

**TREATY BETWEEN
THE REPUBLIC OF INDIA AND THE REPUBLIC OF BELARUS
ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

The Republic of India and the Republic of Belarus, hereinafter referred to as Contracting Parties,

Guided by the traditional friendly relations between the two States,

Recognizing the need to facilitate the widest measures of mutual legal assistance in the service of summons, execution of judicial orders and other judicial documents and commissions,

Desiring to improve the effectiveness of measures of both the States in investigation, prosecution and suppression of crime through cooperation and mutual legal assistance in criminal matters,

Have agreed as follows:

ARTICLE 1

Scope of Application

1. Under this Treaty, the Contracting Parties shall grant each other the widest measure of mutual legal assistance in criminal matters.
2. For the purpose of this Treaty mutual legal assistance shall be granted irrespective of whether the assistance is sought or to be provided by a court or some other competent authority.
3. The mutual legal assistance includes:
 - (a) identification and establishment of location of persons or property acquired by criminal means (proceeds of crime) and instruments of crime;
 - (b) obtaining evidence and statements of persons;
 - (c) providing documents and judicial records in the original or their certified copies, and other information, and delivering property and exhibits;

- (d) search and seizure;
- (e) activities directed at search and seizure of property, forfeiture of property acquired by criminal means (proceeds of crime) and of instruments of crime;
- (f) tracing of persons;
- (g) temporary transfer of persons in custody for the purpose of giving evidence or assisting in investigation;
- (h) delivery of documents;
- (i) any other legal assistance stipulated by the provisions of this Treaty and any assistance consistent with the law of the Requested Contracting Party.

4. The legal assistance related to the issues of arrest and detention of persons with the purpose of their extradition, transfer of convicts for the continuation of serving criminal punishment and criminal prosecution shall be settled by specific treaties between Contracting Parties.

ARTICLE 2

Definitions

For the purpose of this Treaty the terms used mean:

- (a) Criminal matters:

For the Republic of India – investigations, inquiries, trials and other proceedings relating to an offence as stated in its criminal law;

For the Republic of Belarus – individual proceedings conducted by the criminal prosecution authority and court in respect to the conducted act dangerous to society as stated in its criminal law;

- (b) property acquired by criminal means (proceeds of crime) – any property that is derived or realized directly or indirectly by any person from an offence or offences or the value of any such property;

- (c) property – as it is defined in the respective national laws of the Contracting Parties;
- (d) instruments of crime – any objects, including property used or intended to be used for committing an offence;
- (e) the restraint of property – any measure for the prevention of trading or transfer or any other disposal of property.

ARTICLE 3

Central Authorities

1. Requests for assistance under this Treaty shall be made through the Central Authorities of the Contracting Parties.
2. In the Republic of India the Central Authority is the Ministry of Home Affairs of the Government of India.

In the Republic of Belarus the Central Authorities are the General Prosecutor's Office of the Republic of Belarus and the Supreme Court of the Republic of Belarus.

ARTICLE 4

Content and the Form of a Request for Legal Assistance

1. Requests for legal assistance under this Treaty shall be made in writing. In urgent circumstances, or where otherwise permitted by the Requested Contracting Party, a request and supporting documents, if any, may be sent by facsimile or other electronic channels followed by sending of originals immediately.
2. Requests for legal assistance shall include a statement of:
 - (a) the name of the competent authority of the Requesting Contracting Party;

- (b) the name of the competent authority of the Requested Contracting Party;
- (c) the matters, including the relevant facts and provisions of laws and subordinate legislation, to which the investigation or proceedings relate and information about the extent of the loss caused by the crime;
- (d) the purpose for which the request is made and the nature of assistance sought;
- (e) details of any particular procedure or requirement that the Requesting Contracting Party wishes to be followed;
- (f) any time limit within which compliance with the request is desired;
- (g) the identity, nationality and location of the person or persons who are the subject of the investigation or proceedings, including witnesses and victims (occupation and as far as it is possible also the place and date of birth as for legal persons- their names, legal (registered) address and the location);
- (h) in the case of requests for obtaining of evidence, search and seizure- the basis for belief that this evidence is within the jurisdiction of the Requested Contracting Party;
- (i) in the case of requests to take evidence from a person- description of this subject matter in relation to which evidence required and a list of questions which a person should be asked;
- (j) in the case of lending of exhibits, persons(s) who will have custody of the exhibit, the place to which the exhibit is to be removed and any examinations to be conducted and the date by which the exhibits shall be returned;
- (k) in the case of making persons detained or in custody available, persons who will safeguard these persons during the transfer, the place to which this person is to be transferred and the date of this person's return;

- (l) the need, if any, for confidentiality and the reasons therefore;
- (m) in the case of requests for restraint or forfeiture of the property acquired by criminal means (proceeds of crime) or instruments of crime, where possible:

- detailed description of the property acquired by criminal means (proceeds of crime) or instruments of crime including their location;

- description of the basis for belief that the money or property is the property acquired by criminal means (proceeds of crime) or instruments of crime;

- description of the evidence for a proceeding that would be available in the territory of the Requested Contracting Party.

3. Requests for legal assistance if it is necessary for execution of proceedings shall be accompanied by judicial orders or other orders of the competent authority (official) of the Requesting Contracting Party or other relevant documents.

4. The request for legal assistance shall be signed by the authorized person and officially sealed by the competent authority of the Requesting Contracting Party.

5. The Requested Contracting Party shall not refuse to execute the request solely because it does not include all of the information described under Paragraph 2 of this Article, if it can otherwise be executed according to the law of the Requested Contracting Party.

6. If the Requested Contracting Party considers that additional information is needed to enable the request to be dealt with, that Contracting Party may request such additional information.

ARTICLE 5

Execution of Request

1. Requests for legal assistance shall be executed in accordance with the law of the Requested Contracting Party and may be executed in accordance with any requirements or in the manner specified in the request if not incompatible with the law of the Requested Contracting Party.
2. If the location of the person that is requested is unknown, the Requested Contracting Party shall take all the appropriate measures for its establishment.
3. The presence of the representatives of the Requesting Contracting Party shall be permitted according to the national legislation of the Requested Contracting Party.
4. The Requested Contracting Party upon request shall inform the Requesting Contracting Party of any circumstances likely to cause a significant delay in execution of the request for legal assistance and about the period of the delay.
5. The Requested Contracting Party shall inform the Requesting Contracting Party of the decision of the Requested Contracting Party not to comply in whole or in part with a request for legal assistance, or to postpone its execution and shall give reasons for that decision.
6. On the completion of the execution of the request for legal assistance the Requested Contracting Party shall transfer the documents to the Requesting Contracting Party.

ARTICLE 6

Refusal of Legal Assistance

1. The Requested Contracting Party may refuse legal assistance if:
 - (a) the execution of the request would impair its sovereignty, security, public order or other essential interests, or prejudice the safety of any person;

- (b) the execution of the request would be contrary to the domestic law of the Requested Contracting Party;
- (c) the request related to an offence in respect of which the accused person had been acquitted or pardoned.

2. Before refusing to grant a request for legal assistance, the Requested Contracting Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Contracting Party accepts the assistance subject to conditions, it shall comply with them.

ARTICLE 7

Transmission of Documents and Objects

1. When the request for legal assistance concerns the transmission of records and documents, the Requested Contracting Party may transmit the certified true copies thereof, unless the Requesting Contracting Party expressly requests the originals.

2. The original records or documents as well as any objects transmitted in execution of the request, shall be returned by the Requesting Contracting Party to the Requested Contracting Party as soon as possible upon the latter's request.

3. Insofar as not prohibited by the law of the Requested Contracting Party, documents, objects and records shall be transmitted in a form or accompanied by such certification as may be requested by the Requesting Contracting Party in order to make them admissible according to the law of the Requesting Contracting Party.

ARTICLE 8

Summoning a Person for Obtaining Evidence and other Materials

1. A person, including a person detained or in custody, requested to testify and produce documents, records or other articles in the territory of the Requested Contracting Party may be compelled by subpoena or judicial

order to appear and testify as well as produce such documents, records and other articles, in accordance with the law of the Requested Contracting Party.

2. The Requested Contracting Party, in accordance with its law, shall permit the presence of such persons as specified in the request during the execution of the request, and may allow them to pose questions to the person being questioned.

3. The persons present at the execution of a request for a legal assistance shall be permitted to make a verbatim transcript of the proceedings. To the extent not prohibited by the law of the Requested Contracting Party, the use of technical means to make such a verbatim transcript shall be permitted.

4. The Requesting Contracting Party may request the other Contracting Party that a person be made available to testify or to assist an investigation in the territory of the Requesting Contracting Party.

5. The Requested Contracting Party shall invite the person to assist in the investigation or to appear as a witness in the proceedings and seek that person's voluntary concurrence thereto. That person shall be informed of any expenses and allowances payable. The Requested Contracting Party shall promptly inform the Requesting Contracting Party of the person's response.

ARTICLE 9

Making Persons Detained or in Custody Available to Give Evidence or Assist in Investigation

1. A person detained or in custody in the Requested Contracting Party shall, at the request of the Requesting Contracting Party, be temporarily transferred to the Requesting Contracting Party to assist in investigations or proceedings, provided that the person consents to this transfer and there are no overriding grounds against transferring the person.

2. Where the person transferred is required to be kept in custody under the law of the Requested Contracting Party, the Requesting Contracting

Party shall hold that person in custody and shall return the person at the conclusion of the execution of the request.

3. Where the sentence imposed expires, or where the Requested Contracting Party advises the Requesting Contracting Party that the transferred person is no longer required to be held in custody, that person shall be set at liberty and be treated as a person present in the territory of the Requesting Contracting Party pursuant to a request seeking that person's attendance.

4. The temporary transfer of a person, mentioned in Paragraph 1 of this Article, shall be refused, if:

- 1) there is no consent of the person for such transfer;
- 2) his presence is necessary in the territory of the Requested Contracting Party for the purposes of investigation;
- 3) it entails violation of the terms of custody of the of the Requested Contracting Party, stipulated by its law.

5. The request for a temporary transfer of a person mentioned in Paragraph 1 of this Article shall be made pursuant to Article 4 of this Treaty, with the indication of the period of the requested person's presence in the territory of the Requesting Contracting Party. On the expiry of the period the transferred person shall be unconditionally returned to the territory of the Requested Contracting Party.

ARTICLE 10 Safe Conduct

1. A person present in the Requesting Contracting Party, including a person in custody, in response to a request seeking this person's attendance shall not be prosecuted, detained or subjected to any other restriction of his personal liberty in the territory of that Contracting Party for any acts or omissions which preceded that person's departure from the Requested Contracting Party, nor shall that person be obliged to give evidence in any criminal matter other than the proceedings to which the request relates.

2. Paragraph 1 of this Article shall cease to apply if a person, being free to leave the territory of the Requesting Contracting Party, has not left it within a period of 30 days after being officially notified that the person's attendance is no longer required or, having left that territory, he has voluntarily returned.

3. Any person who fails to appear in the territory of the Requesting Contracting Party may not be subjected to any penalty or compulsory measure in the Requested Contracting Party.

ARTICLE 11

Property Acquired by Criminal Means (Proceeds of Crime) and Instruments of Crime

1. The Requested Contracting Party, upon request of the Requesting Contracting Party, shall endeavor to ascertain whether any property acquired by criminal means (proceeds of crime) or instruments of a crime are located within its jurisdiction and shall notify the Requesting Contracting Party of the results of its inquiries.

2. A request for legal assistance may be made for the purpose of the forfeiture or confiscation of property acquired by criminal means (proceeds of crime) or instruments of a crime. Such assistance shall be given in accordance with the law of the Requested Contracting Party by whatever means appropriate. This may include giving effect to an order made by a court or other competent authority in the Requesting Contracting Party or submitting the request to a competent authority for the purpose of seeking a forfeiture or confiscation order in the Requested Contracting Party.

3. A request may be made for assistance in the restraint of property for the purpose of ensuring that it is available to satisfy an order for the recovery of property acquired by criminal means (proceeds of crime) or instruments of a crime.

4. Property acquired by criminal means (proceeds of crime) or instruments of crime forfeited or confiscated pursuant to this Treaty shall accrue to the Requested Contracting Party, unless otherwise agreed in a particular case.

5. Where action has been taken in the Requested Contracting Party pursuant to a request for legal assistance under Paragraph 1 or 2 of this Article, and there is a representation in the Republic of India or in the Republic of Belarus, as the case may be, by a person affected by the order, the relevant Contracting Party shall inform the other Contracting Party as soon as possible and shall also inform it promptly of the outcome of that representation.

6. The property shall be transferred to the Requesting Contracting Party after adjudication of the claims of the third persons relating to this property subject to the relevant provisions in the law of the Contracting Party whose competent authority carries out the transfer.

ARTICLE 12

Confidentiality and Limitation of Use

1. The Requested Contracting Party may require, after consultation with the Requesting Contracting Party, that information or evidence furnished or the source of such information or evidence be kept confidential or be disclosed or used only subject to such condition as it may specify.

2. The Requested Contracting Party shall, to the extent requested, keep confidential the request for legal assistance, its contents, supporting documents and any action taken pursuant to the request except to the extent necessary to execute it.

3. The Requesting Contracting Party shall not disclose or use information or evidence furnished for purposes other than those stated in the request for legal assistance without the prior consent of the Requested Contracting Party.

ARTICLE 13

Authentication

Evidence or documents transmitted and received pursuant to this Treaty shall not require any form of authentication, save as is specified in Article 7 of this Treaty.

ARTICLE 14

Languages

While complying with this Treaty, the Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in English.

ARTICLE 15

Costs

1. The Requested Contracting Party shall meet the cost of executing the request for legal assistance, except that the Requesting Contracting Party shall bear:

- the expenses associated with transferring any person to or from the territory of the Requested Contracting Party at the request of the Requesting Contracting Party, and any allowance or expenses payable to that person while in the Requesting Contracting Party pursuant to a request for legal assistance under Article 8 or 9 of this Treaty;
- the expenses and fees of experts either in the Requested Contracting Party or the Requesting Contracting Party.

2. If it becomes apparent that the execution of the request for legal assistance requires expenses of an extraordinary nature, the Contracting Parties shall consult to determine the terms and conditions under which the requested assistance can be provided.

ARTICLE 16**Delivery of documents**

The competent authority of the Requested Contracting Party shall deliver documents in accordance with its national legislation. The delivery of documents shall be confirmed by a receipt with the signature of the person served and the person serving it, place and date of delivery or another testimony of the delivering authority which confirms the fact and date of delivery. Such a confirmation or another testimony shall be sealed with an official seal of the competent authority of the relevant Contracting Party.

ARTICLE 17**Consultations**

The Contracting Parties shall consult promptly, at the request of either Contracting Party, concerning the interpretation and the application of this Treaty, either generally or in relation to a particular request for legal assistance.

ARTICLE 18**Compatibility with other Treaties**

This Treaty shall not prejudice the obligations of the Contracting Parties arising from other international Treaties.

ARTICLE 19**Temporal Scope of Application**

This Treaty shall apply to any request for legal assistance submitted after its entry into force even if the relevant acts or omissions had occurred before that date.

ARTICLE 20

Ratification and Termination

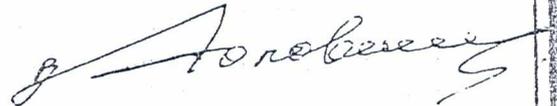
1. This Treaty shall be subject to ratification and it shall enter into force from the date of exchange of instruments of ratification.
2. Either of the Contracting Parties may terminate this Treaty at any time by giving notice to the other Contracting Party through the diplomatic channels. This Treaty shall cease to have effect six months after the receipt of the notice.

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

DONE at Minsk, this the ^{5th} day of October, 2005, in duplicate, each in Hindi, Russian and English, all texts being equally authentic. In case of any divergence in interpretation, the English text shall prevail.

Vijay Kumar

For the Republic of India



For the Republic of Belarus