

## EXTRADITION TREATY BETWEEN INDIA AND CANADA

The Government of India and the Government of Canada, desiring to make more effective the cooperation of the two countries in the suppression of crime by making provision for the reciprocal extradition of offenders, and recognizing that concrete steps are necessary to combat terrorism, agree as follows:

Article 1: Duty to Extradite

1. Each contracting State agrees to extradite to the other, subject to the conditions of this Treaty, any person who, being accused or convicted of an extradition offence as described in Article 3, committed within the territory of the one State, is found in the territory of the other State, whether or not such offence was committed before or after the coming into force of this Treaty.
2. For the purposes of this Treaty, the territory of a contracting State includes all the land, airspace and waters within its jurisdiction.
3. There is no duty to extradite a person where the request for extradition is made for the purpose of discriminating against that person on account of his race, religion, colour or ethnic origin.
4. There is no duty to extradite a person who has been convicted and sentenced in respect of an extradition offence, if the sentence imposed or remaining to be served, is imprisonment for 6 months or less.

Article 2: Extraterritorial offences

Extradition shall also be granted in respect of an extradition offence as described in Article 3, committed outside the territory but within the jurisdiction as asserted by the requesting State if the requested State would, in corresponding circumstances, have jurisdiction over such offence.

Article 3 : Extradition Offences

1. An extradition offence is committed when the conduct of the person whose extradition is sought constitutes an offence punishable by the laws of both contracting States by a term of imprisonment for a period of more than one year.
2. When extradition is ordered in respect of an extradition offence, it may also be ordered in respect of any other offence related to the commission of the extradition offence if it is specified in the request for extradition and meets all requirements for extradition except the term of imprisonment referred to in paragraph 1.
3. Extradition shall be ordered for an extradition offence notwithstanding that it may be an offence relating to taxation or revenue or is one of a purely fiscal character.

Article 4: Extradition and Prosecution

1. The request for extradition may be refused by the requested State if the person whose extradition is sought may be tried for the extradition offence in one of its own courts.
2. In deciding whether or not to refuse a request for extradition for the reason set out in paragraph 1, the requested State shall consider which contracting State has felt or will feel the effects or consequences of the offence more gravely or immediately.
3. Where the requested State refuses a request for extradition for the reason set out in paragraph 1, it shall submit the case to its competent authority so that prosecution may be considered. In such case, the requesting State shall, upon request, provide all available assistance that may be required by such competent authority in respect of the prosecution.
4. Where extradition is granted under this Treaty, the requesting State shall ensure that the person extradited is brought to trial within 6 months of the extradition.
5. Where trial has not commenced within 6 months, the requesting State shall bring the person extradited before its appropriate courts for bail to be considered pending trial and to set a trial date for the charges for which extradition was granted.

Article 5: Exceptions to Extradition

1. Extradition may be refused if:-

(a) the offence in respect of which it is requested is considered by the requested State to be a political offence or an offence of a political character;

(b) it appears to the requested State that the request was not made in good faith or in the interests of justice or was made for political reasons or that it would otherwise be unjust having regard to all the circumstances including the trivial nature of the offence.

2. Extradition shall be refused if:-

(a) the offence in respect of which it is requested is considered by the requested State to be a purely military offence;

(b) the person sought is being proceeded against or has been tried and acquitted or discharged or convicted and punished, by the requested State or by a third state for the offence in respect of which extradition is requested.

3. For the purposes of this Treaty conduct constituting the following offences according to the law of the requested State shall not be regarded as political offences or offences of a political character:

(a) an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970;

(b) an offence within the scope of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;

(c) an offence within the scope of the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, signed at New York on December 14, 1973;

(d) an offence within the scope of any convention to which both contracting states are party and which obligates the parties to prosecute or grant extradition;

(e) an offence related to terrorism;

(f) murder, manslaughter, assault causing bodily harm, kidnapping, hostage-taking, offences involving serious damage to property or disruption of public facilities and offences relating to firearms, weapons, explosives, or dangerous substances;

(g) an attempt or conspiracy to commit an offence described in subparagraphs (a) through (f) or counselling the commission of such an offence or participation as an accomplice in the offences so described.

Article 6 : Capital Punishment

Extradition may be refused when the offence for which extradition is requested is punishable by death under the laws of the requesting State and the laws of the requested State do not provide such punishment for the conduct constituting the offence, unless the requesting State gives such assurances as the requested State considers sufficient that the death penalty shall, if imposed, not be executed.

Article 7 : Postponement of Surrender

When the person sought is being proceeded against or is serving a sentence in the requested State for an offence other than that for which extradition is requested, the requested State may surrender the person sought or postpone his surrender until the conclusion of the proceedings or the service of any sentence that may have been imposed.

Article 8: Extradition Procedures

1. The request for extradition shall be made through diplomatic channels and shall be supported by the following:

(a) information concerning the identity, description, and location of the person sought;

(b) a statement of the facts of the case, and

(c) a statement of the laws of the requesting State describing the offence and the punishment therefor.

2. Where the request for extradition is for a person accused of an extradition offence it shall also be supported by:

(a) a copy of the warrant of arrest, and

(b) such evidence as, according to the laws of the requested State, would justify his arrest and committal for trial if the offence had been committed within its jurisdiction including evidence showing that the person sought is the person to whom the warrant of arrest refers.

3. Where the request for extradition is for a person convicted of an extradition offence it shall be supported by:

(a) a copy of the certificate of conviction or a copy of the judgement or order of conviction; and

(b) evidence that the person sought is the person to whom the conviction refers;

and, if such person was sentenced, by:

(c) a copy of the judgement or order of sentence; and

(d) a statement showing what portion of the sentence remains to be served.

Article 9: Extradition Evidence

1. The evidence submitted in support of a request for extradition shall be admitted in extradition proceedings in the requested State if it purports to be under the stamp or seal of a department, ministry or minister of the requesting State, without proof of the official character of the stamp or seal.
2. The evidence referred to in paragraph 1 may include originals or copies of statements, depositions or other evidence purporting to have been taken on oath or affirmation whether taken for the purpose of supporting the request for extradition or for some other purpose.
3. The evidence described in paragraph 2 shall be admissible in extradition proceedings in the requested State, whether sworn or affirmed to in the requesting State or in some third state.

Article 10: Additional Evidence

1. If the requested State considers the evidence submitted in support of the request for extradition to be insufficient, it may request the submission of additional evidence and may set a time limit for the submission of that evidence, but upon the request of the requesting State, may grant a reasonable extension of the time limit set.

2. If the additional evidence is considered insufficient, or is not received within the time specified by the requested State, the person sought may be discharged or set at liberty.

3. Notwithstanding paragraph 2, extradition proceedings may be recommenced for the same or other extradition offence, upon a new request for extradition being made by the requesting State, and on the basis of the evidence already submitted and any other evidence.

Article 11: Provisional Arrest

1. In cases of urgency a contracting State may request the provisional arrest of the person sought.
2. The request for provisional arrest may be made through diplomatic channels, directly between the Department of Justice of Canada and the Ministry of Home Affairs of India, through the International Criminal Police Organization (INTERPOL), or by any other means acceptable to the requested State.
3. The request for provisional arrest shall be supported by:
  - (a) Information concerning the identity, description and location of the person sought,
  - (b) a brief statement of the facts of the case,
  - (c) an indication that the requesting State will request the extradition of the person sought,
  - (d) a statement of the existence of a warrant for the arrest or order of conviction against the person sought, and
  - (e) such further information, if any, to justify the issuance of a warrant of arrest had the extradition offence been committed or the person sought been convicted, in or within the jurisdiction of the requested State.
4. On receipt of a request for provisional arrest, the requested State shall take appropriate steps to arrest the person sought, and to promptly notify the requesting State of the results of its efforts.
5. The person sought shall be discharged and set at liberty if the requested State has not received a request for extradition within 30 days and the supporting documents and evidence within 90 days from the date of arrest.
6. Notwithstanding paragraph 5, the person sought may be re-arrested for the same or other extradition offence if a request for extradition is subsequently received by the requested State.

Article 12: Surrender

1. The requested State shall notify the requesting State as soon as possible of its decision with regard to the request for extradition.
2. If extradition is granted, the requested State shall make the person sought available to the persons authorized by the requesting State to receive him at the time and place agreed to by both contracting States.
3. Where the person sought has not been conveyed out of the requested State within two months after the final decision on extradition has been made, he shall be discharged from custody and the requested State may thereafter refuse to extradite him for the same offence.

Article 13: Surrender of Property

1. Upon the arrest of the person sought, the requested State shall, to the extent permitted by its laws, search for and seize any property used in or obtained by the commission of the extradition offence, or any proceeds thereof, or any property that will afford evidence of the commission of that offence.

2. If extradition is ordered, the requested State upon the surrender of the person sought, to the extent permitted by its laws and subject to any conditions relating to the rights of third parties, shall, subject to the provisions or paragraph 3 below, also surrender the property or any proceeds thereof, without any specific request from the requesting State. Such property or proceeds shall be surrendered even if the person sought cannot be extradited due to his death, escape or disappearance.

3. The requested State may refuse to surrender any property or any proceeds thereof unless the requesting State provides satisfactory assurances that they will, if required, be returned to the requested State as soon as possible and all conditions relating to the rights of third parties observed.

Article 14: Rule of Speciality

1. A person extradited under this Treaty shall not be detained, tried or punished in the requesting State for an offence committed prior to his surrender other than that for which he was extradited, unless:

(a) he has left the requesting State and voluntarily returned thereto,  
or

(b) he has not left the requesting State within 60 days after being  
free to do so.

2. A person extradited under this Treaty shall not be extradited by the requesting State to a third State for an offence committed prior to his extradition unless the requested State consents or the requirements of subparagraphs (a) or (b) of paragraph 1 above have been met.

3. Paragraphs 1 and 2 do not apply to an offence the commission of which is included in the commission of the offence for which the person sought was surrendered and the proof of which is based on the evidence that was submitted in support of the request for extradition.

Article 15: Mutual Legal Assistance in Extradition

The requested State agrees upon request, to the extent permitted by its law, to gather evidence within its own territory for the requesting State relating to the offence for which extradition has been requested.

Article 16: Waiver of Extradition

1. A person whose extradition is sought and who has been arrested pursuant to this Treaty may consent in writing to return to the requesting State and to be held in custody pending such return without formal extradition. When such consent has been given, the requesting State shall, without delay, take all such steps as are necessary to receive the person sought.
2. The consent referred to in paragraph 1 shall be deemed not to have been given unless the person sought was personally advised by a judge or competent magistrate of the rights and protections conferred under this Treaty, and that such consent constitutes a waiver of those rights and protections, including the protection conferred under Article 14.

Article 17: Conflicting 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 with which the requested State has an extradition arrangement, the requested State shall determine to which State the person shall be extradited, and shall not be obliged to give preference to the contracting State.

Article 18: Translation of Documents

The request for extradition and the evidence submitted in support thereof shall be provided in or translated into one of the official languages of the requested State and where translated the accuracy of such translation shall be verified by the evidence of the translator. The translator's evidence shall also be in one of the official languages of the requested State and shall comply with Article 9 of this Treaty.

Article 19: Expenses

1. In any proceeding arising out of a request for extradition, the requested State shall make all necessary arrangements for and bear the cost of representation for the requesting State by its own legal officers or otherwise.
2. The requesting State shall bear the expenses of transporting any person extradited or otherwise returned pursuant to this Treaty, including any internal transportation within the requested State and any expenses incurred in respect of transit.
3. All other expenses incurred in the requested State in connection with extradition pursuant to this Treaty shall unless otherwise agreed to, be borne by the requested State.
4. No pecuniary claim, arising out of the arrest, detention, examination and surrender of any person pursuant to the provisions of this Treaty shall be made by the requested State against the requesting State.

Article 20: Applicable Law

Except where otherwise provided by this Treaty, the procedures with regard to arrest and extradition shall be governed by the laws of the requested State.

Article 21: Ratification

1. This Treaty is subject to ratification and the instruments of ratification shall be exchanged at New Delhi as soon as possible. It shall come into force upon the exchange of instruments of ratification.

2. Either of the contracting States may terminate this Treaty by giving six months notice thereof through diplomatic channels. Upon the expiry of such notice, the Treaty shall cease to have any force or effect.

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

Done in duplicate in the English, Hindi and French languages, each language version being equally authentic at New Delhi, this Sixth day of February, 1987.

Narayan Datt Tiwari  
External Affairs Minister

for the Government of India

Charles Joseph Clark  
Secretary of State  
for External Affairs

for the Government of Canada