

TREATY
ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL
MATTERS
BETWEEN THE REPUBLIC OF INDIA AND THE
REPUBLIC OF BULGARIA

The Republic of India and Republic of Bulgaria (hereinafter referred to as Contracting States);

Guided by the traditional friendly relations between the two countries;

Recognizing the need to facilitate the widest measures of mutual assistance in the service of summons, execution of warrants and other judicial documents and commissions;

Desiring to improve the effectiveness of both countries in the suppression of crime, investigation, prosecution and crime related to terrorism and tracing, restraint, forfeiture or confiscation of the proceeds and instruments of crime, through cooperation and mutual legal assistance in criminal matters;

Have agreed as follows:

Article 1
Scope of Application

1. The Contracting States undertake to afford each other, in accordance with the provisions of the present Treaty, the widest measures of mutual legal assistance in criminal matters.
2. Mutual legal assistance is any assistance given by the Requested State in respect of investigations, prosecutions or proceedings to the Requesting State in criminal matters, irrespective of whether the assistance is sought or is to be provided by a court or some other authority and shall include:

- a) locating and identifying persons and objects;
 - b) service of summons and other judicial documents;
 - c) taking of evidence, obtaining testimony from persons, including expert examination;
 - d) executing inspection, search and seizure;
 - e) providing material and documentary evidence;
 - f) making persons in custody and others, including experts, available to give evidence or assist in investigations;
 - g) location, restraining, seizure and confiscation of the proceeds and instruments of crime;
 - h) providing relevant judicial records and exchange of legal information.
3. Other forms of legal assistance may be executed if they are in accordance with the law of the Requested State.
4. Assistance and procedures set forth in this Treaty shall not prevent either State from granting assistance to the other State through the provisions of other applicable international conventions or agreements or through the provisions of its domestic laws. The States may also provide assistance pursuant to any bilateral arrangement or agreement that may be applicable.
5. The assistance under this Treaty shall not include:
- a) extradition and detention of a person with a view of extradition of that person;
 - b) enforcement of criminal judgments rendered by the courts of the Requesting State on the territory of the Requested State;
 - c) transfer of persons in custody to serve sentences;
 - d) transfer of proceedings in criminal matters.
6. Assistance shall be provided without regard to whether the conduct which is the subject of the investigation, prosecution or proceedings in the Requesting State would constitute an offence under the laws of the Requested State.

7. This Treaty shall apply to requests for legal assistance relating to offences committed before its entry into force.

Article 2 **Definitions**

For the purpose of this Treaty :

- a) 'Criminal matters' means investigations, inquiries, trials or other proceedings relating to an offence created by law including those relating to taxation, custom duties and international transfer of capital and payments.
- b) 'Property' means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets derived or used in the commission of an offence and includes property obtained through proceeds of crime'.
- c) 'Proceeds of crime' means any property derived or obtained directly or indirectly, by any person as a result of criminal activity or the value of any such property'.
- d) 'Instruments' means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;
- e) 'Confiscation' means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property.
- f) 'Restraint of property' means any measure for the prevention of dealing in or transfer or disposal of property.

Article 3
Refusal or Postponement of Legal Assistance

1. Assistance may be refused if:
 - a) in the opinion of the Requested State, the execution of the request would impair its sovereignty, security, public order or other essential public interest;
 - b) the Requested State has reasons to believe that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin, expression of opinion or that that person's position may be prejudiced for any of those reasons;
 - c) the request relates to an offence in respect of which the accused person had been finally acquitted or pardoned in the Requested State.

2. Legal assistance may be postponed if the execution of the request would interfere with an ongoing investigation or prosecution in the Requested State.

3. The Requested State shall promptly inform the Requesting State of its decision not to comply in whole or in part with a request for assistance, or to postpone execution, and shall give reasons for that decision.

4. Before refusing a request for assistance or before postponing the execution of a request, the Requested State shall consider whether assistance may be provided subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to those conditions, it shall comply with them.

Article 4
Execution of Request for Legal Assistance

1. When executing the requested legal actions, the Requested State shall apply its national legislation. To the extent consistent with

its law and practice the Requested State may carry out the request in the manner specified by the law of the Requesting State.

2. If the Requesting State makes a specific request, the Requested State shall communicate the date and place of execution of the requested assistance. In such case the authorities of the Requesting State and the parties to the proceedings may attend the execution of the request in conformity with the laws of the Requested State.

3. The Requested State shall not refuse to execute a request on the ground of bank secrecy.

Article 5

Service of Documents

1. The Requested State shall serve any document transmitted to it for the purpose of service.

2. The Requesting State shall transmit a request for the service of a document pertaining to a response or appearance in the Requesting State within a reasonable time, before the scheduled response or appearance.

3. The Requested State shall return a proof of service in the manner required by the Requesting State. If the service cannot be effected the reasons shall be communicated immediately to the Requesting State.

Article 6

Transmission of Documents and Objects

1. The Requested State shall provide copies of publicly available information and documents of government departments and agencies.

2. The Requested State may provide any information, documents and objects in the possession of a government department or

agency, but not publicly available, to the same extent and under the same conditions as they would be available to its own law enforcement and judicial authorities.

3. The Requested State may provide certified copies of documents, unless the Requesting State expressly requests originals. The original documents shall be kept in the safe custody of the Requesting State till the end of the proceedings.
4. Original documents or objects provided to the Requesting State shall be returned to the Requested State as soon as possible upon request.
5. In so far as not prohibited by the law of the Requested State, documents or objects shall be provided in a form or accompanied by such certification as may be specified by the Requesting State in order to make them admissible according to the law of the Requesting State.
6. Taxes or customs duties shall not be levied on objects that have been transmitted under this Treaty except in accordance with the domestic laws of the Contracting States.

Article 7
Availability of Persons to Give Evidence or
Assist in Investigation or Criminal Proceedings in the
Requested State

1. A person including a person in custody, requested to testify and produce documents or objects in the Requested State may be compelled by subpoena or order to appear, testify and produce such documents or objects, in accordance with the law of the Requested State.
2. Where appearance of persons is requested with respect to the execution of a request for assistance in the territory of the Requested

State, it shall apply measures of compulsion and sanctions provided for by its domestic law.

3. Subject to the law of the Requested State officials or authorized persons of the Requesting State and persons concerned in the proceedings in the Requesting State shall be permitted to be present when evidence is taken in the Requested State and to participate in the taking of such evidence in the manner as may be specified by the Requested State.

4. The right to participate in the taking of evidence includes the right to pose questions. The persons present at the execution of a request may be permitted to make a verbatim transcript of the proceedings. The use of technical means to make such a verbatim transcript may be permitted.

Article 8
Availability of Person to Give Evidence or
Assist in Investigations or Criminal Proceedings in the
Requesting State

1. The Requesting State may request that a person be made available to give evidence or assist investigations in its jurisdiction.

2. The Requested State shall invite the person to assist in the investigation or to appear as a witness in the proceedings in the Requesting State and seek that person's voluntary consent thereto. The Requested State shall promptly inform the Requesting State of that person's response.

3. The request shall indicate the approximate allowances and travel and subsistence expenses payable by the Requesting State. If a specific request is made, the Requested State may grant the person an advance, which shall be refunded by the Requesting State.

Article 9

**Transfer of Persons in Custody to Give Evidence
or to Assist in Investigations or Criminal Proceedings**

1. Upon the request of the Requesting State a person in custody in the Requested State shall, subject to that person's consent be temporarily transferred to the Requesting State to assist in investigations or give evidence unless there are overriding grounds against the transfer.

2. The transferred person shall be held in custody in the Requesting State and shall be returned in custody to the Requested State on the conclusion of the matter in relation to which the transfer was sought or at such earlier time as the person's presence is no longer required.

3. Where the Requested State advises the Requesting State that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person referred to in article 8 of the present Treaty.

Article 10
Safe Conduct

1. A person present in the Requesting State pursuant to a request seeking that person's attendance shall not be detained, prosecuted, or subjected to any other restriction of personal liberty in the Requesting State in respect of offences or convictions that preceded that person's departure from the Requested State. That person shall not, without his consent, be required to give evidence in any proceedings or to assist in any investigations other than the proceedings and investigations to which the request relates.

2. The protection under paragraph 1 shall cease to apply, if that person being free to leave the Requesting State has not left after the expiration of 30 consecutive days after being officially notified that his presence is no longer required—~~or, having left, has voluntarily returned.~~

3. Any person who fails to appear in the Requesting State may not be subjected to any sanction or compulsory measure in the Requested State.

Article 11
Information on Judgments

1. The Requested State shall communicate extracts from and information relating to judicial records requested by Requesting State required in criminal proceedings, to the extent these may be made available to its own judicial authorities in like cases.

2. In cases other than those provided for in paragraph 1 of this Article, the request shall be complied with in accordance with the conditions provided for by the law or practice of the Requested State.

Article 12
Search and Seizure

1. The Requested State shall execute a request for a search and seizure.

2. Search and seizure shall be conducted by the Requested State to the same extent and under the same conditions as to be got done for its own law enforcement and judicial authorities in accordance with its laws.

3. The competent authority that has executed a request for a search and seizure shall provide such information as may be required by the Requesting State concerning, but not limited to, the identity, condition, integrity and continuity of possession of the documents or objects seized and the circumstances of the seizure.

Article 13

Proceeds and Instruments of Crime

1. The Requested State shall upon request endeavor to ascertain whether any proceeds or instruments of a crime are located within its jurisdiction and shall notify the Requesting State of the results of its inquiries.
2. The Requested State shall upon request take the necessary provisional measures, such as freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might be such as to satisfy the request.
3. The Requested State shall upon request for confiscation concerning instruments or proceeds, situated in its territory, enforce a confiscation order made by a court of a Requesting State in relation to such instruments or proceeds; or submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, enforce it.
4. The measures mentioned in this article should be carried out as permitted by and in accordance with the domestic law of the Requested State and, to the extent not incompatible with such law.
5. Proceeds or instruments forfeited or confiscated pursuant to this Treaty shall accrue to the Requested State, unless otherwise agreed on a case- to- case basis.

Article 14

Contents of a Request for Legal Assistance

1. The request for legal assistance shall include :
 - a) description of the competent authorities responsible for conducting the investigation or court proceedings to which the request relates;

- b) purpose of the request and a brief description of the assistance sought;
 - c) description of the facts alleged to constitute the offence and a statement or texts of relevant laws, except in cases of a request for service of documents;
 - d) any other information necessary for the execution of the request, in particular information concerning the identity of the persons concerned in the request;
 - e) details of any particular procedure or requirements that the Requesting State wishes to be followed, and general information about the authorities and parties to the proceedings that are willing to participate;
 - f) if necessary, specification of any time limit within which compliance with the request is desired.
2. In case of requests to take evidence from a person, the request shall contain information about the subject matter of the evidence or statement sought, an interrogation questionnaire and other appropriate requirements.
3. In the following cases, requests for assistance shall include:
- (a) in the case of requests to take evidence from a person, an indication as to the type of statements, whether sworn, affirmed or recorded/ authenticated by a judicial officer that are required and a description of the subject matter of the evidence or statement sought;
 - (b) in the case of providing of materials of evidence, the current location of such materials in the Requested State and an indication of the authority or persons who will be entrusted to keep such materials in the Requesting State, the place to which such materials are to be moved, any tests to be conducted and the date by which such materials will be returned;
 - (c) in the case of making detained persons available, an indication of the authority or persons who will have custody

during the transfer, the place to which the detained person is to be transferred and the probable date of that person's return; and

4. If necessary, and where possible, requests for assistance shall include:

(a) the identity, nationality and location of a person or persons who is/are the subject of the investigation, prosecution or proceedings;

(b) details of any particular procedure or requirement that the Requesting State wishes to be followed and the reasons therefor.

5. If the Requested State considers that the information is not sufficient to enable the request to be executed, it may request additional information to enable the request to be dealt with.

Article 15
Limitation on Use

The Requesting State shall not, without the consent of the Requested State use or transfer information or evidence provided by the Requested State for investigations and proceedings other than those stated in the request. However in cases where the charge is altered, the material provided may be used in so far as the offence, as charged, is an offence in respect of which mutual assistance could be provided under the present Treaty.

Article 16
Confidentiality

1. The Requested State shall upon request keep confidential the request for assistance, its contents and the supporting documents as well as the fact of granting of such assistance. If the request cannot be executed without breach of confidentiality, the Requested State

shall so inform the Requesting State, which shall then determine whether the request should nevertheless be executed.

2. The Requested State shall upon request keep confidential the evidence and information provided by the Requesting State except to the extent that the evidence and information is needed for the investigation and proceedings described in the request.

Article 17
Central Authorities

1. Central Authorities shall transmit and receive requests for legal assistance and responses thereto for the purposes of this Treaty. Transmissions may also take place through the International Police Organization/INTERPOL.

2. The Central authorities for the purposes of this Treaty shall be:

for the Republic of India - the Ministry of Home Affairs

and for the Republic of Bulgaria - the Ministry of Justice.

Article 18
Exchange of Legal Information

Upon request, the Contracting States shall inform each other of the provisions of their respective laws and legal practice.

Article 19
Certification

All records and documents, or certified copies thereof that are exchanged between the Contracting States shall not require any form of legislation within the meaning of this Treaty.

Article 20
Language

Requests for legal assistance and supporting documents shall be accompanied by a certified translation in English or in the language of the Requested State.

Article 21
Costs

1. The costs of executing the request for legal assistance shall be borne by the Requested State.
2. The Requesting State shall bear the expenses for the transfer of persons in custody to its territory and the expenses and fees of experts in the Requested State and the costs mentioned in paragraph 3 of Article 8.
3. If it becomes apparent that the execution of the request requires expenses of an extraordinary nature, the Contracting States shall consult to determine the terms and conditions under which the requested assistance can be provided.

Article 22
Ratification and Entry into Force

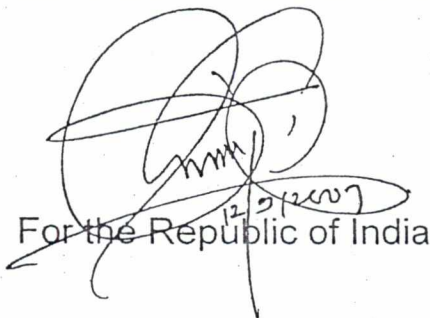
1. This Treaty shall be subject to ratification and shall enter into force on the 30th day after the exchange of the instruments of ratification.
2. Either contracting State may denounce the present Treaty by giving notice in writing to the other State through the diplomatic channel. Such denunciation shall take effect six months following the date on which it is received by the other State.
3. Under the initiative of either contracting State amendments may be made to this Treaty, which shall enter into force according to procedure described in paragraph 1 of this article.

Article 23
Interpretation

All matters with respect to the interpretation or implementation of this Treaty shall be settled by the Contracting States through consultations between the authorities mentioned in Article 17 of the Treaty.

In witness whereof the undersigned being duly authorized thereto by their respective Governments, have signed this treaty.

Done at New Delhi on 12 September, 2007 in duplicate in Hindi, Bulgarian and English language all texts being equally authentic. In case of divergence, the English text shall prevail.



For the Republic of India



For the Republic of Bulgaria