

Extradition Agreement between the Government of the Republic of India and the Government of the French Republic

TREATY

India

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EXTRADITION-AGREEMENT-BETWEEN-THE-GOVERNMENT-OF-THE- of 2007

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Extradition Agreement between the Government of the Republic of India and the Government of the French RepublicPublished vide Notification No. G.S.R. 409(E), 31st May, 2007Ministry of External AffairsOrderG.S.R. 409(E). - Whereas the Extradition Agreement Treaty between the Republic of India and the French Republic was signed at Paris on 24th of January, 2003; and the Agreement has entered into force with effect from 1st August, 2005 and which Agreement provides as follows:The Government of the Republic of IndiaAndThe Government of the French RepublicHereinafter designated as the Contracting States, desiring to provide for effective cooperation between the two States.In the suppression of crime and, specifically, to facilitate extradition have agreed as follows:Article 1Obligation to Extradite

1. The Contracting States undertake to surrender to each other, subject to the provisions and conditions laid down in this Agreement, all persons against whom the competent authorities of the Requesting State are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence of imprisonment.

Article 2Extraditable Offences

- 1. Extradition shall be granted in respect of offences punishable, under the laws of the two Contracting States, by imprisonment of at least two years.**
- 2. Where on conviction a prison sentence has been awarded on account of an extraditable offence in the territory of the requesting State, the duration of the penalty remaining to be served must amount at least to nine months.**
- 3. Even regarding offences related to fiscal matters, customs duties or currency exchange, extradition shall be granted in accordance with the provisions of this Agreement.**
- 4. If the request for extradition includes several separate offences each of which is punishable under the laws of the two Contracting States by a sentence of imprisonment, but some of which do not fulfil the condition with regard to the duration of the sentence 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 shall not be granted if the offence in respect of which it is requested is regarded by the Requested State as a political offence, or as an offence connected with such an offence.**

The Requested State may decide not to regard as a political offence or as an offence connected with political offence or as an offence inspired by political motives a serious offence involving an act of violence against the life, physical integrity or liberty of a person(s) or a serious offence involving an act against property if the act created a collective danger for a person(s). The same shall apply to an attempt to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence. When evaluating the character of the offence, the Requested Party shall consider any particularly serious aspect of the offence, including : (a) whether it created a danger to the life, physical integrity or liberty of a person(s); or (b) whether it affected persons not connected to the motives behind it; or (c) whether cruel or vicious means were used in the commission of the offence.

- 2. 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.**

3. 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.

Article 4 Military Offences Extradition for offences under military law which are not offences under ordinary criminal law is excluded from the application of this Agreement. Article 5 Extradition of Nationals

1. Neither of the Contracting States shall extradite its own nationals. Nationality shall be determined as at the time of the commission of the offence for which extradition is requested.

2. If, pursuant to paragraph 1, the Requested State does not surrender the person claimed for the sole reason of nationality, it shall, in accordance with its laws and at the request of the Requesting State, submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate. If the Requested State requires additional documents, such documents shall be provided free of charge. The Requesting State shall be informed of the result of its request through the channels provided for in Article 9.

Article 6 Other Compulsory Refusals of Extradition Extradition shall not be granted if:

1. final judgement 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;

2. the person claimed has become immune, by reason of lapse of time, from prosecution or punishment, according to the law of either State;

3. pardon has been granted either in the territory of the Requesting State or in the territory of the Requested State, provided, in the latter case, that the Requested State was competent to prosecute according to its domestic law.

Article 7 Optional Refusals Extradition may be refused:

- 1. when the offence for which extradition is requested is regarded by the law of the Requested State as having been committed in whole or in part in its territory or in a place treated as its territory;**
- 2. when the offence for which extradition is requested has been committed outside the territory of the Requesting State and the law of the Requested State does not allow prosecution for the same category of offence when committed outside its territory.**
- 3. if the person claimed is being prosecuted by the Requested State in respect of the offence or offences for which extradition is requested, or if the judicial authorities of the Requested State have discontinued, in accordance with the law of that State, the criminal proceedings for the offence for which extradition is requested;**
- 4. when the person claimed has been tried and finally acquitted or convicted in a third State in respect of the offence or offences for which extradition is requested;**
- 5. If the surrender is likely to have dire consequences for the person claimed, namely on the grounds of his age or health.**

Article 8 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 may be refused unless the Requesting State gives such assurance as the Requested State considers sufficient that the death penalty will not be awarded or, if awarded, shall not be carried out.

Article 9 Transmission of Requests and Supporting Documents

1. The request for extradition shall be in writing and shall be transmitted through the diplomatic channel.

2. The request shall be supported by :

(a) the original or a true certified copy of the conviction and sentence, or of the warrant of arrest or other order having the same effect and issued in accordance with the procedure laid down in the law of the Requesting State; (b) a statement of the offences for which extradition is requested, the time and place of their commission, their legal description, and a reference to the relevant legal provisions, including those pertaining to lapse of time, as well as a copy of those provisions; (c) particulars of the remaining duration of the sentence to be carried out when the

person is claimed for the purpose of serving a sentence of imprisonment;(d)as accurate a description as possible of the person claimed, together with any other information which will help to establish his identity and, if possible, his location.Article 10Additional EvidenceIf the information communicated by the Requesting State is found to be insufficient to enable the Requested State to make a decision in pursuance of the present Agreement, the latter State shall request the necessary supplementary information and may fix a time limit for the receipt thereof. This time limit may be extended by the Requested State upon a duly reasoned request being made by the Requesting State.Article 11Provisional Arrest

1. In case of urgency, the competent authorities of the Requesting State may apply for the provisional arrest of the person sought; the competent authorities of the Requested State shall take a decision on it in accordance with their law.

2. The request for provisional arrest shall include a brief statement of the facts of the case; it shall also state that one of the documents mentioned in Article 9, paragraph 2 (a), 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 direct by post or telegraph or through the International Criminal Police Organization (Interpol) or by any other means affording evidence in writing or accepted by the Requested State. The requesting authority shall be informed without delay of the result of its request.

4. Provisional arrest may be terminated if, within a period of 60 days after arrest, the Requested State has not received the request for extradition and the documents mentioned in Article 9. 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.

5. Release shall not prejudice re-arrest and extradition if a request for extradition is received subsequently.

Article 12Request for Extradition by Several States

1. 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 request, the nationality of the person claimed and the possibility of subsequent extradition to another 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 13 Decision

1. The Requested State shall promptly communicate to the Requesting State through diplomatic channels its decision on the request for extradition.

2.

The Requested State shall convey to the Requesting State the reason for any complete or partial refusal of the request for extradition. Article 14 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 both States.

Article 15 Surrender of the Person Sought

1. If extradition 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.

2. Subject to the provisions of paragraph 3 of this Article, if the person claimed has not been taken over on the appointed date, he may be released after the expiry of 15 days and shall in any case be released after the expiry of 30 days. The Requested State may refuse to extradite him for the same offence.

3. If circumstances beyond its control prevent one of the Contracting States from surrendering or taking over the person to be extradited, it shall notify the other State. The two States shall agree upon a new date for surrender and the provisions of paragraph 2 of this Article shall apply.

Article 16 Rule 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 or detention order 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 9 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. The Requesting State may, however, take any measures necessary to remove the person from its territory, or any measures necessary under its law, including proceedings by default, to prevent any legal effects of lapse of time.

3. When the legal description of the offence for which a person has been extradited is altered this person shall only be proceeded against or sentenced if the offence under its new description:

(a) can give rise to extradition pursuant to this Agreement; (b) relates to the same facts on which extradition was granted.

4. When the modification of the legal description of the offence for which a person has been extradited may result in a lessening of the sentence to be awarded, the provisions of paragraph 3 of this Article shall apply.

Article 17 Re-Extradition to a Third State Except as provided for in Article 16, paragraph 1(b), the Requesting State shall not, without the consent of the Requested State, surrender to a third State a person surrendered to it and sought by the said third State in respect of offences committed before his surrender. The Requested State may request the production of the documents mentioned in Article 9 as well as a legal record in which the person claimed states that he accepts or refuses re-extradition. Article 18 Information on the Result of the Criminal Proceedings The Requesting State shall inform the Requested State, upon demand by the latter, of the outcome of the criminal proceedings being conducted in respect of the extradited person and send a copy of the final and binding decision. Article 19 Surrender of Property

1. Upon the request of the Requesting State and 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 and which at the time of apprehension are found in the possession of the person sought shall be surrendered if extradition of the person sought is granted. Surrender of such articles shall be possible even without any special request and, if possible, at the same time as the person sought is surrendered.

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

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

Article 20 Transit

1. Transit through the territory of either of the Contracting States shall be granted upon request transmitted through the diplomatic channel, provided that the offence concerned is an extraditable offence under this Agreement.

2. The State requested to grant transit may refuse to comply when the person concerned is its national.

3. Subject to the provisions of paragraph 4 of this article, it shall be necessary to produce the documents mentioned in article 9, paragraph 2.

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

(a) When no landing is scheduled, 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 9, paragraph 2 (a) 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 11 and the Requesting State shall submit a formal request for transit; (b) When a landing is scheduled, the Requesting State shall submit a formal request for transit. Article 21 Procedure Except where this Agreement otherwise provides, the procedure with regard to extradition and provisional arrest shall be governed solely by the law of the Requested State. Article 22 Languages to be Used The documents transmitted in application of this Agreement shall be in the language of the Requesting State and be accompanied by a translation in the language of the Requested State. Article 23 Expenses

1. Expenses incurred in the territory of the Requested State until the surrender of the person claimed are borne by that State.

2. Expenses incurred on the transit of a person claimed through the territory of the State requested to allow the transit, are borne by the Requesting State.

Article 24 Ratification Entry into Force; Denunciation

1. Each of the States shall notify the other of the fulfilment of the procedures required by its constitution for the entry into force of the present Agreement.

2. The present Agreement shall enter into force on the first day of the second month following the date of receipt of the last notification.

3. Either State may terminate the present Agreement at any time by giving to the other written notice of termination through diplomatic channels; in that case, termination shall take effect six months from the date of receipt of that notice.

Done at Paris on 24th of January 2003 in triplicate in Hindi, French and English languages, all three texts being equally authentic. 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

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hereby directs that the provisions of the said Act, other than Chapter II, shall apply to the French Republic with effect from the date of the publication of this notification.