

Country:  India

Available languages: **English**

Keywords:  Treaties (Mutual legal assistance)

TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF INDIA ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Government of the United States of America and The Government of the Republic of India, hereinafter referred to as the Contracting Parties, desiring to improve the effectiveness of the law enforcement authorities of both states in the investigation, prosecution, prevention, and suppression of crimes, including those relating to terrorism, narcotics trafficking, economic crimes, and organized crime, through cooperation and mutual legal assistance in criminal matters,

Have agreed as follows:

Article 1 Scope of Assistance

1. The Contracting Parties shall provide the widest measure of mutual assistance to each other, in accordance with the provisions of this Treaty, in connection with the investigation, prosecution, prevention and suppression of offenses, and in proceedings related to criminal matters.

2. Assistance shall include:

- a) taking the testimony or statements of persons;
- b) providing documents, records, and items of evidence;
- c) locating or identifying persons or items;
- d) serving documents;
- e) transferring persons in custody for testimony or other purposes;
- f) executing requests for searches and seizures;
- g) assisting in proceedings related to seizure and forfeiture of assets, restitution, collection of fines; and
- h) any other form of assistance not prohibited by the laws of the Requested State.

3. Assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution, or proceeding in the Requesting State would constitute an offense under the laws of the Requested State.

4. This Treaty is intended solely for mutual legal assistance between the Contracting Parties. The provisions of this Treaty shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request.

Article 2 Central Authorities

1. Each Contracting Party shall designate a Central Authority to make and receive requests pursuant to

this Treaty.

2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For India, the Central Authority shall be the Ministry of Home Affairs or a person designated by the Ministry of Home Affairs.

3. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

Article 3 Limitations on Assistance

1. The Central Authority of the Requested State may deny assistance if:

a) the request relates to an offense under military law that would not be an offense under ordinary criminal law;

b) the execution of the request would prejudice the security or similar essential interests of the Requested State;

c) the request relates to a political offense; or

d) the request is not made in conformity with the Treaty.

2. For the purposes of this Treaty, the following offenses shall not be considered to be political offenses:

a) a murder or other willful crime against the person of a Head of State or Head of Government of one of the Contracting Parties, or of a member of the Head of State's or head of Government's family;

b) aircraft hijacking offenses, as described in The Hague Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970;

c) acts of aviation sabotage, as described in the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on September 23, 1971;

d) crimes against internationally protected persons, including diplomats, as described in the Convention on the Prevention and Punishment of crimes Against Internationally Protected Persons, including Diplomatic Agents, done at New York on December 14, 1973;

e) hostage taking as described in the International Convention Against the taking of Hostages, done at New York on December 17, 1979;

f) offenses related to illegal drugs, as described in the Single Convention on Narcotic Drugs, 1961, done at New York on March 30, 1961, the Protocol Amending the Single Convention on Narcotic Drugs, 1961, done at Geneva on March 25, 1972, and the United Nations Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances, done at Vienna on December 20, 1988;

g) any other offense within the scope of a multilateral terrorism convention to which both Contracting Parties are a party; and

h) a conspiracy or attempt to commit any of the foregoing offenses, or aiding or abetting a person who commits or attempts to commit such offenses.

3. Before denying assistance pursuant to this Article, the Central Authority of the Requested State shall consult with the Central Authority of the Requesting State to consider whether assistance can be given subject to such conditions as it deems necessary. If the Requesting State accepts assistance subject to these conditions, it shall comply with the conditions.

4. If the Central Authority of the Requested State denies assistance, it shall inform the Central Authority of the Requesting State of the reasons for the denial.

Article 4 Form and Contents of Requests

1. A request for assistance shall be made in writing except that the Central Authority of the Requested State may accept a request made otherwise in urgent situations. If the request is not in writing, it shall be confirmed in writing within ten days thereafter unless the Central Authority of the Requested State agrees otherwise. The request shall be in English unless otherwise agreed.

2. The request shall include the following:

a) the name of the authority conducting the investigation, prosecution, or proceeding to which the request relates;

b) a description of the subject matter and nature of the investigation, prosecution, or proceeding, including the specific criminal offenses which relate to the matter;

c) a description of the evidence, information, or other assistance sought; and

d) a statement of the purpose for which the evidence, information, or other assistance is sought.

3. To the extent necessary and possible, a request shall also include:

a) information on the identity and location of any person from whom evidence is sought;

b) information on the identity and location of a person to be served, that person's relationship to the proceedings, and the manner in which service is to be made;

c) information on the identity and suspected location of a person or item to be located;

d) a precise description of the place or person to be searched and of the items to be seized;

e) a description of the manner in which any testimony or statement is to be taken and recorded;

f) a list of questions to be asked of a witness;

g) a description of any particular procedure to be followed in executing the request;

h) information as to the allowances and expenses to which a person asked to appear in the Requesting State will be entitled; and

i) any other information that may be brought to the attention of the Requested State to facilitate its execution of the request.

Article 5 Execution of Requests

1. The Central Authority of the Requested State shall promptly execute the request or, when appropriate, shall transmit it to the authority having jurisdiction to do so. The competent authorities of the Requested State shall do everything in their power to execute the request. The Courts of the Requested State shall have authority to issue subpoenas, search warrants, or other orders necessary to execute the request.

2. The Central Authority of the Requested State shall make all necessary arrangements for the representation in the Requested State of the Requesting State in any proceedings arising out of a request for assistance.

3. Requests shall be executed in accordance with the laws of the Requested State except to the extent that this Treaty provides otherwise. The method of execution specified in the request shall be followed except insofar as it is prohibited by the laws of the Requested State.
4. The Requested State shall not decline execution of a request on the ground of bank secrecy.
5. If the Central Authority of the Requested State determines that execution of a request would interfere with an ongoing criminal investigation, prosecution, or proceeding in that State, it may postpone execution, or make execution subject to conditions determined necessary after consultations with the Central Authority of the Requesting State. If the Requesting State accepts the assistance subject to the conditions, it shall comply with the conditions.
6. The Requested State shall use its best efforts to keep confidential a request and its contents if such confidentiality is requested by the Central Authority of the Requesting State. If the request cannot be executed without breaching such confidentiality, the Central Authority of the Requested State shall so inform the Central Authority of the Requesting State, which shall then determine whether the request should nevertheless be executed.
7. The Central Authority of the Requested State shall respond to reasonable inquiries by the Central Authority of the Requesting State on progress toward execution of the request.
8. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the outcome of the execution of the request. If execution of the request is denied, delayed, or postponed, the Central Authority of the Requested State shall inform the Central Authority of the Requesting State of the reasons for the denial, delay, or postponement.

Article 6 Costs

The Requested State shall pay all costs relating to the execution of the request, including the costs of representation, except for the fees of expert witnesses, the costs of translation, interpretation, and transcription, and the allowances and expenses related to travel of persons pursuant to Articles 10 and 11, which costs, fees, allowances, and expenses shall be paid by the Requesting State.

Article 7 Limitations on Use

1. The Central Authority of the Requested State may request that the Requesting State not use any information or evidence obtained under this Treaty in any investigation, prosecution, or proceeding other than that described in the request without the prior consent of the Central Authority of the Requested State. If the Requested State makes such a request, the Requesting State shall comply with the conditions.
2. The Central Authority of the Requested State may request that information or evidence furnished under this Treaty be kept confidential or be used only subject to terms and conditions it may specify. If the Requesting State accepts the information or evidence subject to such conditions, the Requesting State shall use its best efforts to comply with the conditions.
3. Nothing in this Article shall preclude the use or disclosure of information or evidence to the extent that such information or evidence is exculpatory to a defendant in a criminal prosecution. The Requesting State shall notify the Requested State in advance of any such proposed disclosure.
4. Information or evidence that has been made public in the Requesting State pursuant to paragraph 1 or 2 may thereafter be used for any purpose.

Article 8 Testimony or Evidence in the Requested State

1. A person in the Requested State from whom evidence is requested pursuant to this Treaty shall be compelled, if necessary, to appear and testify or produce items, including documents and records.

2. Upon request, the Central Authority of the Requested State shall furnish information in advance about the date and place of the taking of the testimony or evidence pursuant to this Article.
3. The Requested State shall permit the presence of specified persons during the execution of the request, and shall allow such persons to pose questions to be asked of the person giving the testimony or evidence.
4. If the person referred to in paragraph 1 asserts a claim of immunity, incapacity, or privilege under the laws of the Requesting State, the evidence shall nonetheless be taken and the claim made known to the Central Authority of the Requesting State for resolution by the authorities of that State.
5. Insofar as not prohibited by the law of the Requested State, evidence which has been produced in the Requested State pursuant to this Article or which has been the subject of testimony taken under this Article shall be transmitted in a form or accompanied by such certification as may be requested by the Requesting State in order to make it admissible according to the law of the Requesting State. Where the United States is the Requesting State, such documents shall, upon request, be authenticated by Form A and the absence or nonexistence of such records shall, upon request, be certified by Form B. Such documents and forms shall be admissible in evidence in the United States.

Article 9 Records of Government Agencies

1. The Requested State shall provide the Requesting State with copies of publicly available records related to the request, including documents or information in any form, in the possession of government departments and agencies in the Requested State.
2. The Requested State may provide copies of any records related to the request, including documents or information in any form, that are in the possession of a government department or agency in that State but which are not publicly available, to the same extent and under the same conditions as such records would be available to the Requested State's own law enforcement or judicial authorities. The Requested State may in its discretion deny, entirely or in part, a request pursuant to this paragraph.
3. Insofar as not prohibited by the laws of the Requested State, records produced pursuant to this Article shall, upon request, be authenticated by the official responsible for maintaining them and transmitted in a form or accompanied by such certification as may be requested by the Requesting State in order to make them admissible according to the law of the Requesting State. Where the United States is the Requesting State, such documents shall, upon request, be authenticated by Form C and the absence or nonexistence of such records shall, upon request, be certified by Form D. Such documents and forms shall be admissible in evidence in the United States.

Article 10 Appearance Outside the Requested State

1. When the Requesting State requests the appearance of a person outside the Requested State, the Requested State shall invite the person to so appear. The Requesting State shall indicate the extent to which the person's expenses will be paid. The Central Authority of the Requested State shall promptly inform the Central Authority of the Requesting State of the person's response.
2. A person appearing in the Requesting State pursuant to this article shall not be subject to service of process, or be detained or subjected to any restriction of personal liberty, by reason of any acts or convictions which preceded that person's departure from the Requested State.
3. The safe conduct provided for by this Article shall cease ten days after the Central Authority of the Requesting State has notified the Central Authority of the Requested State that the person's presence is no longer required, or when the person, having left the Requesting State, voluntarily returns to it. The Central Authority of the Requesting State may, in its discretion, extend this period up to twenty days for it determines that there is good cause to do so.

Article 11 Transfer of Persons in Custody

1. A person in the custody of the Requested State whose presence in the Requesting State is sought for purposes of assistance under this Treaty shall be transferred from the Requested State for that purpose if the person consents and if the Central Authorities of both States agree.
2. A person in the custody of the Requesting State whose presence in the Requested State is sought for purposes of assistance under this Treaty may be transferred from the Requesting State to the Requested State if the person consents and if the Central Authorities of both States agree.
3. For purposes of this Article:
 - a) the receiving State shall have the authority and the obligation to keep the person transferred in custody unless otherwise authorized by the sending State;
 - b) the receiving State shall return the person transferred to the custody of the sending State as soon as circumstances permit or as otherwise agreed by both Central Authorities;
 - c) the receiving State shall not require the sending State to initiate extradition proceedings for the return of the person transferred; and
 - d) the person transferred shall receive credit for service of the sentence imposed in the sending State for time served in the custody of the receiving State.

Article 12 Transit of Persons in Custody

1. The Requested State may authorize the transit through its territory of a person held in custody, by the Requesting State or a third State, whose personal appearance has been requested by the Requesting State in an investigation, prosecution, or proceeding.
2. The Requested State shall have the authority and the obligation to keep the person in custody during transit.

Article 13 Location or Identification of Persons or Items

If the Requesting State seeks the location or identity of persons or items in the Requested State, the Requested State shall use its best efforts to ascertain such location or identity.

Article 14 Service of Documents

1. The Requested State shall use its best efforts to effect service of any document relating, in whole or in part, to any request for assistance made by the Requesting State under the provisions of this Treaty.
2. The Requesting State shall transmit any request for the service of a document requiring the appearance of a person before an authority in the Requesting State within a reasonable time before the scheduled appearance.
3. The Requested State shall return a proof of service in the manner specified in the Request.

Article 15 Search and Seizure

1. The Requested State shall execute a request for the search, seizure, and delivery of any item to the Requesting State if the request includes the information justifying such action under the laws of the Requested State.
2. Upon request, every official who has custody of a seized item shall certify the identity of the item, the continuity of custody, and any changes in its condition. For the United States such certification shall,

upon request, be made through the use of Form E and shall be admissible in evidence in the United States. No further certification shall be required.

3. The Central Authority of the Requested State may require that the Requesting State agree to terms and conditions deemed necessary to protect third party interests in the item to be transferred.

Article 16 Return of Items

The Central Authority of the Requested State may require that the Central Authority of the Requesting State return any items, including documents and records, furnished to it in execution of a request under this Treaty.

Article 17 Assistance in Forfeiture Proceedings

1. If the Central Authority of one Contracting Party becomes aware of proceeds or instrumentalities of crimes which are located in the territory of the other Contracting Party and may be forfeitable or otherwise subject to seizure under the laws of that Contracting Party, it may so inform the Central Authority of the other Contracting Party. If that other Contracting Party has jurisdiction in this regard, it may present this information to its authorities for a determination whether any action is appropriate. These authorities shall issue their decision in accordance with the laws of their country, and shall, through their Central Authority, report to the other Contracting Party on the action taken.

2. The Contracting Parties shall assist each other to the extent permitted by their respective laws in proceedings relating to the forfeiture of the proceeds and instrumentalities of offenses, restitution to the victims of crime, and the collection of fines imposed as sentences in criminal prosecutions. This may include, as appropriate under the laws of the Requested State, action to temporarily restrain, attach, immobilize, or seize the proceeds or instrumentalities pending further proceedings.

3. The Contracting Party that has custody over proceeds or instrumentalities of offenses shall dispose of them in accordance with its laws. Either Contracting Party may transfer all or part of such assets, or the proceeds of their sale, to the other Contracting Party, to the extent permitted by the transferring Party's laws and upon such terms as it deems appropriate.

Article 18 Compatibility with Other Treaties

Assistance and procedures set forth in this Treaty shall not prevent either Contracting Party from granting assistance to the other Contracting Party through the provisions of other applicable international agreements, or through the provisions of its national laws. Either Contracting Party may also provide assistance pursuant to any bilateral arrangement, agreement, or practice that may be applicable.

Article 19 Consultation

The Central Authorities of the Contracting Parties shall consult, at times mutually agreed to by them, to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 20 Ratification, Entry Into Force, and Termination

1. This Treaty shall be subject to ratification, and the instruments of ratification shall be exchanged as soon as possible.

2. This Treaty shall enter into force on the date of the exchange of instruments of ratification.

3. This Treaty shall apply to any request presented after the date of its entry into force whether the relevant acts or omissions occurred prior to or after that date.

4. Either Contracting Party may terminate this Treaty by means of written notice to the other Contracting Party. Termination shall take effect six months following the date of notification.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

DONE at New Delhi, this 17th day of October, 2001, in duplicate, in the English and the Hindi languages. In case of divergence between the two texts, the English text shall prevail.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

[signature]

FOR THE GOVERNMENT OF THE REPUBLIC OF INDIA:

[signature]

S. Treaty Doc. No. 107-3, 2001 WL 1875755 (Treaty)

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