

Agreement for the Surrender of Fugitive Offenders between the Government of the Republic of India and the Government of Hongkong

TREATY

India

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AGREEMENT-FOR-THE-SURRENDER-OF-FUGITIVE-OFFENDERS-BETWEEN-INDIA-AND-HONGKONG **of 1999**

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Agreement for the Surrender of Fugitive Offenders between the Government of the Republic of India and the Government of Hongkong Published vide Notification No. G.S.R. 275(E), dated 20th April, 1999 Ministry of External Affairs Order G.S.R. 275(E). - Who is the Agreement for the Surrender of Fugitive Offenders between the Government of the Republic of India and the Government of Hongkong was signed in Hong Kong on 28th June, 1997, and whereas the Later notification (From Hongkong side) as to the fulfilment of requirements for the entry into force of the Agreement was received on 15th October, 1997 and in terms of Article 17(1) entered into force on 14th November, 1997 and which Agreement provides as follows:- Article 1 Obligation to Surrender The parties agree to surrender to each other, subject to the provisions laid down in this Agreement, any person who is found in the jurisdiction of the requested party and who is wanted by the requesting party for prosecution or for the imposition or enforcement of a sentence in respect of an offence under Article 2 of this Agreement whether such an offence was committed before or after the entry into force of the agreement. Article 2 Offences

1. Surrender of fugitive offenders shall be granted for an offence coming within any of the following descriptions of offences in so far as it is according to the laws of both Parties punishable by imprisonment or other form of detention for at least one year, or by a more severe penalty:

(i) Murder, manslaughter or culpable homicide; (ii) Aiding, abetting, counselling or procuring suicide; (iii) Maliciously wounding; inflicting grievous bodily harm, assault occasioning actual bodily harm or causing injury whether by means of a weapon, a dangerous substance or otherwise; (iv) Bigamy; (v) Rape. (vi) An offence relating to women and girls; (vii) Indecent assault; (viii) Stealing, abandoning, exposing or unlawfully detaining a child; (ix) Gross indecency with a child; (x) Kidnapping; abduction; false imprisonment or unlawful detention, including the taking of a hostage; dealing in slaves; (xi) Offences against the law relating to drugs, including narcotics and psychotropic substances and precursors and essential chemicals used in the illegal manufacture of narcotic drugs and psychotropic substances; (xii) Obtaining property or pecuniary advantage by deception; cheating; criminal breach of trust; embezzlement or criminal misappropriation; theft; robbery; burglary; blackmail; handing or receiving stolen goods; false accounting or any other offence in respect of property involving fraud; (xiii) Offences relating to fiscal matters, taxes or duties, notwithstanding, that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty or customs regulation of the same kind as the law of the requesting Party; (xiv) Smuggling; offences against laws relating to the import and export of prohibited items, including historical and archaeological and other items; (xv) Conspiracy to commit fraud or to defraud; (xvi) Offences against bankruptcy law; (xvii) False statements by company directors and other officers; (xviii) Any offence against the law relating to false or misleading trade descriptions; counterfeiting of coins, or forgery or uttering what is forged; (xix) An offence against the laws relating to corruption, including bribery, secret commissions, and breach of trust; (xx) Perjury and subornation of perjury; attempting to pervert the course of justice; (xxi) Criminal damage, including arson, 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; (xxii) Offences involving the unlawful use of computers; (xxiii) An offence against the law relating to firearms, including but not limited to the possession of a firearm or ammunition by a person who intends either himself or through another person to endanger life or the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person; (xxiv) An offence against the law relating to explosives, including but not limited to the causing of an explosion likely to endanger life or cause serious damage to property or 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; (xxv) Sinking or destroying a vessel at sea; assaults on board a ship on the high seas with intent to destroy life or to do grievous bodily harm; revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master; (xxvi) Piracy, involving ships or aircraft, according to international law; (xxvii) Genocide or conspiracy or direct and public incitement to commit genocide; (xxviii) Unlawful use, possession, control, seizure or hijacking of aircraft, vessels or other means of transportation; (xxix) Impeding the arrest or prosecution of a person who has or is believed to have committed an offence for which surrender may be granted under this Agreement and which is punishable according to the laws of both Parties by imprisonment or other form of detention of a period of five years or more; (xxx) Offences against the laws relating to the protection of public health and the environment; (xxxi) Offences relating to the possession or laundering of proceeds obtained from the commission of any offence for which surrender may be granted under this Agreement; (xxxii) Offences for which fugitive offenders may be surrendered under International Conventions currently applied; (xxxiii) Aiding, abetting, counselling or procuring the commission of

inciting, being an accessory before or after the fact to or attempting or conspiring to commit any offence for which surrender may be granted under this Agreement(xxxiv)Any other offences not referred to in the previous items of this paragraph, which are punishable by imprisonment or other form of detention for at least one year or by a more severe penalty and which are also offences for which surrender may be granted in accordance with the laws of both Parties.(2)where surrender of a fugitive offender is requested the purpose of carrying out a sentence, a further requirement shall be that in the case of a period of imprisonment or detention at least six months remain to be served.(3)For the purposes of this Article, in determining whether an offence is an offence punishable under the laws of both parties the totality of the acts or omissions alleged against the person whose surrender is sought shall be taken into account without reference to the elements of the offence prescribed by the law of the requesting party.(4)Where surrender of a fugitive offender is requested for the purpose of carrying out a sentence the requested Party may refuse to surrender him if it appears that the conviction was obtained in his absence, unless he has the opportunity to have his case retried in his presence, in which case he shall be considered as an accused person under this Agreement.

Article 3Basis for SurrenderA fugitive offender shall be surrendered only if the evidence be found sufficient according to the law of the requested Party either to justify the committal for trial of the person sought if the offence of which he is accused had been committed in the territory of the requested Party or to prove that he is the identical person convicted by the courts of the requesting Party.

Article 4Surrender of Nationals(1)The Government of the Republic of India reserves the right, to refuse the surrender of its nationals. The Government of Hong Kong reserves the right to refuse the surrender of nationals of the State whose Government is responsible for its foreign affairs.(2)Where the requested Party exercises this right, the requesting Party may request that the case be submitted to the competent authorities of the requested Party in order that proceedings for the prosecution of the person may be considered.

Article 5Death PenaltyIf the offence for which surrender of a fugitive offender is requested under this Agreement is punishable according to the law of the requesting Party with the death penalty, and if in respect of such an offence the death penalty is not provided for by the law of the requested Party, surrender may be refused unless the requesting Party gives such assurances as the requested Party considers sufficient that the death penalty will not be imposed or if imposed will not be carried out.

Article 6Refusal of SurrenderA fugitive offender shall not be surrendered if the requested Party has substantial grounds for believing:(1)(a)that the offence of which that person is accused or was convicted is an offence of a political character:(b)that the request for his return (though purporting to be made on account of an offence for which surrender may be granted) is in fact made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions: or(c)that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions(2)For the purposes of this agreement, the following offences shall not be considered to be of a political character:(a)murder or other wilful crime against the person of the Head of State of the Republic of India, or, in the case of Hong Kong, the Head of State whose government is responsible for its foreign affairs or in either case of a member of the head of State's immediate family;(b)an offence within the scope of the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, 1970;(c)an offence within the scope of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971;(d)an offence within the scope of the New York Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, 1973;(e)an

offence within the scope of the New York International Convention against the Taking of Hostages, 1979:(f)any offence in respect of which both parties have an obligation in accordance with a multilateral agreement either to surrender the person sought or to submit the case to their competent authorities for prosecution.(3)A fugitive offender shall not be surrendered if he has been acquitted or pardoned or if his prosecution is barred or his conviction set aside for any reason provided for under the law of the requesting Party or the requested Party.(4)The surrender of any person sought under the terms of this Agreement may also be refused if it appears to the requested Party that:(a)by reason of the trivial nature of the offence of which he is accused or was convicted; or(b)by reason of the passage of time since he is alleged to have committed it or to have become unlawfully at large as the case may be: or(c)because the accusation against him is not made in good faith or in the interests of justice: or(d)because there exist valid humanitarian grounds it would having regard to all the circumstances be unjust or oppressive to return him.

Article 7 Postponement of SurrenderIf the person sought is being proceeded against or is under punishment in the jurisdiction of the requested Party for any other offence, surrender shall be deferred until the conclusion of the proceedings and the execution of any punishment awarded.

Article 8 The Request and Supporting Documents(1)Requests for the surrender of a fugitive offender shall be made by and to the appropriate authorities of the Parties as may be notified between them from time to time.(2)The request shall be accompanied by:(a)as accurate a description as possible of the fugitive offender together with any other information which would help to establish his identity, nationality and whereabouts;(b)a statement and particulars of the offence for which surrender is requested;(c)the text of the legal provisions, if any creating or defining the offence a statement of the punishment which can be imposed therefor and a specification of any time limit that is imposed on the institution of proceedings or on the enforcement of any sentence in respect of that offence.(3)If the request relates to an accused person, it shall also be accompanied by a copy of the warrant of arrest issued by a judge, magistrate or other competent authority of the requesting Party and by such evidence as, according to the law of the requested Party, would justify his committal for trial if the offence had been committed within the jurisdiction of the requested Party.(4)If the request relates to a person already convicted and sentenced, it shall also be accompanied by:(a)a certificate of the conviction and sentence; and(b)if the person was convicted but not sentenced, a statement to that effect by the appropriate court and a copy of the warrant of arrest: or(c)if the person was sentenced, a statement that the sentence is enforceable and indicating how much of the sentence has still to be served.(5)If the information communicated by the requesting Party is found to be insufficient to allow the requested Party to make a decision in pursuance of this Agreement, the latter Party may request the necessary supplementary information and may fix a time-limit for receipt thereof.

Article 9 Language of DocumentationIf in a particular case the requested Party so required the requesting Party shall supply a translation of any document submitted in accordance with the provisions of this agreement.

Article 10 Provisional Arrest(1)In urgent cases the person sought may, in accordance with the law of the requested Party, be provisionally arrested on the application of the competent authorities of the requesting Party. The application for provisional arrest shall contain an indication of intention to request the surrender of the person sought and a statement of the existence of a warrant of arrest or a judgement of conviction against that person, and such further information, if any as would be necessary to justify the issue of a warrant of arrest had the offence been committed, or the person sought been convicted, within the jurisdiction of the requested party.(2)An application for provisional arrest may be forwarded through the same

channels as a request for surrender or through the International Criminal Police Organisation (Interpol).(3)The provisional arrest of the person sought shall be terminated upon the expiration of sixty days from the date of his arrest if the request for his surrender shall not have been received. This provision shall not prevent the re-arrest or surrender of the person sought if the request for his surrender is received subsequently.

Article 11 Concurrent Requests If the surrender of a fugitive offender is requested concurrently by one of the Parties and a State or States with whom the Republic of India or Hong Kong, whichever is being requested, has arrangements for the surrender of fugitive offenders, the requested Party shall make its decision in so far as its law allows having regard to all the circumstances including the provisions in this regard in any Agreements in force between the requested Party and the requesting Parties, the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person sought and the possibility of subsequent surrender to another State, and notify the other Party of its decision in the event of surrender of the fugitive to another jurisdiction.

Article 12 Authentication (1) Any document that, in accordance with Article 9, accompanies a request for surrender shall be admitted in evidence, if authenticated, in any proceedings in the jurisdiction of the requested Party. (2) A document is authenticated for the purposes of this Agreement if: (a) it purports to be signed or certified by a judge, magistrate or other officer authorised by the requesting Party; and (b) it purports to be sealed with an official or public seal of the requesting Party or of an officer of the requesting Party.

Article 13 Representation and Costs (1) The requested Party shall make all necessary arrangements for and meet the costs of any proceedings arising out of a request for surrender and shall otherwise represent the interests of the requesting Party. (2) If it becomes apparent that exceptional expenses may be incurred as a result of a request for surrender the Parties shall consult with a view to deciding how these expenses will be met. (3) The requested Party shall bear the expenses arising out of the arrest and detention of the person whose surrender is sought until that person is surrendered. The requesting Party shall bear all subsequent expenses.

Article 14 Arrangements for Surrender (1) If a fugitive offender is to be surrendered, the person sought shall be sent by the authorities of the requested Party to such convenient place of departure within that Party's jurisdiction as the requesting Party shall indicate. (2) Subject to the provisions of paragraph (3) of this Article the requesting Party shall remove the person sought from the requested Party within one month or such longer period as may be permitted under the law of the requested Party. If he is not removed within that period the requested Party may refuse to extradite him for the same offence. (3) If circumstances beyond its control prevent a Party from surrendering or taking over the person to be surrendered, it shall notify the other Party. In that case, the two Parties, upon mutual agreement, shall set a new date for surrender and the provisions of paragraph (2) of this Article shall apply.

Article 15 Surrender of Property (1) When a request for surrender of a fugitive offender is granted the requested Party shall so far as its law allows hand over to the requesting Party all articles, including sums of money, (a) which may serve as proof of the offence; or (b) which have been acquired by the person sought as a result of the offence and are in his possession or discovered subsequently. (2) If the articles in question are liable to seizure or confiscation within the jurisdiction of the requested Party the latter may, in connection with pending proceedings, temporarily retain them or hand them over on condition that they are to be returned. (3) These provisions shall not prejudice the rights of the requested Party or of any person other than the person sought. When such rights exist the articles shall on request be returned to the requested Party without charge as soon as possible after the end of the proceedings.

Article 16 Speciality and Resurrender (1) A fugitive

offender who has been surrendered 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 : (a) the offence in respect of which his return is ordered; (b) any lesser offence however described disclosed by the facts in respect of which his return was ordered provided such an offence is an offence for which he can be returned under this Agreement; (c) any other offence being an offence for which surrender may be granted under this Agreement in respect of which the requested Party may consent to his being dealt with; unless he has first had an opportunity to leave the jurisdiction of the Party to which he has been surrendered or he has not done so within forty-five days of his having been free to leave the jurisdiction or has returned to that jurisdiction having left it. (2) A fugitive offender who has been surrendered shall not be re-surrendered to another jurisdiction for an offence committed prior to his surrender unless : (a) the requested Party consents to such re-surrender; or (b) he has first had an opportunity to exercise his right to leave the jurisdiction of the Party to which he has been surrendered and has not done so within forty-five days or has Voluntarily returned to that jurisdiction having left it. (3) A Party whose consent is requested under paragraphs (1) (c) or (2) (a) of this Article may require the submission of any document or statement referred to in Article 8, and any statement made by the surrendered person on the matter. Article 17 Entry into Force, Suspension and Termination (1) This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been complied with. (2) Either of the Parties may suspend or terminate this Agreement at any time by giving notice to the other through the same channels as a request for the surrender of a fugitive offender. Suspension shall take effect on receipt Of the relevant notice. In the event of termination the Agreement shall cease to have effect six months after the receipt of the notice. In witness whereof the undersigned, being duly authorised by their respective government, have signed this Agreement. Done at Hong Kong this 28th days of June, in the year one thousand nine hundred and ninety seven in the Hindi, Chinese and English languages, each text being equally authentic. 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 Hong Kong with effect from the date of publication of this notification.