EXTRADITION TREATY BETWEEN THE REPUBLIC OF INDIA AND THE REPUBLIC OF KAZAKHSTAN

The Republic of India and the Republic of Kazakhstan; hereinafter referred to as the "Contracting States"

Desiring to make more effective the co-operation of the two States in the suppression of crime by making further provision for the reciprocal extradition of fugitive criminals;

Recognising that concrete steps are necessary to combat terrorism;

Have agreed as follows:

Article 1
Obligation 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, being accused or convicted of an extradition offence as described in Article 2, committed within the territory of the Requesting State, is found within the territory of the Requested State, whether such criminal offence was committed before or after the entry into force of this Treaty.

2. Extradition shall also be available in respect of an extraditable criminal offence as described in Article 2 of the present Treaty committed outside the territory of the Requesting State but in respect of which it has jurisdiction, if the Requested State would, in corresponding circumstances, have jurisdiction over such a criminal offence. In such circumstances the Requested State shall have regard to all the circumstances of the case including the seriousness of the criminal offence.

3. Extradition shall also be available for an extraditable criminal offence as described in Article 2, of the present Treaty if it is committed in a third State by a citizen of the Requesting State and it bases its jurisdiction on the citizenship of the offender.

Article 2:
Extradition Offences

An extraditable criminal offence for the purpose of this Treaty is constituted by conduct which under the laws of each Contracting State is punishable by a term of imprisonment for a period of at least one year.

Article 3
Composite Offences

Extradition shall be available in accordance with this Treaty for an extraditable criminal offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested State, if his conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extraditable criminal offence under the laws of both the Contracting States.

Article 4
Extra-territorial Jurisdiction

It shall be a criminal offence, under the laws of both the Contracting States, for any citizen of a Contracting State to commit any criminal offence in any place beyond its territory.

Article 5
Grounds for Refusal of Extradition

1. A person may not be extradited if:

1.1 he is a citizen of the Requested State; or
1.2 he satisfies the Requested State that he might, if extradited, be prejudiced at his trial or be punished, by reason of his race, religion, nationality or political opinions; or
1.3 he satisfies the Requested State that it would, having regard to all the circumstances, be unjust or oppressive to extradite him by reason of the expiry of the limitation-period for initiating the criminal proceedings under the legislation of the Requested State or for execution of a sentence, or on other legal grounds; or

1.4 The extradition is not permitted according to the laws of the Requested State; or

1.5 The criminal offence of which he is accused or convicted is a military offence which is not also a criminal offence under the general criminal law.

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

3. The request for extradition may be refused by the Requested State if the person whose extradition is sought may be tried for the extraditable criminal offence in the courts of the Requested State.

Article 6
Obligation to Prosecute

1. Where the Requested State refuses a request for extradition for the reason set out in paragraph 3 of Article 5, it shall submit the case to its competent authorities for prosecution.

2. If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

Article 7
Consequence of Non-extradition of own Citizens

If according to paragraph 1.1 of Article 5, extradition is refused, the Requested State, shall initiate criminal prosecution against such person for the same offence according to its laws. For this the Requesting State shall transfer to the Requested State the relevant documents and evidence.

Article-8
Postponement of Extradition & 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 proceedings of the case, end of sentence or release, which shall be advised to the Requesting State.

2. If the postponement of extradition can cause the expiration of the limitation 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 9
Extradition Procedure

1. The request for extradition shall be made through the diplomatic channels.

2. The request shall be accompanied by:

2.1 the name and surname (patronym) 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 photographs and fingerprints;

2.2 a statement of the facts of the criminal offence for which extradition is requested; and

2.3 the text, of the corresponding law;

2.3.1 defining that criminal offence; and

2.3.2 prescribing the punishment for that criminal offence.

3. The request for extradition for the prosecution, besides the information specified above, must be accompanied by the warrant of arrest issued by a competent authority of the Requesting 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 person is no longer entitled to question the conviction or sentence and showing how much of the sentence has not been carried out.

5. If the Requested State considers that the evidence produced or information supplied for the purpose of this Treaty is not sufficient in order to enable a decision to be taken as to the request, additional evidence or information shall be submitted within a reasonable time.

Article 10
Provisional Arrest

1. In urgent cases the person may, in accordance with the law, be provisionally arrested by the Requested State, on the request of the competent authorities of the Requesting State, made either through diplomatic channels or the National Central Bureau of International Criminal Police Organisation-INTERPOL, before the receiving of the request for extradition. The request 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; and, if available, the date specified in paragraphs 2.1 and 2.3 of Article 9 of the present Treaty and such further information, if any, as would be necessary to justify the issue of a warrant of a arrest had the criminal offence been committed, or the person been convicted, in the territory of the Requested State.

2. A person arrested upon such a request shall be set at liberty upon the expiration of 30 days from the date of his arrest if a request for his extradition shall not have been received within this period. The period of detention shall be extendable up to 60 days on a request to this effect from the Requesting State and up to 90 days in exceptional circumstances.

Article 11
Rule of Speciality

1. The extradited person may not without consent of the Requested State, be prosecuted or punished for the criminal offence other than that for which extradition has been granted and any lesser criminal offence disclosed by the facts provided for the purposes of securing his extradition, nor may such a person, without consent of the Requested State, be extradited to a third State.

2. The consent of the Requested State is not required if:

2.1 the extradited person has not left, though had the opportunity, the territory of the Requesting State within 30 days after termination of the criminal prosecution, serving of the sentence or release on any legal ground. Such period shall not be deemed to include the period of time during which the extradited person is unable to leave the territory of the Requesting State for reasons beyond his control;

2.2 If the extradited person, once having left that territory, voluntarily returns there.

3. The provisions of paragraph 1 of this Article shall not apply to the criminal offences committed after the return of person or matters arising in relation to such criminal offences.

Article 12
Recognition of Documents and Evidence

1. Documents issued or certified and statements recorded by competent courts or other authorities in the prescribed form in the territory of one Contracting state as per its laws shall not require any form of authentication in the territory of the other Contracting State.

2. Documents considered as public in the territory of one of the Contracting States shall have the evidential force of public documents also in the territory of the other Contracting State.

Article 13
Competing Request

If extradition of the same person whether for the same criminal offence or for different criminal 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 the State to which the person shall be extradited and shall not be obliged to give preference to the Contracting State.

Article 14
Capital Punishment

If under the law of the Requesting State the person sought is liable to the death penalty for the criminal offence for which his extradition is requested, but the law of the Requested State does not provide for the 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 penalty will not be carried out.

Article-15
Transfer

1. The modalities of transfer of the person to be extradited shall be agreed upon by the competent authorities of both the Contracting States as mutually convenient.

2. The Requesting State shall take the person sought from the territory of the Requested State within one month of the consent of Requested State to extradite or such longer period as may be permitted under the law of the Requested State. If the person is not removed within that period, the Requested State may refuse to extradite him for the same criminal offence.

Article 16
Transfer of article connected with crime.

1. The Requested State shall, within the limits of its legislation, transfer by the request of the Requesting State the articles used for committing crime by the person being extradited, articles bearing crime traces or crime proceeds.

2. The above articles shall be transferred also in cases when the extradition cannot be effected if the person died, fled or due to other reasons.

3. The Requesting State may temporarily postpone the transfer of the articles referred to in paragraph 1 of this Article if they are required for proceedings instituted in connection with another criminal case till the end of such proceedings.

4. The rights of third persons to the articles transferred to the Requesting State shall remain in force. Upon termination of the proceedings the Requesting State shall return these articles to their owners in its territory. If the owners are in the territory of the Requested State the articles are to be returned to it for the transfer to them. If the owners are in the territory of a third country the articles shall be returned to them by the Requesting State without charge.

5. The transfer of the articles and of money shall be effected within the limits provided for by the legislation of the Requested State.

Article 17
Mutual Legal Assistance in Extradition

Each Contracting State shall, to the extent permitted by its law, afford the other the widest possible measure of mutual assistance in criminal matters in connection with the criminal offence for which extradition has been requested.

Article 18
Expenses on Extradition

All expenses related to the extradition shall be borne by the Contracting State in whose territory the same occurred. The expenses caused by transit transportation of the extradited person by one of the Contracting States from a third State through the territory of the other Contracting State shall be borne by the Contracting State effecting the transit.

Article 19
Languages

While 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 20
International Conventions/Treaties

The present Treaty shall not affect the rights and obligations of the Contracting States arising from other international Conventions/Treaties to which the Contracting States are signatories.

Article 21
Transit

1. Transit of a person who is the subject of extradition from a third State through the territory of a Contracting State to the territory of the other Contracting State shall be granted upon submission of a request, provided that the criminal offence concerned is an extraditable criminal offence under Article 2.

2. Transit of a national of the Requested State may be refused if, in the opinion of that State, it is inadmissible under its law.

3. The request for transit must be accompanied by the documents mentioned in Article 9.

Article 22
Alternations and Supplements

The Contracting States may amend the present Treaty by separate protocols, which shall enter into force by the procedure followed for the entry into force of this Treaty.

Article 23
Consultation

Any problem that may arise in the application or interpretation of this Treaty will be resolved by mutual consultations by the Contracting States.

Article 24
Competent Authorities

The competent authorities of the Contracting States for the purpose of operation of this Treaty will be:

For the Republic of India:- Ministry of External Affairs.

For the Republic of Kazakhstan:-Office of the General Prosecutor of the Republic of Kazakhstan.

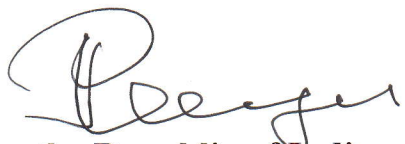
Article 25
Ratification and Termination

1. The present Treaty shall be subject to ratification and shall enter into force on the date of exchange of the instruments of ratification.

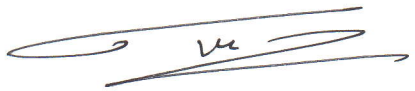
2. Either of the Contracting States may terminate this Treaty at any time by giving notice to the other Contracting State through the diplomatic channels; and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

3. In witness whereof the undersigned being duly authorised thereto have signed this Treaty.

Done at New Delhi on this day of 24th of January 2009 in two originals, each in Hindi, Kazakh, Russian and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.



For the Republic of India



For the Republic of Kazakhstan