

# EXTRADITION TREATY BETWEEN INDIA AND SWITZERLAND

**G.S.R. 462 (E), dated 9th October, 1996<sup>1</sup>.**—Whereas the Extradition Treaty between the United Kingdom of Great Britain and Ireland, and the Swiss Federal Council was concluded and signed at Berne on the 26th November, 1880, as amended by the Convention dated the 29th June, 1904, are considered to be in force between India and Switzerland;

And whereas the Central Government in exercise of the powers conferred by sub-section (1) of Sec. 3 of the Extradition Act, 1962 (34 of 1962), had directed by an order number G.S.R. 56, dated the 5th January, 1963 that the provisions of the said Act, other than Chapter III shall apply to Switzerland;

Now, therefore, in exercise of the powers conferred by sub-section (3) of Sec. 3 of the said Act, the Central Government hereby sets out the aforesaid Treaty as under:—

## "ARTICLE I

Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland engages to deliver up, under the circumstances and on the conditions stipulated in the present Treaty, all persons, and the Swiss Federal Council engages to deliver up, under the like circumstances and conditions, all persons, excepting Swiss citizens, who, having been charged with, or convicted by the Tribunals of one of the two High Contracting Parties of the crimes or offences enumerated in Art. II, committed in the territory of the one party, shall be found within the territory of the other.

In the event of the Federal Council being unable, by reason of his Swiss nationality, to grant the extradition of an individual, who, after having committed in the United Kingdom one of the crimes or offences enumerated in Art. II, should have taken refuge in Switzerland, the Federal Council engages to give legal effect to and prosecute the charge against him according to the laws of the Canton of his origin; and the Government of the United Kingdom engages to communicate to the Federal Council all documents, depositions, and proofs relating to the case, and to cause the commissions of examination directed by the Swiss Judge, and transmitted through the proper Diplomatic channel, to be executed gratuitously.

## ARTICLE II

The crimes for which the extradition is to be granted are the following:—

1. Murder (including infanticide) and attempt to murder.
2. Manslaughter.
3. Counterfeiting or altering money, uttering or bringing into circulation counterfeit or altered money.
4. Forgery, or counterfeiting, or altering, or uttering what is forged, or counterfeited, or altered; comprehending the crimes designated in the Penal Codes of both States as counterfeiting or falsification of paper money, bank notes, or other securities, forgery, or falsification

1. PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART. II, SEC. 3 (I), DATED 9TH OCTOBER, 1996.

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of other public or private documents, likewise the uttering or bringing into circulation, or wilfully using such counterfeited, forged or falsified papers,

5. Embezzlement or larceny.
6. Obtaining money or goods by false pretences.
7. Crimes against bankruptcy law.
8. Fraud committed by a bailee, banker, agent, factor, trustee, or director, or member of public officer of any Company made criminal by any law for the time being in force.
9. Rape.
10. Abduction of minors
11. Child stealing or kidnapping.
12. Burglary, or house breaking, with criminal intent.
13. Arson.
14. Robbery with violence.
15. Threats by letter or otherwise with intent to extort.
16. Perjury or subornation or perjury.
17. Malicious injury to property, if the offence be indictable.

The extradition is also to take place for participation in any of the aforesaid crimes, as an accessory before or after the fact, provided such participation be punishable by the laws of both Contracting Parties.

## ARTICLE III

A fugitive criminal may be apprehended in either country under a warrant issued by any Police Magistrate, Justice of the Peace, or other competent authority, on such information or complaint, and such evidence, or after such proceedings as would, in the opinion of the authority issuing the warrant, justify the issue of a warrant if the crime had been committed or the person convicted in that part of the dominions of the two Contracting parties in which the Magistrate, Justice of the Peace, or other competent authority exercises jurisdiction: provided, however, that, in the United Kingdom, the accused shall, in such case, be sent as speedily as possible before a Police Magistrate in London.

Requisitions for provisional arrest may be addressed by post or by telegraph, provided they purport to be sent by some judicial or other competent authority. Such requisitions must contain a description in general terms of the crime or offence, and a statement that a warrant has been granted for the arrest of the criminal, and that his extradition will be demanded.

He shall in accordance with this Article be discharged, as well in the United Kingdom as in Switzerland, if within the term of thirty days a requisition for extradition shall not have been made by the Diplomatic Agent of the country claiming his surrender in accordance with the stipulations of this Treaty.

## ARTICLE IV

The requisition for extradition must always be made by the way of diplomacy, and to wit, in Switzerland by the British Minister to the President of Confederation, and in the United Kingdom to the Secretary of State for Foreign Affairs by the Swiss Counsel-General in London, who, for the

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purposes of this Treaty, is hereby recognised by Her Majesty as a Diplomatic Representative of Switzerland.

#### ARTICLE V

In Switzerland the manner of proceeding shall be as follows :—

The requisition for the extradition of an accused person must be accompanied by an authentic copy of the warrant of arrest, issued by a competent official or Magistrate, clearly setting forth the crime or offence of which he is accused, together with a properly legalized information setting forth the facts and evidence upon which the warrant was granted.

If the requisition relates to a person already convicted must be accompanied by an authentic copy of the sentence/conviction, setting forth the crime or offence of which he has been convicted.

The requisition must be accompanied by a description of the person claimed, and, if it be possible, by other information and particulars which may serve to identify him.

After having examined these documents, the Swiss Federal Council shall communicate them to the Cantonal Government in whose territory the person charged is found, in order that he may be examined by a judicial or police officer on the subject of their contents.

The Cantonal Government will transmit the *proces-verbal*, of the examination, together with all the documents, accompanied, if there be one, by a more detailed report to the Federal Council, who, after having examined them, and there be no opposition on either side, will grant the extradition, and will communicate its decision both to the British Legation and to the Cantonal Government in question, to the latter in order that it may send the person to be surrendered to such place on the frontier, and deliver him to such foreign police authority as the British Legation may name in each special case.

Should the documents furnished with a view of proving the facts, or a establishing the identity of the accused, or the particulars collected by the Swiss authorities appear insufficient, notice shall be immediately given to the Diplomatic Representative of Great Britain, in order that he may furnish further evidence if such further evidence be not furnished within fifteen days the person arrested shall be set at liberty.

In the event of the application of this Treaty being contested, the Swiss Federal Council will transmit the documents ("dossier") to the Swiss Federal Tribunal, whose duty it is to decide definitely the question whether extradition should be granted or refused.

The Federal Council will communicate the judgment of the Federal Tribunal to the British Legation. If this judgment grants the extradition the Federal Council will order its execution, as in the case when the Federal Council itself grants the extradition. If, on the other hand, the Federal Tribunal refuses the extradition, the Federal Council will immediately order the person accused to be set at liberty.

#### ARTICLE VI

In the dominions of Her Britannic Majesty, other than the Colonies or foreign possessions of Her Majesty, the manner of proceeding shall be as follows :—

(a) In the case of a person accused.—The requisition for the surrender shall be made to Her Britannic Majesty's Principal Secretary

of State for Foreign Affairs by the Diplomatic Representative of the Swiss confederation. The said demand shall be accompanied by a warrant of arrest, or other equivalent judicial document, issued by a Judge or Magistrate duly authorised to take cognizance of the acts charged against the accused in Switzerland, and duly authenticated depositions or statements taken on oath, or solemnly declared to be true, before such Judge or Magistrate, clearly setting forth the said acts, and containing a description of the person claimed, and any particulars which may serve to identify him.

The said Principal Secretary of State shall transmit such documents to Her Britannic Majesty's Principal Secretary of State for the Home Department, who shall then, by order under his hand and seal, signify to some Police Magistrate in London that such requisition has been made, and require him, if there be due cause, to issue his warrant for the apprehension of the fugitive.

On the receipt of such order from the Secretary of State, and on the production of such evidence as would, in the opinion of the Magistrate, justify the issue of the warrant if the crime had been committed in the United Kingdom, he shall issue his warrant accordingly.

When the person claimed shall have been apprehended, he shall be brought before the Magistrate who issue the warrant, or some other Police Magistrate in London. If the evidence to be then produced shall be such as to justify, according to the law of England, the committal for trial of the prisoner, if the crime of which he is accused had been committed in the United Kingdom, the Police Magistrate shall commit him to prison to await the warrant of the Secretary of State for his surrender, sending immediately to the Secretary of State a certificate of the committal and a report upon the case.

After the expiration of a period from the committal of the prisoner, which shall never be less than fifteen days, the Secretary of State shall, by order under his hand and seal, order the fugitive criminal to be sent to such seaport-town as shall, in each, special case, be selected for his delivery to the Swiss Government.

(b) In the case of a person convicted.—The course of proceeding shall be the same as in the case of a person accused, except that the warrant to be transmitted by the Diplomatic Representative of Switzerland in support of his requisition shall clearly set forth the crime or offence of which the person claimed has been convicted, and state the place and date of his conviction.

The evidence to be produced shall consist of the penal sentence passed against the convicted person by the competent Court of the State claiming his extradition.

(c) Person convicted by judgment in default or *arrdt de contumace* shall be, in the matter of extradition, considered as persons accused, and may, as such, be surrendered.

(d) After the Police Magistrate shall have committed the accused or convicted person to prison to await the order of a Secretary of State for his surrender, such person, shall have the right to apply for a writ of *habeas corpus*; if he should so apply, his surrender must be deferred

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until after the decision of the Court upon the return to the writ, and even then can only take place if the decision is adverse to the applicant. In the latter case, the Court may at once order his delivery to the person authorized to receive him, without waiting for the order of a Secretary of State for his surrender, or commit him to prison to await such order.

#### ARTICLE VII

In the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence the depositions or statements of witnesses, either sworn or solemnly declared to be true, taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, or copies thereof, provided such documents purport to be signed or copies thereof, provided such documents purport to be signed or certified by a Judge, Magistrate, or officer of such State, and are authenticated by the official seal of a British Secretary of State, or of the Chancellor of the Swiss Confederation being affixed thereto.

The personal attendance of witnesses can be required only to establish the identity of the person who is being proceeded against with that of the person arrested.

#### ARTICLE VIII

If proof sufficient to warrant the extradition be not furnished within two months from the day of the apprehension, the person arrested shall be discharged from custody.

#### ARTICLE IX

In cases where it may be necessary, the Swiss Government shall be represented at the English Courts by the Law Officer of the Crown, and the English Government in the Swiss Courts by the competent Swiss authorities.

The respective Government will give the necessary assistance within their territories to the Representatives of the other State who claim their intervention for the custody and security of the persons subject to extradition.

No claim for the repayment of expenses for the assistance mentioned in this Article shall be made by either of the Contracting parties.

#### ARTICLE X

The present Treaty shall apply to crimes and offences committed prior to the signature of the Treaty; but a person surrendered shall not be tried for any crime or offence committed in the other country before the extradition other than the crime for which his surrender has been granted.

#### ARTICLE XI

A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character, or if he proved that the requisition for his surrender has, in fact, been made with a view to try and punish him for an offence of political character.

#### ARTICLE XII

The extradition shall not take place if, subsequently to the commission of the crime, or the institution of the penal prosecution, or the conviction thereon, exemption from prosecution or punishment has been acquired according to the laws of the State applied to.

#### ARTICLE XIII

The extradition shall not take place if the person claimed on the part of the Government of the United Kingdom, or the person claimed on the part of the Swiss Government, has already been tried and discharged or punished, or is still under trial, in one of the Swiss Cantons or in the United Kingdom respectively, for the crime for which his extradition is demanded.

#### ARTICLE XIV

If the person claimed on the part of the Government of the United Kingdom, or if the person claimed on the part of the Swiss Government, should be under examination, or have been condemned for any other crime, in one of the Swiss Cantons or in the United Kingdom respectively, his extradition may be deferred until he shall have been set at liberty in due course of law.

In case such individual should be proceeded against in the country in which he has taken refuge, on account of obligations contracted towards private individuals, his extradition shall, nevertheless, take place, the injured party retaining his right to prosecute his claims before the competent authority.

#### ARTICLE XV

If the individual claimed by one of the two High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers, on account of other crimes or offences committed upon their respective territories, his extradition shall be granted to that State whose demand is earliest in date.

#### ARTICLE XVI

All articles, seized, which were in the possession of the person to be surrendered at the time of his apprehension, shall, if the competent authority of the State applied for the extradition has ordered the delivery thereof, be given up when the extradition takes place, and the said delivery shall extend not merely to the stolen articles, but to every thing that may serve as a proof of the crime.

This delivery shall take place even when the extradition, after having been granted, cannot be carried out by reason of the escape or death of the individual claimed, unless the claims of third parties with regard to the above-mentioned articles render such delivery inexpedient.

#### ARTICLE XVII

The Contracting Parties renounce any claim for the reimbursement of the expenses incurred by them in the arrest and maintenance of the person to be surrendered, and his conveyance to the frontiers of the State to which the requisition is made; they reciprocally agree to bear such expenses themselves.

#### ARTICLE XVIII

The stipulations of the present Treaty shall be applicable to the Colonies and foreign possession of her Britannic Majesty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of such Colonies or foreign possessions shall be made to the Governor or to the supreme authority of such colony or possession through the Swiss Consul residing there, or in case there should be no Swiss Consul

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through the recognized Consular Agent of another State charged with the Swiss interests in the Colony or possession in question.

The Governor or supreme authority above-mentioned shall decide with regard to such requisitions as nearly as possible in accordance with the provisions of the present Treaty. He will, however, be at liberty either to consent to the extradition or report the case to his Government.

Her Britannic Majesty shall, however, be at liberty to make special arrangements in the British Colonies and foreign possessions for the surrender of such individuals as shall have committed in Switzerland any of the crimes hereinbefore mentioned, who may take refuge within such Colonies and foreign possessions, on the basis, as nearly as may be, of the provisions of the present Treaty.

The requisition for the surrender of a fugitive criminal from any Colony or foreign possession of Her Britannic Majesty shall be governed by the rules laid down in the preceding Articles of the present Treaty.

#### ARTICLE XIX

The present Treaty shall come into force ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties.

After the Treaty shall have come into force, the Treaty concluded between the High Contracting Parties on the 31st of March, 1874, shall be considered as cancelled, except as to any proceedings that may have been already taken or commenced in virtue thereof.

It may be terminated by either of the High Contracting Parties, on giving to the other party six months' notice of its intention to terminate the same, but no such notice shall exceed the period of one year.

The Treaty shall be ratified, and the ratifications shall be exchanged at Berne as soon as possible.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto the seal of their arms.

Done at Berne, the twenty-sixth day of November, in the year of our Lord one thousand eight hundred and eighty".

The Convention dated 29th June, 1904 provides as follows :

The Federal Council of the Swiss Confederation and the Government of His Majesty the King of the United Kingdom of Great Britain and Ireland, having deemed, it necessary to extend, so far as regards the relations of Switzerland with the British Colonies and foreign possessions, the periods of thirty days and two months respectively fixed by Art. III, paragraph 8, and Art. VIII, of the Treaty concluded on the 26th November, 1880, between the Swiss Federal Council and Her late Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, & c., respecting the extradition of persons accused or condemned, the Undersigned, duly authorized to that effect by their respective Governments, have agreed as follows :—

The following stipulation is added to the first paragraph of Art. XVIII of the Treaty of Extradition:

"Nevertheless, so far as regards the relations of Switzerland with these Colonies and foreign possessions, the period of time fixed by Art. III, paragraph 8, within which the requisition for extradition is to be made through the diplomatic channel, shall be six weeks; and that provided by Art. VIII for the production of proof sufficient to warrant the extradition shall be three calendar months."

The present Convention shall come into force from the date when the ratifications shall be exchanged. It shall have the same force and duration, as the Treaty of Extradition of the 26th November, 1880, to which it relates.

It shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

In witness whereof the Undersigned have signed the present Convention, and have affixed their seals thereto.

Done at London, in duplicate, the 29th day of June, 1904.

#### NOTIFICATIONS

**G.S.R. 433 (E).**—In exercise of the powers conferred by Cl. (b) of sub-section (1) of Sec. 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 Papua-New Guinea with effect from 1st day of September, 1978.<sup>1</sup>

**G.S.R. 434 (E).**—In exercise of the powers conferred by sub-section (1) of Sec. 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 Sri Lanka with effect from 1st day of September, 1978.<sup>2</sup>

**G.S.R. 38 (E).**—In exercise of the powers conferred by Cl. (b) of sub-section (1) of Sec. 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 Fiji with effect from 1st day of February, 1979.<sup>3</sup>

**G.S.R. 415 (E), dated the 22nd April, 1987.**<sup>4</sup>—In exercise of the powers conferred by Item 18 of the Sch. II to the Extradition Act, 1962 (34 of 1962), the Central Government hereby specify the offences relating to—

- (a) public servant voluntarily allowing prisoners of State or war to escape;
- (b) intentional omission to apprehend on the part of public servant bound to apprehend;
- (c) intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed;
- (d) escape from confinement or custody negligently suffered by public servant;
- (e) resistance or obstruction by a person to his lawful apprehension;
- (f) resistance or obstruction to lawful apprehension or constrain to an illegal act;
- (g) voluntarily causing hurt to extort property, or to constrain to an illegal act;
- (h) causing hurt by means of poison etc., with intent to commit an offence.

which if committed in India would be punishable under Sec. 128 or Secs. 221 to 225 or Sec. 327 of Code to be extradition offences within the meaning of the Extradition Act, 1962 (34 of 1962) in relation to all foreign States other than Treaty States and in relation to all Commonwealth countries.

(2) This notification shall come into force on 22nd April, 1987.

1. Published in the *Gazette of India, Extraordinary*, Pt. II, Sec. 3 (i), dated 28th August 1978.

2. *Ibid.*

3. Published in the *Gazette of India, Extraordinary*, Pt. II, Sec. 3 (i), dated 22nd January, 1979.

4. Published in the *Gazette of India, Extraordinary*, Pt. II, Sec. 3 (i), dated 22nd April, 1987.

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