

Extradition Treaty between the Republic of India and the Republic of Poland

UNION OF INDIA

India

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EXTRADITION-TREATY-BETWEEN-THE-REPUBLIC-OF-INDIA-AND-THE-REPUBLIC-OF-POLAND-2008

- Published on 16 May 2008
- Commenced on 16 May 2008
- [This is the version of this document from 16 May 2008.]
- [Note: The original publication document is not available and this content could not be verified.]

Extradition Treaty between the Republic of India and the Republic of PolandPublished vide Notification No. G.S.R. 382(E), 16th May, 2008Ministry of External AffairsG.S.R. 382(E). - Whereas the Extradition Treaty between the Republic of India and the Republic of Poland was signed at New Delhi, on 17th February, 2003; and the instruments of ratification were exchanged at Warsaw (Poland) on 4th April, 2005, and which treaty provides as follows:The Republic of India and the Republic of Polandhereinafter referred to as Contracting StatesDesiring to make more effective the cooperation between the two States in the suppression of crime, including terrorism, by concluding a treaty for the extradition of offenders,Have agreed as follows:Article 1Obligation to extradite

1. Each Contracting State undertakes to extradite to the other Contracting State, in the circumstances and subject to the conditions specified in this Treaty, any person who is wanted prosecution for, or is convicted of an extraditable offence, as specified in Article 2, committed within the territory of the Requesting State, and is found within the territory of the Requested State.

2. Extradition shall also be granted in respect of an extraditable offence, as specified in Article 2, committed outside the territory of the Requesting State but in respect of which the requesting State has jurisdiction, if the laws of the Requested State provide for the punishment for such an offence committed

outside its territory in similar circumstances.

3. Extradition may also be granted in respect of an extraditable Offence, as specified in Article 2, committed wholly or partly in the territory of the Requested State, over which the Requesting State has jurisdiction.

4. Extradition shall be granted in accordance with the provisions of this Treaty, irrespective of when the offence in relation to which extradition is sought was committed, provided that:

a) it was an offence under the laws of both the Contracting States at the time of the acts or omissions constituting the offence; and b) it was an offence under the laws of both the Contracting States at the time the request for extradition was made. Article 2 Extradition Offences

1. An extradition offence for the purposes of this Treaty is constituted by act 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 shall also be an extradition offence if it consists of an attempt to commit, abetment or participation in the commission of an offence specified in paragraph 1. Conspiracy to commit an offence specified in paragraph 1, as provided by the laws of the Republic of India and participation in an association or an organized group to commit offences specified in paragraph 1, as provided by the laws of the Republic of Poland, shall also be extradition offences.

3. An offence shall be an extradition offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character. Where extradition is sought for an offence against laws relating to taxation, customs duties, foreign exchange or other revenue matter, extradition may not be refused only on the ground that the laws of the Requested State do not impose the same kind of tax or duty or do not contain a tax, duty, customs, or exchange regulation of the same kind as the laws of the Requesting State.

Article 3 Application This Treaty shall apply to offences committed before as well as after the date it enters into force. Article 4 Grounds for Refusal of Extradition

1. A person shall not be extradited if:

(a)he is a citizen of the Requested State;(b)the person claimed has, according to the laws of either the Requesting or the Requested State, become immune, by reason of lapse of time, from prosecution or the execution of punishment;(c)extradition is inadmissible under the laws of the Requested State; or(d)the offence in respect of which he is wanted for prosecution or is convicted is a military offence which is not an offence under ordinary criminal law.

2. A person shall also not be extradited if in respect of the offence for which his extradition is requested, he has been previously proceeded against in the Requested State and convicted or acquitted with final effect.

3. Where it appears to the Requested & State that extradition would be totally incompatible with humanitarian considerations, in particular the state of health or old age of the person sought, the Contracting States shall consult to mutually determine whether the extradition request should continue.

Article 5Political Offences

1. Extradition shall not be granted if the offence for which extradition is requested is an offence of a political character.

2. For the purposes of this Treaty, the following offences shall not be considered to be of a political character:

(a)murder or any other offence against the person of the Head of State, the Head of Government of either of the Contracting States or members of their families;(b)an offence for which both Contracting States have the obligation pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution;(c)murder, manslaughter, malicious wounding, or inflicting grievous bodily harm or other grievous injury to health;(d)an offence involving kidnapping, abduction or any form of unlawful detention, including the taking of a hostage;(e)placing or using an Explosive, incendiary or destructive device capable of endangering life, of causing substantial bodily harm or of causing substantial property damage; and(f)an attempt to commit, or participation in the commission of any of the foregoing offences as well as conspiracy to commit these offences, as provided by the laws of the Republic of India and participation in an association or an organized group to commit these offences, as provided by the laws of the Republic of Poland.

Article 6Consequences of Refusal of Extradition

- 1. If an extradition request is refused under paragraph 1 sub-paragraph (a) of Article 4, the Requested State shall transmit the case to its competent authorities in order to initiate criminal proceedings in accordance with the laws of the Requested State. For this the Requesting State shall transfer to the Requested State the relevant documents and evidence.**
- 2. The provision of paragraph 1 shall apply in other cases also where a request for extradition is refused, if the initiation of criminal proceeding is not excluded under the laws of the Requested State.**
- 3. In case the extradition is refused on the ground of existence of jurisdiction (Article 1 paragraph 3) and according to the decision of the investigating authority the trial is not found feasible in the Requested State, the request for extradition may be resubmitted.**

Article 7 Postponement of Extradition and Temporary Extradition

- 1. If the person to be extradited is being prosecuted or serving sentence for another crime in the territory of the Requested State, the extradition may be postponed till the end of the criminal proceedings of the case, or completion of sentence, which shall be advised to the Requesting State.**
- 2. If the postponement of extradition can result in immunity by the reason of lapse of time or impede the investigation, the person can be extradited temporarily under a special request of the Requesting State.**
- 3. The temporarily extradited person must be returned to the Requested State immediately after the end of the proceedings of the case.**

Article 8 Extradition Procedures

- 1. The request for extradition shall be made through diplomatic channels.**
- 2. The request shall be accompanied by :**

(a) the name and surname of the person whose extradition is requested, information on his citizenship, place of residence or whereabouts and other pertaining data, as well as, if possible, the description of the person's appearance, his photograph and fingerprints; (b) a statement of the facts of the offence for which extradition is requested; and (c) the text of the laws: (i) defining the offence and (ii) prescribing punishment for that offence.

3. The request for extradition for the prosecution, besides the information specified above, must be accompanied by the original or a certified copy of the warrant of arrest issued by a competent court of the Requesting State and such information or statements as would justify the committal for trial of the person had the offence been committed in the Requested State.

4. If the request relates to a person already convicted and sentenced, it shall also be accompanied by a certified copy of the judgement and a statement that the judgement is final and enforceable and showing how much of sentence still remains to be undergone.

5. If the Requested State considers that the material 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, it shall request the necessary supplementary material or information and may fix a reasonable time limit for the receipt thereof.

Article 9 Provisional arrest

1. In urgent cases the person sought may, in accordance with the laws of the Requested State, be provisionally arrested on the application of the competent authorities of the Requesting State. The application shall contain an indication of intention to request the extradition of that person and a statement of existence of a warrant of arrest or a conviction against him, such information as may be necessary to identify him and such other information as would be necessary for the issue of a warrant of arrest in the Requested State. The application shall also state for what offence extradition will be requested.

2. 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 a request for his extradition shall not have been received. This provision shall not prevent institution of further proceedings for the extradition of the person sought if a request is subsequently received.

Article 10 Rule of Speciality

1. A person extradited under this Treaty may not be detained, prosecuted, sentenced or punished in the Requesting State for offences except for:

(a) an offence for which extradition has been granted or a differently denominated offence based on the same facts on which extradition was granted, provided such an offence is extraditable or is a lesser form of such offence; (b) an offence committed after the extradition of the person; or (c) an offence for which the competent authority of the Requested State has consented to the person's detention, prosecution, sentencing, or punishment. For the purpose of this sub-paragraph: (i) the Requested State may require the submission of the documents specified in Article 8; and (ii) unless the Requested State objects in writing, the person extradited may be detained by the Requesting State for 90 days, or for such longer period of time as the Requested State may authorise, 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 the surrender unless the surrendering State consents.

3. Paragraph 1 and 2 of this Article shall not prevent the detention, prosecution, sentencing 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 State after extradition and voluntarily returns to it; or (b) that person does not leave the territory of the Requesting State within 30 days of the day on which that person is free to leave.

Article 11 Admissibility of Documents The documents which accompany an extradition request shall be received and admitted as evidence in extradition proceedings if: (a) in the case of a request from the Republic of India, they are certified by the proper diplomatic or consular representative of the Republic of Poland in the Republic of India; (b) in the case of a request from the Republic of Poland, they are certified by the principal diplomatic or consular officer of the Republic of India resident in the Republic of Poland; or (c) they are certified or authenticated in any other manner accepted by the laws of the Requested State.

Article 12 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, the Requested State shall determine the State to which the person shall be extradited. In making its decision, the Requested State shall take into consideration factors including existence or non-existence of extradition treaty with the states requesting extradition, place of the commission of offences, gravity of offences, nationality of the offender and chronological order of the requests received.

Article 13 Death Sentence If under the laws of the Requesting State the person sought is liable to the death penalty for the offence for which his extradition is requested, but the law of the Requested State does not provide for death penalty in a similar case, extradition may be refused, unless the Requesting State gives such assurances as the Requested State considers sufficient that the death sentence will not be carried out.

Article 14 Transfer

1. The modalities of transfer of the person to be extradited, including the time and the place, shall be agreed upon by the competent authorities of both the Contracting States.

2. The Requesting State shall take delivery of the person sought from the territory of the Requested State within 30 days of the date on which the Requesting State was notified of the extradition decision. If he is not removed within that period, the Requested State may refuse to extradite him for the same offence.

3. If circumstances beyond its control prevent a Contracting State from timely surrendering or taking delivery of the person to be extradited, it shall notify the other Contracting State before 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 and for taking delivery.

Article 15 Seizure and Surrender of Property

1. To the extent permitted under its laws, the Requested State may seize and surrender to the Requesting State all articles, documents and evidence connected with the offence in respect of which extradition is granted. The items mentioned in this Article may be surrendered, to the extent permitted under the laws of the Requested State, even when extradition cannot be effected due to the death, disappearance, or escape of the person sought.

2. The Requested State may condition the surrender of the property upon satisfactory assurances from the Requesting State that the property will be returned to the Requested State as soon as practicable. The Requested State may also defer the surrender of such property if it is needed as evidence in the Requested State.

3. The rights of third parties in such property shall be duly respected.

Article 16 Mutual Legal Assistance in Extradition Each Contracting State shall, to the extent permitted by its laws, afford the other Contracting State the widest measure of mutual assistance in criminal matters in connection with the offence for which extradition has been requested. Article 17 Extradition expenses The Requesting State shall bear the expenses related to the translation of documents and the transportation of the person surrendered. The Requested State shall pay all other expenses incurred in that State by reason of the extradition proceedings. Article

18LanguagesWhile 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 19Obligations under International TreatiesThe present Treaty shall not affect the rights and obligations of the Contracting States arising from other international Treaties to which the Contracting States are parties.Article 20Ratification and Termination

1. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged New Delhi or Warsaw. It shall enter into force on the date of exchange of instruments of ratification.

2. Either of the Contracting States may terminate this Treaty at any time by giving notice to the other through the diplomatic channel; in such a case, the Treaty shall cease to have effect six months after receipt of the notice.

In witness whereof the undersigned being duly authorised thereto by their respective Governments, have signed this Treaty.Done at New Delhi this day of 17 February 2003 in duplicate in Hindi, Polish and English languages, all texts being equally authentic. In case of any interpretational difference 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), and in suppression of notification of Government of India, if any existing, relating to an extradition treaty or arrangement applicable in respect of the Republic of Poland, the Central Government hereby directs that the provisions of the said Act, other than Chapter III, shall apply to the Republic of Poland with effect from the date of the publication of this notification.