

**TENTH REPORT**

**COMMITTEE ON PETITIONS**

**(SEVENTEENTH LOK SABHA)**

**MINISTRY OF EXTERNAL AFFAIRS**

**AND**

**MINISTRY OF HOME AFFAIRS**

**(Presented to Lok Sabha on 21.9.2020)**



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## COMPOSITION OF THE COMMITTEE ON PETITIONS

(2019-20)

Dr. Virendra Kumar - *Chairperson*

### MEMBERS

2. Shri Anto Antony
3. Shri Sukhbir Singh Badal
4. Shri Harish Dwivedi
5. Shri P. Raveendranath Kumar
6. Shri P.K. Kunhalikutty
7. Dr. Sukanta Majumdar
8. Shri Sanjay Sadashivrao Mandlik
9. Smt. Anupriya Patel
10. Dr. Bharati Pravin Pawar
11. Shri V. Srinivas Prasad
12. Shri Brijendra Singh
13. Shri Sushil Kumar Singh
14. Shri Prabhubhai Nagarbhai Vasava
15. Shri Rajan Vichare

### SECRETARIAT

1. Shri T.G. Chandrasekhar - Joint Secretary
2. Shri Raju Srivastava - Director
3. Shri G. C. Dobhal - Additional Director
4. Shri Anand Kumar Hansda - Assistant Executive Officer

**TENTH REPORT OF THE COMMITTEE ON PETITIONS  
(SEVENTEENTH LOK SABHA)**

**INTRODUCTION**

I, the Chairperson, Committee on Petitions, having been authorised by the Committee to present on their behalf, this Tenth Report (Seventeenth Lok Sabha) of the Committee to the House on the Action Taken by the Government on the Recommendations made by the Committee on Petitions (Sixteenth Lok Sabha) in their Fifty-Second Report on the Representation of Shri T.K. Kaul, father of Ms. Parul Kaul, regarding inordinate delay on extradition of Shri Rajnesh Kaul, husband of Ms. Parul Kaul for subjecting her to cruelty, criminal breach of trust, acts done in furtherance of common intention.

2. The Committee considered and adopted the draft Tenth Report at their sitting held on 16.9.2020.
3. The observations/recommendations of the Committee on the above matters have been included in the Report.

**NEW DELHI;**

**16 September, 2020**  
**25 Bhadrapada, 1942 (Saka)**

**DR. VIRENDRA KUMAR,**  
***Chairperson,***  
***Committee on Petitions.***

## REPORT

### **ACTION TAKEN BY THE GOVERNMENT ON THE RECOMMENDATIONS MADE BY THE COMMITTEE ON PETITIONS (SIXTEENTH LOK SABHA) IN THEIR FIFTY-SECOND REPORT ON THE REPRESENTATION OF SHRI T. K. KAUL, FATHER OF MS. PARUL KAUL REGARDING INORDINATE DELAY ON EXTRADITION OF SHRI RAJNESH KAUL, HUSBAND OF MS. PARUL KAUL FOR SUBJECTING HER TO CRUELTY, CRIMINAL BREACH OF TRUST, ACTS DONE IN FURTHERANCE OF COMMON INTENTION.**

The Committee on Petitions (Sixteenth Lok Sabha) presented their Fifty-Second Report to Lok Sabha on 3.8.2018 which had dealt with the Representation of Shri T. K. Kaul regarding inordinate delay on extradition of Shri Rajnesh Kaul, husband of Ms. Parul Kaul for subjecting her to cruelty, criminal breach of trust, acts done in furtherance of common intention.

2. The Committee had made certain observations/recommendations in the matter and the Ministry of External Affairs and the Ministry of Home Affairs were asked to implement the recommendations and requested to furnish their action taken replies thereon for further consideration of the Committee.

3. Action Taken Replies have since been received from the Ministry of External Affairs and the Ministry of Home Affairs *vide* OM No. AA/Parl./125/53/2017 dated 3.10.2018 and Letter No. 25012/2015-LC(83)(Pt. I) dated 22.6.2020, respectively in respect of all the observations/recommendations contained in the aforesaid Report. The recommendations made by the Committee and the replies furnished thereto by the Ministry of External Affairs and the Ministry of Home Affairs are detailed in the succeeding paragraphs.

4. In paras 30, 31 and 32 of the Report, the Committee had observed/recommended as follows:-

*"The Committee note from the submissions made by the Ministry of Home Affairs that on the complaint of Ms. Parul Kaul, daughter of Shri T. K. Kaul against her husband Shri Rajnesh Kaul and his other family members, a case was registered on 07.09.2012 vide FIR No.118/12 u/s 498A/406/34 PC at Police Station (Crime Against Women Cell), Nanakpura, New Delhi. During the course of investigation, the accused Shri Rajnesh Kaul was declared Proclaimed Offender by the Ld. Court of Ms. Tyagita Singh, Metropolitan Magistrate, Dwarka Court, New Delhi. The Charge-Sheet of the case had been filed in the concerned court on 29.08.2013. During trial, the Ld. Court of Ms. Richa*

*Gusain Solanki, Metropolitan Magistrate, Dwarka had ordered vide its Order dated 28.05.2016 to issue the Blue Corner Notice against the accused.*

*The Committee further note from the submissions made by the Ministry of External Affairs that as per affidavit filed by Shri Rajnesh Kaul in respect of criminal case 'Parul Kaul vs. Rajnesh Kaul and ors', the accused, Shri Rajnesh Kaul had been residing at 5, Nield Street, Ropes Crossing, NSW-2760, Australia. The Committee also note of the fact that if a person is wanted for trial in India and is presently residing in a foreign country, this process may lead to extradition, negotiated on the basis of established International Legal Principles and there exist an Extradition Treaty between the Government of the Republic of India and the Government of Australia.*

*In this regard, the Committee take note of the fact that on the complaint of Ms. Parul Kaul, daughter of Shri T. K. Kaul, against her husband Shri Rajnesh Kaul and his other family members, a case was registered on 07.09.2012. However, the Charge-Sheet of the case was filed in the concerned Court on 29.08.2013. The accused, Shri Rajnesh Kaul was declared Proclaimed Offender on 02.05.2014 by the Metropolitan Magistrate, New Delhi. Subsequently, the Metropolitan Magistrate, Dwarka, New Delhi vide its Order dated 28.05.2016 ordered to issue the Blue Corner Notice against the accused. In this regard, the Committee are constrained to note that the Delhi Police took almost one complete year to file Charge Sheet in the Court against the accused which shows the lack of seriousness of the concerned Agencies in the matter. The Committee, therefore, recommend that the Ministry of Home Affairs, in consultation with concerned Agencies, prepare a strategy to deal such special cases of distressed women wherein the submission of Charge Sheet, etc., be filed in the appropriate Court in a time bound manner."*

5. The Ministry of Home Affairs, in their action taken replies, have submitted as follows:-

*"The recommendations of the Committee have been noted. The Ministry of Home Affairs has sensitized the Investing Agencies to expedite the process of investigation and filing of charge sheet in cases where assistance from foreign countries are needed. In this regard, MHA has made special provisions of expediting the process of service of summons and notices on persons residing abroad. Further, the matter is also looked into by the Integrated Nodal Agency (INA), Ministry of Social Justice and Empowerment, wherein, MHA is also represented."*

6. In paras 33 and 34 of the Report, the Committee had observed/recommended as follows:-

*"The Committee note from the submissions of the Ministry of Home Affairs that in compliance to the Court's order dated 28.05.2016 to issue Blue Corner Notice against the accused, Shri Rajnesh Kaul, a request letter along with duly filled Proforma of Blue Corner Notice was forwarded by the Delhi Police to Central Bureau of Investigation (CBI) on 08.06.2016. Further, the publication of Blue Corner Notice against Shri Rajnesh Kaul by the Law Enforcement Agency, i.e., INTERPOL was pending for the want of proper information from Delhi Police. To add further to the woes of the victim, this matter was never been brought to the notice of the Ministry of Home Affairs either by the CBI or Delhi Police.*

*The Committee are shocked to find that there has been a systemic failure of communication between the Delhi Police, CBI and the Ministry of Home Affairs. The matter of publication of Blue Corner Notice against Shri Rajnesh Kaul is pending for the want of proper information from Delhi Police caused a loss of precious time, as also it has not been brought to the notice of the Nodal Ministry. The Committee, therefore, recommend that in the cases relating to Distressed Women, the compliance of the Instructions be followed strictly by the agencies concerned in future and also such kind of failure of communication should not be accepted by the Ministry and the persons/Authority related therewith not only should be held accountable but punitive action as warranted be taken against them without fail. The Ministry of Home Affairs should also formulate and issue Guidelines with regard to strict compliance of the prescribed Rules to all its Departments/Agencies in respect of communicating the Ministry in such type of Special Cases. The Committee would, therefore, like to be apprised the steps taken in this direction within three months of presentation of this Report to the House."*

7. The Ministry of Home Affairs, in their action taken replies, have submitted as follows:-

*"The Blue Corner Notices are also called 'enquiry notices' and may be issued in order to have some one's identify verified; to obtain particulars of a person's criminal record; to locate someone who is missing or is an identified or unidentified international criminal or is wanted for a violation of ordinary criminal law and whose extradition may be requested. These notices are being issued by the Interpol, Lyon and the matters are processed by the Central Bureau of Investigation (designated as National Crime Bureau of India).*

*In this regard, a Workshop was conducted at the CBI Headquarters, wherein, Interpol Liaison Officer of the States participated."*

8. In paras 35, 36 and 37 of the Report, the Committee had observed/recommended as follows:-

*"The Committee note from the submissions of the Ministry of External Affairs regarding 'dual criminality' that when considering the 'dual criminality requirement', the Australian Courts have determined that it is not essential for each country to have 'Identically Defined Offences'. Rather, the conduct which amounted to the offence in the requesting country must amount to an offence in Australia. It implies that the wording or names of the offences do not need to be the same in both the countries, but the conduct which would amount to an offence in the requesting country must also be criminalised in Australia (and punishable by more than 12 months imprisonment). The qualifications of Dual Criminality would be met in the instant case if the Investigating Agency makes a formal request for the extradition primarily on violations of Sections 498-A, 406 and 34 of IPC and it would depend on whether the extradition request sufficiently explain the conduct amounting to the offence and provide particular details of the conduct.*

*The Committee further note from the submissions of the Ministry of Home Affairs that this Ministry had only received notice for service upon Shri Rajnesh Kaul, husband of Ms. Parul Kaul and the copy of FIR received from Delhi Police emphasizes upon the Dowry Demands; which make the case all together on weak footing as it may not qualify the dual criminality condition provided in the Extradition Treaty between India and Australia.*

*The Committee note further with concern that the instant case was on weak footing as it may not qualify the 'dual criminality' condition provided in the Extradition Treaty between India and Australia. The Committee, therefore, recommend that while forwarding the extradition request by the Agencies concerned of the Ministry of Home Affairs to the Ministry of External Affairs, the Law Enforcement Agencies should sufficiently be explained about the conduct which would amount to an offence in the requesting country must also be a criminal activity in other countries including Australia and to provide them the specific details so as to determine whether a particular case comes under 'Dual Criminality' or not and also about appropriateness of various Sections of IPC to not to leave any room to get the extradition request return or modify to avoid loss of time. These aspects need to be kept in mind by the Law Enforcement Agencies concerned while submitting an Extradition Request without any discrepancies."*

9. The Ministry of Home Affairs, in their action taken replies, have submitted as follows:-

*"The Ministry is assisting and providing proper guidance to the Law Enforcement Agencies in making request for extradition as and when approached by the Law Enforcement Agency concerned.*

*In recent past, a two days workshop on 'National Orientation Programme on Cases Concerning Persons Residing Abroad' was conducted by the National Judicial Academy at Bhopal to all the judicial officers from 23-24 November, 2019. The Judicial Academy was also requested by the Ministry of Law and Justice to conduct various conferences/seminars/ workshop during the next Academic sessions on the topic/themes related to International Cooperation. Respective Law Enforcement Agencies also have their own sensitization programmes for the Law Enforcement Officers."*

10. In paras 38 and 39 of the Report, the Committee had observed/recommended as follows:-

*"The Committee note of the fact that the dowry is not a concept in the legal jurisprudence and not an offence under the laws of most foreign countries, including Australia. However, in India, generally, the Complainant and the Law Enforcement Agencies make the entire case as 'dowry' related, whereas, neither Section 498A nor 405 and 406, uses the term 'dowry'. Invariably, there is a lack of evidence to support the allegations of subjecting a woman to cruelty by her husband or relatives of husband. Similarly, the facts and evidence generally lack elements necessary to prima facie prove that criminal breach of trust was committed by husband and his relatives.*

*The Committee further note with concern that in India, out of all harassment cases, the number of cases of harassment for dowry are the maximum. The reason could be one or the other. The Committee are surprised to know about the law which is offence under the laws in India and are punishable but not a concept in the legal jurisprudence and not an offence under the laws of most foreign countries, including Australia. The Committee, therefore, recommend the Authorities to think seriously on this aspect and concrete steps may be taken to provide relief to the distressed women who marry the NRI spouse. Steps should also be taken to include the 'harassment for dowry' Clause in the Extradition Treaty to justify the cases of dowry harassment in foreign countries as well, including Australia, keeping in view the Indian scenario in mind."*

11. The Ministry of Home Affairs, in their action taken replies, have submitted as follows:-

*"Extradition Act is being administered by the Ministry of External Affairs (MEA) and the treaties are negotiated and finalized under the guidance of MEA. However, the Overseas*

*Indian Affairs Division of Ministry of External Affairs and Integrated Nodal Agency (INA), Ministry of Social Justice and Empowerment is dealing with the matters and are actively monitoring NRI cases."*

12. The Ministry of External Affairs in their action taken replies, have submitted as follows:-

*"As noted in the 52<sup>nd</sup> Report of the Committee on Petitions, as per Article 2(1) of the Extradition Treaty between India and Australia, the offences for which the extradition has been requested, must be extraditable, i.e., the offence punishable under the laws of both India and Australia for a period of at least one year (dual criminality).*

*Australian Courts have determined that it is not essential for each country to have 'Identically Defined Offences'. Rather, the conduct which amounted to the offence in the requesting country must amount to an offence in Australia.*

*Article 3(1) of the Dowry Prohibition Act, 1961, (Act no. 28 of 1961) states that if any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with the fine which shall not be less than Rs. Fifteen Thousand or the amount of the value of such dowry, whichever is more.*

*The Extradition Treaty uses a no-list method and any conduct/offence punishable with an imprisonment of one year or more under the laws of both India and Australia is extraditable. Therefore, the conduct amounting to 'harassment for dowry', if punishable under the laws of India and Australia, is already covered.'*

13. In paras 40, 41 and 42 of the Report, the Committee had observed/recommended as follows:-

*"The Committee note from the submissions of the Ministry of External Affairs that extradition request for an accused/fugitive can be initiated after the filing of Charge Sheet before an appropriate Court and the Court having taken cognizance of the case has issued orders/directions justifying accused/fugitive's committal for trial on the basis of evidence made available in the charge sheet and has sought presence of the accused/fugitive to face trial in the case. An accused who is in a foreign State may be extradited to India as per the extradition request which has to be prepared by the Law Enforcement Agency concerned in accordance with the Guidelines issued by the Ministry of External Affairs to facilitate preparation of such request and it will be examined in consultation with the Legal and Treaties Division of the Ministry of External Affairs in*

*terms of rectifying deficiency, if any. Thereafter, after seeking the approval of Hon'ble External Affairs Minister, the same will be forwarded to the requested State, through Indian Mission, for its consideration.*

*The Committee are constrained to note that the process of extradition request is very lengthy and time consuming which starts from the lengthy legal procedure of Court's Orders/Directions justifying accused/fugitive's committal for trial on the basis of evidence made available in the Charge Sheet and has sought presence of the accused/fugitive to face trial in the case to preparation of extradition request by the Law Enforcement Agency and further approval of the Hon'ble External Affairs Minister is also to be sought.*

*Keeping in view the mental and physical state of the Distressed Women, who marry the NRI spouses, the Committee are of the opinion that the process of submitting and forwarding extradition request be simplified which will not only save time but help the distressed women to get justice in time. In the instant case, both the Ministries of External Affairs and Home Affairs are not able to take any concrete steps with respect to initiation of extradition proceedings against Shri Rajnesh Kaul. The Committee, therefore, urge the Ministry of External Affairs and the Ministry of Home Affairs to evolve a short, simple and quick way of preparation, easy submitting and quick forwarding of extradition request to the country concerned for its consideration."*

14. The Ministry of Home Affairs, in their action taken replies, have submitted as follows:-

*"The Ministry of External Affairs is the Nodal Ministry for extradition and has issued suggestions/guidelines for preparing extradition requests (Annexure-I). These guidelines can also be accessed under head of CPV (Consular, Passport and VISA) Division. (<http://www.mea.gov.in/cpv-extradition.htm>).*

*Ministry of Home Affairs, being Nodal Ministry for Mutual Legal Assistance in Criminal Matters, in order to simplify and streamline the procedure, keeping in mind the substantial change in International Cooperation based on new legislations, regulations and conventions and amendment in procedural laws all over the world including India, has issued revised comprehensive guidelines for 'Mutual Legal Assistance in Criminal Matters in December, 2019' regarding investigation abroad and service of judicial documents abroad (Annexure-II). These guidelines can also be accessed at MHA's website i.e. <http://mha.gov.in> (Division of MHA)- Internal Security-II Division - Notification/policy guidelines. The link of these guidelines is [http://mha.gov.in/sites/default/files/ISII\\_ComprehensiveGuidelines\\_17122019.pdf](http://mha.gov.in/sites/default/files/ISII_ComprehensiveGuidelines_17122019.pdf).*

*All the States/UTs and Law Enforcement Agencies have also been requested to take up continuous capacity building of Legal/Judicial Officers, Prosecutors, Police Officers and Officers of other Investigating Agencies. This Ministry is providing the faculty assistance of experts on the subject matter as and when requested by the States/LEAs.*

*Besides this, the States/UT and LEAs have been requested to train Judicial Officers as well as Law Enforcement Officers at their respective academies by way of in service trainings, conferences, workshops, etc."*

15. The Ministry of External Affairs in their action taken replies, have submitted as follows:-

*"It may be noted that Ministry of External Affairs by itself does not initiate extradition requests. On receipt of an extradition request, the Ministry of External Affairs processes the same expeditiously, taking into consideration the legal and procedural requirements under the bilateral extradition treaty. Thereafter, after seeking the approval of Hon'ble External Affairs Minister, the extradition request is forwarded, through Indian Mission, to the requested State for its consideration.*

*It may be noted that Ministry of External Affairs had issued a 'Suggestions for drawing up extradition requests' and 'Guidelines for Indian law enforcement agencies for extradition of fugitives from abroad' including 'Special Remarks relating to Extradition Requests for Crimes covered by Section 498-A of the Indian Penal Code and other Dowry-related Offences' for providing broad guidance regarding extradition procedures in India. MEA also guides the concerned Law Enforcement Agencies in the preparation of extradition request whenever requested. Officials of the Ministry of External Affairs also meet the concerned officials in Law enforcement agencies as well as victims of these crimes on a case by case basis to assist in the preparation of extradition requests.*

### ***The Present Status of Extradition of Shri Rajnesh Kaul from Australia***

*The Ministry of Home Affairs vide its letter No.25012/10/2015-LC(83) (Pt. I) dated 8 August 2018, received in Ministry of External Affairs on 23 August 2018, has informed that the Hon'ble Delhi High Court has quashed the FIR filed by Ms. Parul Kaul and all the consequent proceedings emanating therefrom in view of the settlement arrived between her and her ex-husband Mr. Rajnesh Kaul on all financial aspects concerning them including distribution of properties. A copy of the Delhi HC Judgment is also enclosed at Annexure -III."*

16. In paras 43 and 44 of the Report, the Committee had observed/recommended as follows:-

*"The Committee note from the submissions of the Ministry of Home Affairs that in cases where Law Enforcement Agencies are forwarding their request for Extradition without due justification mentioned about the particulars/details of the conduct or wherein the prima facie case is not made out on the basis of the facts provided by the Law Enforcement Agencies or only a Non-Bailable Warrant without any document supporting the charges alleged in the said warrant in all such cases, the requests are sent back to the Courts/Law Enforcement Agencies concerned by the concerned Agencies of the foreign countries to modify the formal request of extradition so as to clearly bring out the prima facie case made out against the alleged accused. In this context, the Ministry of Home Affairs have examined 313 number of cases during the last three years; out of which 242 cases returned to the Courts/Law Enforcement Agencies for modifications/corrections.*

*The Committee note that while making a formal request for extradition of a person to face trial in India, the Law Enforcement Agencies do not 'sufficiently explain' or provide 'particular details of the conduct' which causes returning of cases to the Courts/Law Enforcement Agencies for modifications/corrections. The Committee are perturbed to note that in the last three years, the Ministry of Home Affairs had examined 313 number of cases and 242 cases were returned to the Courts/Law Enforcement Agencies for modifications/corrections. The Committee, therefore, strongly recommend that the Ministry of Home Affairs may re-devise their strategy in consultation with their concerned Agencies along with desired information, relevant papers and documents, etc., so that the number of extradition requests forwarded to the Ministry of External Affairs be minimised to avoid loss of time and also helping the victims getting the justice in time. The Committee may be apprised of the action taken in this regard."*

17. The Ministry of Home Affairs, in their action taken replies, have submitted as follows:-

*"MHA while communicating with the Court of competent jurisdiction provides detailed procedure of making extradition requests. MHA is providing proper guidance to various Law Enforcement Officers from time to time in making the extradition request. Keeping in view the sensitivity of cases and gravity of offences, MHA calls the Investigating Officers for assisting them in preparing the extradition request before sending it to Ministry of External Affairs. Besides this, MHA Officers are attending conferences/workshop being organised by the Ministry of Law and Justice and Ministry of External Affairs and delivering lectures to various participants on extradition matters in order to train the officers of such agencies."*

18. In paras 45 and 46 of the Report, the Committee had observed/recommended as follows:-

*"The Committee further note from the submissions of the Ministry of Home Affairs that the delay in making Extradition requests to the Ministry of External Affairs might allow the fugitive to find an escape to avoid getting extradited or to delay the process of extradition. Once the fugitive is traced, his whereabouts are known, immediately the Law Enforcement Agency is requested to send a 'Provisional Arrest Request' and the same is transmitted to the country concerned through the Ministry of External Affairs. Thereafter, the extradition request is sent to the country with a provision prescribed in the Treaty. The Ministry of Home Affairs has received the Draft Extradition Request of the accused Shri Rajnesh Kaul from Delhi Police on 21.7.2017.*

*The Committee note with concern that there is a lack of communication and understanding between the Ministry of External Affairs, the Ministry of Home Affairs, Law Enforcement Agency and the Delhi Police to deal with such cases of Distressed Women marry the NRI spouses; which resulted in delay in making Extradition requests and further allow the fugitive an opportunity to take measures to avoid getting extradited or to delay the process of Extradition. The Committee, therefore, strongly recommend for creation of an 'error-free' and a speedy network to not only save the time involving in making extradition request but also not to give an opportunity to the offender to take measures to avoid getting extradited or to delay the process of extradition. Further, the Ministry should also initiate steps to monitor such cases of important nature as well as provision of a meeting on a regular interval be fixed with the Agencies concerned, viz., the Ministry of Home Affairs, the Ministry of External Affairs, the Delhi Police, etc. to solve the cases of such important nature and to avoid delay in making and examining extradition requests by the Ministry of External Affairs for further transmission."*

19. The Ministry of Home Affairs, in their action taken replies, have submitted as follows:-

*"The Ministry of Home Affairs is invariably requesting Law Enforcement Agencies concerned to direct their officers to come with draft proposal for examining the extradition requests from time to time besides giving them guidance through various lectures/conferences/workshops etc."*

20. The Ministry of External Affairs, in their action taken replies, have reiterated their position as stated in paragraph 15 above.

21. In paras 47 and 48 of the Report, the Committee had observed/recommended as follows:-

*"The Ministry of Home Affairs vide their communication dated 5.12.2017 informed the Committee on Petitions, Lok Sabha that after the sitting of the Committee on Petitions held on 12.6.2017, on the instant matter under examination, the case is being closely monitored by them. The CBI and Delhi Police were requested to inform them about the current update on fortnightly basis. The draft Extradition request of Shri Rajnesh Kaul was forwarded by the Delhi Police to the Ministry of External Affairs on 21.7.2017. The Ministry of External Affairs forwarded the request to the High Commission of India Australia on 02.08.2017. The Ministry of External Affairs requested Delhi Police to prepare Extradition Request accordingly.*

*In this regard, the Committee are astonished to observe that the Ministry of Home Affairs get activated only after the intervention of the Committee on Petitions, Lok Sabha, whereas, the overall process should have been automated under the guidance of the Ministry of Home Affairs. The Committee, therefore, recommend that the Ministry of Home Affairs should ensure timely processing of all the Extradition Requests received so that such cases should not arise in future. The Committee would like to be apprised of the measures taken by the Ministry in this regard."*

22. The Ministry of Home Affairs, in their action taken replies, have submitted as follows:-

*"The Ministry of External Affairs has issued suggestions/guidelines (Annexure-I) for timely processing of all the Extradition Requests. These guidelines can also be accessed at MEA's website under head of CPV (Consular, Passport and VISA) Division. (<http://www.mea.gov.in/cpv-extradition.htm>).*

*Similarly, MHA had issued comprehensive guidelines for 'Mutual Legal Assistance in Criminal Matters in December, 2019' (Annexure-II) for timely processing all the request of Mutual Legal Assistance from abroad. It is mentioned in guidelines that efforts would be made to transmit summons/notices/judicial processes in cases relating to serious crimes against women and children to the Requested Country preferably within a period of ten working days if the proposals are in order."*

23. In paras 49 and 50 of the Report, the Committee had observed/recommended as follows:-

*"The Committee note that in reply to the Unstarred Question No. 917 raised by Shri Shiv Kumar Udasi, Hon'ble M.P. in Lok Sabha which was replied by the Minister of State in the Ministry of External Affairs, Gen. (Dr.) V. K. Singh (Retd.) that the Government had set up an Expert Committee on NRI Marital Disputes, which presented its Report in August, 2017. Some of its recommendations including constitution of an Integrated Nodal Agency (INA) have been accepted and implemented and some are under further examination.*

*In this regard, the Committee desire to know the status of the implementation of the recommendations of the said Expert Committee on NRI Marital Disputes and also the status of examination of the rest of the recommendations of the said Committee."*

24. The Ministry of External Affairs in their action taken replies, have submitted as follows:-

*"The INA is functioning as an effective body and providing a single window timely solution to the problems of affected women and there is a better monitoring of the welfare measures being undertaken in this regard. So far, INA has its eight sittings and issued five Look Out Circulars against the erring spouses."*

*In so far as the other recommendations of the Expert Committee on NRI marital disputes are concerned, they are being examined by the Ministry of Women and Child Development, Ministry of Law and Justice and Ministry of Home Affairs."*

## OBSERVATIONS/RECOMMENDATIONS

### *Sensitizing the Law Enforcement Agencies in filing of Charge-Sheet in a time bound manner*

25. The Committee while undertaking a detailed examination of the representation of Shri T. K. Kaul, had noted that on the complaint of Ms. Parul Kaul against her husband Shri Rajnesh Kaul and his other family members, a case was registered on 7.9.2012 *vide* FIR No.118/12 under Sections 498-A, 406 and 34 of the Indian Penal Code at the Police Station (Crime Against Women Cell), Nanakpura, New Delhi. During the course of investigation, the accused, Shri Rajnesh Kaul, was declared 'Proclaimed Offender' by the Court of Metropolitan Magistrate, Dwarka, New Delhi. However, the Charge-Sheet of the case was filed in the concerned Court on 29.8.2013. Subsequently, during the trial, the Court of Metropolitan Magistrate, Dwarka, New Delhi *vide* its verdict dated 28.5.2016 ordered to issue the 'Blue Corner Notice' against the accused. Having noted that the Delhi Police took almost one year to file the Charge-Sheet in the Court against the accused which showed the lack of seriousness of the concerned Agencies in the matter, the Committee had recommended that the Ministry of Home Affairs, in consultation with concerned Agencies, to prepare a strategy to deal such special cases of distressed women, wherein, the submission of Charge Sheet, etc., be filed in the appropriate Court in a time bound manner.

26. The Ministry of Home Affairs, in their action taken replies, have submitted that the Ministry have sensitized the Law Enforcement Agencies to expedite the process of investigation and filing of Charge-Sheet in cases where assistance from foreign countries are needed and have made special provisions of expediting the process of service of summons and notices on persons residing abroad. The Ministry have further submitted that the matter is also looked into by the Integrated Nodal Agency (INA), Ministry of Social Justice and Empowerment, wherein, the Ministry of Home Affairs are also represented.

27. The Committee are not satisfied to note that the Ministry of Home Affairs have merely stated that they have sensitized the Law Enforcement Agencies to expedite the process of investigation and filing of Charge-Sheet in cases where assistance from foreign countries are needed and have not provided finer contours of the modalities as to

how the Law Enforcement Agencies are being sensitized for expediting the process of investigation and filing of Charge Sheet in such cases where the accused is residing in a foreign country except in the form of conducting/ participating in the Workshops, Lectures, etc. The Ministry have also not apprised the Committee of the special provisions in regard to expediting the process of service of summons and notices to such accused. Further, the Committee have also not been apprised of the requisite scope of the Integrated Nodal Agency under the Ministry of Social Justice and Empowerment which looks after such cases.

28. The Committee, therefore, urge the Ministry of Home Affairs to furnish the details on all the above aspects, viz., modalities worked out by them to sensitize the Investigating and Law Enforcement Agencies concerned for expediting the process of investigation and filing of Charge-Sheet, etc., in the appropriate Court in a time bound manner; Special Provisions in regard to expediting the process of service of summons and notices to the accused/fugitives residing abroad; and the statutory status, objective, mandate and functions of the Integrated Nodal Agency, within three months from the date of presentation of this Report to the House.

#### *Compliance of the instructions/advisories by various Law Enforcement Agencies*

29. While examining this peculiar case and regarding as a test-case, the Committee were sad to find that there had been a systemic failure of communication between the Delhi Police, the Central Bureau of Investigation (CBI) and the Ministry of Home Affairs as the matter of publication of INTERPOL Blue Corner Notice against the accused, Shri Rajnesh Kaul, was pending for want of proper information from the Delhi Police which caused a loss of precious time and further the matter was not brought to the notice of the Nodal Ministry, i.e., the Ministry of Home Affairs either by the CBI or the Delhi Police.

30. The Committee had, therefore, recommended that in the cases relating to distressed Women, the compliance of the instructions be followed strictly by the Agencies concerned in future and also such kind of failure of communication should not be accepted by the Ministry of Home Affairs and the persons/Authority related therewith should not only be held accountable but punitive action as warranted be taken against them. The Committee had further recommended that the Ministry should also formulate and issue Guidelines with regard to strict compliance of the prescribed

Rules to all its Departments/Agencies in respect of communicating the Ministry in such type of Special Cases.

31. The Ministry of Home Affairs, in their action taken replies, have submitted that the 'Blue Corner Notices' are being issued by the INTERPOL, Lyon (France) and the matters are being processed by the Central Bureau of Investigation (designated as National Crime Bureau of India). In this regard, the Ministry have also submitted that a Workshop was conducted at the CBI Headquarters, wherein, Interpol Liaison Officer of the States also participated.

32. The Committee are satisfied with the submissions made by the Ministry of Home Affairs that a Workshop on processing of 'Blue Corner Notices' was conducted at the CBI Headquarters, wherein, Interpol Liaison Officer from the States also participated. In this regard, the Committee expect that the Ministry of Home Affairs should organize such Workshops on various aspects of processing of Blue Corner Notices for the Liaison Officers of Law Enforcement Agencies nominated by the State/UT Governments and other Government Organization(s) on a regular basis. Notwithstanding this, the Committee wish to reiterate its earlier recommendation that apart from organizing regular Workshops on processing of 'Blue Corner Notices', the Ministry of Home Affairs should also formulate and issue Guidelines with regard to strict compliance of the instructions, directions, orders and prescribe Rules/Guidelines in regard to error-free processing of 'Blue Corner Notices' to all its Departments, Investigating and Law Enforcement Agencies for better coordination with the Nodal Ministry *i.e.*, the Ministry of Home Affairs in order to expedite the issuance of 'Blue Corner Notices' by the INTERPOL in such type of Special Cases involving distressed Women in need of urgent assistance.

#### **Formulation of extradition request(s)**

33. The Committee had recommended that while forwarding the extradition request by the Agencies concerned of the Ministry of Home Affairs to the Ministry of External Affairs, the Law Enforcement Agencies should elaborately examine the fact that the offence committed by the accused person in the requesting country must also be a criminal activity in other countries including Australia to satisfy the doctrine of 'Dual Criminality' along with the efficacy of various Sections of IPC for obviating the

possibility of 'extradition requests' for being returned on the grounds of not fulfilling the aspect of 'Dual Criminality' and/or other related deficiencies.

34. The Ministry of Home Affairs, in their action taken replies, have submitted that the Ministry are assisting and providing proper guidance to the Law Enforcement Agencies in making request for extradition as and when approached by the Law Enforcement Agency concerned. In this connection, the Ministry of Home Affairs have also informed the Committee that, in recent past, a two days' Workshop on 'National Orientation Programme on Cases Concerning Persons Residing Abroad' was conducted by the National Judicial Academy at Bhopal to all the Judicial Officers from 23 to 24 November, 2019. The Judicial Academy was also requested by the Ministry of Law and Justice to conduct various Conferences/Seminars/Workshops during the next academic sessions on the topics/themes related to International Cooperation. The Ministry have further submitted that the Law Enforcement Agencies also have their own sensitization programmes for the Law Enforcement Officers.

35. The Committee are not satisfied with the submissions made by the Ministry of Home Affairs to the effect that they have been assisting and providing guidance to the Law Enforcement Agencies in making extradition request(s) only when approached by the them. In this connection, the Committee expect that the Ministry of Home Affairs should proactively engage in organizing Conferences, Seminars, Workshops, etc., by bringing not only the Ministry of Law and Justice and the Ministry of External Affairs but also the Integrated Nodal Agency (the Ministry of Social Justice and Empowerment) on the same page *inter alia* for giving proper guidance on various intricate and technical clauses such as '*dual criminality*' as well as invoking of appropriate Sections of IPC in an extradition case for enabling them to sufficiently explain the conduct of the accused/fugitives for reducing the discrepancies in the extradition request(s) for being returned for modifications, etc.

#### **Inclusion of 'Harassment for Dowry' Clause in the Extradition Treaty**

36. With regard to the inclusion of 'Harassment for Dowry' Clause in the Extradition Treaty, the Committee had noted the fact that the dowry is not a concept in the legal jurisprudence and not an offence under the laws of most of the foreign countries, including Australia. However, in India, generally, the Complainant and the Law

Enforcement Agencies make the entire case as 'dowry' related, whereas, neither Section 498-A nor 405 and 406 of the Indian Penal Code, explicitly, uses the term 'dowry'. In this connection, the Committee had found that, invariably, there is a lack of facts and evidence to support the allegations of a woman subjected to cruelty by her husband or his relatives to *prima facie* prove that criminal breach of trust was committed by them. The Committee had further noted that in India, out of all harassment cases, the number of cases of harassment for dowry are the maximum. The Committee had, therefore, recommended the Authorities to consider these aspects and take concrete steps to provide relief to the distressed women who marry the NRI spouse.

37. The Ministry of Home Affairs, in their action taken replies, have submitted that the Extradition Act is being administered by the Ministry of External Affairs (MEA) and the treaties are negotiated and finalized under the guidance of MEA. However, the Overseas Indian Affairs Division of the Ministry of External Affairs and the Integrated Nodal Agency (INA), Ministry of Social Justice and Empowerment are dealing with the matters and are actively monitoring NRI cases. In this context, the Ministry of External Affairs, have also submitted that as per Article 2(1) of the Extradition Treaty between India and Australia, the offences for which the extradition has been requested, must be extraditable, *i.e.*, the offence punishable under the laws of both India and Australia for a period of at least one year (Dual Criminality). The Ministry have further informed that the Australian Courts have determined that it is not essential for each country to have 'Identically Defined Offences', however, the conduct which amounted to the offence in the requesting country must amount to an offence in Australia. The Ministry have also informed the Committee that Article 3(1) of the Dowry Prohibition Act, 1961, (Act No. 28 of 1961) states that if any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with the fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more. The Ministry have further apprised the Committee that the Extradition Treaty uses a no-list method and any conduct/offence punishable with an imprisonment of one year or more under the laws of both, India and Australia, is extraditable and therefore, the conduct amounting to 'Harassment for Dowry', if punishable under the laws of India and Australia, is already covered.'

38. Notwithstanding the fact that the extraditable offences for which the Extradition Request(s) have been made should fulfil the criteria of 'dual criminality' in the case of Australia and the Australian Courts have also determined that it is not essential for each country to have 'Identically Defined Offences', the Committee recommend the Ministry of External Affairs that since most of the harassment cases against distressed women are dowry related, while formulating an Extradition Treaty with a foreign country, efforts be made for inclusion of an explicit Clause on 'Harassment for Dowry' as an extraditable offence which is already punishable in terms of Clause 3(1) of the Indian Dowry Prohibition Act, 1961, (Act No. 28 of 1961).

**Simplification of the process of making 'Extradition Request(s)'**

39. While examining the process being followed for making extradition request(s) by the Government, the Committee were constrained to note that the process of preparing, submitting and forwarding such request(s) is not only lengthy but also time consuming which starts from the lengthy legal procedure of obtaining Court's Orders/Directions, thereby, justifying accused/fugitive's committal for trial on the basis of evidence made available in the Charge-Sheet and the presence of the accused/fugitive to face trial in the case, followed by obtaining the approval of the Hon'ble External Affairs Minister. Keeping in view the mental and physical state of the distressed women, who had married to an NRI, the Committee had urged the Ministry of External Affairs and the Ministry of Home Affairs to evolve a short, simple way of preparation, easy submitting and quick forwarding of extradition request(s) to the country concerned for its consideration.

40. The Ministry of Home Affairs, in their action taken replies, have submitted that the Ministry of External Affairs is the Nodal Ministry for extradition and has issued suggestions/guidelines for preparing extradition requests. Concurrently, the Ministry of External Affairs, in their action taken replies, have submitted that they do not initiate extradition requests. On receipt of an extradition request, the Ministry process the same expeditiously, taking into consideration the legal and procedural requirements under the bilateral extradition treaty. Thereafter, after seeking the approval of Hon'ble External Affairs Minister, the extradition request(s) are forwarded, through Indian Mission, to the requested State for its consideration. The Ministry of External Affairs have also informed the Committee that 'Suggestions for drawing up Extradition Requests' and 'Guidelines for Indian Law Enforcement Agencies for extradition of fugitives from abroad' including

**‘Special Remarks relating to Extradition Requests for Crimes covered by Section 498-A of the Indian Penal Code and other Dowry-related Offences’ for providing broad guidance regarding extradition procedures in India have also been issued. The Ministry have further informed that, whenever requested, the concerned Law Enforcement Agencies are also being counseled in the preparation of extradition request.**

**41. The Committee are satisfied to note that both the Ministry of Home and the Ministry of External Affairs have been issuing suggestions, guidelines, instructions, etc., in regard to preparation and processing of extradition requests. The Committee hope that while formulating such suggestions, guidelines, instructions, etc., on extradition request(s) there would be proper and systematic inter-ministerial and inter-departmental coordination and cooperation and the views/opinions of other stakeholders, viz., the Law Enforcement Agencies of the State Governments, National Crime Bureau of India, Integrated Nodal Agency, other Law Enforcement Agencies, and NGOs working on the subject would also be taken into consideration in evolving a short, simple and quick way of preparation and forwarding of extradition request(s) to the country concerned for their consideration. The Committee expect that the Ministry of External Affairs, being the Nodal Ministry for extradition along with the Ministry of Home Affairs would ensure that the guidelines and instructions for preparation, submission and forwarding of extradition would be scrupulously followed by the Law Enforcement Agencies.**

**Implementation of the recommendations of the Expert Committee on NRI marital disputes**

**42. The Committee had noted that the Government had set up an Expert Committee on NRI marital disputes, which presented its Report in August, 2017 and some of its recommendations including constitution of an Integrated Nodal Agency (INA) were accepted & implemented and other recommendations are under examination. In this regard, the Committee had desired to know the status of implementation of important recommendations of the said Expert Committee. In response, the Ministry of External Affairs, in their action taken replies, have submitted that the INA is functioning as an effective body and providing a single window, timely solution to the problems of affected women and there is a better monitoring of the welfare measures being undertaken in this regard. The Ministry of External Affairs have also informed that INA has, so far, organised eight sittings and issued 05 Look Out Circulars against the erring spouses. The Ministry of External Affairs have further informed that insofar as the other recommendations of**

the Expert Committee on NRI marital disputes are concerned, they are being examined by the Ministry of Women and Child Development, the Ministry of Law and Justice and the Ministry of Home Affairs.

43. The Committee are satisfied to note that on the recommendations of an Expert Committee on NRI marital disputes, a dedicated Body in the form of an Integrated Nodal Agency (INA) has been established to provide a single window, timely solution to the problems of distressed women affected by the marital dispute with their NRI spouse and to monitor welfare measures meant for them. However, the Committee would like the Ministry of External Affairs to apprise them of the status of implementation of other important recommendations of the Expert Committee which are presently under examination by the Ministry of Women and Child Development, the Ministry of Law and Justice and the Ministry of Home Affairs.

NEW DELHI;

16 September, 2020

*25 Bhadrapada, 1942 (Saka)*

DR. VIRENDRA KUMAR,  
Chairperson,  
*Committee on Petitions.*

Ministry of External Affairs  
 CPV Division  
 (Extradition Section)

SUGGESTION FOR DRAWING UP EXTRADITION REQUESTS

Extradition request for an accused/fugitive can be initiated after the charge sheet has been filed before an appropriate Court and the said Court, having taken cognizance of the case, has issued orders/directions justifying the accused's/fugitive's committal for trial on the basis of evidence made available in the charge sheet and has sought the presence of the accused/fugitive to face trial in the case.

All extradition requests should be formatted as specified and should contain by documents and information enumerated below:

1. The extradition request should be spiral-bound and should contain an index with page numbers.
2. The request should be supported by a self-contained affidavit, executed by the Court by whom the fugitive is wanted, or by a Senior Officer in-charge of the case (not below the rank of Superintendent of Police of the concerned investigating agency) sworn before a Judicial Magistrate (of the Court by which the fugitive is wanted for prosecution). The affidavit should contain brief facts and history of the case, referring at the appropriate places to the statements of witnesses and other documentary evidence; description of criminal clearly establishing his identity; provisions of the law invoked etc. so that a prima facie case is made out against the fugitive criminal. The affidavit should not rely on acronyms/abbreviations which may be clear to an Indian reader, but may not be familiar to a foreign reader.
  - (i) Paragraph 1 of the affidavit should indicate the basis/capacity in which the affidavit is executed.
  - (ii) The affidavit should indicate the offences for which the accused is charged in India.
  - (iii) The affidavit should confirm that the law in question was in force at the time of commission of offences and that it is still in force, including the penalty provisions.
  - (iv) The affidavit should confirm that, if the accused was extradited to India, he would be tried in India only for those offences for which extradition is sought.

(v) The affidavit should confirm that the offences are not barred by the period of limitation.

(vi) The affidavit should also include references to documents and information that would establish the offences for which extradition is sought, together with a detailed written statement setting out the acts or omissions which are alleged against the accused in respect of each offence for which his extradition is sought.

3. Copy of First Information Report (FIR), duly countersigned by the competent judicial authority, should be enclosed with the request.
4. The competent authority should countersign a copy of charge sheet, which is enclosed with the documents.
5. *The request should include a letter/order from the concerned court justifying the accused person's committal for trial on the basis of evidence made available in the Charge Sheet, with a direction seeking the accused person's presence in court to stand trial in said court from the country of present stay.*
6. The Warrant of Arrest should be in original and open-dated, indicating clearly only those offences for which the accused is charged and the Court has taken cognizance of, with the relevant Sections thereof.
7. The nationality, identity and address of the accused should be made available with the request.
8. The photograph and finger print (if available) of the accused person should be identified through an affidavit in the request.
9. The request should enclose copies of the relevant provisions under which the accused is charged, along with extracts of the relevant laws, indicating the maximum sentence prescribed for the offence for which the accused is charged or convicted.
10. If any CD/floppy is enclosed with the documents for establishing the crime, a certified transcript of the CD/floppy should also be enclosed with the extradition dossier, duly countersigned by the competent judicial authority.
11. The extradition request is to be submitted in quadruplicate (four copies - one original + three copies).

12. All the documents should be clear, legible and in a presentable form as they are to be presented to Governments of Foreign Countries.
  13. Original documents in national languages should be sent along with certified English translation of each such document from authorized translators.
- 
14. Extradition requests/documents submitted to countries where English is not first language should be submitted along with a duly translated copy in the host country's official language, as specified in the Extradition Treaty. The Court issuing the warrant should certify such a translated copy.
  15. All the pages in original as well as photocopies (and in translated copies where are applicable) should be counter-signed by the competent judicial authorities.

After completion of necessary formalities, the request for extradition should contain a letter/note from a Senior Officer (not below the rank of Joint Secretary) of the concerned State Government, confirming the correctness of the case/material, with a request to the Central Authority to forward it to the Government of the concerned foreign country.

*N.B.: In cases where the extradition request is originating from the concerned court, it should be prepared in the form of an affidavit in the first-person, i.e. by the Hon'ble Magistrate/Judge himself/herself. (Such requests, when received from Court Masters or other court officials writing in third person on behalf of the Court, are objected to by authorities in the Requested State).*

F. No. 25016/52/2019-LC

Government of India  
 Ministry of Home Affairs  
 IS-II Division/Legal Cell-I

\*\*\*\*

2<sup>nd</sup> Floor, Dhyanchand National Stadium

Near India Gate, New Delhi

Date 04/12/2019

To

1. Secretary, MoF/ MEA/MoL&J/ DoP&T New Delhi.
2. All Chief Secretaries of States/ UTs.
3. All DGPs of States/ Commissioner of UTs.
4. Director CBI/ IB/ ED/ DRI/ NIA/CBDT & NCB.
5. Registrar, Supreme Court, New Delhi.
6. All Registrars of High Court of States/ UTs.

**Sub: Comprehensive Guidelines for investigation abroad and issue of Letters Rogatory (LRs)/ Mutual Legal Assistance (MLA) Request and Service of Summons/Notices/Judicial documents in respect of Criminal Matters.**

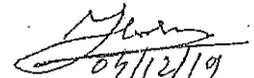
Sir,

The Ministry of Home Affairs (MHA) had issued comprehensive guidelines regarding investigation abroad and issue of Letters Rogatory (LRs) in 2007 and regarding service of summons/notices/ judicial documents on the persons residing abroad, in 2009. With a view to streamlining the process of MLAT in criminal matters, the guidelines have been revised in respect of LR, MLA request and service of summons/notices/ judicial documents, etc. The revised guidelines incorporate various legal and technical developments in the recent years and aim to make the documentation in this regard more precise and focused as well as compliant with international requirements.

2. A copy of the guidelines is enclosed with a request to circulate these among officers concerned for following the procedure laid-down in the guidelines.

Encl: As above.

Yours faithfully,



04/12/19  
 (M. K. Chahar)

Under Secretary to the Govt. of India

Tel:-23070164

Copy to:-

- MHA: Joint Secretary, C& IC Division, MHA, North Block, New Delhi.  
 MEA: Joint Secretary, CPV Division, MEA, JLN Bhawan New Delhi.  
 NIA: IG (Policy) (HQ), Opposite CGO Complex, New Delhi.  
 CBI: Joint Director (Interpol), CGO Complex, New Delhi.  
 MoL&J: Joint Secretary, Department of Legal Affairs, Shastri Bhawan, New Delhi.  
 ED: Joint Director (Policy), 6<sup>th</sup> Floor, Lok Nayak Bhawan, Khan Market, New Delhi



सत्यमेव जयते

# **Guidelines on Mutual Legal Assistance in Criminal Matters**

**MINISTRY OF HOME AFFAIRS**

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## List of Abbreviations

AD (IPCC), CBI	Assistant Director, International Police Cooperation Cell, Central Bureau of Investigation
AD (NCB), CBI	Assistant Director, National Central Bureau, Central Bureau of Investigation
CPV Division, MEA	Consular, Passport & Visa Division, Ministry of External Affairs
CrPC	Code of Criminal Procedure, 1973
DOP	Director of Prosecution
ED	Enforcement Directorate
FEOA	Fugitive Economic Offenders Act, 2018
INTERPOL	International Criminal Police Organization
IS-II Division, MHA	Internal Security-II Division, Ministry of Home Affairs
ILO	Interpol Liaison Officer
JD (TFC), CBI	Joint Director (Technical, Forensic & Co-ordination), Central Bureau of Investigation
LR	Letters Rogatory
MLA Request	Mutual Legal Assistance Request
MLAT	Mutual Legal Assistance Treaty
NIA	National Investigation Agency
PMLA	Prevention of Money Laundering Act, 2002
UT	Union Territory

# Part I: Overview

## A. Mutual Legal Assistance in Criminal Matters

1.1 Mutual Legal Assistance is a mechanism whereby countries cooperate with one another in order to provide and obtain formal assistance in prevention, suppression, investigation and prosecution of crime to ensure that the criminals do not escape or sabotage the due process of law for want of evidence available in different countries.

1.2 India provides mutual legal assistance in criminal matters through Bilateral Treaties/Agreements, Multilateral Treaties/Agreements or International Conventions or on the basis of assurance of reciprocity.

1.3 The Mutual Legal Assistance Treaties (MLATs) in criminal matters are the bilateral treaties, entered between the countries for providing international cooperation and assistance. India has entered into Mutual Legal Assistance Treaties/Agreements with 42 countries (November 2019).

**Figure 1.1: List of countries having MLAT/Bilateral Agreements with India**

Arab Republic of Egypt (2009)	Kingdom of Morocco* (2018)	Republic of Kazakhstan (2000)	Russian Federation (2000)
Bosnia & Herzegovina (2010)	Kingdom of Spain (2007)	Republic of Korea (2005)	State of Israel (2015)
Canada (1998)	Kingdom of Thailand (2004)	Republic of Maldives* (2019)	State of Kuwait (2007)
Commonwealth of Australia (2011)	Kyrgyz Republic (2014)	Republic of Mauritius (2006)	Sultanate of Oman (2015)
Confederation of Switzerland (1989)	Malaysia (2012)	Republic of Singapore (2005)	Ukraine (2003)
Democratic Socialist Republic of Sri Lanka (2010)	Mongolia (2004)	Republic of South Africa (2005)	Union of Myanmar (2010)
French Republic (2005)	People's Republic of Bangladesh (2011)	Republic of Tajikistan (2003)	United Arab Emirates (2000)
Hong Kong Special Administrative Region of the People's Republic of China (2009)	Republic of Azerbaijan (2013)	Republic of Turkey (1993)	United Kingdom of Great Britain and Northern Ireland (1995)
Islamic Republic of Iran (2010)	Republic of Belarus (2006)	Republic of Uzbekistan (2001)	United Mexican States (2009)
Kingdom of Bahrain (2005)	Republic of Bulgaria (2008)	Republic of Vietnam (2008)	United States of America (2005)
Kingdom of Cambodia* (2018)	Republic of Indonesia (2011)		

\*The MLAT has been signed but yet to come in force.

**Figure 1.2: List of International Conventions signed by India having provisions related to Mutual Legal Assistance**

1)	United Nations Convention Against Transnational Organized Crime, 2000 (list of member countries: <a href="https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&amp;mtmsg_no=XVIII-12&amp;chapter=18&amp;clang=en">https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&amp;mtmsg_no=XVIII-12&amp;chapter=18&amp;clang=en</a> )
2)	United Nations Convention Against Corruption, 2003 (list of member countries: <a href="https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&amp;mtmsg_no=XVIII-14&amp;chapter=18&amp;lang=en">https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&amp;mtmsg_no=XVIII-14&amp;chapter=18&amp;lang=en</a> )
3)	United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substance, 1988 (Vienna Convention) (list of member countries: <a href="https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtmsg_no=VI-19&amp;chapter=6&amp;clang=en">https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&amp;mtmsg_no=VI-19&amp;chapter=6&amp;clang=en</a> )
4)	Hague Convention (list of member countries: <a href="https://www.hcch.net/en/states/hcch-members">https://www.hcch.net/en/states/hcch-members</a> )
5)	SAARC Convention (list of SAARC countries: <a href="http://saarc-sec.org/about-saarc">http://saarc-sec.org/about-saarc</a> )
6)	Commonwealth Scheme (Harare Scheme) (list of Commonwealth countries: <a href="http://thecommonwealth.org/member-countries">http://thecommonwealth.org/member-countries</a> )

## B. Letters Rogatory (LR)

1.4 The term 'Letters Rogatory' is derived from the Latin term *rogatorius*. Letters Rogatory are the letters of request sent by the Court of one country to the Court of another country for obtaining assistance in investigation or prosecution of a criminal matter.

1.5 In India, Section 166A and Section 105K of Code of Criminal Procedure, 1973 (CrPC), Section 57 and Section 61 of Prevention of Money Laundering Act, 2002 (PMLA), Section 12 of Fugitive Economic Offenders Act, 2018 (FEOA), etc., lays down the procedure of sending 'letter of request' through Competent Court on the request of Investigating Officer.

1.6 The procedure for execution of a request received from the foreign Court or Competent Authority has been enshrined in Section 166B and 105K of CrPC, Section 58 of PMLA, etc. In General, the assistance sought under Letters Rogatories is for service of documents and taking of evidence. Letters Rogatory may be made to any country on the basis of Bilateral Treaty/Agreement, Multilateral Treaty/Agreement or International Convention or on the basis of *assurance of reciprocity*.

## C. Mutual Legal Assistance (MLA) Request

1.7 Mutual Legal Assistance Request in the Indian context is a formal request made by the Central Authority of India i.e., Ministry of Home Affairs to the Central Authority of another country on the request of Investigating Officer or Agency under any Bilateral Treaty/Agreement, Multilateral Treaty/Agreement or International Convention.

## 7. Difference between Mutual Legal Assistance (MLA) Request and Letters Rogatory(LR)

Figure 1.3: Difference between MLA Request and Letters Rogatory		
	Mutual Legal Assistance Request (MLA) Request	Letters Rogatory (LR)
<i>Nature</i>	MLA request is made by the Central Authority of India to the Central Authority of another country on the request of the Investigating Officer or Investigating Agency.	LR is issued by the Indian Court on the request of the Investigating Officer or Investigating Agency under Section 166A and Chapter VII A of CrPC.
<i>Scope</i>	MLA Request can only be made to the countries with which India has Bilateral Treaty/Agreement, Multilateral Treaty/Agreement or International Convention.	LRs can be issued to the countries with whom India has Bilateral Treaty/Agreement, Multilateral Treaty/Agreement or International Convention under the same arrangements. Further, LR can also be issued to any other country (with whom India does not have any existing Bilateral Treaty/Agreement, Multilateral Treaty/Agreement or International Convention) on the basis of assurance of Reciprocity.

### E. Service of Summons, Notices and Judicial Processes

1.8 In India, Section 105 and Chapter VIIA of CrPC, Section 59 and Section 61 of PMLA, Section 10 of FEOA, etc., provides for service of summons, notices and judicial processes. The summons, notices and judicial processes are sent by the Court of competent jurisdiction to IS-II Division, MHA and are further sent by MHA to the foreign country concerned either directly or through Indian Mission/Embassy/Diplomatic Channels for service on the person through the Competent Authorities in the foreign country.

### F. Central Authority of India

1.9 The **MINISTRY OF HOME AFFAIRS** is the Central Authority of India for dealing with requests of mutual legal assistance in criminal matters. The Central Authority transmits and receives all requests for assistance either directly or through diplomatic channels.

All the requests to the Central Authority of India should be addressed to:

<p><b>Under Secretary (Legal)</b>  <b>Internal Security-II Division, 2nd Floor,</b>  <b>Ministry of Home Affairs,</b>  <b>Major Dhyan Chand National Stadium,</b>  <b>New Delhi-110001, India</b></p>	<p><b>Tele Fax: 011-23075338</b>  <b>Telephone: 011-23070164</b>  <b>Email: us-legal@mha.gov.in</b></p>
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1.10 The Central Authority of India i.e., Ministry of Home Affairs performs the following functions with respect to providing and obtaining mutual legal assistance in criminal matters:

- i) It ensures that the widest measure of legal assistance is provided by India
- ii) It formulates and takes the policy decision on mutual legal assistance in criminal matters.
- iii) It reviews all requests received by it from the Investigating Agencies/State

Governments/UTs/Judicial Authorities and takes appropriate actions. If necessary, it corresponds with the agency or Court sending the request regarding the inadequacy or the need to supplement a request and provide information on how they can be improved.

- iv) For delivering the request to foreign country and follow up of the requests, the IS-II Division, MHA functions through AD (IPCC), CBI.
- v) It receives requests from foreign countries.
- vi) It promptly gets the requests executed through the appropriate Authority, in accordance with the Indian laws and in the manner specified by the foreign country, if it is not contrary to Indian law.
- vii) It answers queries related to Indian law and provides information to the countries wishing to make requests to India
- viii) It coordinates arrangements for the representation of foreign countries in India for any proceedings arising out of a request for assistance.
- ix) It periodically participates in the bilateral consultations with the Central Authority of the Contracting States to take measure for the prevention and suppression of crime and early execution of requests.
- x) It arranges training for Indian law enforcement agencies in coordination with CPV Division MEA, AD (IPCC) CBI, NIA and State Police Authorities. It takes assistance of AD (IPCC), CBI for arranging the training programmes at CBI academy or at State Police academies.
- xi) It arranges training programmes in coordination with foreign experts on the subject of mutual legal assistance in criminal matters and extradition.

1.11 IS-II Division, MHA for maintaining record and data for MLA Request/LRs and follow-up of such cases takes the assistance of AD (IPCC), CBI. The contact details of AD (IPCC), CBI are as follows:

<p>The Assistant Director, IPCC, 06<sup>th</sup> Floor, CBI HQ, 5-B, CGO Complex, Lodhi Road, Jawaharlal Nehru Stadium Marg, New Delhi- 110003</p>	<p>Tele Fax : 011-24364070 Telephone : 011-24392170 Email : adco@cbi.gov.in</p>
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## G. Informal Requests

1.12 For getting informal information or leads, the assistance can be sought through INTERPOL Channels. The Investigating Agency is required to take up the matter with Assistant Director, NCB, Central Bureau of Investigation, 5-B, CGO Complex, Lodhi Road, Jawaharlal Nehru Stadium Marg, New Delhi-110003.

## H. Types of Request

1.13 Common forms of assistance provided to or sought by India are as follows:

- i) identifying and locating persons and objects;
- ii) taking evidence and obtaining statements;
- iii) assisting in the availability of person in custody or others to give evidence or assist in investigations or appear as a witness;
- iv) effecting service of judicial documents;
- v) executing searches and seizures;
- vi) providing information, documents, records and other evidentiary items;
- vii) taking measures to identify, locate, attach, freeze, restrain, confiscate or forfeit the proceeds and

- instrumentalities of crime;
- viii) taking measures to restitute the embezzled public funds;
- ix) delivery of property including lending exhibits;
- x) protecting and preserving computer data;
- xi) any other form of assistance not prohibited by the law of the Contracting States.

## **I. Grounds for Refusal or Postponement of Request for Assistance**

1.14 The request for assistance is generally refused if:

- i) the execution of the request would impair sovereignty, security, public order and essential public interest of India or foreign country.
- ii) the request for assistance has been made for the purpose of investigating and prosecuting a person on account of that person's sex, race, religion, nationality, origin or political opinions or that person's position may be prejudiced for any of those reasons.
- iii) the request is made for conduct or offence which is an offence under military law but not an offence under ordinary criminal law in India or foreign country.
- iv) the request relates to an offence in respect of which the accused person has been finally acquitted or pardoned.
- v) *de minimis* request is made i.e. the request is trivial or disproportionate in nature.
- vi) the request seeking restraint, forfeiture or confiscation of proceeds and instrumentalities of crime or seizure of property is in respect of conduct/activity which cannot be made the basis for such restraint, forfeiture, confiscation or seizure in the Contracting States.

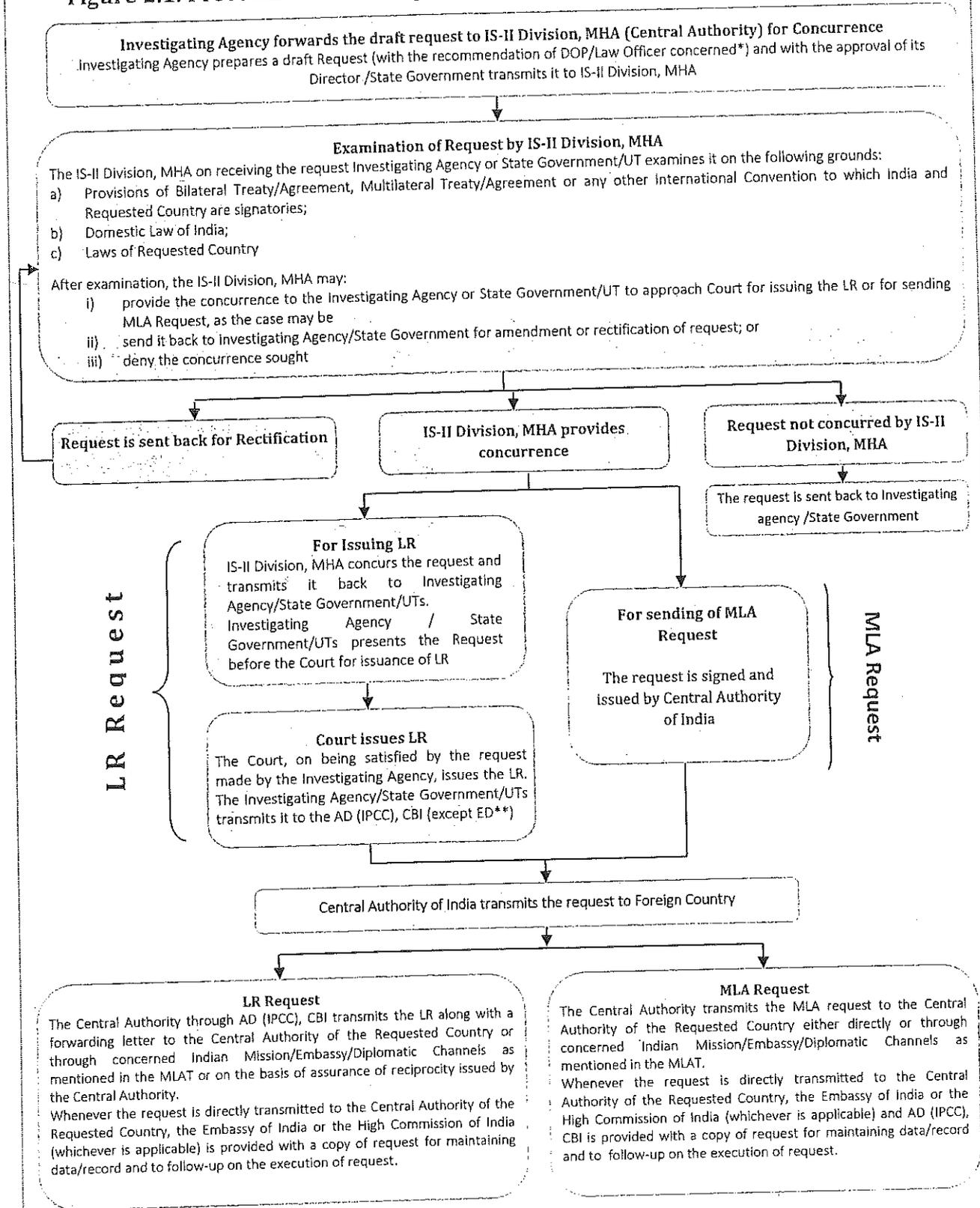
1.15 The execution of request may be postponed if it would interfere with an ongoing criminal investigation, prosecution or proceeding in the Contracting States. Such request may be executed subject to conditions determined necessary after consultations with the Central Authority of the Requesting Country.

1.16 The execution of request shall not be refused solely on the ground of bank secrecy or because the request for assistance does not include all the information if it can otherwise be executed in accordance with the laws of Contracting State.

# Part II: Procedure for Sending and Executing Request for Mutual Legal Assistance

## A. Procedure for Sending Request for Assistance (Outgoing Requests)

**Figure 2.1: Procedure for making a Request for Assistance (Outgoing Request)**



\*In case of ED with the approval of Department of Revenue, Ministry of Finance  
 \*\*The LR of ED after taking forwarding letter from Central Authority of India is sent either directly to the Central Authority of the Requested Country or to the concerned Indian Mission or Embassy through Diplomatic channels as mentioned in the MLAT under intimation to IS-II Division, MHA

**Figure 2.2: Step-by-Step Procedure for making Letters Rogatory Request (Sec 166A CrPC<sup>1</sup>, 105K CrPC<sup>2</sup>, Chapter VII A CrPC, Sec 57<sup>3</sup> and Sec 61<sup>4</sup> PMLA, Sec 12 FEOA<sup>5</sup>, etc.)**

<b>Step 1</b>	<p><b>Drafting of Request by Investigating Officer or Agency and transmitting it to IS-II Division, MHA</b></p> <ul style="list-style-type: none"> <li>⇒ The Investigating Officer compiles the facts related to the case and brings out assistance needed from the foreign country. The draft of the request is sent with the legal opinion/recommendation of Director of Prosecution (DOP)<sup>6</sup> and approval of Director/ Director General/Head of Central Investigating Agency or the Ministry concerned or the State Government as the case may be.</li> <li>⇒ After receiving the approval from the Director / State Government, the Draft request (<u>one copy</u>) is transmitted to the Central Authority of India. Such draft request is routed through the Home Department of State in case of State Police or is sent to the Central Authority of India by the Central Agencies with the approval of their respective Ministries/ Head of Departments.</li> <li>⇒ The IS-II-Division, MHA (Central Authority of India) examines the draft request and may:             <ul style="list-style-type: none"> <li>i) provide the concurrence to the Investigating Agency or State Government/UT to approach Court for issuing the LR; or</li> <li>ii) send it back to the Investigating Agency or State Government/UT for amendment or rectification of request; or</li> <li>iii) deny the concurrence sought.</li> </ul> </li> </ul> <p>It is to be noted that all the requests for issue of LR by Investigation Officer/ Agency are to be sent to the IS-II-Division, MHA (Central Authority of India) for concurrence before being presented to the Court for issuance.</p> <p>The Central Authority may consult the contact person of the Investigating Agency whenever required in relation with the request.</p>
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<sup>1</sup> CrPC- Section 166A. Letter of request to competent authority for investigation in a country or place outside India.— (1) Notwithstanding anything contained in this Code, if, in the course of an investigation into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that evidence may be available in a country or place outside India, any Criminal Court may issue a letter of request to a Court or an authority in that country or place competent to deal with such request to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case and to forward all the evidence so taken or collected or the authenticated copies thereof or the thing so collected to the Court issuing such letter.

(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

(3) Every statement recorded or document or thing received under sub-section (1) shall be deemed to be the evidence collected during the course of investigation under this Chapter.

<sup>2</sup> CrPC- 105K. Procedure in respect of letter of request.—Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India in such form and in such manner as the Central Government may, by notification, specify in this behalf.

<sup>3</sup>PMLA- Section 57. Letter of request to a contracting State in certain cases.—(1) Notwithstanding anything contained in this Act or the Code of Criminal Procedure, 1973 (2 of 1974) if, in the course of an investigation into an offence or other proceedings under this Act, an application is made to a Special Court by the Investigating Officer or any officer superior in rank to the Investigating Officer that any evidence is required in connection with investigation into an offence or proceedings under this Act and he is of the opinion that such evidence may be available in any place in a contracting State, and the Special Court, on being satisfied that such evidence is required in connection with the investigation into an offence or proceedings under this Act, may issue a letter of request to a court or an authority in the contracting State competent to deal with such request to-

(i) examine facts and circumstances of the case,

(ii) take such steps as the Special Court may specify in such letter of request, and

(iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

(2) The letter of request shall be transmitted in such manner as the Central Government may specify in this behalf.

(3) Every statement recorded or document or thing received under subsection (1) shall be deemed to be the evidence collected during the course of investigation.

<sup>4</sup> PMLA-61. Procedure in respect of letter of request.—Every letter of request, summons or warrant, received by the Central Government from, and every letter of request, summons or warrant, to be transmitted to a contracting State under this Chapter shall be transmitted to a contracting State or, as the case may be, sent to the concerned Court in India and in such form and in such manner as the Central Government may, by notification, specify in this behalf.

<sup>5</sup> FEOA-Section 12. Declaration of fugitive economic offender.—(5) Where the Special Court has made an order for confiscation of any property under sub-section (2), and such property is in a contracting State, the Special Court may issue a letter of request to a Court or authority in the contracting State for execution of such order.

(6) Every letter of request to be transmitted to a contracting State under sub-section (5) shall be transmitted in such form and manner as the Central Government may, by notification, specify in this behalf...

<sup>6</sup> in case of ED the approval of Department of Revenue, Ministry of Finance is also required

The following documents are required to be sent to IS-II Division, MHA:

- a) Draft request;
- b) Copy of FIR;
- c) English translation of FIR if filed in vernacular language;
- d) Opinion/recommendation of DOP or the Law Officer commenting on the need for making such request;
- e) Application by Investigating Agency to the Court for issuing LR;
- f) Applicable Laws of Requested Country;
- g) Any other necessary document related to evidence sought from the foreign country;
- h) Contact details of the officer of the law enforcement agency concerned.

### Step 2 Presenting the concurred request before the Court

After obtaining the concurrence of the IS-II Division, MHA for presenting the request before the Court, the Investigating Officer files an Application in the Court of competent jurisdiction for issuing of LR addressed to the Competent Authorities of the Requested Country.

The following documents are required to be presented before the Court for issue of LR:

- a) Request concurred by the IS-II Division, MHA (Central Authority) along with all the connected documents;
- b) Application by Investigating Agency to the Court for issuing of LR;
- c) Extract of the sections of Indian law mentioned in the request including the law on limitation (For example, Section 468<sup>7</sup> CrPC or provisions of any special law applicable)

Note: Certain documents may be relevant for the investigation but are not related to the request and are not required to be attached for presenting the request before the Court. These documents are:

- Case diary
- Copy of FIR
- English translation of FIR
- Opinion of DOP/Law Officer, etc.

### Step 3 Court to issue LR under relevant law i.e. CrPC, PMLA, FEOA, etc.

The Competent Court may decide to issue a LR addressed to the Competent Authority in the Requested Country as prayed for or otherwise. If the Court is satisfied with the request, it will issue LR under its seal and authority.

### Step 4 Transmission of LR

Once the LR is issued, the Investigating Agency or State Government/UT will transmit three copies of the request to the AD (IPCC), CBI and one copy to IS-II Division, MHA. AD (IPCC), CBI will take the forwarding letter from IS-II Division, MHA and then send it directly to the Central Authority of the country concerned or through Indian Mission/Embassy/Diplomatic Channels as the case may be under intimation to the Central Authority of India.

The LR of ED after taking forwarding letter from Central Authority of India is sent either directly to the Central Authority of the Requested Country or to the concerned Indian Mission or Embassy through Diplomatic channels as mentioned in the MLAT under intimation to IS-II Division, MHA

<sup>7</sup> CrPC Section 468. Bar to taking cognizance after lapse of the period of limitation.—(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.  
(2) The period of limitation shall be— (a) six months, if the offence is punishable with fine only; (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year; (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.  
(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

	Where the request is directly sent by AD (IPCC), CBI to the Central Authority of the foreign country, a copy of LR along with communication in this regard is to be sent to Indian Embassy /Mission abroad.
	The following documents are required to be sent for transmission of request LR issued by the Court under Section 166A of CrPC: <ul style="list-style-type: none"> <li>a) Forwarding letter by Central Authority of India;</li> <li>b) LR issued by the Court;</li> <li>c) Extract of the sections of Indian law with highlighted sentence or penalty for the offence;</li> <li>d) List of witnesses to be examined (if any);</li> <li>e) List of questions to be asked from the witness (if any);</li> <li>f) List of documents to be collected (if any) (Description of documents/articles to be collected &amp; procedure for the same to be provided;</li> <li>g) Certified copy of the order for attachment or forfeiture of property (if any).</li> </ul>

**Figure 2.3: Step-by-step Procedure for making MLA Request**

<b>Figure 2.3: Step-by-step Procedure for making MLA Request</b>	
<b>Step 1:</b>	<b>Forwarding the information to the Central Authority of India</b> The Investigating Agency or State Government/UT forwards a self-contained proposal with the recommendation of DOP/Law Officer and approval by Director/State Government to IS-II Division, MHA. (The documents to be attached with the MLA Request are same as that required to be sent with the LR Request)
<b>Step 2:</b>	<b>Issue of Request by Central Authority</b> The IS-II Division, MHA examines and compares the draft along with the relevant documents and prepares an MLA Request. The MLA request is signed by the officer designated at IS-II Division, MHA and is transmitted along with a forwarding letter to the Central Authority of the Requested Country. Whenever the request is directly transmitted to the Central Authority of the Requested Country, the Embassy of India or the High Commission of India (whichever is applicable) and AD (IPCC), CBI is to be provided with a copy of request for maintaining data/record and to follow-up on the execution of request.

## **B. Procedure to be followed after Central Authority of India forwards the Request to Foreign Country**

2.1 The procedure to be followed after IS-II Division, MHA forwards the request to a foreign country is as follows:

- i) After transmission of the request to the foreign country, the IS-II Division, MHA (Central Authority of India) either directly or through AD (IPCC), CBI takes the follow-up action for execution of the Request by making correspondence with the Indian Mission abroad or Central Authority of the foreign country.
- ii) The Central Authority of the foreign country/Mission may directly communicate with the Central Authority of India or through AD (IPCC), CBI or the contact person of Investigating Agency in case it seeks clarification, additional material, etc., concerning to the request made.
- iii) If the communication is made to IS-II Division, MHA, then on receiving such communication, the IS-II Division, MHA would obtain the required clarifications, additional materials, etc., from the

Investigating Officer concerned and transmit the same to the foreign country either directly or through diplomatic channels and a copy of such communication is marked to AD (IPCC), CBI for maintaining record and follow-up.

or

If the request is received by AD (IPCC), CBI, then AD (IPCC), CBI would obtain the required clarifications, additional materials, etc., from the Investigating Officer concerned and transmit the same to the foreign country either directly or through diplomatic channels and a copy of such communication is marked to IS-II Division, MHA for maintain record and follow-up.

or

On receiving such communication by Investigating Agency, the contact person of Investigating Agency would obtain the required clarifications, additional materials, etc., from the Investigating Officer concerned and transmit the same to the foreign country, directly, in urgent cases and in all other circumstances the communication is made through IS-II Division, MHA.

- iv) After executing the request, the foreign country may forward the Execution Report to IS-II Division, MHA or AD (IPCC), CBI or Indian Mission/Embassy along with the evidence and supporting material. The same is then forwarded to Investigating Agency or State Government/UT.
- v) On receipt of execution report, the Investigating Agency or State Government/UT promptly informs the IS-II Division, MHA (Central Authority) about the execution of request and shortcomings if any.
- vi) In case, after receiving of the Execution Report, new facts have come to light and it is felt by the Investigating Agency to seek further information from the concerned country, a supplementary request may be sent. The procedure for making a supplementary request is the same as that of sending any other request.

### C. Procedure for Executing Request in India (Incoming Request)

2.2 Section 166B<sup>8</sup>, Section 105K<sup>9</sup> and Chapter VII A of CrPC, Section 58<sup>10</sup> and Section 61<sup>11</sup> of PMLA, etc., gives the outline of execution of an incoming request in India. All the requests to India for the mutual legal assistance in criminal matters are made to the Central Authority of India. The requests received through diplomatic channels by Ministry of External Affairs i.e. Territorial Division, CPV Division, etc., are also forwarded to IS-II Division, MHA (Central Authority). After receiving the request, the Central Authority of India examines whether the request is complete and fit to be executed in India. While deciding about the execution of request, the Central Authority of India can take the assistance of MEA and other relevant enforcement agencies in India including JD (TFC), CBI.

<sup>8</sup> CrPC-Section 166B. Letter of request from a country or place outside India to a Court or an authority for investigation in India—(1) Upon receipt of a letter of request from a Court or an authority in a country or place outside India competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to an offence under investigation in that country or place, the Central Government may, if it thinks fit—

(i) forward the same to the Chief Metropolitan Magistrate or Chief Judicial Magistrate or such Metropolitan Magistrate or Judicial Magistrate as he may appoint in this behalf, who shall thereupon summon the person before him and record his statement or cause the document or thing to be produced, or  
(ii) send the letter to any police officer for investigation, who shall thereupon investigate into the offence in the same manner, as if the offence had been committed within India.

(2) All the evidence taken or collected under sub-section (1), or authenticated copies thereof or the thing so collected, shall be forwarded by the Magistrate or police officer, as the case may be, to the Central Government for transmission to the Court or the authority issuing the letter of request, in such manner as the Central Government may deem fit.

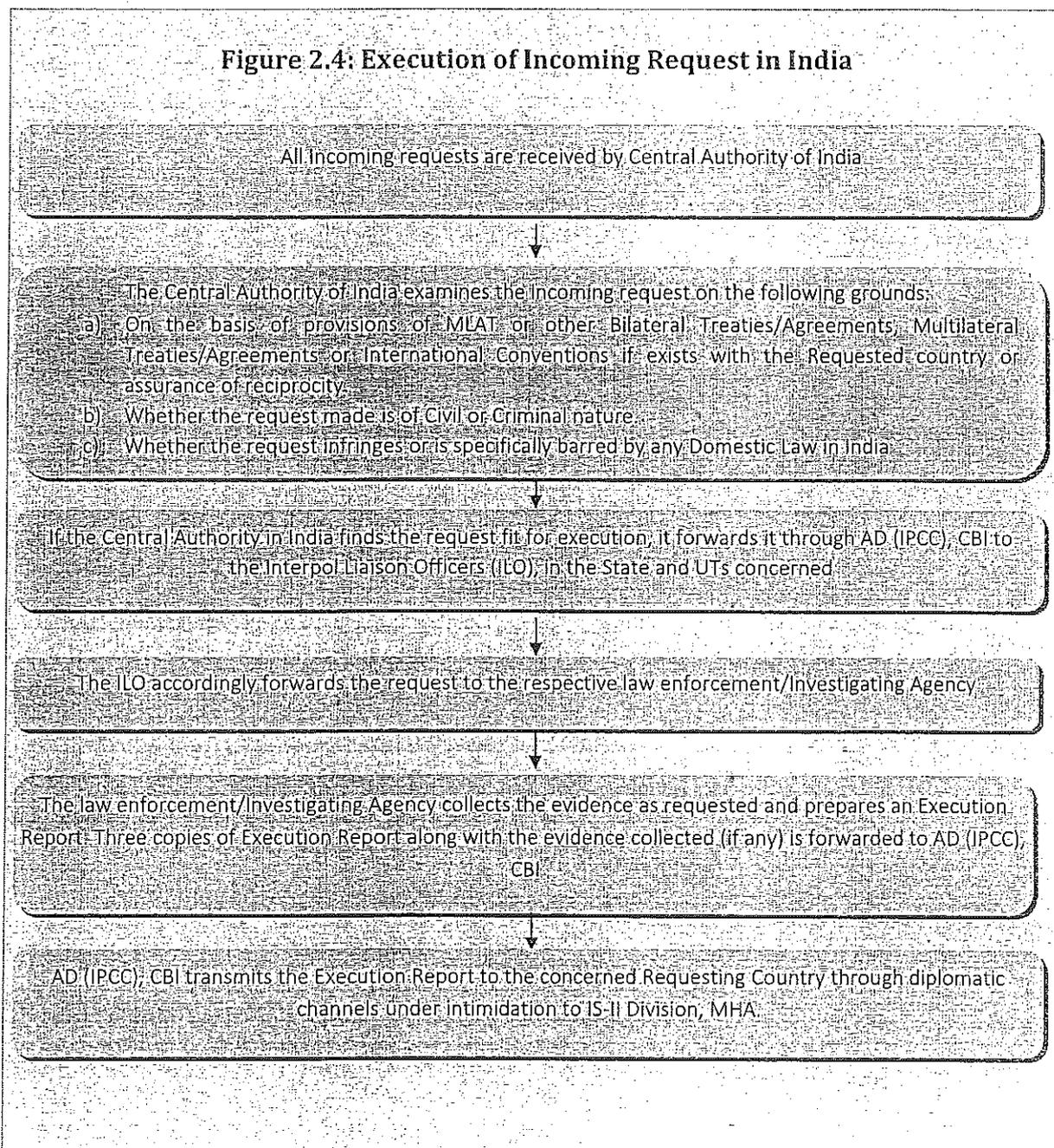
<sup>9</sup> Ibid., Page 10

<sup>10</sup> PMLA-Section 58. Assistance to a contracting State in certain cases.—Where a letter of request is received by the Central Government from a court or authority in a contracting State requesting for investigation into an offence or proceedings under this Act and forwarding to such court or authority any evidence connected therewith, the Central Government may forward such letter of request to the Special Court or to any authority under the Act as it thinks fit for execution of such request in accordance with the provisions of this Act or as the case may be, any other law for the time being in force.

<sup>11</sup> Ibid., Page 10

2.3 In case the request is found to be fit for execution, the Central Authority sends it for execution through AD (IPCC), CBI to the Interpol Liaison Officers (ILO), of State/UTs or the law enforcement agency concerned. Whenever the Central Authority of India decides that the request should be refused or postponed for the execution, it promptly intimates the same to the Requesting Country.

2.4 All the incoming requests are executed in terms of the provisions of extant Bilateral Treaties/Agreements, Multilateral Treaties/Agreements or International Convention and in accordance with Indian Laws.



## D. Monitoring Process

2.5 AD (IPCC), CBI shall provide the complete details of the execution of request to IS-II Division, MHA in the format provided below in the last week of every month or earlier, as required by IS-II Division, MHA.

**Figure 2.5: Format in which information has to be provided to IS-II Division, MHA**

Name of Country (Give the title of case –for example M/S Green Infrastructure Ltd.)	
MHA File No.	(Please mention MHA's File No.)
Interpol/ED File Number	(Please mention File No.)
Investigating Agency	(Please mention name of Investigating Agency and Branch/State Police)
Case No	(Please mention case No.)
MLA Request/ LR Issued by	(Please give designation of Court)
MLA Request/ LR Sent on	(Please give date of sending LR to Indian Mission abroad)
Penal sections	(Give applicable sections of law under which the offence is registered)
Allegation:	
Assistance sought:	
Present Status:	

2.6 On quarterly basis, IS-II Division, MHA along with officers of AD (IPCC), CBI, ED and NIA review the compilation of data and progress of execution of requests.

2.7 Biannual meeting of ILO's concerned for analyzing the progress of execution and issues faced in making the requests.

## Part III: Form, Content and Language of Request

### A. Form of Request

3.1 A request for assistance shall be made in writing. However, in urgent circumstances, a request may be made orally or by email or facsimile or any other agreed forms of electronic media or through INTERPOL but shall be confirmed in writing by the Investigating Agency or State Government/UT concerned with all relevant documents within 5 days after making such request to IS-II Division, MHA.

### B. Content of Request

3.2 The request for assistance shall include the following information:

- a) name of the requesting office and the name of the Competent Authority or Agency conducting the investigation, prosecution or proceedings to which the request relates or name of the Competent Authority seeking or providing the assistance in respect of prevention or suppression of crimes;
- b) nature of the investigation, prosecution or proceedings;
- c) summary of the facts;
- d) copy of the applicable laws;
- e) contact details of a person capable of responding to enquiries concerning request;
- f) purpose of request and the nature of assistance sought;
- g) establishing a link between criminal matter and assistance sought;
- h) information available for the person under investigation or property under investigation;
- i) criminal history of alleged accused, if any;
- j) degree of confidentiality required and the reasons thereof;
- k) any time limit within which the request should be executed;
- l) such other information as is necessary for the proper execution of the request;
- m) mandatory assurances;
- n) country-specific assurances (where required) and
- o) cost related to the execution of the request, where applicable.

3.3 If necessary, and wherever possible, requests for assistance shall include:

- a) Identity, nationality and location of a person or persons who is/are the subject of investigation, prosecution or proceedings;
- b) Details of any particular procedure or requirement that needs to be followed in Requested Country and the reasons thereof.

### C. Language of Request

3.4 The request for assistance and all the supporting documents shall be provided in English and *wherever necessary*, the request and the supporting documents should be translated in the language required by the Requested Country. The translated copies (if any) should be duly certified by the translator and authenticated by the concerned Investigating Agency.

**Figure 3.1: Points to be considered by Investigating Officer/Agency before drafting a Request for Assistance**

- |                          |  |   |
|--------------------------|--|---|
| <input type="checkbox"/> | <b>Necessity and grounds of request</b>  | The Investigating Officer or Agency should ensure whether they have sufficient grounds to make a request to a foreign country.  |
| <input type="checkbox"/> | <b>Timeline</b>  | The Investigating Officer or Agency should bring out clearly the period/timeline during which the request needs to be executed.   |
| <input type="checkbox"/> | <b>Potential ground of Refusal</b>   | It should be ensured that the request does not fall under the grounds of refusal mentioned in the MLAT or Agreement or as compiled in Part I of these Guidelines.   |
| <input type="checkbox"/> | <b>Legal Basis of Request</b>  | The provisions of the Bilateral Treaty/Agreements, Multilateral Treaty/Agreements or International Convention as well as requirement of the law of Requested Country such as principle of dual criminality, assurance of reciprocity, etc., may be studied with view to determine that such a request would fall within the parameters of legal requirements of the Requested Country. Where no such Bilateral Treaty/Agreements, Multilateral Treaty/Agreements or International Convention exists, request may be made on the basis of assurance of reciprocity. The assurance of Reciprocity is to be provided by the Central Authority of India to the Requested Country. |
| <input type="checkbox"/> | <b>Format of the document and any evidentiary requirement in Requested Country</b> | Before making a request it should be checked whether there is a specific format prescribed by the Requested Country for entertaining/execution of request or if there is any mandatory requirement in the form of assurances, etc., in the Requested Country.   |
| <input type="checkbox"/> | <b>Language of the Request</b>   | The request and supporting documents should be made or accompanied by a certified translation with a language specified in the MLAT or the official language of the Requested Country (non-treaty countries).   |
| <input type="checkbox"/> | <b>Confidentiality Requirement</b>   | It should be evaluated if there is any need for confidentiality requirement for execution of request.   |
| <input type="checkbox"/> | <b>Limitation</b>  | The investigation/prosecution is not barred by the period of limitation.  |

**Figure 3.2: Check List of Documents to be attached with Draft Request (MLA Request/LR)  
(to be sent to Central Authority for concurrence)**

All the documents are to be sent to "Under Secretary (Legal Cell), Internal Security-II Division, Ministry of Home Affairs, 2<sup>nd</sup> Floor, Major Dhyan Chand National Stadium, New Delhi-110001"

- 1. Draft application containing brief facts of the case (Refer to figure 3.4 and 3.5)
- 2. Original copy of the legal opinion of the Director of Prosecution or Senior Law Officer
- 3. Copy of application from Investigating Agency requesting the Court to issue LR
- 4. Copy of FIR and translated version of FIR (if filed in any vernacular language)
- 5. Extracts of relevant Sections of Indian Law
- 6. Applicable laws of Requested Country
- 7. Contact details of the officer of the law enforcement agency concerned
- 8. Any other necessary document related to evidence sought

**Figure 3.3: Check List of Documents to be sent to AD (IPCC), CBI after Letters Rogatory has  
been issued by Court**

All the documents are to be sent to "The Assistant Director, IPCC, 6th Floor, CBI HQ, 5-B, CGO Complex, Lodhi Road, Jawaharlal Nehru Stadium Marg, New Delhi- 110003"

- Covering Letter by Investigating Agency or Court
- LR issued by Court under relevant provisions of law i.e. CrPC, PMLA, FEOA, etc.
- Extract of sections of Indian law mentioned in the request including the law on limitation
- English translation of all the documents attached and translation in the language required by the requested country (wherever required)

**Case-wise list of documents to be attached with the request**

- List of witnesses to be examined (if any)
- List of questions to be asked from the witness (if any)
- List of documents to be collected (if any) (Description of documents/articles to be collected & procedure for the same is to be provided)
- Certified copy of the order for attachment or forfeiture of property (if any)

Figure 3.4: Executive Summary of the information to be included in the Request

1)	Purpose for making the request		
2)	Nature of request		
3)	Name of the Requested Country		
4)	Basis of request	<input type="checkbox"/> MLAT	<input type="checkbox"/> UNTOC
		<input type="checkbox"/> SAARC Convention	<input type="checkbox"/> UNCAC
		<input type="checkbox"/> Hague Convention	<input type="checkbox"/> Harare Scheme
		<input type="checkbox"/> Vienna Convention, 1988 (NDPS)	
		<input type="checkbox"/> Any other Bilateral Treaties/Agreements, Multilateral Treaties/Agreements _____ (Specify)	
		<input type="checkbox"/> Any other International Convention/Resolution _____ (Specify)	
		<input type="checkbox"/> Assurance of Reciprocity	
5)	Issuing Authority	Name: Address: Details of the contact person at Issuing Authority:	
6)	Investigating Authority	Name: Address: Details of the contact person who can give clarification on the case:	
7)	Case details	FIR No./ Case Number: Section under which FIR / Case Number has been registered:	
8)	Brief summary of the case	Brief fact of the case:	
		Link between alleged offence(s) and assistance requested:	
		Applicable laws and maximum penalties for the offence in India:	
		Limitation Period:	
		Current Status of the case	
9)	Any other relevant information for proper execution of request		
10)	Any specific manner/procedure to be followed for execution of request		
11)	Cost for executing the request		
12)	Timeline for executing the request		
13)	Limitation of use		
14)	Confidentiality requirement with reasons (if any)		

Date:

(to be signed and stamped by the Issuing Authority)

### Figure 3.5: Format and contents of Letters Rogatory and Mutual Legal Assistance Request

For Letters Rogatory: To: The Competent Authority of the \_\_\_\_\_ (Requested Country)

(Court of Jurisdiction)

I, [name of the presiding officer of the Court], has been authorized to make this request for mutual legal assistance in criminal matters, respectfully request the assistance of the Government (name of the Requested Country) in the criminal matter.

For Mutual Legal Assistance Request: To: The Central Authority of the \_\_\_\_\_ (Requested Country)  
Certificate on behalf of the \_\_\_\_\_ (Requesting party)

I, \_\_\_\_\_, Under Secretary to the Government of India, IS-II Division Ministry of Home Affairs am authorized to make this request for mutual legal assistance in criminal matters on behalf of government of India and certify that the Government of \_\_\_\_\_ (Requested Country) in relation to criminal proceeding involving \_\_\_\_\_ (describe nature of criminal proceedings)

Request: \_\_\_\_\_ (to be filled by Investigating Agency / Court)

[This request is made by the Government of the Republic of India for assistance in accordance with the provisions (describe the relevant provisions) of Treaty between Republic of India and (name of the Requested country) or United Nations Convention Against Corruption or United Nations Convention Against Transnational Organized Crime or SAARC Convention or Harare Scheme (or any other Treaty/Agreement which is relevant); Or

This request is made by the Government of the Republic of India for assistance in accordance with the Assurance of Reciprocity in similar matters. Original Assurance of Reciprocity issued by Ministry of Home Affairs, Govt. of the Republic of India, who is Central Authority of India, is attached herewith.]

Nature of Request: \_\_\_\_\_ (to be filled by Investigating Agency / Court)

[This request relates to (describe the subject of criminal matter). The Authority/agency conducting the investigation/prosecution of the criminal matter is (describe authority/agency concerned with the criminal matter).  
Indicate whether judicial proceedings have been, or are to be, instituted or concluded, as the case may be, and provide details of such proceedings (example the level of the Court).]

Criminal Offences / Applicable Legislation / Penalties: \_\_\_\_\_ (to be filled by Investigating Agency / Court)

[Set out the offences alleged to have been contravened in relation to the criminal proceedings as well as the maximum penalties for these offences and attach copies of applicable legislative provisions. State identity of Suspect/ accused person, if known. If the matter pertains to the enforcement of foreign confiscation order etc., then state also the legal provisions pursuant to which the foreign confiscation order was/is intended to be made, as the case may be.]

Period of Limitations: \_\_\_\_\_ (to be filled by Investigating Agency / Court)

[Here it may also be mentioned that the offence is not time-barred or punishment has not lapsed, citing the relevant provision of the period of limitation of Indian Law.]

Statement of Facts: \_\_\_\_\_ (to be filled by Investigating Agency / Court)

[This column is to be filled up on case to case basis.

- Describe the material facts of the criminal matter including, in particular, those necessary to establish circumstances in the Requesting Country ie. India connected to the evidence or assistance sought, and the relevance of the evidence in India in the criminal matter.
- Clearly state the connection of material sought. E.g. if bank records are sought, the connection of bank accounts in requested country with the investigation being conducted in India may be specifically mentioned. If the bank accounts have been utilized in the commission of crime, that may also be invariably mentioned.

- c) Indicate whether and how any person(s) has carried on or benefited from the offence(s) committed in the Requesting State. State how the thing sought to be produced by this Request (whether by itself or with another thing) will be of substantial value to the criminal matter.
- d) State also whether a foreign confiscation order has been or may be made in such proceeding and whether any person(s) affected or will be affected by such an order has been notified of the proceedings in accordance with the Domestic Law. Provide details of seizure, confiscation, restitution of the property to the Requested Party against which restraint / enforcement is sought and how such property is bona fide linked to the offence.]

**Purpose of the Request:** \_\_\_\_\_ *(to be filled by Investigating Agency / Court)*

[State purpose which is intended to be achieved by the assistance sought, e.g. investigation, prosecution, prevention, suppression of crime, freezing, seizure, confiscation and return of the proceeds of crime in a criminal matter and secure admissible evidence to be used in the trial.]

**Assistance Requested:** The Competent Authority of Government of \_\_\_\_\_ (name of the Requested country) is requested to take such steps as are necessary for:

\_\_\_\_\_ *(to be filled by Investigating Agency / Court)*

[use only relevant portion which is related to the case.]

The Competent Authority of Government of (name of the Requested country) is requested to take such steps as are necessary for:

- a) Examination of a witness in the Requested Party;  
E.g. - Mr. X of ABC Co. Ltd., (address) is to be orally examined on the following matters:
- o Specify clearly the relevant issues/ areas relating to the subject-matter of the criminal proceedings/investigation on which evidence of the witness is sought and/or provide a list of the relevant questions. Specify clearly the manner of examination and applicable legal safeguards as well (witness rights as per India Law).
  - o Include all available personal details of the witness (including name, nationality, location, passport information and gender etc)
  - o State the status of the witness (suspect/accused, or simply a witness)
  - o Include a clear explanation of how the information sought from the witness is relevant to the case.
- b) production of documents, records or items before a Court (and obtaining of oral evidence of the witness producing such material for the purpose of identifying and providing the material produced)  
E.g. - Director of ABC Co. Ltd., (address) is required to produce (describe the form of evidence e.g. "certified copies") the following documents, records or items for the period (state relevant time frame):
- o Specify documents, records or items or classes thereof.
  - o The above witness to be orally examined on the following matters for the purpose of identifying and proving the documents, records or items produced)
  - o state relevant particulars, e.g. to provide confirmation as to his position in a company/office and that he is responsible for keeping/ maintaining /holding the documents, records or items in relation to the subject-matter of the investigation; that he is authorized by the relevant law of the Requested Party to make the statement ; to confirm that he has access to the documents, records or items kept in relation to the subject-matter of the investigation in the normal course of his duties; to confirm the authenticity of the copies of the documents, records or items supplied; to confirm that the documents, records or items were created in the ordinary course of business.
- c) search of person or premises for documents, records or items; (read section 105 of Cr. PC)  
E.g. - The premises of ABC Co. Ltd., (address) to be searched under a search warrant for the seizure of the following from the company:
- o provide details of the documents, records or items sought to be searched for and seized,
  - o support any request for originals of documents, records or items seized with reasons,
  - o support the belief that relevant documents would be available in the premises of the ABC Co. Ltd.
  - o Search being a coercive procedure, the information/evidence supplied shall invariably show the nexus of the premises/computer/electronic device with the Crime/Criminal to establish reasonable suspicion/probable cause.
  - o State how the items seized will be relevant to the case.
- d) production of documents, records or items through production orders;  
E.g. - Manager of ABC Bank Ltd., (address) to be required to produce copies of the following documents, records or items under a production order:
- o (describe particulars of material required to be produced and where located).
  - o (state grounds for believing that the material sought is likely to be of substantial value to the criminal matter).

- o (support any request for the production of originals of documents with reasons).
- o (if original cannot be produced, request for authenticated copies of the same).
- o For bank document, indication of the name and address of the bank, account number, account holder name, time period for the production of the bank statements, types of banking documents requested (account opening documents, statements, wires, loan agreements, among others), relation of the bank account with the crimes committed along with the certificate provided in the respective Statute.
- e) Arrangement of travel of person/persons in custody or an expert from (name of Requested Party) to assist in a criminal matter;
  - Read Section 105B of Cr. PC
  - E.g. - Arrangements to be made for Mr. X (address) to travel to (name of Requesting Party) to give assistance in a (criminal matter) by rendering the following assistance:
    - o specify the assistance sought.
    - o provide the undertakings required by the law of (name of Requested Party).
    - o provide details of the allowances to which the person will be entitled, and of the arrangements for security and accommodation for the person, while the person is in (name of Requesting Party) pursuant to the request).
- f) Enforcement of a forfeiture order/ request to assist in the restraining of dealing in property; (Read section 105 C of Cr.PC).
  - o Include an official, certified copy of the relevant order(s)
  - o Include an official, certified copy of the conviction of the person
  - o include the provisions of the relevant proceeds of crime laws (including information about restraint and forfeiture regimes)
  - o provide confirmation that the conviction and the order are final and are not subject to appeal
  - o include information about the location and particulars of the assets to be restrained, forfeited or used to satisfy a pecuniary order
  - o include as much information as possible to link the criminal conduct of the person to the assets located in Requesting country (including evidence of transfers or other financial information)
  - o Include any information if there is any third party interest in any of the properties in the Requested country.
- g) Assistance in locating / identifying and locating a person who is suspected to be involved in/to have benefited from the commission of a serious offence;
  - E.g. - Arrangements to be made to locate / identify and locate Mr. X who is believed to be in (name of Requested Party) with the last known address at (address).
  - o State particulars of person concerned.
- h) assistance in tracing property suspected to be connected to a serious offence;
  - E.g. - Arrangements to be made to trace (description of property) believed to be in (name of Requested Party).
  - o state particulars of property concerned.
- i). Arrangement of examination of a person as witness through commission to assist in a criminal matter;
  - o read Section 285 of Cr. PC
  - o Specify clearly the relevant issues/ areas relating to the subject-matter of the criminal proceedings/investigation on which evidence of the witness is sought and/or provide a list of the relevant questions. Specify clearly the manner of examination and applicable legal safeguards as well)
  - o Attach original order of the Court issuing the commission.
- j) Electronic Evidence.
 

If electronic evidence is being sought, the connection if relevant email/Twitter/Facebook account with crime and criminal may be mentioned. How the said account has been used in the commission of crime may also be highlighted. It may also be mentioned that preservation request has already been sent to concern ISPs. ]

## Mandatory Assurance And Undertakings

It is confirmed that this request:

- (a) Neither relates to the investigation, prosecution or punishment of a person for a criminal offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character nor it is made for the purposes of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of that person's race, religion, sex, ethnic origin, nationality or political opinions;
- (b) Does not relate to the investigation, prosecution or punishment of a person for an offence in a case where the person has been convicted, acquitted or pardoned by a Competent Court or other Authority of the Republic of India or has undergone the punishment provided by the laws of the Republic of India, in respect of that offence or of another offence constituted by the same act or omission as that offence.
- (c) As per Indian Law, it is not necessary to give any notice to the accused either before issuing the LR or before examining him as a witness/ accused.
- (d) Cost: Generally, the cost of execution of letter of Request shall be borne by requesting State as per the provisions of the Mutual Legal Assistance Treaty. However, if there are significant costs involved like travel of witnesses/Cost of obtaining Expert Opinion etc., mention the readiness to meet the expenditure to be incurred.
- (e) Should the Judicial Authority of the Requested Country require the return of any information / evidence / thing obtained in pursuant to this request at the conclusion of the criminal proceeding, the same shall be returned to the Judicial Authority of the Requested Country.
- (f) The person(s) whose attendance is requested shall not:
  - i. be detained, prosecuted, punished and subjected to any other restriction of personal liberty in the territory of Republic of India for any acts, omissions or convictions which preceded the person(s) departure from the Requested Country other than that to which the request relates.
  - ii. be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that had occurred before the person's departure from the Requested Country.
  - iii. be required to give evidence in any proceeding or to assist in any investigation(s) other than the proceeding or investigation(s) to which the request relates, without the person's consent.
- (g) In the matter of investigation of an offence for which the maximum punishment prescribed under the law is death, an assurance for non-execution of such penalty by commutation or remission of such penalty may be given on a case to case basis.

[Paragraph (f) shall cease to apply if a person, being free to leave the country has not left within 30 days or for any period agreed upon or after receiving official notification that the person's attendance is no longer required has remained voluntarily in the territory of the country or, having left has voluntarily returned.]

**Limitation of Use:** \_\_\_\_\_ (to be filled by Investigating Agency /Court)

[Unless otherwise agreed, the Investigation agency of India, who is conducting investigation in the present case, shall not, without the consent of the Requested Country, use or transfer information or evidence provided by the Requested Country for investigations or 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.]

**Execution of Request:** \_\_\_\_\_ (to be filled by Investigating Agency /Court)

[Procedure to be followed:

- (State details of manner and form in which evidence is to be taken and transmitted to Requesting Party, if relevant.)
- (State any special requirements as to certification / authentication of documents.)
- (State if attendance by representative of appropriate Authority of Requesting Party is required at examination of witnesses / execution of request and, if so, the title of the office held by the proposed representative.)

E.g.-Permission is requested for an officer of (name of appropriate Authority in Requesting Party) to travel to (name of

Requested Party) to remain present during the examination of witness and to assist the authorities of Requested Country (if required) during the execution of this request.]

Period of Execution: \_\_\_\_\_ (to be filled by Investigating Agency / Court)

[If required, state that it is requested that the request be executed urgently / within (state period giving reasons i.e. specify likely trial or hearing dates or any other dates/reasons relevant to the execution of the request.)

Confidentiality: \_\_\_\_\_ (to be filled by Investigating Agency / Court)

[Here explicitly mention the confidentiality requirement during handling of the request by Requested Country if any.

Eg: "The details of this investigation are considered sensitive. Therefore, please treat this request, its contents, the fact that this request has been made and the results of its execution as confidential and do not disclose it and share it with any subjects, except all those who are dealing with this request for the purpose of its execution, without the consent of the Requesting Authority."

Liaison: \_\_\_\_\_ (to be filled by Investigating Agency / Court)

[Provide the details of the officers who are handling this request for liaising with Requested Country: State name of officer(s); Address; Telephone Number; Facsimile Number; Electronic mail address]

Please accept the assurance of our highest consideration.

(Signature along with seal)

Name of the Presiding Officer of the case:

Office:

Date:

Figure 3.6: List of countries having MLAT with India

S.No	Countries and year of MLAT or Agreement	Central Authority- Address and Email ID	Language requirement as per MLAT	Specifications requirements for making a request
1.	Australia "Commonwealth of Australia" MLAT-2011	Assistant Secretary International Crime Cooperation Central Authority International Crime Cooperation Division Attorney-General's Department 3-5 National Circuit BARTON ACT 2600 AUSTRALIA Telephone: +61 2 6141 3244 Facsimile: +61 2 6141 5457 Email: <a href="mailto:mutualassistance@ag.gov.au">mutualassistance@ag.gov.au</a>	Requests shall be submitted in the English language	No specific requirement.
2.	Azerbaijan "Republic of Azerbaijan" MLAT-2013	Ministry of Justice AZ 1073, Baku, Inshaatchilar ave.1 Tel: (994 12) 430-09-77 Fax : (994 12) 430-09-81 E-mail: <a href="mailto:mincus@azdata.net">mincus@azdata.net</a> Web site: <a href="http://www.justice.gov.az">www.justice.gov.az</a>	Contracting States shall use their national language attaching the translation in the national language of the other Contracting State or in the English language	No specific requirement.
3.	Bahrain "Kingdom of Bahrain" Agreement-2005	Ministry of Justice 82 Rd No 1702, Manama, Bahrain	Requests and supporting documents shall be accompanied by a translation into one of the official languages of the Requested State or into English	No specific requirement.
4.	Bangladesh "People's Republic of Bangladesh" Agreement -2011	Ministry of Home Affairs	Requests and supporting documents shall be accompanied by a translation into English.	No specific requirement.
5.	Belarus "Republic of Belarus" MLAT-2006	General Prosecutor's Office of the Republic of Belarus and the Supreme Court of the Republic of Belarus	Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in English.	No specific requirement.
6.	Bosnia & Herzegovina "Bosnia and Herzegovina" MLAT-2010	Ministry of Justice of Bosnia and Herzegovina 1 Trg BiH Street, 71 000 Sarajevo Tel: + 387 33 223 501, 223 502 Fax: +387 33 223 504	Requests with supporting documents shall be submitted in the English language, if required, accompanied by a translation in the language of the Requested State	No specific requirement.
7.	Bulgaria "Republic of Bulgaria" MLAT-2008	Ministry of Justice Address: 1 Slavyanska str. 1040, Sofia, Bulgaria Email: <a href="mailto:priemna@justice.government.bg">priemna@justice.government.bg</a> Phone: +359 (2) 9237 555	Requests for legal assistance and supporting documents shall be accompanied by a certified translation in English or in the language of the Requested State	No specific requirement.
8.	Cambodia* "Kingdom of Cambodia" MLAT 2018	Ministry of Interior N° 275, Norodom, Phnom Penh; Phone: 855-23 721 190; Phone: 855-23 721 905	Request shall be submitted in the English language.	No specific requirement.
9.	Canada MLAT-1998	International Assistance Group Litigation Branch, Criminal Law Division Department of Justice Canada 284 Wellington Street, 2nd Floor Ottawa, ON K1A 0H8 Telephone: +613 957 4832 After hours: +613 851 7891 Facsimile: +613 957 8412 E-mail: <a href="mailto:cdncentralauthority@justice.gc.ca">cdncentralauthority@justice.gc.ca</a>	Requests and supporting documents shall be accompanied by a translation into one of the official languages of the Requested State	No specific requirement.
10.	Egypt "Arab Republic of Egypt" Agreement- 2009	Ministry of Justice Lazoughly Square Abdeen, Cairo Governorate, Egypt	Requests and supporting documents shall be accompanied by a translation in English or in the language of the Requested State	No specific requirement.
11.	France "French Republic" Agreement -2005	Ministry of Justice Ministère de la Justice et des Libertés Direction des Affaires criminelles et des Grâces Bureau de l'Entraide Pénale Internationale 13 place Vendôme 75042 Cedex 01 Telephone: +331 44 86 14 22, Facsimile: +331 44 86 14 11	Requests and supporting documents shall be accompanied by a translation into one of the official languages of the Requested State. (French Translation)	No specific requirement..

12.	Hong Kong "Hong Kong Special Administrative Region of the People's Republic of China" Agreement - 2009	Secretary for Justice The Mutual Legal Assistance Unit Department of Justice 47/F, High Block Queensway Government Offices 66 Queensway Hong Kong Telephone: (852) 2867 4343 Facsimile: (852) 2523 7959	Requests shall be in, or translated into, an official language of the Requested Party. All documents submitted in support of a request shall be accompanied, if so required by the Requested Party, by a translation into an official language of the Requested Party	Mandatory assurances <sup>12</sup> are required.
13.	Iran "Islamic Republic of Iran" Agreement - 2010	Central Authority is the Judiciary	Requests and supporting documents shall be accompanied by a translation in English or in the language of the Requested State	No specific requirement.
14.	Indonesia "Republic of Indonesia" MLAT - 2011	Ministry of Law and Human Right H.E. Minister for Law and Human Rights Directorate General of Legal Administrative Affairs, Jl. H.R. Rasuna Said Kav. 6-7 Jakarta 12940 Indonesia Telephone: +62 21 520 23 91 Facsimile: +62 21 526 10 82	English and the Indonesian translation (Bhasha Indonesia)	No specific requirement.
15.	Israel "State of Israel" MLAT - 2015	Ministry of Justice 216 Y'afro st. Jerusalem (Sha'arei H'air building) Israel Tel. ++972-2-6595601 Fax ++972-2-6595611	Requests shall be submitted in the English language	No specific requirement.
16.	Kazakhstan "Republic of Kazakhstan" MLAT - 2000	Office of the Attorney General	Requests and supporting documents shall be accompanied by a translation into one of the languages of the requested Party (Translation in Kazakh or Russian)	No specific requirement.
17.	Kyrgyzstan "Kyrgyz Republic" MLAT - 2014	General Prosecutor's Office 010000, the Republic of Kazakhstan, Nur-Sultan city, Mangilik El avenue, 14  Chancery: +7 (7172) 71-28-68	the Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English or Russian languages	No specific requirement.
18.	Kuwait "State of Kuwait" Agreement - 2007	Ministry of Justice (Criminal Execution Office & Foreign Communications)	Requests and supporting documents shall be accompanied by a translation into one of the official languages of the Requested Party or into English.	No specific requirement.
19.	Malaysia "Malaysia" MLAT - 2012	Attorney General of Malaysia c/o International Cooperation Unit Attorney General's Chambers No. 45 Persiaran Perdana Precinct 4, 62100 Putrajaya, MALAYSIA Telephone: (+603) 8872 2000 Facsimile: (+603) 8890 2218	Requests and supporting documents thereto and other communications related to the request shall be submitted in the English language.	No specific requirement.
20.	Maldives "Republic of Maldives" MLAT - 2019	Prosecutor General's Office Majeedhee Magu, Male' 20040, Maldives Phone: +960 300-0655	Request has to be sent in English	No specific requirement.
21.	Mauritius "Republic of Mauritius" Agreement - 2006	Attorney General's Office Ground Floor, 2nd, 3rd, 4th, 5th, and 6th floor Renganaden Seeneevassen Building Port Louis, MAURITIUS Phone : (230) 203-4740 Fax : (230) 212-6742 Email : ago@govmu.org	Requests shall be submitted in the English language	No specific requirement.
22.	Mexico "United Mexican States" MLAT - 2009	Office of the Attorney General Dirección General de Extradiciones y Asistencia Jurídica Procuraduría General de la República Avenida Paseo de la Reforma N° 211-213, Segundo Piso, Colonia Cuauhtémoc, Delegación Cuauhtémoc,	Requests and supporting documents shall be in the language of the Requested Party or in English	No specific requirement.

<sup>12</sup> MANDATORY ASSURANCES

- (a) does not relate to the prosecution or punishment of a person for a criminal offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;
- (b) is not made for the purposes of prosecuting, punishing or otherwise causing prejudice to a person on account of that person's race, religion, nationality or political opinions;
- (c) does not relate to the prosecution of a person for an offence in a case where the person has been convicted, acquitted or pardoned by a competent court or other authority of (name of requesting place), in respect of that offence or of another offence constituted by the same act or omission as that offence; and
- (d) does not have as its primary purpose the assessment or collection of tax.

		México, Distrito Federal, C.P. 06500 , Telephone: +52 55 53 46 01 13, Facsimile: +52 55 53 46 09 02, E-mail: fresendiz@pgr.gob.mx		
23.	Mongolia "Mongolia" MLAT-2004	General Prosecutor's Office.	Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English language.	No specific requirement.
24.	Morocco* "Kingdom of Morocco" MLAT 2018	Ministry of Justice Ministry of Justice Mamounieh Square, PO Box 1015, Rabat, Morocco Phone: +212 5372-13737	Arabic translation	No specific requirement.
25.	Myanmar "Union of Myanmar" MLAT-2010	Ministry of Home Affairs Office Building No.8, Administrative Zone Naypyitaw, UNION OF MYANMAR Telephone No. : +95-1-412-135 Facsimile No. : +95-1- 412-015	Requests shall be submitted in the English language.	No specific requirement.
26.	Russia "Russian Federation" MLAT-2000	Prosecutor General's Office of the Russian Federation Main Department of International Legal Cooperation 15a, Bolshaya-Dmltrovka, GSP-3 Moscow 125993 Russia Telephone: +7 495 692 32 06 Facsimile: +7 495 692 29 79, +7 495 692 16 60; E-mail: transgprf@mail.ru	Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting party or in the English language. (Russian Translation)	No specific requirement.
27.	Singapore "Republic of Singapore" Agreement-2005	Director-General International Affairs Division The Attorney-General's Chambers 1 Upper Pickering Street Singapore 058288 REPUBLIC OF SINGAPORE	All requests and supporting documents submitted by the Requesting State shall be in English.	Foreign Law immunity certificate <sup>13</sup> and Mandatory assurances are required.
28.	South Africa "Republic of South Africa" MLAT-2005	Director General of the Department of Justice & Constitutional Development Private Bag x81 PRETORIA 0001 +27 315 1111	Requests shall be submitted in the English language	No specific requirement.
29.	South Korea "Republic of Korea" MLAT-2005	International Criminal Affairs Division Criminal Affairs Bureau Ministry of Justice, Republic of Korea Gwacheon-Si Gwanmoon-Ro 88, Government Complex Building #5, Postal Code 427-720 Telephone: +82 2 2110 3555 Facsimile: +82 2 3480 3113	Requests with supporting documents and other communications made shall be made in the English language accompanied by a translation into the Korean language	No specific requirement.
30.	Spain "Kingdom of Spain" Agreement-2007	Ministry of Justice Ministerio de Justicia Subdirección General de Cooperación Jurídica Internacional c/San Bernardo, 62 28071 Madrid, Spain Telephone: +34 91 390 22 98/44 33 Facsimile: +34 91 390 44 57	Requests and supporting documents shall be accompanied by a translation into the official language of the Requested Party or English	No specific requirement.
31.	Sri Lanka "Democratic Socialist Republic of Sri Lanka" MLAT-2010	Ministry of Justice and Law Reforms Secretary Ministry of Justice and Prison Reforms Superior Courts Complex Adhikarana Mawatha Colombo 12, Sri Lanka Fax : +94 112 445 447 Email : secretary@moj.gov.lk	Requests shall be submitted in the English language.	No specific requirement.
32.	Switzerland "Confederation of Switzerland" Exchange of		French, German or Italian translation is required.	No specific requirement.

<sup>13</sup> [Letter head]

FOREIGN LAW IMMUNITY CERTIFICATE

I, [name & designation], on behalf of the Government of India certify that under the law of India, persons generally or a specified person could, either generally or in specified proceedings and either generally or in specified circumstances, be required to [answer such questions as are sought to be asked / produce the equivalent of the document/things/information/evidence] sought by this Request.

[Signature and/or seal]

[Name, Designation, Office, Date]

	Diplomatic Notes-1989			
33.	Sultanate of Oman Agreement -2015	Royal Oman Police	Requests and supporting documentation shall be accompanied by a translation into one of the official languages used in the Requested State	No specific requirement.
34.	Tajikistan "Republic of Tajikistan" MLAT-2003	Prosecutor's Office of the Republic of Tajikistan 734025, Dushanbe city, Tehron 36 Street (+992 37) 2215327 Email: dushanbe@prokuratura.tj	Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English language	No specific requirement.
35.	Thailand "Kingdom of Thailand" MLAT-2004	International Affairs Department Office of the Attorney General, Rajaburi Direkridhhi Building, Government Complex Chaeng Watthana Road, Lak si Bangkok 10210, Thailand Telephone: +66 2 142 1660 Facsimile: +66 2 143 9797 Email: inter@ago.go.th	Requests shall be submitted in English language	No specific requirement.
36.	Turkey "Republic of Turkey" Agreement -1993	Ministry of Justice General Directorate of International Law and Foreign Relations Mustafa Kemal Mahallesi 2151. Caddesi No:34/A 06520 Söğütözü, Ankara, Turkey Telephone: +90 312 2187821 Facsimile: +90 312 2194523 E-mail: uhdigm@adalet.gov.tr	Request and documents to be provided in the English language	No specific requirement.
37.	Ukraine MLAT-2003	General Prosecutor's Office of Ukraine (concerning requests by pre-trial investigation authorities) and the Ministry of Justice of Ukraine (concerning requests by courts)	Requests and supporting documents shall be accompanied by a translation into English	No specific requirement.
38.	United Arab Emirates Agreement - 2000	Ministry of Interior 1st Street, W 56 - Abu Dhabi United Arab Emirates	Requests and supporting documents shall be accompanied by a translation into one of the official languages of the Requested Party. (Arabic along with English Translation)	Legal provisions relating to lapse and limitation of law suit.
39.	United Kingdom "United Kingdom of Great Britain and Northern Ireland" Agreement -1995	UK Home Office 5th Floor Fry Building 2, Marsham Street London SW1P 4DF Telephone: +44 20 7035 4040 Facsimile: +44 20 7035 6985	Request and supporting documents shall be drawn in the language of Requesting Party and shall be accompanied by a translation into that of the Requested Party.	No specific requirement.
40.	United States of America MLAT-2005	Office of International Affairs Criminal Division United States Department of Justice 1301 New York Avenue, N.W. Washington, D.C. 20005, Telephone: +1 202 514 0000; Facsimile: +1 202 514 0080	The request shall be in English	No specific requirement.
41.	Uzbekistan "Republic of Uzbekistan" MLAT-2001	Prosecutor's Office of the Republic of Uzbekistan 66 Yahyo Gulyamov Street Tashkent 142000, Uzbekistan Phone: +998 71 232 10 07	The Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English language.	No specific requirement.
42.	Vietnam "Republic of Vietnam" MLAT-2008	International Cooperation and Mutual Legal Assistance in Criminal Matters Department, Mutual Legal Assistance in Criminal Matters Division, Supreme People's Procuracy, 44 Ly Thuong Kiet street Hoan Kiem district, VIET NAM Telephone: +84 4 38 255 058 ext. 103 or 105; Facsimile: +84 4 39 361 637 Email: http_mla@vks.gov.v	A request, any supporting documentation and any communications shall be in the language of the Requesting Party and be accompanied by a translation into the language of the Requested Party or in the English language	No specific requirement.

\*The MLAT has been signed but yet to come in force.

# Part IV: Service of Summons, Notices and Judicial Processes

## A. Request for Service of Summons/Notices/ Judicial Processes on Persons Residing Abroad

4.1 In India, Section 105<sup>14</sup> and Chapter VII A of CrPC, Section 57<sup>15</sup> and Section 61<sup>16</sup> of PMLA, Section 10 FEOA<sup>17</sup>, etc., provides for the reciprocal arrangements made by the Central Government of India with the foreign countries with regard to the service of summons, notices or any other judicial documents/processes.

4.2 The request for service of summons/notices/ judicial processes should be addressed to "Under Secretary (Legal Cell), Internal Security-II Division, Ministry of Home Affairs, 2<sup>nd</sup> Floor, Major Dhyan Chand National Stadium, New Delhi-110001" and forwarded through post/dasti along with a covering letter from the Registrar/Court official or Investigating Agency.

4.3 The request for service of summons/notices/ judicial processes on persons residing abroad should include:

- Complete name and address of the individual/organization on whom the documents are to be served;
- Status of the person (witness/accused) against whom the summons or notice has been issued;
- Next date of hearing of the case or other deadlines to be followed;
- Material facts of the case including purpose of the request, the nature of the assistance sought;
- The link between alleged offence(s) and assistance requested (in case of service of summons/notices/

<sup>14</sup> CrPC- Sec 105. Reciprocal arrangements regarding processes.—(1) Where a Court in the territories to which this Code extends (hereafter in this section referred to as the said territories) desires that—

- (a) a summons to an accused person, or
- (b) a warrant for the arrest of an accused person, or
- (c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or
- (d) a search-warrant,

issued by it shall be served or executed at any place,—

(i) within the local jurisdiction of a Court in any State or area in India outside the said territories, it may send such summons or warrant in duplicate by post or otherwise, to the presiding officer of that Court to be served or executed; and where any summons referred to in clause (a) or clause (c) has been so served, the provisions of section 68 shall apply in relation to such summons as if the presiding officer of the Court to whom it is sent were a Magistrate in the said territories;

(ii) in any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country or place for service or execution of summons or warrant in relation to criminal matters (hereafter in this section referred to as the contracting State), it may send such summons or warrant in duplicate in such form, directed to such Court, Judge or Magistrate, and send to such authority for transmission, as the Central Government may, by notification, specify in this behalf.

(2) Where a Court in the said territories has received for service or execution—

- (a) a summons to an accused person, or
- (b) a warrant for the arrest of an accused person, or
- (c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or
- (d) a search-warrant,

issued by— (i) a Court in any State or area in India outside the said territories;

(ii) a Court, Judge or Magistrate in a contracting State, it shall cause the same to be served or executed] as if it were a summons or warrant received by it from another Court in the said territories for service or execution within its local jurisdiction; and where—

(i) a warrant of arrest has been executed, the person arrested shall, so far as possible, be dealt with in accordance with the procedure prescribed by sections 80 and 81,

(ii) a search-warrant has been executed, the things found in the search shall, so far as possible, be dealt with in accordance with the procedure prescribed by section 101;

Provided that in a case where a summons or search-warrant received from a contracting State has been executed, the documents or things produced or things found in the search shall be forwarded to the Court issuing the summons or search-warrant through such authority as the Central Government may, by notification, specify in this behalf.

<sup>15</sup> Ibid., Page 10

<sup>16</sup> Ibid., Page 10

<sup>17</sup> FEOA-Section 10. Notice.—(4) A notice under sub-section (1) shall be forwarded to such authority, as the Central Government may notify, for effecting service in a contracting State.

(5) The authority referred to in sub-section (4) shall make efforts to serve the notice within a period of two weeks in such manner as may be prescribed.

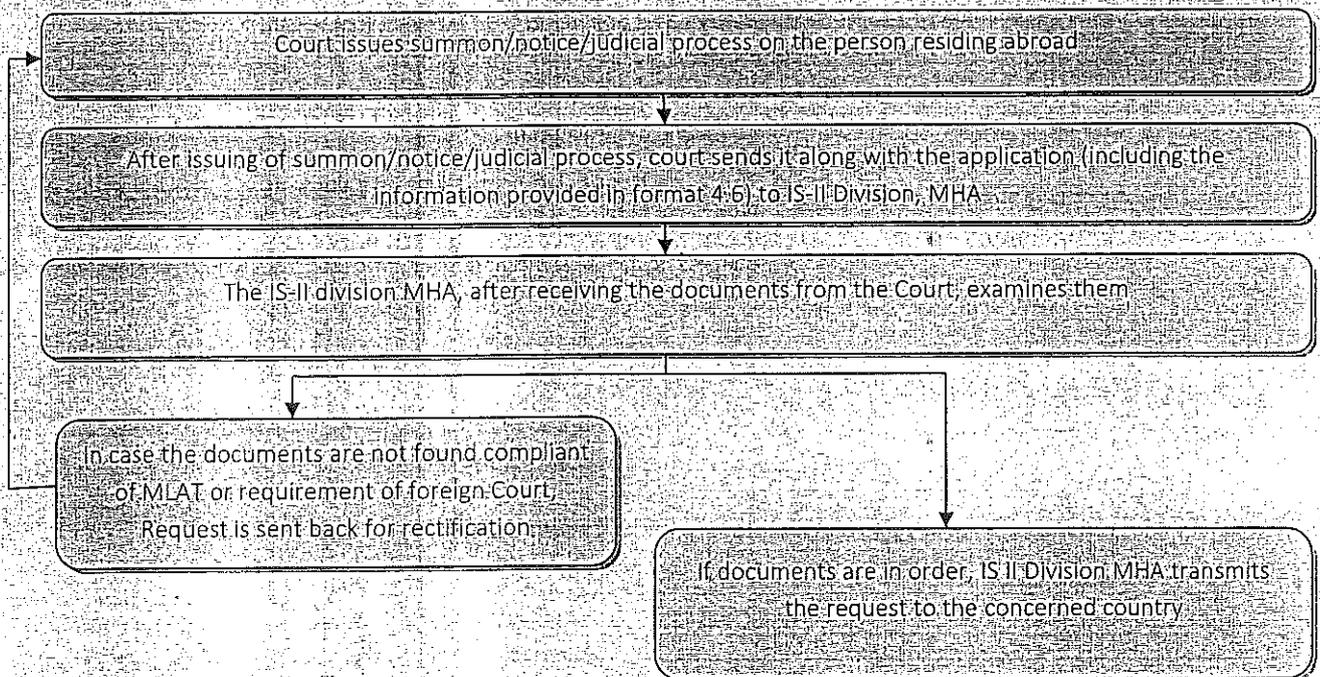
judicial processes is to be made on suspects);

- Specific instructions, if any, as to how the document has to be served in a foreign country;
- Confirmation from the Court/Agency that:
  - ✓ the case is criminal in nature
  - ✓ Court will bear any expenditure if charged by foreign government/agency for service of summons/notices/ judicial processes.
- Complete address of the issuing Authority to which the judicial papers/service reports may be returned;
- Details of any allowances and expenses to which the summoned person is entitled.

4.4 In case, the option of recording of evidence through audio-visual means is provided by the Court, the following information shall also be included in the request:

- Copy of Order providing the option of recording of evidence through audio-visual means;
- Tentative date and time range (considering the time difference between the countries) for recording of statements;
- Link for conducting video conferencing;
- Details of the technical requirements for establishing the link;
- Contact details of the person (coordinator at the Court) who could be contacted for technical assistance and testing of the links during recording of evidence through audio-visual means (Name, designation, phone number, email, etc.)

**Figure 4.1: Procedure of service of summon/notice/judicial process on the person residing abroad**



## **B. Important Points to be noted for making a Request for Service of Summons/Notices/Judicial Processes**

- 1) It is to be noted that foreign Courts or authorities require at least a period of 10 weeks for transmission of request and service of summons/notices/judicial processes upon the person concerned. The next date of hearing/appearance for the case may be decided accordingly.
- 2) In the case of countries referred to in Figure 4.4 and other non-English speaking countries, the summons/notices/judicial documents should be accompanied with the certified/authenticated translation (in duplicate) in the official language of the country where such document is proposed to be served.
- 3) The documents are served by the Requested Country as per their domestic laws and procedure.
- 4) For the purpose of Figure 4.6 the issuing Authority shall be the Authority issuing summon/notice/judicial processes.
- 5) The execution of non-bailable warrants of arrest amounts to extradition. Hence, they do not come under the ambit of service of judicial documents. However, only the service and not the execution of Non-Bailable warrants can be done by IS-II Division, MHA.
- 6) The IS-II Division, MHA shall make endeavours to transmit summons/notices/judicial processes in cases relating to serious crimes against women and children to the Requested Country preferably within a period of ten working days. It is however clarified that the MHA cannot quantify the time period taken by the Requested Country to serve such summons/notices/judicial processes on the witness.

## **C. Service of Summons in Foreign Country for Recording of Statement or Collection of Evidence through Audio-Visual Means**

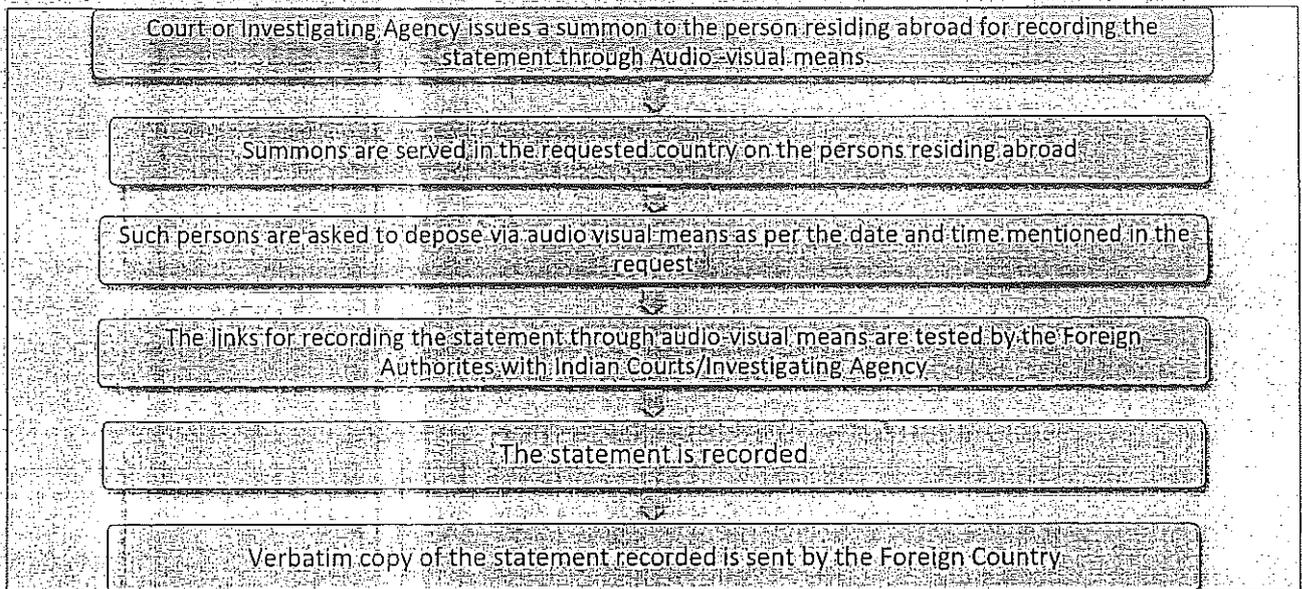
4.5 For taking statements or evidence through audio-visual means in a foreign country, a summon has to be issued by the Indian Court or Investigation Agency and forwarded along with the request to Central Authority of India for further transmission to the foreign country. After the summon is duly served upon the person residing abroad through the Competent Authority in the foreign country, such a person has to appear on the date, time and place agreed upon by Court, Central Authority of India and Central Authority of the Requested Country.

4.6 The request for recording of statement through audio-visual means should also include details of the people who should be present in the room while recording the statement. The details of the links provided in the request are tested by the Indian Courts as well as the foreign Authorities.

4.7 After recording the testimony of the person through audio-visual means, the foreign country sends back the verbatim copy of the statement recorded to India.

## Procedure for Recording of Statement through Audio-Visual Means

Figure 4.2: Procedure of recording statement through Audio-Visual means



4.8 Recording of statement through audio-visual means shall be conducted as per the provisions of the Information Technology Act, 2000, the Indian Evidence Act, 1872 and Code of Criminal Procedure, 1973. A Court may either *suo moto* or on application by the Investigating Officer/Agency direct any person residing abroad to appear before it or give evidence or make submissions through the use of audio-visual means.

4.9 The coordinators are to be appointed for recording of statement by audio-visual means by the Central Authority/Court in India as well as the Competent Authority in Requested Country. For the Requested Country the coordinator may be the Central Authority of Requested Country or if the law of Requested Country permits the official of Consulate/Embassy of India

4.10 Recording the statement through audio-visual means shall ordinarily take place at the mutually agreed time between the Court in India and the Requested Country keeping in view the time difference, if any, between India and Requested Country.

4.11 The identity of the person to be examined shall be confirmed by the Court with the assistance of the co-coordinator at the time of recording of the evidence. For examination of prosecution witness or Court witness, the prosecution and where person to be examined is a defence witness, the defence counsel will confirm to the Court his location, willingness to be examined by audio-visual means, place and facility of such recording of statement through audio-visual means. In case the person to be examined is an accused, prosecution will confirm his location.

4.12 Establishment and disconnection of links between the Court in India and the point at Requested Country would be regulated by orders of the Court in India. The Court shall satisfy itself that the person to be examined at the Requested Country can be seen and heard clearly and similarly that the person to be examined at the Requested Country can clearly see and hear the Court. The Court shall at all times have the ability to control the camera view in the Requested Country so that there is an unobstructed view of all the persons present in the room. The Court shall have a clear image of each deponent to the extent possible so that the demeanor of such person may be observed.

4.13 The Court may, at the request of a person to be examined, or on its own motion, taking into account the best interests of the person to be examined, direct appropriate measures to protect his privacy keeping in

mind his age, gender and physical condition.

4.14 Where a party or a lawyer requests that in the course of recording of statement through audio-visual means some privileged communication may have to take place, Court will pass appropriate directions in that regard.

4.15 In case any party or his/her authorized person is desirous of being physically present at the Requested Country at the time of recording of the evidence, it shall be open for such party to make arrangements at its own costs including for appearance/representation at the Requested Country subject to orders to the contrary by the Court.

4.16 Third parties may be allowed to be present during recording of statement through audio-visual mode subject to orders to the contrary, if any, by the Court. Where, for any reason, a person unconnected with the case is present at the requested country, then that person shall be identified by the coordinator of the Requested Country at the start of the proceedings and the purpose for his being present explained to the Court.

4.17 The issues related to the cost incurred on recording of statement by audio-visual means shall be governed by MLAT and in case of non-treaty countries with mutual consent of the Central Authorities.

#### **Technological and coordination Requirements of recording of statement through Audio-Visual means**

4.18 The respective co-ordinators shall conduct a test between both the countries well in advance, to resolve any technical problem so that the proceedings are conducted without interruption.

4.19 The equipment including hardware and software required for recording of statements by audio-visual means are:

- (a) A computer resource, desktop or laptop with internet connectivity and printer;
- (b) Device ensuring uninterrupted power supply;
- (c) Video Camera;
- (d) Microphones and speakers;
- (e) Display unit;
- (f) Document visualizer;
- (g) Comfortable sitting arrangements ensuring privacy;
- (h) Adequate lighting;
- (i) Insulations as far as possible/proper acoustics;
- (j) Digital signatures from licensed certifying authorities for the co-ordinators at the Court point and the remote point.

4.20 The coordinator on both sides shall provide:

- i) a translator in case the person to be examined is not conversant with the language of the Court;
- ii) an expert in sign language in case the person to be examined is speech and/or hearing impaired;
- iii) an assistance, for reading of documents in case the person to be examined is visually challenged;
- iv) an interpreter or special educator, as the case may be, in case the person to be examined is temporarily or permanently mentally or physically disabled.

4.21 It should be ensured by the coordinators that:

- i) person to be examined or heard is available and ready at the room earmarked for the recording of statement through audio-visual means at mutually agreed time.
- ii) no other recording device is permitted in the room except the one installed for recording of statement

through audio-visual means;

- iii) entry into the video conference room is regulated;
- iv) coordinator at the Court should ensure that the co-coordinator at the Requested Country has certified copies or soft copies of all or any part of the Court record in a sealed cover directed by the Court sufficiently in advance of the, scheduled recording of statement.

4.22 If in the course of examination of a person at a Requested Country, it is necessary to put a document to him, the Court may permit the document to be put in the following manner:

- i) if the document is at the Court in India, by transmitting a copy of it to the Requested Country electronically including through a document visualizer and the copy so transmitted being then put to the person;
- ii) if the document is at the Requested Country, by putting it to the person and transmitting a copy of it to the Court electronically including through a document visualizer. The hard copy would also be sent subsequently to the Court by courier/mail.

4.23 The matters with respect to which no express provision has been made in these guidelines shall be decided by the Court in consultation with the Requested Country.

## **E. Execution of Request for Service of Summons/Notices/Judicial Processes Issued by the Foreign Courts/Authorities**

4.24 The request for service of summons/notices/judicial processes from a Contracting State or foreign country are received by IS-II Division, Ministry of Home Affairs (Central Authority of India) through diplomatic channels/MEA or directly from the Central Authority of Contracting State or foreign country.

4.25 After receipt of the request, the Central Authority of India shall examine the documents and having found them fit for service should-

(i) forward the same to the Chief Metropolitan Magistrate or Chief Judicial Magistrate or such Metropolitan Magistrate or Judicial Magistrate as he may appoint in this behalf, who shall thereupon summon the person before him and record his statement or cause the document or thing to be produced, or

(ii) send the document to any police officer for investigation, who shall thereupon investigate into the offence in the same manner, as if the offence had been committed within India.

4.26 The IS-II Division, MHA shall ensure that summons/notices/judicial processes received from the Contracting States or foreign country are compliant to the provisions of the Bilateral Treaty/Agreements, Multilateral Treaty/Agreements or International Convention under which they have been sent for service and the translated copy of such documents are enclosed in the language specified in Treaty. For the non-treaty countries, the Central Authority should ensure that the documents are translated into English (refer to Figure 4.5 of these Guidelines).

4.27 The concerned Authorities after service of these documents upon the person shall prepare a report of service of such documents and forward the report along with proof of service in original as per the domestic law and procedure of India or in the manner mentioned in the Request. The proof of service along with connecting documents shall be forwarded to IS-II Division, MHA. The Central Authority of India shall further forward the proof of service along with the connecting documents to the Requesting Country through diplomatic channels or through the same channel through which the request for service was

received.

4.28 The Competent Authorities assigned the task of service shall endeavor to serve the documents promptly and expeditiously, preferably within two weeks.

4.29 If the service of the documents cannot be effected upon, the reasons thereof shall be communicated within 7 days to the IS-II Division, Ministry of Home Affairs through the ILO concerned.

### Figure 4.3: Check List of the Documents to be sent to Central Authority for Service of Summons/Notices/Judicial Processes

All the documents are to be sent to "Under Secretary (Legal Cell), Internal Security II Division, Ministry of Home Affairs, 2<sup>nd</sup> Floor, Major Dhyhan Chand National Stadium, New Delhi-110001"

- Covering Letter by Registrar/Court Official or Investigating Agency addressed to the above mentioned Authority
- Duly filled, signed and stamped Application containing brief facts of the case for the request for service of summons/ notices/ judicial processes (Refer to figure 4.6)
- Original summon (in duplicate)/notice/judicial process signed and stamped by Court (Refer to Figure 4.7 and 4.8)
- Translated copy of Application and summon/notice/judicial document if required by the Requested Country
- Certified copy of Order of Court providing for recording of statement through audio-visual means (in case the option of recording of evidence through audio-visual means is provided by the Court)
- Copy/extract of applicable sections under which accused/defendant is being proceeded against

### Figure 4.4: Requirements of Countries having MLAT/Bilateral Agreements with India for Execution of Request for Service of Summons/Notices/Judicial Processes

S.No	Countries	Requirements for making a request
1.	Australia	Australian Authorities levy charges for service of documents. Indian Court/Authority has to give an undertaking stating that whatever charges are levied by the Australian Authorities will be paid by the Court or Agency concerned.
2.	Azerbaijan	No specific requirement. Request has to be made in English.
3.	Bahrain	No specific requirement. Request has to be made in English.
4.	Bangladesh	No specific requirement. Request has to be made in English.
5.	Belarus	No specific requirement. Request has to be made in English.
6.	Bosnia & Herzegovina	No specific requirement. Request has to be made in English.
7.	Bulgaria	No specific requirement. Request has to be made in English.

8.	Cambodia*	No specific requirement. Request has to be made in English.
9.	Canada	No specific requirement. Request has to be made in English or French as per the requirement.
10.	Egypt	No specific requirement. Request has to be made in English.
11.	France	French translation of judicial document and supporting documents is required.
12.	Hong Kong	Request has to be made in English or Chinese. Mandatory assurances are required to be furnished (Refer to figure 3.6 of these guidelines).
13.	Iran	No specific requirement. Request has to be made in English.
14.	Indonesia	Request has to be made in English with Indonesian (Basha Indonesia) translation.
15.	Israel	No specific requirement. Request has to be made in English.
16.	Kazakhstan	Kazakh or Russian translation of judicial and supporting documents is required for making a request.
17.	Kyrgyzstan	No specific requirement. Request has to be made in English.
18.	Kuwait	No specific requirement. Request has to be made in English.
19.	Malaysia	No specific requirement. Request has to be made in English.
20.	Maldives*	No specific requirement. Request has to be made in English.
21.	Mauritius	No specific requirement. Request has to be made in English.
22.	Mexico	No specific requirement. Request has to be made in English.
23.	Mongolia	No specific requirement. Request has to be made in English.
24.	Morocco*	Arabic translation of judicial document and supporting documents is required.
25.	Myanmar	No specific requirement. Request has to be made in English.
26.	Russia	Request has to be made in English.
27.	Singapore	Foreign law immunity certificate and Mandatory assurances are required (Refer to figure 3.6 of these guidelines). Request has to be made in English.
28.	South Africa	No specific requirement. Request has to be made in English.
29.	South Korea	Korean translation of judicial and supporting documents is required.
30.	Spain	No specific requirement. Request has to be made in English.
31.	Sri Lanka	No specific requirement. Request has to be made in English.
32.	Switzerland	Swiss or German or Italian translation of judicial and supporting documents is required.
33.	Sultanate of Oman	No specific requirement. Request has to be made in English.
34.	Tajikistan	No specific requirement. Request has to be made in English.
35.	Thailand	No specific requirement. Request has to be made in English.
36.	Turkey	No specific requirement. Request has to be made in English.
37.	Ukraine	No specific requirement. Request has to be made in English.
38.	United Arab Emirates	Arabic translation of judicial document and supporting documents is required.

39.	United Kingdom	No specific requirement. Request has to be made in English.
40.	United States of America	No specific requirement. Request has to be made in English.
41.	Uzbekistan	No specific requirement. Request has to be made in English.
42.	Vietnam	No specific requirement. Request has to be made in English.

\*The MLAT has been signed but yet to come in force

**Note:** For the countries which are not covered by any Bilateral Treaty/Agreement, Multilateral Treaty/Agreement or International Convention, the summons/notices/judicial processes would be served on the basis of Assurance of Reciprocity (issued by MHA).

Based on the experience and communication held with such countries it is observed that they required the documents to be translated in their respective national languages.

**Figure 4.5: Requirements of Non- MLAT Countries for Execution of Request for Service of Summons/Notices/Judicial Processes as per practice**

S.No	Countries	Requirements for making a request
1.	Afghanistan	Dari or Pashto translation of request and supporting documents is required.
2.	Brazil	Portuguese translation of request and supporting documents is required.
3.	China	Chinese translation of request and supporting documents is required.
4.	Germany	German translation of request and supporting documents is required.
5.	Ireland	If personal service of judicial documents is required, a copy of relevant laws stating that that why personal service is required has to be provided.
6.	Italy	Italian translation of request and supporting documents is required.
7.	Japan	Japanese translation of request and supporting documents is required.
8.	Nepal	Nepali translation of request and supporting documents is required.
9.	Netherlands	Dutch translation of request and supporting documents is required.
10.	Poland	Polish translation of request and supporting documents is required.
11.	Portugal	Portuguese translation of request and supporting documents is required.
12.	Saudi Arabia	Arabic translation of request and supporting documents is required.
13.	Sweden	Swedish translation of request and supporting documents is required.

Figure 4.6: Format of the Request for Service of Summons/Notices/Judicial Processes

1)	Purpose for making request	Service of summon/notice/judicial documents				
2)	Nature of request					
3)	Name of Requested Country					
4)	Basis of request	<input type="checkbox"/>	MLAT	<input type="checkbox"/>	UNTOC	
		<input type="checkbox"/>	SAARC Convention	<input type="checkbox"/>	UNCAC	
		<input type="checkbox"/>	Haque Convention	<input type="checkbox"/>	Harare Scheme	
		<input type="checkbox"/>	Vienna Convention, 1988 (NDPS)			
		<input type="checkbox"/>	Any other Bilateral Treaties/Agreements, Multilateral Treaties/Agreements _____ (Specify)			
		<input type="checkbox"/>	Any other International Convention/Resolution _____ (Specify)			
		<input type="checkbox"/>	Assurance of Reciprocity			
5)	Complete Name and Address of the person to be served	Name: Address: Telephone /Mobile Number: Email:				
6)	Issuing Authority	Name: Address: Pin Code: Details of the person at Issuing Authority: Designation: Phone/Mobile Number: Email:				
7)	Contact details of person/officer who could be contacted for clarifications about the document	Name: Designation: Phone No: Fax Email ID:				
8)	Case details	FIR No./ Case Number: Section under which FIR / Case Number has been registered:				
9)	Brief summary of the case	Brief fact of the case:				
		Applicable laws and maximum penalties for the offence in India:				
10)	Status of the person to be served abroad (Witness/accused)					
11)	Details of allowances and expenses payable to the person if any					
12)	Confirmation to pay any expenditure, if charged by foreign government/agency for service of documents					
13)	Any specific manner in which a service has to be made					
14)	Date by which the document is expected to be served abroad					
15)	Next date of hearing					
16)	Confidentiality requirement with reasons (if any)					

Option for recording evidence through audio - visual mean

17)	Mode of recording evidence	Audio/videoconferencing/any other mode
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18)	Link for conducting video conferencing	
19)	Details of the technical requirements for establishing the link	
20)	Detail of the person who would provide technical assistance to. Requested Country	Name
		Designation
		Phone number
		Email

(to be signed and stamped by the Issuing Authority)

Date: \_\_\_\_\_

**Figure 4.7: Format for summons to witness as provided in CrPC**

FORM No. 33  
SUMMONS TO WITNESS

To \_\_\_\_\_ of \_\_\_\_\_

WHEREAS complaint has been made before me that \_\_\_\_\_ (name of the accused) of \_\_\_\_\_ (address) has (or is suspected to have) committed the offence of \_\_\_\_\_ (state the offence concisely with time and place), and it appears to me that you are likely to give material evidence or to produce any document or other thing for the prosecution;

You are hereby summoned to appear before this Court on the \_\_\_\_\_ day of \_\_\_\_\_ next at \_\_\_\_\_ in the forenoon, to produce such document or thing or to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that, if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Dated, this \_\_\_\_\_ day of , 20\_\_

(Seal of the Court)

(Signature)

**Figure 4.8: Format for summons to accused as provided in CrPC**

FORM No. 1  
SUMMONS TO AN ACCUSED PERSON

To (name of accused) of (address)

WHEREAS your attendance is necessary to answer to a charge of \_\_\_\_\_ (state shortly the offence charged), you are hereby required to appear in person (or by pleader, as the case may be) before the (Magistrate) of \_\_\_\_\_, on the \_\_\_\_\_ day. Herein fail not.

Dated, this \_\_\_\_\_ day of \_\_ 20\_\_

(Seal of the Court)

(Signature)

# Part V: Miscellaneous Provisions relating to Reciprocal Arrangements

## A. Request for Recording of Statement and Taking Evidence from the Person Residing Abroad

5.1 The statement of the persons residing abroad can be recorded in the following ways:

- i) Recording of the statement by the Competent Authority of the Requested Country
- ii) Obtaining statement through Commission Issued by India Court
- iii) Making available persons in India for recording of statement (including person in custody)
- iv) Obtaining statement through Audio-Visual Means in foreign country

### i) Recording of the statement by the Competent Authority of the Requested Country

5.1.1 Section 166A and Section 105K of CrPC, Section 57 and Section 61 of PMLA, Section 12 of FEOA, etc., provides that the request for assistance for obtaining evidence in foreign country can be initiated by an Investigating Officer who has a reasonable ground to believe that evidence may be available in such foreign country. On such a request of the Investigating Officer, the Criminal Court in India may issue a letter of request for taking of testimony of any person including a person in custody and produce documents, records, articles or objects in the foreign country. It may be noted that a person required to give evidence as a witness in the territory of foreign country may decline to give evidence if the domestic law of the foreign country so permits.

### ii) Obtaining statement through Commission Issued by Indian Court

5.1.2 For recording of the statement of the person residing abroad, a Court in India may issue a commission under Section 285 of CrPC<sup>18</sup>, subject to the domestic laws of the foreign country.

#### Figure 5.1: Format for Issue of Commission

IN THE COURT OF

Commission to examine witness outside India (Sec 285 (3) of the Code of Criminal Procedure, 1973)

To

Through the \_\_\_\_\_ (Name of Ministry), Government of India, New Delhi

Whereas it appears to me that the evidence of ..... is necessary for the ends of justice in case No.....vs..... in the Court of ..... and that such witness residing within the local limits of your jurisdiction and his attendance cannot be procured without an amount of unreasonable delay, expense or inconvenience, I ..... have the honour to request and do hereby request that for the reasons aforesaid and for the assistance of the said Court you will be pleased to summon the said witness to attend at such time and place as you shall appoint and that you will cause such witness to be examined upon the interrogatories which accompany this commission (for viva voce).

Any party to the proceeding may appear before you by pleader, or, if not in custody, in person, and may examine, cross-examine or re-examine (as the case may be) the said witness.

And I further have the honour to request that you will be pleased to cause the answers of the said witness to be reduced into writing and all books, letters, papers and documents produced upon such examination to be duly marked for identification and that you will be further pleased to authenticate such examination by your official seal (if any) and by your

<sup>18</sup> Section 285. Commission to whom to be issued.—(1) If the witness is within the territories to which this Code extends, the commission shall be directed to the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be, within whose local jurisdiction the witness is to be found.

(2) If the witness is in India, but in a State or an area to which this Code does not extend, the commission shall be directed to such Court or officer as the Central Government may, by notification, specify in this behalf.

(3) If the witness is in a country or place outside India and arrangements have been made by the Central Government with the Government of such country or place for taking the evidence of witnesses in relation to criminal matters, the commission shall be issued in such form, directed to such Court or officer, and sent to such authority for transmission as the Central Government may, by notification, prescribe in this behalf.

signature and to return the same together with this commission to the undersigned through \_\_\_\_\_ (Name of Ministry), Government of India, New Delhi.

Given under my hand and the seal of the Court on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

Judge  
Judicial Magistrate  
Metropolitan Magistrate

### iii) Making available persons in India for recording of statement

5.1.3 For making available persons (including person in custody) in India for recording of statement the provisions of Bilateral Treaty/Agreements, Multilateral Treaty/Agreements or International Convention shall be followed.

### iv) Obtaining statement through Audio-Visual Means

5.1.4 Section 161 CrPC provides that the examination of witness may also be done by audio-visual electronic means. Further, the Hon'ble Supreme Court has held in "*State of Maharashtra vs Praful Desai*"<sup>19</sup> that the recording of evidence by way of video conferencing might be done in cases where the attendance of the witness cannot be ensured without delay, expense and inconvenience.

5.1.5 Where a Court or other Authority or agency or an officer having jurisdiction, in the course of investigation or prosecution, finds it necessary that evidence may be recorded by audio-visual means to avoid amount of delay and expenses, it may forward an application to the IS-II Division, MHA (Central Authority of India) for the said purposes. Audio-visual means may be used for:

- i) facilitating examination of a witness or an expert in foreign country;
- ii) identification of persons or object, or
- iii) any other purposes related to investigation and prosecution of a criminal matter.

5.1.6 For recording of statement through audio-visual means, Part IV of the Guidelines may be referred.

## B. Visit of Investigating Officers Abroad for Assisting in Execution of Request and Joint Investigation

### 1) Visit of Investigating Officers Abroad for Assisting in Execution of Request

5.2 Sometimes, it may become necessary to send Police Officer(s) from India to a foreign country for assisting foreign country in execution of LRs or MLA Request or for collecting information or leads during the course of investigation of a case keeping in view the importance of the case and the complicated nature of offences under investigation. As any Investigating Officer of India does not enjoy Police powers/investigative powers in a foreign country, such visit by an Investigating Officer without the express consent of any country may be considered interference in the sovereignty of that country unless some required formalities are observed.

5.3 When it is considered necessary to send a team of Officers abroad, the Investigating Agency or State Government/UT may send a proposal to IS-II Division, MHA (Central Authority of India) for obtaining the approval for the proposed visit, whenever necessary.

5.4 Subject to the law of foreign country such police officers may participate in taking of the

<sup>19</sup> (2003 4 SCC 601)

evidence and may also pose questions to the person examined. He may also make a verbatim transcript of the proceeding.

5.5 The visit will not commence before the required permission is received. The visiting Investigating Officers must get in touch with the Indian Mission on their arrival. In case, the country does not have a mission, the accredited mission for India may be kept informed with regard to the visit of the Investigating Officers.

5.6 The following information needs to be sent to the IS-II Division, MHA (Central Authority of India) for taking up the matter with the country to which such team is proposed to be sent:

- A brief note detailing the reasons for sending the team, nature of enquiries required to be made in the Requested Country. This is to enable the authorities to assess whether the request is justified.
- All available particulars about identity or particulars of the person to be contacted or documents to be scrutinized, etc. This would help the Requested Country to make all necessary preparations.
- Information about the penal offence to which mission relates.
- Whether Article 3 of the ICPO (Interpol) Constitution or some other legal provision restricting international cooperation is attracted.
- Exact date and duration of the mission and information about the police officers such as their name, ranks, contact details, etc.,
- Any other information which may be relevant in processing such a request.

## **2) Visit of Investigating Officers of Foreign Country for Assisting in Execution of Request in India**

5.7 The request for the visit of the Investigating Officer of the Contracting State intending to visit India in relation to execution of LR/ MLA Request or for capacity building in mutual legal assistance shall be made to the IS-II Division, MHA (Central Authority of India) for remaining present or assisting in the execution of request. The tentative travel itinerary of the persons visiting should also be provided to Central Authority of India well in advance.

5.8 If the IS-II Division, MHA (Central Authority of India) agrees for allowing the presence of officers of a foreign country, the dates of the visit should be finalized with mutual consent after ensuring the availability of witnesses.

5.9 It should be ensured that any foreign Police Personnel/ Legal Attaches at the embassy/High Commission of foreign countries or foreign officials who are present in the embassy or visiting India for investigative purposes are not permitted to establish any direct contact with the police personnel at the State Level unless specifically authorized by IS-II Division, MHA (Central Authority of India). Any attempt by such foreign police /legal personnel to establish direct contact with the State Police Authorities should immediately be brought to the notice of IS-II Division, MHA (Central Authority of India).

## **3) Joint Investigation**

5.10 A Joint Investigation Team is a team set up for a set period, based on mutually agreed terms between the Contracting States for a specific purpose in relation to the investigations, prosecution or proceedings. The procedures under which the joint investigation team has to operate in Contracting

States should be mutually agreed upon such as its composition, duration, location, organization, functions, purpose and terms of participation of team members.

## C. Protection and Preservation of Data

5.11 **Data Retention/Preservation:** Data preservation is the key step in investigation of offences of cyber crimes and offences involving digital evidence. Accessing the internet through an Internet Service Provider (ISP) creates important records and other information such as customer records, connection information and stored data. This is very important evidence to prove the guilt intention of the accused. Since this type of evidence can disappear quickly, it is of paramount importance to get the data preserved expeditiously through appropriate channels. The G-8 24/7 Network for data preservation is one such channel.

5.12 The request for data protection/preservation may be sent using official ID's directly to the service provider or through the Assistant Director (NCB), Central Bureau of Investigation, 5-B, 6th Floor, CGO Complex, Lodhi Road, Jawaharlal Nehru Stadium Marg, New Delhi-110003 ((email: [adipol@cbi.gov.in](mailto:adipol@cbi.gov.in) and Telefax:011-24364070), who would in turn get the data preserved through Cyber Crime Investigation Cell (EQU-IX) of CBI which is being the contact point in respect of India G-8 24/7 Network. It allows Law Enforcement Agencies of India making urgent preservation requests of the digital data before it perishes. CBI will keep the Central Authority of India informed of making such preservation requests. Generally, the data is preserved for an initial period of 90 days from the receipt of Request. During this period, the investigation Agencies including State Law Enforcement Agencies should send a proposal to IS-II Division, MHA for issue of LR or MLA Request for obtaining the data from concerned service provider. If the investigation is continuing, then after every 60 days the request for preservation of data shall be served to the country concerned.

5.13 **Obtaining Subscriber Information:** In order to obtain subscriber information, the Investigation Agency need only establish that the evidence sought is relevant and related to the criminal investigation. It is not enough to show that the accused had an email account; the account must have something to do with the crime being investigated. This is the lowest legal standard required of all investigative processes.

5.14 **Obtaining Transactional Information:** In order to obtain the transactional information, the Investigation Agency must provide specific facts detailing how the records or other information sought are relevant and material to criminal investigation. This is because the law in many foreign countries requires prosecutors to provide the Court with a factual summary of the investigation and how the records requested will advance that investigation.

5.15 **Obtaining Contents:** In order to obtain the content in most cases, the Investigation Agency must provide information in the formal request that satisfies two legal standards. i.e., (1) probable cause and (2) that the facts supporting the request are correct.

### Safeguards for Protection and Preservation of Data

5.16 While seeking the assistance of protection and preservation of data, the following safeguards should be ensured:

- a) Data including personal data must be obtained and processed fairly and lawfully and must be appropriate, relevant and not excessive with regard to the purposes for which it is sought and transferred.
- b) The Requested Country has to be informed about the time period for which the data is required. Such period shall be consented by the Requested Country.

- c) The transferred data shall be kept for no longer than the period required for the purpose for which it has been received and shall be returned to the Requested Country or deleted at the end of the period specified.
- d) The Requested Country shall be informed in advance in case the data has to be kept for a longer period in India.
- e) The Competent Authorities of the Contracting States shall take all reasonable measures to prevent the transfer of inaccurate, incomplete or out-of-date data. If it is established that inaccurate or non-transferable data has been transferred, it shall be immediately informed to the Requested Country and provide correct or accurate data. Any inaccurate data so received should be deleted or returned to the Requested Country.
- f) The data should not be transferred to a third country, a private individual or an international body without the consent of the Requested Country.
- g) The data transferred should be protected from accidental or unauthorized destruction, accidental loss, and unauthorized access, modification or dissemination.
- h) A record of the data transferred and its destruction should be maintained.

#### **D. Identification of Bank Information**

5.17 Where a Court or Authority or Agency or Officer having jurisdiction in this regards for investigation into a criminal offence desires to obtain financial information of a person who is in any place in a foreign country, it may forward a request to IS-II Division, MHA (Central Authority of India) for ascertaining in the foreign country that:

- i) if the banks located in the Contracting State have any information related to the bank account held by the person suspected or charged with a criminal offence in India; or
- ii) any other financial detail thereof

5.18 The request for identification of bank information should also include:

- name of the Bank; name of the account holder; bank account number;
- address and branch code of the bank where the account is held ;
- grounds for believing that banks in the foreign Country hold account(s) ;
- time period over which the information is sought ;
- any other documents required (e.g. account opening information, bank statements, etc.) and its relevance to the investigation

#### **E. Interception of Postal Items**

5.19 For preservation and suppression of crime, a request for interception of a postal item during the course of its carriage by a postal service may be made, where there are reasonable grounds to believe that such interception would prevent or be relevant in the commission of offence in India or foreign country concerned or such interception is required for the purpose of any investigation or proceeding in criminal matter.

5.20 The request for interception of postal item should include:

- date of dispatch of the postal item;
- sufficient information to identify the item;
- the course of transit, anticipated delivery time;
- details of courier (if applicable) and
- explanation of how the item relates to the criminal investigation in the Requesting Country.

## Figure 5.2: Do's and Don'ts for the Investigating Officer or Agency

### Do's

- ✓ While making a request or preparing execution report, the following precautions may be taken by the Investigating Agencies:
  - Any documents, photographs and objects, if enclosed with the request/execution report, should be clearly marked and referred to in the body of Request.
  - All the photocopied papers/ documents enclosed must be legible and if required must be translated in the language mentioned in the Treaty/Agreement or International Convention. The translated copies should be duly signed by a translator and authenticated by the Investigating Agency.
  - The request /execution report should be neatly bound and page numbered.
- ✓ At least, four copies of the request should be prepared including the original.
- ✓ A soft copy of the request should be made and forwarded to IS-II Division, MHA.
- ✓ In case of service of documents, clear and complete address of the person on whom the service needs to be effected should be mentioned.
- ✓ The request for assistance, its contents and its supporting documents should be kept confidential. In case the request cannot be executed without breaching confidentiality, the foreign country should be so informed.
- ✓ Investigating Agencies should ensure that any foreign Police Personnel/ Legal Attaches at the Embassy/High Commission of foreign countries or foreign officials who are present in the Indian Embassy or visiting India for investigative purposes are not permitted to establish any direct contact with the police personnel at the State Level unless specifically authorized by Central Authority. Any attempt by such foreign police /legal personnel to establish direct contact with the State Police Authorities should immediately be brought to the notice of the Central Authority of India.

### Don'ts

- X The request made should not be vague. Fishing inquiries should be avoided.
- X Requests which are civil or commercial in nature should not be made to the Ministry of Home Affairs. Such request should be made to the Ministry of Law and Justice.
- X Information which is not relevant for the investigation and prosecution of the criminal case should not be asked in the request.
- X The request for execution of the non-bailable warrants should not be made under MLAT or Letters Rogatory.
- X Requests which are trivial or *de minimis* in nature should be avoided.
- X Authorities should not disclose the contents of a request without the consent of the foreign Country.
- X Without the consent of the foreign country, any information or evidence provided by the foreign country for investigations or proceedings should not be used or transferred for any other purpose than those stated in the request.

## Part VI: Informal Requests

### A. Introduction

6.1 India is a member of INTERPOL and Central Bureau of Investigation has been designated as the National Central Bureau of India for routing the requests for making informal inquiries with the NCBs of other countries. Informal request is a request made in the cases where the Investigating Agency needs information or leads or material in a faster way to form the basis of the case, or where during a formal investigation, such information is considered to be necessary. In such cases, the information may be collected by sending an informal request through INTERPOL, which is the world's largest International Police Organization. INTERPOL facilitates police-to police assistance and cooperation even where diplomatic relations do not exist between particular countries. Police-to-police assistance is often used in the investigation stage of a law enforcement operation, or to obtain general intelligence or information that would not require the exercise of coercive powers. Police-to-police assistance can be an effective way to determine what material is held by a foreign country prior to making a mutual legal assistance request. Mutual legal assistance and police-to-police assistance are separate forms of cooperation that complement one another.

6.2 The request for collection of information for the purpose of starting an investigation or for collecting leads to ascertain facts before launching formal investigation or for issuance of various INTERPOL notices such as Red Notice, Blue Notice, Green Notice, Yellow Notice, Black Notice, Orange Notice, Purple Notice, Interpol-United Nations Security Council Special Notice are routed for inquiries and assistance through NCB India (CBI). Other informal inquiries made with NCB of other countries or INTERPOL Headquarters are also made through NCB India.

### B. Mode and form of making an Informal Request

6.3 Where it is found to be necessary to gather information through INTERPOL or diplomatic channels, the Investigation Agency is required to send a self-contained request, along with necessary details, to the Assistant Director (NCB), Central Bureau of Investigation, 5-B, 6<sup>th</sup> Floor, CGO Complex, Lodhi Road, Jawahar Lal Nehru Stadium Marg, New Delhi-110003 (email: adipol@cbi.gov.in and Telefax:011-24364070).

6.4 Generally the following assistance is provided through informal channel:

- a) ascertaining the location of witnesses/accused;
- b) verifying the availability of a certain company at a particular address;
- c) for ascertaining the availability of a bank account in the name of a particular person in a certain bank;
- d) willingness of a person to give evidence;
- e) verifying the passport details;
- f) verifying the availability of a property in the name of certain entity/person;
- g) request for preservation of cyber data;
- h) analogous laws to determine dual Criminality.

## C. Contents of Informal Request

6.5 The informal request must incorporate the following details:

- FIR number along with name(s) of the accused and sections of law under which case has been registered;
- gist of the allegations made in the FIR/ preliminary inquiry or any other investigation process;
- details of the information sought.

6.6 For an informal request, it is necessary that material being furnished should be carefully examined and scrutinized at an appropriate level especially with regard to accuracy of facts and figures.

## Part VII: Extradition Requests

### A. Introduction

7.1 Extradition is the surrender by one State to another of a person desired to be dealt with for crimes for which he has been accused or convicted and which are justifiable in the Courts of the other States. The extradition of fugitives is done as per the provisions of the Extradition Act, 1962 and as per Extradition Treaty or other Extradition Arrangement or International Conventions signed by India with the country concerned. The Ministry of External Affairs (MEA) is the Central Authority for the requests of extradition. A request for extradition has to be made as per the provisions of the Extradition Act, 1962 and the Treaty with the Contracting State.

**Figure 7.1: List of Countries having Extradition Treaty with India**

1.	Azerbaijan (2013)	12.	Egypt (2008)	23.	Nepal (1953)	34.	Tajikistan(2003)
2.	Australia (2008)	13.	France (2003)	24.	Netherlands (1889)	35.	Thailand (2013)
3.	Bahrain (2004)	14.	Germany (2001)	25.	Oman (2004)	36.	Tunisia (2000)
4.	Bangladesh (2013)	15.	Hong Kong (1997)	26.	Poland (2003)	37.	Turkey (2001)
5.	Belarus (2007)	16.	Indonesia (2011)	27.	Philippines 2004)	38.	UAE (1999)
6.	Belgium (1901)	17.	Iran (2008)	28.	Russia (1998)	39.	UK (1992)
7.	Bhutan (1996)	18.	Kuwait (2004)	29.	Saudi Arabia (2010)	40.	Ukraine (2002)
8.	Brazil (2008)	19.	Malaysia (2010)	30.	South Africa (2003)	41.	USA (1997)
9.	Bulgaria (2003)	20.	Mauritius(2003)	31.	South Korea (2004)	42.	Uzbekistan (2000)
10.	Canada (1987)	21.	Mexico (2007)	32.	Spain (2002)	43.	Vietnam (2011)
11.	Chile (1897)	22.	Mongolia (2001)	33.	Switzerland (1996)		

**Figure 7.2: List of Countries with which India has an Extradition Arrangement**

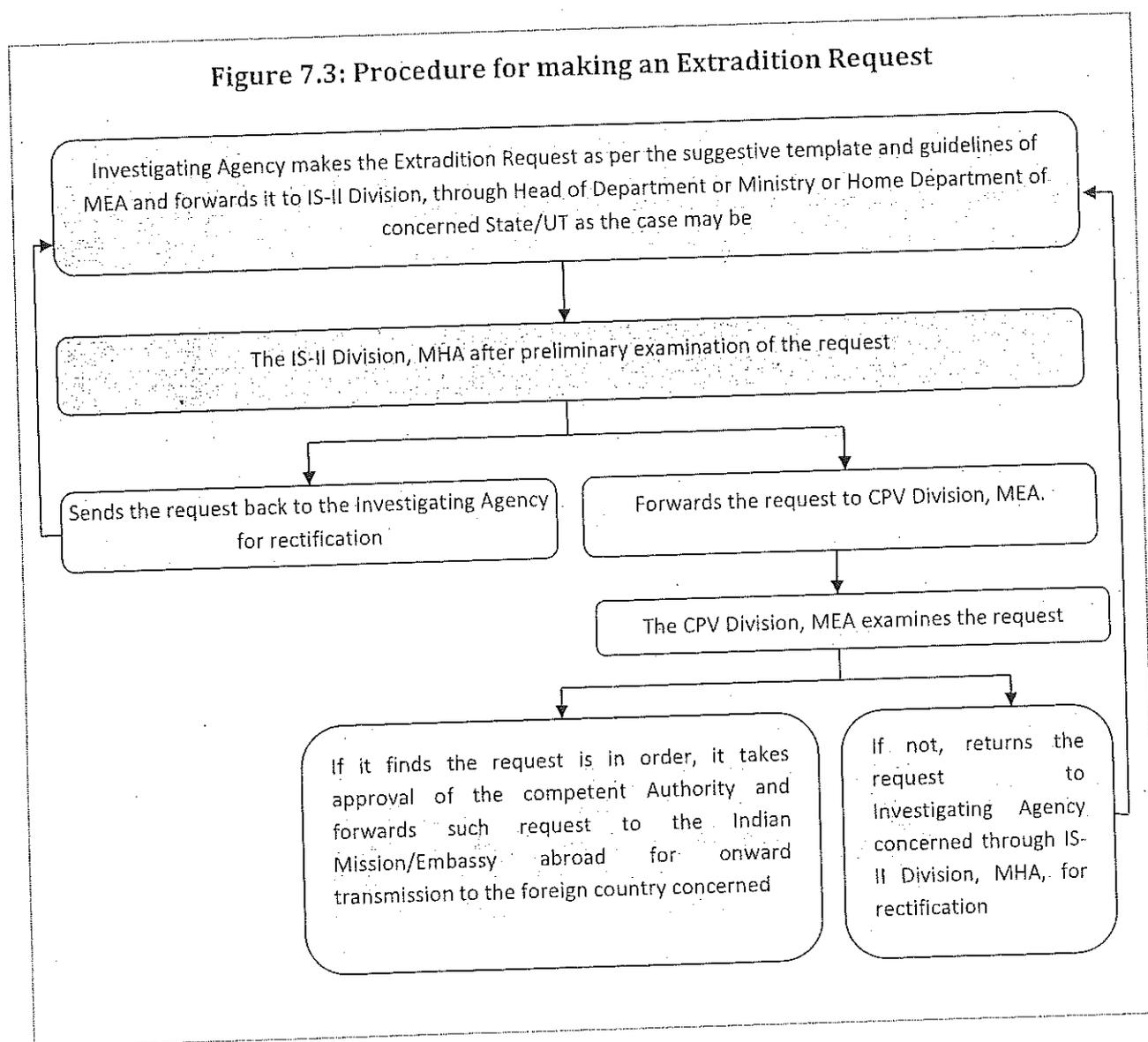
1.	Antigua & Barbuda (2001)	4.	Fiji (1979)	7.	Peru (2011)	10.	Sweden (1963)
2.	Armenia (2019)	5.	Italy*(2003)	8.	Singapore (1972)	11.	Tanzania (1966)
3.	Croatia* (2011)	6.	Papua New Guinea (1978)	9.	Sri Lanka (1978)		

\* The Extradition Arrangements with Italy and Croatia confine to Crimes related to Illicit Traffic in Narcotic Drugs and Psychotropic Substances owing to the fact that India, Italy and Croatia are parties to the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

## B. Procedure for making an Extradition Request

7.2 The procedure for making an extradition request is as follows:

- i) The Investigating Agency or Court makes the Extradition Request as per the suggestive template and guidelines of MEA available on <https://www.mea.gov.in/extraditionguidelinesabroad.htm> and forwards it through Head of Department or Ministry or Home Department of concerned State/UT to IS-II Division, MHA which examines the request and coordinates with MEA and other Investigating Agencies.
- ii) The IS-II Division, MHA after preliminary examination of the request may send it back to the concerned Investigating Agency for rectification, or if the request is generally in order, it then forward the same to CPV Division, MEA.
- iii) The CPV Division, MEA after examining the request may send it back to the Investigating Agency concerned, through IS-II Division, MHA, for rectification of deficiencies, or if prima facie finds it to be in order, takes necessary approval of the Competent Authority and forwards such request to the Indian Mission or Embassy of India abroad for onward transmission to the foreign country concerned.



## **Important Points to be considered while making an Extradition Request**

7.3 The important points to be considered while making Extradition Request are as follows:

- i) Extraditability of offences as per the Extradition Act, 1962/Treaty/Arrangement/International Convention if any;
- ii) Dual Criminality;
- iii) Assurances (death penalty, prison conditions, term of sentence, etc.)
- iv) The offences are not barred by the clause of limitation (e.g. Section 468<sup>20</sup> CrPC)

## **D. Grounds for Refusal of Extradition Request**

7.4 The grounds for refusal are invariably contained in the relevant extradition treaty. Generally, these grounds are:

- i) where a person's extradition is sought for an offence of a political character. However, the Extradition Act, 1962 in general and the extradition treaties, in particular, also list out many offences which shall not be considered as an offence of a political character;
- ii) the offence of which a person is accused or convicted for a military offence;
- iii) if the person whose extradition is sought has, according to the law of the Requesting Country becomes immune from prosecution or punishment by reason of lapse of time;
- iv) the person has been tried and acquitted/pardoned/ undergone punishment with respect to the offence for which his extradition is sought;
- v) if the Requested Country has substantial grounds to believe that the person's extradition is sought for the purpose of prosecuting or punishing the person on account of his/her sex, race, religion, nationality, or political opinions, or that the person's position may be prejudiced for any of those reasons.

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**Disclaimer:** This document is a guiding reference to law enforcement agencies and cannot be used in Court of law for any purposes.

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<sup>20</sup> Ibid., Page 11

# Glossary

1. **Assurance of Reciprocity:** It is a promise that the Requesting Country will provide the Requested Country the same type of assistance in the future, should the Requested Country ever be asked to do so. This principle is a useful tool in a situation in which there is no treaty, as it can be viewed as a stand-alone promise that one country will do the same for another country in future should the need arise.
2. **Attachment:** It means prohibition of transfer, conversion, disposition or movement of property by an order.
3. **Contracting States:** Any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise
4. **Data:** Data means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner, and is intended to be processed, is being processed or has been processed in a computer system or computer network, and may be in any form (including computer printouts magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer.
5. **International Criminal Police Organization (INTERPOL):** INTERPOL is the world's largest international police organization, with 194 member countries. Its role is to enable police around the world to work together to make the world a safer place and ensure public safety. In the extradition and mutual legal assistance field, the communications network and other services of INTERPOL provide highly effective assistance in furtherance of these actions.
6. **Personal Data:** Personal Data means data about or relating to a natural or legal person who is directly or indirectly identifiable, having regard to any characteristic, trait, attribute or any other feature of the identity of such natural person or legal, or any combination of such features, or any combination of such features with any other information.
7. **Preservation of Computer Data:** It means protection of computer data which already exists in a stored form from modification or deletion, or from anything that would cause its current quality or condition to change or deteriorate.
8. **Proceeds and Instrumentalities of Crime:** It means any property derived or obtained directly or indirectly, by any person as a result of criminal activity (including crime involving currency transfers) or the value of any such property.
9. **Property:** It 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 and instrumentalities of crime.
10. **Requested Country:** Any country to which a request for mutual legal assistance has been made.
11. **Requesting Country:** Any country which is making a request for mutual legal assistance.
12. **Tracing:** Tracing means determining the nature, source, disposition, movement, title or ownership of property.

D-3A

D/o Dashi

Date Bound case for :

(511)

HIGH COURT OF DELHI AT NEW DELHI

No. 30300 /Cr.

Dated 16/7/18

From:

The Registrar General,  
High Court of Delhi,  
New Delhi.

The SHO / I/O / AO  
P.S. CAW Cell  
Nanaki Pura,  
New Delhi.

To,

The Lel. Court  
Amara Court, Or Successor  
New Delhi. Court  
(Pending before Court  
concerned)

CRL.M.C.No. 5071/2017 CRL.M.A. No. \_\_\_\_\_

Rayneem Kaul & ors.

Petitioner

VERSUS

State & Anr.

Respondent

Petition under Section 482 Cr. P.C. for quashing of FIR u/c  
34/406/498A IPC Regd. at

Police Station CAW Cell, Nanaki Pura FIR No. 118/2012

Sir/Madam,

In continuation of this Court's letter no. \_\_\_\_\_ dt. \_\_\_\_\_  
I am directed to forward herewith immediate compliance/necessary action a copy of  
judgement/order dt. 10-7-18 Passed in the above case by Hon'ble  
Mr. Justice A.K. Patil of this Court. Other necessary  
directions are contained in the enclosed copy of order.

The Court while issuing notice /adjourning the case \_\_\_\_\_

BEFORE THE HON'BLE HIGH COURT OF DELHI AT NEW DELHI  
(EXTRA ORDINARY CRIMINAL JURISDICTION)  
CRL. M.C. NO. 507 OF 2016

IN THE MATTER OF:

RAJNESH KAUL & ORS

....PETTIONERS

VERSUS

STATE & ANR

.... RESPONDENT

MEMO OF PARTIES

1) RAJNESH KAUL

s/o Bal Kishan Kaul,

aged about 36 years

Residing At

No. 5, Nield Street, Ropes Crossing,

New South Wales 2760

Through Constituted Attorney

Shri Bal Kishan Kaul

2) SANTOSH KUMARI KAUL

W/o Bal Kishan Kaul,

Aged about 67 years,

Residing at

No. 20, Kahyap Rishi Vihar,

Dondhaherra, Ghaziabad

3) BAL KISHAN KAUL

Son of Lata Daya Kishan Kaul,

Aged about 69 years

Residing at

No. 20, Kahyap Rishi Vihar,

Dondhaherra, Ghaziabad

.... PETTIONERS

VERSUS

1) STATE (GOVT OF NCT)

Represented by

Sub - Inspector of Police,

CWC, Nanakpura Police Station,

New Delhi

2) PARUL KAUL,

D/o Tej Kishan Kaul

No. 3158/D3, Vasant Kunj,

New Delhi

.... RESPONDENT

*Parul Kaul*

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CRL.M.C. 5071/2017

RAJNESH KAUL & ORS ..... Petitioners  
Through Ms. Shalini Kaul, Adv.

versus

THE STATE GOVT OF NCT OF DELHI & ANR..... Respondents  
Through Mr. Izhar Ahmad, APP with ASI  
Balwant, P.S. CAW Cell, Nanakpura  
Mr. Tej Kishan Kaul, Attorney/father  
of respondent no. 2 in person

CORAM:  
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER  
% 10.07.2018

Petitioner no. 1 and respondent no. 2 were married on 23<sup>rd</sup> February, 2008, as per the Hindu rites and ceremonies at Delhi. Thereafter, they moved to Australia. On account of marital discord, they started living separately. Their marriage has already been dissolved by a decree of divorce dated 12<sup>th</sup> August, 2014 passed by the Federal Circuit Court in Australia (Annexure P-2). Petitioner no. 1 has been represented through his father Sh. Bal Kishan Kaul, who is petitioner no. 3 and also holds a Power



her father and Attorney Mr. Tej Kishan Kaul. Photocopy of the Power of Attorney executed by respondent no. 2 in favour of her father has been placed on record. Learned counsel for the petitioners and Attorney of respondent no. 2 submit that consent order dated 17<sup>th</sup> October, 2017 has been passed by the Federal Circuit Court of Australia containing certain terms regarding closure of all cases and distribution of properties. One of the terms, as contained in the order, is with regard to the quashing of present FIR. Mr. Tej Kishan Kaul submits that he has instructions from the respondent no. 2 to convey this court that she has no objection in case FIR no. 118/2012 under Sections 498-A/406/34 IPC registered at police station CAW Cell, Nanakpura and the consequent proceedings emanating therefrom are quashed.

Learned APP submits that petitioner no. 1 has been declared P.O. and a supplementary challan has been filed. Learned counsel for the petitioners submits that since parties have settled the matter, FIR can be quashed, despite the petitioner no. 1 having been declared P.O.

Keeping in mind the fact that present FIR is outcome of a matrimonial disputes between the petitioner no. 1 and respondent no. 2, which stands settled, inasmuch as petitioner no. 1 and respondent no. 2 have parted ways

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and have even settled all their other financial aspects, in my view, no fruitful purpose would be served to keep the present criminal proceedings pending. Accordingly, in the interest of justice, aforesaid FIR and the consequent proceedings emanating therefrom are quashed.

Petition is disposed of in the above terms. Dasti.



A.K. PATHAK, J.

JULY 10, 2018  
*v. bararia*

*JK*

