document is authenticated for the purpose of this Treaty, if it has been signed or certified by a judge or other competent officer of the Requesting Party and sealed by the official seal of the competent authority of the Requesting Party.

Article 8Supplementary Information

- 1. If the Requested Party considers at any stage that the information furnished in support of a request for extradition is not sufficient in accordance with this Treaty to enable extradition to be granted, that Party may request that supplementary information be furnished within such time as it may specify.**
- 2. If the person whose extradition is sought is under arrest and the supplementary information furnished is not sufficient in accordance with this Treaty or is not received within the time specified, the person may be released from custody. Such release shall not preclude the Requested Party from making a new request for the extradition of that person.**
- 3. Where the person is released from the custody in accordance with paragraph 2, the Requested Party shall notify the Requesting Party as soon as practicable.**

Article 9Provisional Arrest

- 1. In case of urgency, a Party may request the provisional arrest of the person sought pending the presentation of the request for extradition. A request for provisional arrest may be transmitted through diplomatic channels or directly between the Central Bureau of Investigation of the Republic of India and the Ministry of Justice of the Republic of Korea.**
- 2. The application for provisional arrest shall be in writing and contain :**
 - (a)a description of the person sought, including information concerning the person's nationality;(b)the location of the person sought, if known;(c)a brief statement of the facts of the case, including, if possible, the time and place of the commission of the offence;(d)a description of the laws violated;(e)a statement of the existence of a warrant of arrest, or judgment of conviction against the person sought; and(f)a statement that a request for extradition of the person sought will follow.

3. On receipt of such an application, the Requested Party shall take the necessary steps to secure the arrest of the person sought and the Requesting Party shall be promptly notified of the result.

4. The person arrested may be set at liberty if the Requesting Party fails to present the request for extradition, accompanied by the documents specified in Article 7, within forty-five (45) days from the date of arrest, provided that this shall not prevent the institution of proceedings with a view to extraditing the person sought if the request is subsequently received.

5. The period of the provisional arrest shall not, in any case, exceed sixty (60) days from the date of the provisional arrest.

Article 10 Simplified Extradition When a person sought advises a court or other competent authorities of the Requested Party that he/she consents to his/her extradition, the Requested Party shall take all necessary measures to expedite the extradition to the extent permitted under its laws. Article 11 Concurrent Requests

1. Where requests are received from two or more States for the extradition of the same person either for the same offence or for different offences, the Requested Party shall determine to which of those States the person is to be extradited and shall notify those States of its decision.

2. In determining to which State a person is to be extradited, the Requested Party shall consider all relevant factors, including but not limited to:

(a) the nationality and the ordinary place of residence of the person sought; (b) whether the requests were made pursuant to an applicable treaty or arrangement; (c) the time when and the place where each offence was committed; (d) the respective interests of the requesting States; (e) the gravity of the offences; (f) the nationality of the victim; (g) the possibility of further extradition between the requesting States; and (h) the respective dates of the requests. Article 12 Surrender

1. The Requested Party shall, as soon as a decision on the request for extradition has been made, communicate that decision to the Requesting Party through diplomatic channels. Reasons shall be given for any complete or partial refusal of a request for extradition.

2. The Requested Party shall surrender the person sought to the competent authorities of the Requesting Party at a location in the territory of the Requested Party acceptable to both parties.

3. The Requesting Party shall remove the person from the territory of the Requested Party within such reasonable period as the Requested Party specifies and, if the person is not removed within that period, the Requested Party may set that person at liberty and may refuse extradition for the same offence.

4. If circumstances beyond its control prevent a Party from surrendering or removing the person to be extradited, it shall notify the other party, and in this case the provisions of paragraph 3 of this Article shall not apply. The two parties shall mutually decide upon a new date of surrender or removal in accordance with the provisions of the Article.

Article 13 Surrender of Property

1. To the extent permitted under the laws of the Requested Party and subject to the rights of third parties, which shall be duly respected, all property found in the territory of the Requested Party that has been acquired as a result of the offence or may be required as evidence shall, if the Requested Party so request, be surrendered if extradition is granted.

2. Subject to paragraph 1 of this Article, the above-mentioned property shall, if the Requesting Party so requests, be surrendered to the Requesting Party even if the extradition cannot be carried out owing to the death, disappearance or escape of the person sought.

3. Where the law of the Requested Party or the protection of rights of third parties so requires, any property so surrendered shall be returned to the Requested Party free of charge if that party so requested.

Article 14 Rule of Speciality

1. A person extradited under this Treaty may not be detained, tried, or punished in the Requesting Party except for:

(a)the offence for which extradition has been granted or a differently denominated offence based on the same facts, on which extradition was granted, provided such offence is extraditable, or is a lesser included offence.(b)an offence committed after the extradition of the person; or(c)an offence for which the executive authority of the Requested Party consents to the person's detention, trial, or punishment for an offence;For the purpose of this subparagraph :(i)the Requested Party may require the submission of the documents called for in Article 7;(ii)a copy of statement, if any, made by the extradited person with respect to the offence shall be submitted to the Requested Party; and(iii)the person extradited may be detained by the Requesting Party for such period of time as the Requested Party may authorize, while the request is being processed.

2. A person extradited under this Treaty may not be extradited to a third State for an offence committed prior to his extradition unless the Requested Party consents.

3. Paragraphs 1 and 2 of this Article shall not prevent the detention, trial, or punishment of an extradited person, or the extradition of that person to a third State, if:

(a)that person leaves the territory of the Requesting Party after extradition and voluntarily returns to it; or(b)that person does not leave the territory of the Requesting Party within 45 days of the day on which that person is free to leave.**Article 15**Information of ResultsThe Requesting Party shall provide timely information to the Requested Party relating to the proceedings against or the imposition or enforcement of punishment upon the person extradited or the re-extradition of that person to a third State.**Article 16**Transit

1. To the extent permitted by its law, transportation of a person surrendered to one Party by a third State through the territory of the other Party shall be authorized on request in writing made through diplomatic channels or directly between the Central Bureau of Investigation of the Republic of India and the Ministry of Justice of the Republic of Korea.

2. Authorization for transit shall not be required when air transport is to be used and no landing is scheduled in the territory of the Party of transit. If an unscheduled landing occurs in the territory of that Party, it may require the other Party to furnish a request for transit as provided in paragraph 1 of this Article.

Article 17Costs

- 1. The Requested Party shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition.**
- 2. The Requested Party shall bear the cost incurred in its territory in connection with the arrest and detention of the person whose extradition is sought, or the seizure and surrender of property.**
- 3. The Requesting Party shall bear the cost incurred in removing the person whose extradition is granted from the territory of the Requested Party and the cost of transit.**

Article 18 Consultation

- 1. The Parties shall consult, at the request of either Party, concerning the interpretation and the application of this Treaty.**

Article 19 Relations with International Conventions This Treaty shall not affect the rights and obligations of the Parties arising from multilateral international conventions/agreements to which they both are parties.

Article 20 Entry into Force and Termination

- 1. This Treaty is subject to ratification. It shall enter into force on the date of the exchange of the instruments of ratification.**
- 2. This Treaty shall apply to offences committed before as well as after the date it enters into force.**
- 3. Either Party may terminate this Treaty by giving notice in writing through diplomatic channels at any time. Termination shall take effect six (6) month after the date on which the notice is given.**

In Witness Whereof, the undersigned, being duly authorized by their respective Government, have signed this Treaty. Done in duplicate at New Delhi on this 5th day of October 2004 in the Hindi, Korean and English languages, all texts 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 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 Korea with effect from the date of the publication of this notification.