

Treaty between the Republic of India and the Federal Republic of Germany on Extradition

UNION OF INDIA

India

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TREATY-BETWEEN-THE-REPUBLIC-OF-INDIA-AND-THE-FEDERAL-REPUBLIC-OF-GERMANY ON EXTRADITION, 2004

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Treaty between the Republic of India and the Federal Republic of Germany on Extradition Published vide Notification No. G.S.R. 346(E), dated 28th May, 2004 Ministry of External Affairs Order G.S.R. 346(E). - Whereas the Treaty between the Republic of India and the Federal Republic of Germany on Extradition was signed at Berlin, Federal Republic of Germany on 27th June, 2001; and the instruments of ratification exchanged at New Delhi on 28th April, 2004 and which treaty provides as follows : The Republic of India and the Federal Republic of Germany, desiring to provide for more effective co-operation between the two States in the suppression of crime and, specifically, to facilitate extradition, have agreed as follows : Article 1 Obligation to extradite (1) The Contracting States shall extradite to each other subject to the provisions Described in this Treaty any person found in the territory of one of the Contracting States who is wanted by a competent authority of the Requesting State for, or has been convicted of, an extraditable offence: (2) When the offence has been committed outside the territory of the Requesting State, the Requested State shall grant extradition subject to the provisions described in this Treaty if: (a) its laws would provide for the punishment for such an offence committed in similar circumstances, or (b) the person whose extradition is requested is a national of the Requesting State. Article 2 Extraditable Offences (1) Extraditable offences under this Treaty are offences which are punishable under the laws of both Contracting States. In this connection it shall not matter whether or not the laws of the Contracting States place the offence within the same category of offences or denominate an offence by the same terminology. (2) For offences in connection with taxes, fiscal charges and customs duties, extradition shall be granted in accordance with the provisions of this Treaty only if the said offence corresponds to an offence of a similar nature under the law of the requested Contracting State. (3) Extradition shall be granted in respect of offences which, under the laws of both Contracting States, are punishable by a maximum term of imprisonment or other form of deprivation of liberty of at least

one year. Where extradition is requested for the purpose of enforcing a term of imprisonment or another form of deprivation of liberty, the duration of the remainder of the prison sentence or other deprivation of liberty which is to be enforced must total at least six months.(4) Subject to the conditions set out in paragraph 1, extradition shall also be granted in respect of an attempt or conspiracy to commit, or aiding, abetting, inciting or participating as an accomplice in the commission of, an extraditable offence.(5) Where extradition is granted in respect of an extraditable offence, it shall also be granted in respect of any other extraditable offence which, taken alone, would not be extraditable in terms of paragraph 3.

Article 3 Political Offences(1) Extradition shall not be granted if the offence in respect of which it is requested is regarded by the Requested State as a political offence, an offence of a political character, or as an offence connected with such an offence.(2) Extradition shall also not be granted if the Requested State has substantial grounds for believing that a request for extradition has been made for the purpose of prosecuting or punishing a person on account of his or her race, religion, nationality or political opinion, or that the position of the person sought may be prejudiced for any of these reasons.(3) For the purpose of this Treaty the following offences shall not be deemed to be offences within the meaning of paragraph 1:(a) an offence within the scope of the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft;(b) an offence within the scope of the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;(c) an offence within the scope of the 1973 New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;(d) an offence within the scope of the 1979 New York Convention against the Taking of Hostages;(e) any other offence in respect of which both Contracting States have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit his or her case to their competent authorities for a decision as to prosecution;(f) murder manslaughter or culpable homicide, maliciously wounding or inflicting grievous bodily harm;(g) kidnapping, abduction, or any comparable form of unlawful detention, including the taking of hostages;(h) placing or using an explosive, detonating device, destructive device, firearm or ammunition, capable of endangering life, or of causing grievous bodily harm, or of causing substantial property damage;(i) 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 a political offence;(j) an attempt or conspiracy to commit, or aiding, abetting, inciting or participating in the commission of, any of the foregoing offences.

Article 4 Military OffencesExtradition shall not be granted if the offence in respect of which it is requested is a military offence which is not an offence under ordinary criminal law.

Article 5 Grounds for Discretionary RefusalExtradition may be refused if the Requested State considers that, having regard to all the circumstances, including the trivial nature of the offence, or in the interest of justice, it would be unjust or inexpedient to extradite the person.

Article 6 Extradition of own National(1) Neither of the Contracting States shall be bound to extradite its own nationals.(2) The Requested State shall take all legally permissible measures in order to suspend naturalisation proceedings in respect of the person sought until a decision has been taken concerning the request for his or her extradition and, where the extradition request is granted, until his or her surrender.(3) If the Requested State does not extradite its own nationals, it shall, at the behest of the Requesting State, submit the case to its competent authorities so that criminal prosecution may be effected if considered appropriate. If the Requested State seeks additional files, papers and property, these shall be provided free of charge. The Requesting State shall be informed of the result of its request.

Article 7 Lapse of TimeExtradition shall not be granted if

the criminal prosecution or the enforcement of the prison sentence or other form of deprivation of liberty has become statute-barred under the law of the Requesting State. Article 8 Avoidance of Double Jeopardy Extradition shall not be granted if the competent authorities of the Requested State have, with full and binding effect, previously tried and acquitted or convicted the person sought in relation to the criminal offence in respect of which extradition is requested, or if the criminal proceedings against him or her have been irreversibly discontinued by the competent authorities of the Requested State in accordance with its own law. Article 9 Jurisdiction of the Requested State Extradition may be refused if the person sought is proceeded against in the Requested State for the same offence in respect of which extradition is requested. Article 10 Complaint and Authorisation If a complaint by or on behalf of the victim of an offence or an authorisation to prosecute is required by the law of the Requested State, the absence of such a complaint or authorisation shall not affect the obligation to extradite. Article 11 Capital Punishment When the offence in respect of which extradition is requested is punishable by death under the laws of the Requesting State and the laws of the Requested State do not permit such punishment for that offence, extradition may be refused unless the Requesting State furnishes such assurances as the Requested State considers sufficient that the death penalty shall not be imposed or, if imposed, shall not be enforced. Article 12 Channel of Communication; Extradition Documents (1) A request for the extradition of a person sought shall be made in writing and shall be transmitted through diplomatic channels. (2) The request shall be accompanied by (a) all available information concerning the identity and nationality of the person sought; and (b) a copy of the applicable statutory provisions, if any, creating the offence, or a statement of the applicable law, and in either case a statement of the punishment that can be imposed. (3) A request for the extradition of a person sought for the purpose of prosecution shall be accompanied, in addition to the documents provided for in paragraph 2, by the original or a certified copy of the arrest warrant issued in respect of the person sought, a description of each offence in respect of which the person is being sought and, where such information is not contained in the other documentation, a statement of the acts or omissions alleged against the person sought in respect of each such offence. (4) A request for the extradition of a person sought, lodged for the purpose of enforcing a sentence, shall be accompanied, in addition to the documents provided for in paragraph 2, by the original or a certified copy of the enforceable judgment, a summary statement of the facts of the case, where such information is not contained in the other documentation, such documents as provide proof of the final and binding conviction and a statement that the sentence is immediately enforceable and of the extent to which that sentence has not been enforced. (5) The accompanying documents listed in paragraphs 2 to 4 shall be signed by a judge or a competent official and authenticated by the official seal of the competent ministry. (6) If the extradition of a person sought to the Requesting State is not obviously precluded by the laws of the Requested State, and provided that the person sought consents for the record before a judge or a competent official to this extradition after personally being advised of his or her rights to formal extradition proceedings, the Requested State may grant his or her extradition without formal extradition proceedings having taken place. Article 13 Additional Documentation (1) If the Requested State considers that the documentation furnished in support of the request for the extradition of a person sought is not sufficient to fulfil the requirements of this Treaty, that State shall request the submission of necessary additional documentation; it may fix a time limit and upon the Requesting State's application, for which reasons shall be given, may grant a reasonable extension of the time limit. (2) If the person sought is being held in custody and the additional documentation or

information submitted as aforesaid is not sufficient, or if it is not received within the period specified by the Requested State, the person sought shall be released from custody. However, such release shall not bar a subsequent request in respect of the same offence. In this connection, it shall be sufficient for reference to be made in the subsequent request to supporting documents which have already been submitted, provided that these documents will be available in the extradition proceedings carried out on the basis of this subsequent request.

Article 14 Provisional Detention while Awaiting Extradition

(1) In urgent cases, either Contracting State may apply for the provisional arrest of the person sought until the request for extradition has been submitted to the Requested State through diplomatic channels. The request for provisional arrest may be made either through diplomatic channels or directly between the Federal Ministry of Justice of the Federal Republic of Germany and the Ministry of External Affairs of the Republic of India, or through the German and the Indian national Central Bureau of the International Criminal Police Organisation.

(2) The request for provisional arrest shall state that a warrant of arrest or a judgment as mentioned in Article 12 exists, and that it is intended to make a request for extradition. It shall also state the offences in respect of which extradition will be requested, and when and where such offences were committed, as well as providing all available information concerning the description and nationality of the person sought.

(3) On receipt of a request for provisional arrest, the Requested State shall take the necessary steps to secure the arrest of the person sought. The Requesting State shall be informed without delay of the extent to which its request has been complied with.

(4) Provisional detention shall be terminated if, within a period of 60 days after the apprehension of the person sought, the Requested State has not received the request for extradition and the documents specified in Article 12.

(5) The termination of the provisional detention pursuant to paragraph 4 shall not prejudice the rearrest and the extradition of the person sought if the request for extradition and the supporting documents specified in Article 12, insofar as they were not submitted in a timely manner, are received at a later date. Reference may be made to the request for extradition and the documents which have already been transmitted to the Requested State.

Article 15 Requests for Extradition made by Several States

(1) A Contracting State which has received concurrent requests for extradition of the same person, either in respect of the same offence or of different offences, from the other Contracting State and from a third State, shall make its decision having regard to all the circumstances, including the relative seriousness and the places of commission of the offence, the nationality of the person sought and the provisions of any extradition agreements between the Requested State and the Requesting States as well as, in particular, the possibility of subsequent re-extradition to another Requesting State.

(2) If the Requested State reaches a decision at the same time on extradition to one of the Requesting States and on re-extradition to another Requesting State, it shall communicate that decision on re-extradition to each of the Requesting States.

Article 16 Decision

(1) The Requested State shall promptly communicate to the Requesting State its decision on the request for extradition.

(2) The Requested State shall, as far as possible give reasons for any complete or partial refusal of the request for extradition.

Article 17 Deferred Surrender

The Requested State may, after a decision on the request has been rendered by a competent court, defer the decision on the surrender of the person sought if that person is being proceeded against, or is serving a sentence or a measure of correction and security in the Requested State in respect of a different offence from the one for which extradition was requested, until the conclusion of the proceedings and the full execution of any punishment which may be, or may have been, imposed on him or her. In this case the Requested State shall notify the Requesting State.

Article 18 Surrender of

the Person Sought(1) If the extradition has been granted, surrender of the person sought shall take place within such time as may be provided for by the laws of the Requested State. If no time period for surrender is provided for by the laws of the Requested State, surrender shall take place within 30 days from the date on which the Requesting State has been notified that the extradition has been granted. The time period may be extended by 20 days at the request of the Requesting State. The competent authorities of the Contracting States shall agree on the time and place of the surrender of the person sought.(2) If the person sought is not removed from the territory of the Requested State within the time required under paragraph 1, he may be released. The Requested State may subsequently refuse to extradite the person sought for the same offence.(3) If exceptional circumstances prevent a Contracting State from surrendering or taking delivery of the person sought in good time, it shall notify the other Contracting State accordingly prior to the expiration of the time limit. In such a case, the competent authorities of the Contracting States may agree upon a new date for the surrender.(4) The Requested State shall inform the Requesting State as to how long the person sought has been detained awaiting extradition and of the date of his apprehension.Article 19Rule of Speciality(1) Without prejudice to paragraph 3 below, a person extradited under this Treaty shall not:

1. in the Requesting State be detained or tried, or be subjected to any other restriction of his personal liberty for any offence committed before his extradition, other than in respect of:

(a)an offence in respect of which he was extradited, or another offence in respect of which he could be convicted based on the proven facts used to support the request for his extradition, or(b)another extraditable offence in respect of which the Requested State has consented to his or her being so detained or tried, or subjected to any other restriction of his or her personal liberty; or

2. be detained in the Requesting State for the purpose of his or her extradition to a third State, or be re-extradited to such a State, unless the Requested State consents to this.

(2)A request for the consent of the Requested State under this Article shall be accompanied by all the relevant documents specified in Article 12 and by a court record of statements made by the person extradited. Paragraph 1 of Article 13 shall apply mutatis mutandis.(3)Paragraph 1 shall not apply if the person extradited, although having had an opportunity to leave the territory of the Requesting State, has not done so within 45 days of his or her final release, or has returned to that territory after leaving it. Release on parole or probation without an order restricting the freedom of movement of the extradited person shall be deemed equivalent to final release.Article 20Notification of the Outcome of the Criminal ProceedingsThe Requesting State shall notify the Requested State, upon demand by the latter, of the outcome of the criminal proceedings being conducted in respect of the extradited person and shall send a copy of the final and binding decision to the Requested State.Article 21Surrender of Property(1)To the extent permitted under the laws of the Requested State, all articles which may serve as evidence, or which have been acquired as a result of an offence, or which have been obtained as consideration for such articles, and which at the

time of arrest are found in the possession of the person sought or are discovered subsequently, shall be surrendered if extradition is granted. Surrender of such articles shall be possible even without any special request and, if possible, at the same time that the person sought is surrendered.

(2) Subject to the conditions specified in paragraph 1, the articles mentioned therein shall be surrendered even if the person sought cannot be surrendered owing to his or her death or escape.

(3) Insofar as rights of the Requested State or of third parties to the articles are to be respected, the Requested State may refuse surrender or make surrender conditional upon a satisfactory assurance from the Requesting State that the articles will be returned to the Requested State as soon as possible.

Article 22 Mutual Legal Assistance in Connection with Extradition

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

Article 23 Transit

(1) Transit of a person who is the subject of extradition from a third State through the territory of a Contracting State to the territory of the other Contracting State shall be granted upon submission of a request, provided that the offence concerned is an extraditable offence under Article 2, and that the Contracting State requested to grant transit does not consider the offence to be one covered by Article 3 or 4.

(2) Transit of a national of the Requested State may be refused if, in the opinion of that State, it is inadmissible under its law.

(3) The request for transit must be accompanied by the documents mentioned in Article 12.

(4) Article 11 shall apply *mutatis mutandis*.

Article 24 Personal Data

(1) Personal data, hereinafter referred to as "data", shall be understood to be particulars on the personal or factual situation of an identified or identifiable natural person.

(2) Data transmitted on the basis of this Treaty shall only be used for the purposes for which the data were transmitted and on the conditions determined by the transmitting Contracting State in each individual case. In addition such data may be used for the following purposes: (a) for the prosecution of offences, (b) for the prevention of offences of considerable importance, (c) for non criminal court proceedings and administrative proceedings which are related to the use for which the data were transmitted pursuant to the first sentence or related to the use outlined in sub-paragraphs a) and b), (d) toward off a substantial danger to public security. Use of the data for other purposes shall require the prior consent of the Contracting State transmitting the data concerned.

(3) Subject to the domestic legal provisions of each Contracting State, the following provisions shall apply to the transmission and use of data: (a) Upon request, the Contracting State which has received the data shall inform the transmitting State of the data received, of the use made of the data and of the results achieved therefrom. (b) The Contracting States shall carefully handle data transmitted under this Treaty and pay particular attention to the accuracy and completeness of such data. Only data that relate to the request shall be transmitted. If it appears that incorrect data have been transmitted or that data that should not have been transmitted were transmitted, the Contracting State that has received the data shall be notified without delay. The Contracting State that has received the data shall rectify or correct any errors or erase the data. (c) The Contracting States shall keep records in an appropriate form concerning the transmission and receipt of data. (d) The Contracting States shall afford effective protection of the data transmitted against unauthorised access, unauthorised alteration and unauthorised publication. (e) Upon request, the person concerned shall be informed about existing data relating him as well as about the purpose for which they are to be used and the purpose of their storage. There shall be no obligation to give information where on a weighing of interests, the public interest in not giving information is found to outweigh the interest of the person concerned in being

informed. In all other respects the right of the person concerned to be informed of existing data relating to him shall be governed by the domestic law of the Contracting State in whose territory the information is requested. (f) If as a result of transmissions in the context of data exchange under this Treaty a person suffers unlawful damage, the receiving State shall be liable to him therefor according to its domestic law. The receiving State, cannot, vis-a-vis the aggrieved person, invoke the fact that the damage was caused by the transmitting State as a defence. If the receiving State pays compensation for damage that was caused by using incorrect data received from the transmitting State, the transmitting State shall reimburse the receiving State in respect of such compensation in accordance with the relevant provisions of its domestic law.

Article 25 Applicable Law Except where this Treaty provides otherwise, the law of the Requested State shall be applicable to proceedings relating to provisional detention while awaiting extradition, to extradition and to transit.

Article 26 Language to be Used The documents transmitted in application of this Treaty shall be in the language of the Requesting State. German requests shall be accompanied by a translation into English, Indian requests by a translation into German.

Article 27 Expenses Expenses arising from the transportation of a person sought to the Requesting State shall be borne by that State. Other expenses arising from an extradition or a transit request shall not be claimed by the Requested State from the Requesting State. The competent legal officials of the State in which the extradition proceedings take place shall, by all legal means within their power, assist the Requesting State before the competent judges and officials.

Article 28 Scope of Application This Treaty shall apply to offences encompassed by Article 2 committed before as well as after the date on which this Treaty enters into force. Extradition shall not be granted, however, in respect of an offence committed before this Treaty enters into force which was not an offence under the laws of both Contracting States at the time of its commission.

Article 29 Registration Registration of this Treaty with the Secretariat of the United Nations, in accordance with Article 102 of the Charter of the United Nations, shall be initiated by the Federal Republic of Germany immediately following its entry into force. The other Contracting State shall be informed of registration, and of the UN registration number, as soon as this has been confirmed by the Secretariat of the United Nations.

Article 30 Ratification; Entry into Force; Denunciation (1) This Treaty shall be subject to ratification; the instruments of ratification shall be exchanged in New Delhi as soon as possible. (2) This Treaty shall enter into force 30 days after the exchange of the instruments of ratification. (3) This Treaty shall continue in force until the expiration of one year from the date on which written notice is given by one Contracting State. The date of receipt of such notice by the other Contracting State shall be definitive for determining the deadline.

Done at Berlin on the 27th June, 2001 in duplicate in the Hindi, German and English languages, all three texts being authentic. In case of divergent interpretation of the Hindi and the German texts, 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), the Central Government hereby directs that the provisions of the said Act, other than Chapter II, shall apply to the Federal Republic of Germany with effect from the date of the publication of this notification.