



# A COMPENDIUM ON INTERPOL AND INVESTIGATION ABROAD

YEAR – 2022



**Central Detective Training Institute, Ghaziabad**  
Bureau of Police Research & Development,  
Ministry of Home Affairs, Govt. of India

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**A COMPENDIUM ON  
INTERPOL AND INVESTIGATION ABROAD**

(A STUDY MATERIAL FOR INVESTIGATING OFFICER)  
YEAR OF PUBLICATION - 2022

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### **FROM THE DIRECTOR'S DESK**

It gives me immense pleasure to write the foreword for this one-of-a-kind book, which collects various known and not so well known facts and functions of Interpol - International Criminal Police Organization (ICPO).



CDTI, Ghaziabad is imparting training to police officers of the rank of Sub Inspectors to Addl. SP from Uttar Pradesh, Madhya Pradesh, Uttarakhand, Jharkhand, Bihar, Chhattisgarh, and Delhi, etc. besides training CAPF's Officers. The training institute has also conducted a course on investigation abroad. This book is a comprehensive collection of information about the evolution of Interpol, its features, principles of cooperation, legal facts, and provision applicable in India.

This book is a ready reckoner for the police officers, who are engaged in investigation abroad. The appendix has a model format of the Letters Rogatory (L.R) and Mutual Legal Assistance Treaty (MLAT). To enhance the practical understanding of the officers, a case study and a trial court judgment containing a Letters Rogatory; procedure for sending a report for assistance (outgoing report) as a ready reference has also been provided.

I convey my heartiest congratulations to the author and I am sure that the compendium will provide valuable insights to the police officers, prosecutors, and to all those who may have to grapple with the complexities of investigation abroad in the years to come.

  
**(Ambar Kishor Jha)**  
Director

### **From the Author's Desk**

It is with great pleasure I present a book of this nature for all the current as well as upcoming police officers of the force. I have tried to encapsulating information from various Government, National and International Websites, and relevant cases to present this as a ready reckonner in the book.



Having spent more than three decades with the Central Bureau of Investigation across departments, handling complex cases, and managing task forces, I understand the importance and need of this type of compendium. The content in this book has been put together in an easy-to-understand manner with the aim that any officer needing assistance can refer the book as and when required without having to search various publications.

The book contains several examples of case studies for you to understand the complexities and processes of investigations abroad, the nature of domestic and international laws, and more.

I hope you find this book useful.



**Barun Bhattacharjee**  
**DSP, CDTI, Ghaziabad**

## **Acknowledgement**

The content in the book has been created from various sources including Interpol website, CBI Academy, and MHA site etc. Although the author has made every effort to ensure that the information in this book was correct at press time, the author does not assume and hereby disclaims any liability to any party for any loss, damage, or disruption caused by errors or omissions whether such errors or omissions result from negligence, or any other cause.

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## About Interpol

Interpol was constituted for effective mechanism of International Cooperation in criminal matters. It has 195 member countries and helps police to work together to make the world a safe place to live. It is now the second biggest international organization after the United Nations. On 27 November 1989, the headquarters of Interpol was shifted from Paris to Lyons (France) and since then it is functioning from there.

### Evolution of Interpol: A timeline

- **1914:** The first International Criminal Police Congress was held at Monaco from 14-18 April 1914, to study the possibility of establishing an International Criminal Records Office (ICRO) and harmonizing the extradition process of fugitives. The right-thinking Police Officers and legal experts of 14 different countries and territories experienced the necessity of mutual cooperation among various countries of the World. The outbreak of the First World War in the meantime prevented progress.
- **1923:** During the second International Criminal Police Congress at Vienna (Austria), it was decided to establish a forum called the International Criminal Police Commission (ICPC) with its headquarters at Vienna. It operated in the same form till the outbreak of the Second World War.
- **1946:** After the Second World War, the Police Congress was held in Brussels to revive ICPC. The headquarters of ICPC was moved from Vienna to Paris and the word 'Interpol' was chosen as the telegraphic address of the said Headquarters.
- **1949:** India became a member of Interpol.
- **1956:** The ICPC was renamed as the International Criminal Police Organization (ICPO) – Interpol. The constitution of ICPO was adopted in the General Assembly of Interpol held at Vienna which was attended by its 59 member countries. It came into force with effect from 13 June 1956.
- **1966:** In October 1966, the Government of India nominated the Central Bureau of Investigation (CBI) as the National Central Bureau of India (NCB) and all the work performed by IB for NCB was then transferred to the CBI.

Salient Articles of ICPO Constitution	Six Principles of Cooperation
<p><b>Article- 2</b> Interpol aims to ensure and promote the widest possible mutual assistance between all criminal Police authorities within the limits of the laws existing in the different countries in the spirit of the "Universal Declaration of Human Rights" and to establish and develop all institutions likely to contribute effectively to the prevention and suppression of crimes.</p> <p><b>Article- 3</b> strictly forbids to undertake any intervention or activities of a political, military, or racial character.</p> <p><b>Article- 4</b> any official police body of any country may delegate as a member of Interpol but the membership shall be subject to the approval by a two-thirds majority of its General Assembly.</p> <p><b>Article- 32</b> each country shall appoint a body called the NCB to ensure liaison with various departments in the country, the NCBs of the other countries, and the General Secretariat of Interpol.</p>	<p><b>Respect for National Sovereignty:</b> The Police Force have to take actions within their national boundaries and in accordance with their laws.</p> <p><b>Enforcement of ordinary criminal laws:</b> They have to enforce the ordinary laws of their country.</p> <p><b>Equality of all member states:</b> All the member states have the same rights and status and are provided with the same services irrespective of their financial contribution to Interpol.</p> <p><b>Universality:</b> Any member may render cooperation to any other member irrespective of geographical or linguistic factors.</p> <p><b>Cooperation with other agencies:</b> Interpol renders cooperation through the respective NCBs of the concerned country, to all the Government agencies engaged in combating ordinary criminal offences.</p> <p><b>Flexibility of working methods:</b> The working methods are flexible to take care of the wide variety of structures and situations in different countries.</p>



## Terrorism Finance: Mitigating the risks\*

[Any crime that results in a profit can be used to finance terrorism. Disrupting the flow of terrorist funding is critical to curtailing their activities. This means that a country may face terrorism finance risks even if the risk of a terrorist attack is low. Sources of terrorist funding include, but are not limited to: low-level fraud, kidnapping for ransom, misuse of non-profit organizations, illicit trade in commodities (such as oil, charcoal, diamonds, gold, and the narcotic (captagon), and digital currencies.

### Strategic cooperation is the need

Interpol maintains relationships with several bodies to help drive high-level policies and cooperation to counter terrorist financing. These include:

- Financial Action Taskforce (FATF), an intergovernmental body that develops international standards to combat money laundering and the financing of terrorism;
- FATF-style regional bodies, who disseminate best practices in their respective region;
- The Egmont Group - a network of 159 financial intelligence units from around the world.

### Investigative support

On a hands-on level, Interpol seeks to encourage better cooperation between financial intelligence units (FIUs) and police in member countries, to encourage the sharing of intelligence and analysis. A key part of this is promoting the extension of I-24/7, our secure global police communications system, to FIUs across the world. In addition, we are championing the systematic inclusion of financial information in Interpol alerts related to terrorist subjects of interest.

### Case study:

*The example below shows how its global network of countries, alerts, and specialized support can lead to fast and concrete results in investigations.*

***One of INTERPOL member countries in Europe requested assistance with a live terrorist financing investigation in which the suspect had financed the travel of family members and others to conflict zones by transferring funds valued circa EUR 18,000. INTERPOL specialized officers offered advice to streamline the investigation and liaised with four other member countries from Africa, the Americas, and the Middle East where funds had been transferred. At the request of the investigating country, INTERPOL published a Red Notice for the suspect who was subsequently arrested in another, previously unconnected, member country and extradited for prosecution.***

## Fighting terrorism through biometrics

Biometric data – such as facial images and fingerprints – can lead to the accurate identification of individuals using a false identity, thereby improving efforts to locate terrorists and carry out successful investigations and prosecutions.

- **INTERPOL created Project First (Facial, Imaging, Recognition, Searching, and Tracking)** to help countries share biometric data on foreign terrorist fighters (FTFs) and other terrorist suspects.
- **Project First** promotes the move from a 'need to know' to a 'need to share' culture. It aims to improve the identification and detection of terrorists and their affiliates by using the latest technology in digital image processing and facial recognition.
- Local law enforcement officers are trained to use mobile equipment to record the biometric data of prison inmates convicted of terrorism-related offences. This data is then stored in INTERPOL databases, for example as Blue Notices which are international alerts to collect additional information about a person's identity, location, or activities in relation to a crime.

- The data can also be searched against other INTERPOL databases, in particular, the facial recognition system and fingerprints database, to positively identify individuals and their international movements.

## Bridging battlefield and police investigations

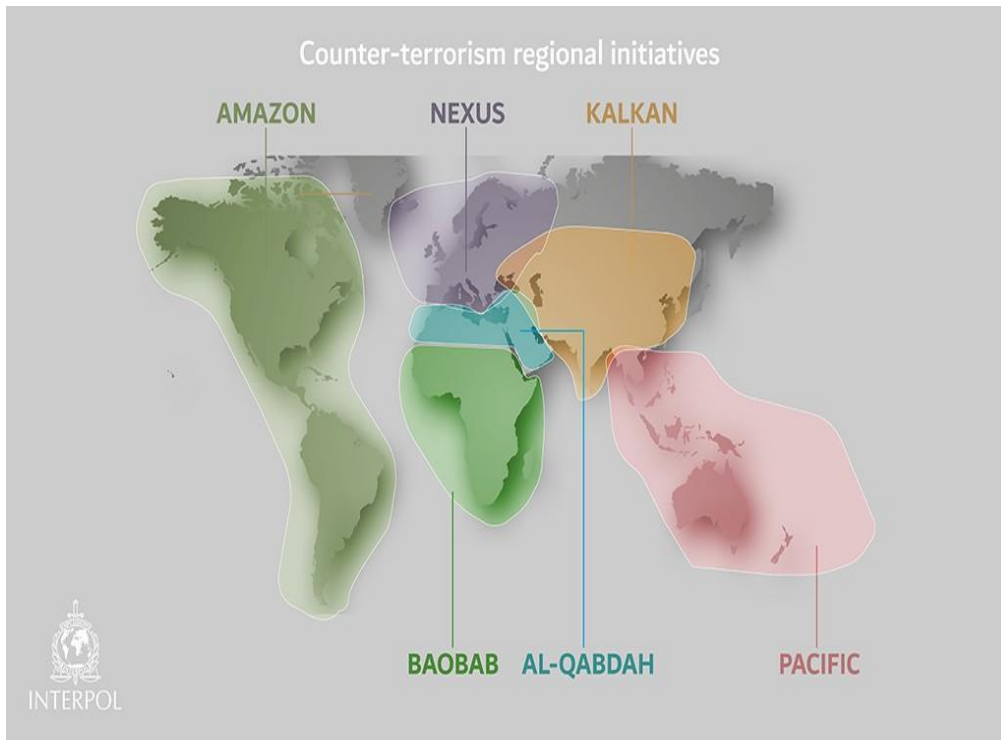
INTERPOL was the first international organization to develop and implement a military-to-police information exchange model (Mi-Lex). This puts information from conflict zones into the hands of law enforcement officers, to support police investigations and the prosecution process. Military first responders can share declassified information collected from the battlefield with relevant INTERPOL National Central Bureaus who process the information according to our rules and enter it into our databases and analysis files. Authorized frontline users in member countries can then access the information via the I-24/7 network.



**Mi-Lex-Military to law enforcement data exchange.**

## Regional Focus

INTERPOL runs six regionally-based initiatives to identify and dismantle terrorist networks. Building on their individual successes, we are now reaching out further, to connect activities and intelligence between regions that traditionally have not worked closely together. Two other regionally focused programmes are under way, in cooperation with partner organizations. They concentrate on delivering targeted training and building police capacity to counter-terrorism. They are: **Project Scorpions** and **Project Trace**.

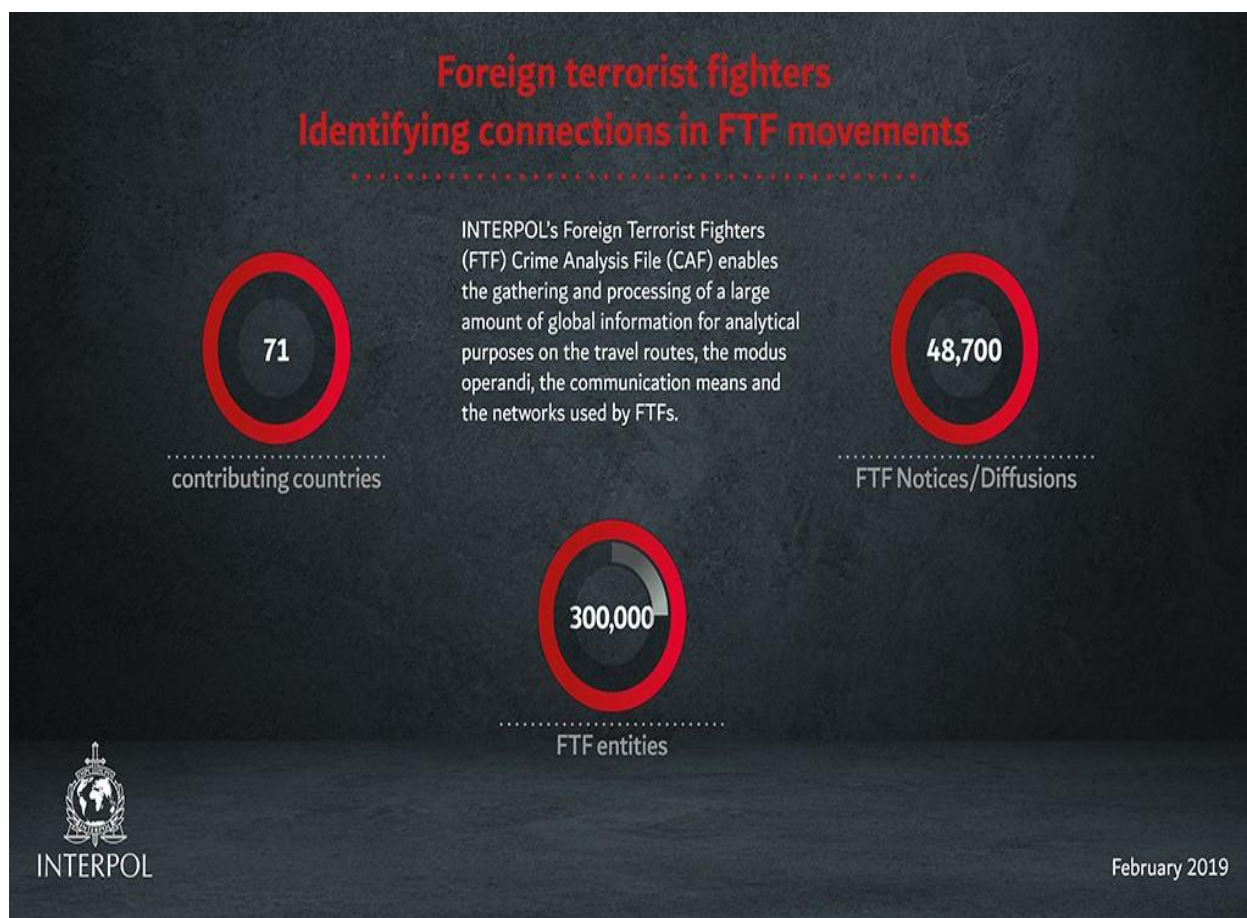


Databases are at the heart of our counter-terrorism operations, especially those that can prevent travel. INTERPOL databases contain details of around 48,700 foreign terrorist fighters. This makes INTERPOL the world's largest repository of such information, which could prove vital in identifying returnees. Data is collected from several hotspots including borders, battlefields, and prisons. The power to stop criminals in their tracks. Stolen travel documents are a key asset for terrorist mobility, particularly for foreign terrorist fighters returning from conflict zones. This makes it vital for border officials to check travelers' identity and passport information against INTERPOL's database of stolen and lost travel documents. Other databases crucial to strong border management are the INTERPOL nominal database – which contains details of the personal data and criminal history of individuals subject to a request for international cooperation – and the database of Travel Documents Associated with Notices.

*"Once terrorist information is shared at the global level, every traffic check, passport control or random search holds the potential for a break in a terrorism investigation or to foil a plot". Jürgen Stock.*

## How Interpol analyzes data and insights

Interpol experts analyze the data and share insights with their members, for example, intelligence on emerging trends related to foreign terrorist fighters.



## How Interpol analyses social media to curb terrorist activities

Terrorists use social media for radicalization, recruitment, funding, planning and execution of terror activities. This section talks about how Interpol curbs such activities.

### Identify suspects and witnesses

Interpol analyses terrorist's use of social media platforms to identify and detect efforts in national counter-terrorism investigations. For example, Interpol search social media platforms to identify potential witnesses, as was the case following the London Bridge attack in the UK in 2017, and the attack at a hotel complex in Nairobi, Kenya, in January 2019.

Interpol is also exploring ways to use **facial recognition technology** to support member countries in their investigations. This technology offers new opportunities to share and compare data to identify terrorists, unknown persons of interest, and subjects who may appear in posts on social media channels.

## Investigative training and resources

As part of Interpol's first joint project with the **United Nations Counter-Terrorism Centre (UNCCT)**, Interpol ran workshops for investigators covering four main areas:

- Detecting terrorist-related activities online;
- Collecting electronic records;
- Requesting e-evidence across borders through police-to-police cooperation;
- Engaging with the private sector to advance investigations by law enforcement agencies.

The workshops (conducted in 2018 and 2019) also served to enhance participants' operational picture on the phenomenon of Foreign Terrorist Fighters (FTFs) more generally. Complementing the workshops is a Handbook, jointly published by Interpol and UNCCT, titled *"Using the Internet and Social Media for Counter-Terrorism Investigations"*.

Interpol offers investigators practical guidance on how best to generate online investigative leads and collect and preserve electronic records often across international borders to contribute to successful investigations and prosecutions. This project was funded by the Governments of Japan, Saudi Arabia, and the United Arab Emirates.



## How Interpol analyses terror crimes involving chemicals and explosives

Attacks using explosives and chemicals endanger public safety on a large-scale, and can severely impact the economic and political stability of countries. High-profile incidents have affected all regions of the world; the past decade has seen thousands of bombings around the world including in Brussels, Abuja, Boston, London, Madrid, Moscow, Mumbai, and frequent chemical attacks in Syria and Iraq.

Interpol supports member countries to prevent, prepare and respond to the use of chemicals in terrorist incidents. It works with them to prevent criminals from diverting, smuggling, and using chemical warfare agents, toxic industrial chemicals, and explosive precursor chemicals. It offers a range of training courses and expertise to counter these crimes, which require specialized knowledge, especially in handling evidence.

### **Project Watchmaker**

Project Watchmaker is a global initiative offering specialized support to member countries by using Interpol's notice and diffusions system to alert law enforcement officials worldwide about people using or manufacturing improvised explosive devices. Interpol's Watchmaker dataset contains profiles of over 3,500 people and 38,750 entities associated with chemical, biological and IED activities. It includes individuals responsible for major terrorist bombing incidents around the world.

## **How Interpol builds capacity in a country**

Interpol capacity building and training projects are designed to improve chemical security in member countries so they can prevent the smuggling of chemicals across international borders. It helps countries to identify, interdict and investigate the illicit diversion of chemicals. It provides training courses targeting government authorities, police services, and the chemical industry, and develop the knowledge and leadership skills of senior law enforcement officials based in border and chemical security agencies.

### **Activities:**

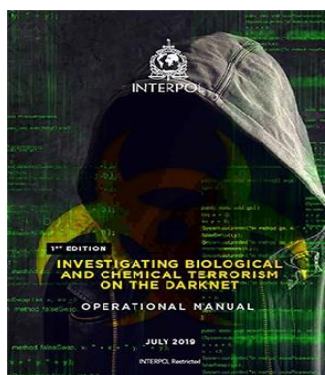
#### **Project Chasm**

Bioterrorism is the deliberate release of viruses, bacteria, toxins, or other harmful agents to cause illness or death in people, animals, or plants.

#### **The threat**

The threat from bioterrorism is real, with current reports indicating that individuals, terrorist groups, and criminals have both the capability and intention to use biological agents to cause harm to society.

#### **Publication**



In addition to its trifold of activities, the INTERPOL Bioterrorism Prevention unit prepares and contributes to the writing of many documents, including guidelines, training videos, and standard operating procedures. For example: *Investigating Biological and Chemical Terrorism on the Darknet: Operating Manual*. The book is a ready reckoner for law enforcement officers to detect triggers and indicators of potential criminal activity related to the access and trade of biological and chemical materials using the Dark net. The book was developed by a team of experts within the CBRNE and cyber communities.

Officers working in the fields of intelligence, counter-terrorism investigation, and cybercrime can use this manual as a reference document that outlines the basic concepts, best international practices, as well as techniques and procedures useful for both investigators and analysts when conducting Darknet investigations associated with the acquisition of biological and chemical agents.]

Note: Page no.9 to 14 of compendium-the source of content was taken from INTERPOL SITE. Chapter:CRIMES.

Link- <https://www.interpol.int/Crimes/Terrorism/Identifying-terrorist-suspects>.

\*\*\*\*\*

## Legal facts & provisions in India

For the criminals, there are no boundaries. But for the law enforcers, laws change beyond borders. For instance, domestic laws are territorial in nature and do not tackle international crimes. International assistance involves sovereignty and attitude. Therefore, it is effective only when it suits the sovereign and not otherwise. Every Sovereign makes provisions in their domestic laws to meet its requirements with regard to the international crimes or the criminals involved in such crimes. India too has domestic laws that have addressed these requirements.

### Legal Provisions to pursue Suspects in India

#### Indian Penal Code 1860

**Sec. 2 – Punishment of Offences Committed within India:** Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within India.

**Sec. 3 – Punishment of Offences committed beyond, but which by law may be tried within, India:** Any person liable, by any Indian law to be tried for an offense committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India.

**\*Sec.4 – Extension of Code to extra-territorial offences:** The provisions of this Code apply also to any offense committed by

- @ (1) any citizen of India in any place without and beyond India;
- (2) Any person on any ship or aircraft registered in India wherever it may be.
- #[(3) any person in any place without and beyond India committing offense targeting a computer resource located in India]

Explanation: In this section, the word “offense” includes every act committed outside India which, if committed in India, would be punishable under this Code.

\* This section was added in 1898.® This portion substituted the earlier clauses (1) to (4) in 1950.\*Added in 2009 through I.T. Act 2008.

**Sec. 108A\* - Abetment in India of offences outside India:** A person abets an offense within the meaning of this Code who, in India abets the commission of any act without and beyond India which would constitute an offense if committed in India.

- Illustration- A in India instigates B a foreigner to commit a murder in Goa. A is guilty of abetting murder.

\*(this section was added in IPC by Act 4 of 1898).

## **Criminal Procedure Code- 1898**

### **Sec- 186-High Court to decide, in case of doubt, the district where inquiry or trial shall take place**

Where two or more Courts have taken cognizance of the same offense and a question arises as to which of them ought to inquire into or try that offense, the question shall be decided –

(a)- If the courts are subordinate to the same High Court, by that High Court;

(b)- if the Courts are not subordinate to the same High Court, by the High Court within the local limits of whose appellate criminal jurisdiction the proceedings were first commenced, and thereupon all other proceedings in respect of that offense shall be discontinued.

### **Sec 189 - Receipt of evidence relating to offences committed outside India**

When any offense alleged to have been committed in a territory outside India is being inquired into or tried under the provisions of section 188.

- The Central Government may, if it thinks fit, direct, that copies of depositions made or exhibits produced before a judicial officer in or for that territory or before a diplomatic or consular representative of India in or for that territory shall be received as evidence by the court holding such inquiry or trial in any case in which such court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

*[The evidence so collected u/s 189 Cr. P. C. is received by the Trial Courts as a public document u/s 78 of the Indian Evidence Act 1872].*

### **Sec.188. Offences committed outside India**

When an offence is committed outside India-

- (a) by a citizen of India, whether on the high seas or elsewhere; or
- (b) by a person, not being such citizen, on any ship or aircraft registered in India,
- he may be dealt with in respect of such offense as if it had been committed at any place within India at which he may be found;
- Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offense shall be inquired into or tried in India except with the previous sanction of the Central Government.

## **The Indian Evidence Act 1872**

### **Sec. 78 – Proof of other official documents.**

The following public documents may be proved as follows:-

(6)- Public documents of any other class in a foreign country, by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public or an Indian Consul or diplomatic agent, that the copy is duly certified by the officer having legal custody of the original, and upon proof of the character of the document according to the law of the foreign country.



## **Commissions for the examination of witnesses**(Sec. 284 to 291 Cr. P. C)

### **Sec. 284 – When attendance of witness may be dispensed with and the commission issued**

- (1)- In the course of any inquiry, trial, or other proceedings under this Code, if it appears to the Magistrate that examination of a witness is necessary and the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience, the court may issue a commission for examination of witnesses;
- Provided in case of examination of President, Vice President, or the Governor of the State, as a witness is necessary for the ends of the justice, a commission shall be issued for the examination of such as a witness.
- (2). The court, when issuing a commission for examination of a prosecution witness, may direct the prosecution to meet the expenses accused including his pleader's fees.

### **Sec. 285 – Commission to whom to be issued.**

- (1)- If the witness is within the territory to which this Code extends, the commission shall be directed to CMM or CJM 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 witness 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 that behalf.*

### **Sec. 290- Execution of Foreign Commission.**

In reverse form as the Central Government may, by notification specify.

### **Sec. 291- Deposition of medical witness.**

- (1)-The deposition of a civil surgeon or other medical witness taken and attested by a magistrate in the presence of the accused, or taken on commission, may be given in evidence in any inquiry, trial, or another proceeding under this Code, although the deponent is not called as a witness.
- (2)- The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such deponent as to the subject matter of his deposition.

### **Sec. 187 – Power to issue summons or warrants for offences committed beyond local jurisdiction.**

- (1) When a Magistrate of the first class sees reason to believe that any person within his local jurisdiction has committed outside such jurisdiction (whether within or outside India) an offence which cannot, under the provisions of sections 177 to 185 (both inclusive), or any other law for the time being in force, be inquired into or tried within such jurisdiction but is under some law for the time being in force triable in India, such Magistrate may inquire into the offence as if it had been committed within such local jurisdiction and compel such person in the manner. hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is not punishable with death or imprisonment for life and such person is ready and willing to give bail to the satisfaction of the Magistrate acting under this section, take a bond With or without sureties for his appearance before the Magistrate having such jurisdiction.

- [\(2\)](#) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent or bound to appear, the case shall be reported for the orders of the High Court.

### **Criminal Procedure Code – 1973**

#### **Sec. 105 - Reciprocal arrangements regarding processes - [as amended on 25.5.1988]**

##### **(1) Where a Court in the territories to which this Code extends (hereinafter 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 said 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 Sec. 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 sent 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 - (*production before Court & transit remand, etc.*),
- (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 Sec.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]*

\*Added on 25 June 1988.

## Concept of Contracting State

- The Amendments in section 105 Cr. P. C. provided a concept of *Contracting State* as the 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.*

## Reciprocal arrangements in Criminal matters.

**A full CHAPTER – VIIA. (Sections 105A to 105L) was added in Cr. P. C. on 20 July 1994.**

“Reciprocal arrangements for assistance in certain matters and procedure for attachment and forfeiture of property.”

### Sec. 105A-Definition of Contracting State etc.

In this Chapter, unless the context otherwise requires,-

**(a)** "contracting State" means 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;

**(b)** "identifying" includes the establishment of proof that the property was derived from, or used in the commission of an offence;

**(c)** "proceeds of crime" 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;

**(d)** "property" means Property and sets 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 of crime;

**(e)** "tracing" means determining the nature, source, disposition, movement, title, or ownership of property.

### Sec. 105B- Assistance in securing the transfer of persons

**(1)** Where a Court in India, in relation to a criminal matter, desires that a warrant for the arrest of any person to attend or produce a document or other thing issued by it shall be executed in any place in a contracting State, it shall send such warrant in duplicate in such form to such Court, Judge or Magistrate through such authority, as the Central Government may, by notification, specify in this behalf and that Court, Judge or Magistrate, as the case may be, shall cause the same to be executed.

**(2)** Notwithstanding anything contained in this Code, if, in the course of an investigation or any inquiry into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that the attendance of a person who is in any place in a contracting State is required in connection with such investigation or inquiry and the Court, is satisfied that such attendance is so required, it shall issue a summons or warrant, in duplicate, against the said person to such Court, Judge or Magistrate, in such form as the Central Government may, by notification, specify in this behalf, to cause the same to be observed or executed.

**(3)** Where a Court in India, in relation to a criminal matter, has received a warrant for the arrest of any person requiring him to attend or attend and produce a document or other thing in that Court or before any other investigating agency, issued by a Court, Judge or Magistrate in a contracting State, the same shall be executed as if it is the warrant received by it from another Court in India for execution within its local limits.

(4) Where a person transferred to a contracting State pursuant to sub- section (3) is a prisoner in India, the Court in India or the Central Government may impose such conditions as that Court or Government deems fit.

1. ins. by act 40 of 1993, s. 2 (w. e. f. 20- 7- 1994).

(5) Where the person transferred to India pursuant, to sub- section (1) or sub- section (2) is a prisoner in a contracting State, the Court in India shall ensure that the conditions subject to which the prisoner is transferred to India are complied with and such prisoner shall be kept in such custody subject to such conditions as the Central Government may direct in writing.

#### **Sec. 105C- Assistance in relation to orders of attachment or forfeiture of property**

- Where a Court in India has reasonable grounds to believe that any property obtained by any person is derived or obtained, directly or indirectly, by such person from the commission of an offence, it may make an order of attachment or forfeiture of such property, as it may deem fit under the provisions of sections 105D to 105J (both inclusive).
- Where the Court has made an order for attachment or forfeiture of any property under Sub-Section (1), and such property is suspected to be in a contracting State, the Court may issue a letter of request to a Court or an authority in the contracting State for execution of such order.
- Where a letter of request is received by the Central Government from a Court or an authority in a contracting State requesting attachment or forfeiture of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence committed in that contracting State, the Central Government may forward such letter of request to the Court, as it thinks fit, for execution in accordance with the provisions of sections 105D to 105J (both inclusive) or, as the case may be, any other law for the time being in force.

#### **Sec. 105D- Identifying unlawfully acquired property.**

- The Court shall, under Sub-Section (1), or on receipt of a letter of request under Sub-Section (3) of section 105C, direct any police officer not below the rank of Sub-Inspector of Police to take all steps necessary for tracing and identifying such property,
- (2) The steps referred to in Sub-Section (1) may include any inquiry, investigation, or survey in respect of any person, place, property, assets, documents, books of account in any bank or public financial institutions or any other relevant matters.
- (3) Any inquiry, investigation, or survey referred to in Sub-Section (2) shall be carried out by an officer mentioned in Sub-Section (1) in accordance with such directions issued by the said Court in this behalf.

### **Sec. 105E- Seizure or attachment of property**

(1) Where any officer conducting an inquiry or investigation under section 105D has a reason to believe that any property in relation to which such inquiry or investigation is being conducted is likely to be concealed transferred or dealt with in any manner which will result in the disposal of such property, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order of attachment directing that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned.

(2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the said Court, within a period of thirty days of its being made.

### **Sec. 105F- Management of Properties seized or forfeited under this chapter**

- The Court may appoint the District Magistrate of the area where the property is situated, or any other officer that may be nominated by the District Magistrate, to perform the functions of an Administrator of such property.
- The Administrator appointed under Sub-Section (1) shall receive and manage the property in relation to which the order has been made under Sub-Section (1) of section 105E or under section 105H in such manner and subject to such conditions as may be specified by the Central Government.
- The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is forfeited to the Central Government.

### **Sec. 105G- Notice of forfeiture of property**

(1) If as a result of the inquiry, investigation or survey under section 105D, the Court has reason to believe that all or any of such properties are proceeds of crime, it may serve a notice upon such person (hereinafter referred to as the person affected) calling upon him within a period of thirty days specified in the notice to indicate the source of income, earning or assets, out of which or by means of which he has acquired such property, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties, as the case may be, should not be declared to be proceeds of crime and forfeited to the Central Government.

(2) Where a notice under Sub-Section (1) to any person specifies any property as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.

### **Sec. 105H- Forfeiture of property in certain cases.**

(1) The Court may, after considering the explanation, if any, to the show-cause notice issued under section 105G and the material available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are proceeds of crime;

Provided that if the person affected (and in a case where the person affected holds any property specified in the notice through any other person such other person also) does not appear before the Court or represent his case before it within a period of thirty days specified in the show-cause notice, the Court may proceed to record a finding under this Sub-Section Ex-parte on the basis of the evidence available before it.

(2) Where the Court is satisfied that some of the properties referred to in the show cause notice are proceeds of crime but it is not possible to identify specifically such properties, then, it shall be lawful for the Court to specify the properties which, to the best of its judgment, are proceeds of crime and record a finding accordingly under Sub-Section (1).

(3) Where the Court records a finding under this section to the effect that any property is proceeds of crime, such property shall stand forfeited to the Central Government free from all encumbrances.

(4) Where any shares in a company stand forfeited to the Central Government under this section, then, the company shall, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956) or the articles of association of the company, forthwith register the Central Government as the transferee of such shares.

#### **Sec. 105I- Fine in lieu of forfeiture**

(1) Where the Court makes a declaration that any property stands forfeited to the Central Government under section 105H and it is a case where the source of only a part of such property has not been proved to the satisfaction of the Court, it shall make an order giving an option to the person affected to pay, in lieu of forfeiture, a fine equal to the market value of such part.

(2) Before making an order imposing a fine under Sub-Section (1), the person affected shall be given a reasonable opportunity of being heard.

(3) Where the person affected pays the fine due under Sub-Section (1), within such time as may be allowed in that behalf, the Court may, by order, revoke the declaration of forfeiture under section 105H, and thereupon such property shall stand released.

#### **Sec. 105J- Certain transfers to be null and void**

Where after the making of an order under Sub-Section (1) of section 105E or the issue of a notice under section 105G, any property referred to in the said order or notice is transferred by any mode whatsoever such transfers shall, for the purposes of the proceedings under this Chapter, be ignored and if such property is subsequently forfeited to the Central Government under section 160H, then the transfer of such property shall be deemed to be null and void.

#### **Sec. 105K- Procedure in respect of the 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.

#### **Sec. 105L- Application of this Chapter**

The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State, with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions, or qualifications as are specified in the said notification.

## Execution of processes abroad

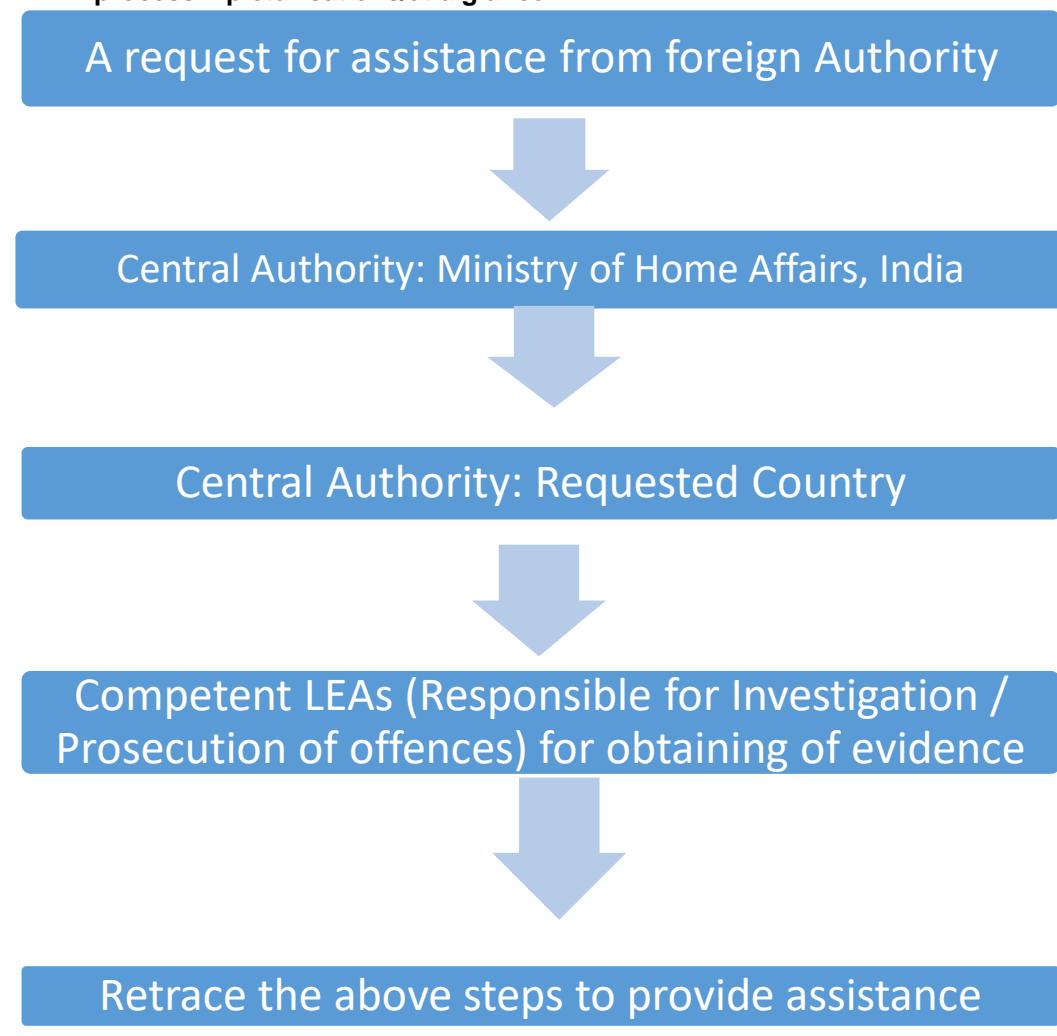
### Mutual Legal Assistance Treaties (MLATs)

Section 105 CrPC requires the Central Government of India to make reciprocal arrangements with foreign governments relating to the service of processes such as summons and warrants issued by the Indian Courts. Such arrangements are called the "TREATIES" - an agreement formally signed, ratified, or adhered to in between two or more nations or sovereigns.

Pursuant to the above provisions, the Ministry of Home Affairs (which is a nodal ministry) has executed bilateral MLATs on criminal matters with as many as 39 countries for the service of such processes. Under these MLATs, the requesting country can seek the assistance of the requested country for the service of summons including for giving evidence, etc., or any other assistance in the investigation or criminal proceedings in the requesting country. However, no person in the requested country can be compelled to assist in any investigation or to appear as a witness in the proceedings in the requesting country, except with his voluntary consent.

Most of these MLATs expressly specify that the assistance thereunder would not include extradition or detention of persons with a view to extraditing him or transfer of any proceedings in criminal matters etc.

### MLAT process – picturisations/at a glance



## **Scenario in India**

There is no specific MLAT law. Only MHA guidelines are available in

India: [http://www.mhagov.in/sites/default/files/ISII\\_ComprehensiveGuidelines1603220.pdf](http://www.mhagov.in/sites/default/files/ISII_ComprehensiveGuidelines1603220.pdf)

Limitations of 91 Cr. PC vis-a-vis TSPs/ISPs. There are new MHA guidelines for section 92 Cr. PC. No differentiation between subscriber data/Meta data/ Content data.

## **Conventions and Treaties**

For the purpose of Extradition of Fugitives from Foreign Countries to India and vice versa, the Indian Extradition Act 1903 was enacted, which was repealed by the Extradition Act 1962 (which came into force on 15 September 1962). This Act was further amended on 8 December 1993. For the purpose of the Extradition of fugitives, separate treaties are signed by the countries concerned.

The processes so issued under the concerned domestic laws are executed in foreign countries through the treaties or international conventions or agreements, covenants, final acts, charters, protocols, pacts, accords, and constitutions for international organizations. These treaties and conventions are the primary sources of international law. The Treaties between two countries are called bilateral and more than two countries are called multilateral.

The UNCOC (UN Convention against Corruption), UNTOC (UN Convention against Transitional Organized Crimes), and the Common Wealth Scheme for Extradition and Mutual Assistance in Criminal Matters, etc. are some of such conventions and treaties.

### **UNCOC (UN Convention against Corruption)**

The UN General Assembly in its resolution dated 4 December 2000 recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime was desirable. It decided to establish an ad hoc committee for negotiation of such an instrument in Vienna at the headquarters of the United Nations Office on Drugs and Crime. The Convention approved by the said Ad Hoc Committee was adopted by the General Assembly on 31 October 2003 which entered into force on 14 December 2005. It was signed by 140 countries. As on August 2018, there are 186 parties to this convention (i.e. 181 UN members + the Cook Islands, Niue, the Holy See, the State of Palestine, and the European Union).

The following 12 UN member States have not yet ratified the convention:-

**Andorra, Barbados, Eritrea, Monaco, North Korea, Saint Kitts and Nevis, Saint Vincent and the Grenadines, San Marino, Somalia, Suriname, Syria, Tonga.**

### **Convention highlights**

- Preventive measures –Chapter –II (Art. 5-14) – An act of Corruption can be prosecuted after the fact, but the first and foremost requirement is - prevention in the both public and private sectors.
- These include model preventive policies, such as the establishment of anticorruption bodies, enhancement of transparency in the financing of election campaigns by the political parties with due safeguard to the public services in order to promote efficiency, transparency, and recruitment based on merit.
- Once recruited, the public servants should be bound by codes of conduct, requirements of financial and other disclosures, and appropriate disciplinary measures.
- Transparency and accountability in the management of public finances and public awareness etc.



## **Criminalization and law enforcement**

(Chapter –III Art 15-44)

The countries to establish criminal and other offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law such as;

(i)- active bribery of national and international public officials;

(ii)- passive bribery of a national public official – trading in influence, abuse of function, illicit enrichment, private sector bribery and embezzlement and concealment of illicit assets, etc.;

(iii)- embezzlement of public funds;

(iv)- money laundering;

Simplify rules pertaining to evidence of corrupt behavior – like to overcome the obstacles in bank secrecy laws, etc.;

Protection of witnesses, victims, expert witnesses, and whistle blowers to ensure that law enforcement is truly effective.

## **International Cooperation**

Chapter-IV (Art. 43-49)

Countries agreed to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders by rendering mutual legal assistance in gathering and transferring evidence for use in court, etc. As per Art. 44, UNCON itself can be used as a basis for extradition with respect to corruption-related offences. 'Dual criminality' is not essential for extradition under UNCO. Corruption-related offences are not considered 'Political' and bank secrecy cannot be cited as a ground to refuse a request for assistance.

## **Asset recovery**

Chapter.-V (Art. 51-59)

The countries agreed on asset recovery, as one of the fundamental principles of the Convention. Chapter–V- lays a framework in both civil and criminal laws for tracing, freezing, forfeiting, and returning funds obtained through corrupt activities.

## **Technical assistance and information exchange**

Chapter. VI - Art.60-62

Include Training, material and human resources, research, and information sharing.

## **Mechanisms for implementation**

Chapter-VII- Art.63-64

Through the **Conference of the States Parties** (CoSP) and UN Secretariat.

## **Final Provisions**

Chapter-VIII- (Art.65-71)

Ensure that the UNCO requirements are to be interpreted as minimum standards. The countries may become more strict or severe.

### **United Nations Convention against Transitional Organized Crimes-(UNTOC).**

It was adopted by a resolution of the UN General Assembly on 15 November 2000 and signed by 147 countries at Palermo Italy on 12 December 2000. India joined on 12 December 2002. It became effective from 29.09.2003. It is also called as 'Palermo Convention'.

In 2014, the UNTOC strengthened its policies regarding wildlife smuggling. As on 19 September 2017, it has 190 parties which include 185 UN members and 5 other countries namely (1)- Holy see, (2)- Niue, (3)- the State of Palestine, (4) Cook Islands, and (5)- European Union. It is the first international convention to fight transnational organized crimes like the trafficking of human beings and terrorism.

It has the following three supplementary protocols which are also called 'the Palermo Protocols':-

- Protocol to Prevent, Suppress and Punish trafficking in persons, especially women and children.
- Protocol against the smuggling of migrants by land, sea, and air.
- Protocol against the illicit manufacturing and trafficking in Firearms.

The UN Office on Drugs and Crime (UNODC) acts as the custodian of the UNTOC and its above-mentioned Protocols. These instruments contain elements of the current international law on human trafficking, arms trafficking, and money laundering.

UNTOC is the main legal international instrument to fight organized crime. Its efficiency, however, depends on each member's ability to implement the organization's framework – for example, the UNTOC requires a minimum sentence of four years imprisonment for transnational organized criminal offences.

### **Common Wealth Scheme for Extradition and Mutual Assistance in Criminal Matters**

Commonwealth, also called Commonwealth of Nations, formerly (1931-49) British Commonwealth of Nations is a free association of sovereign states comprising of the United Kingdom and a number of its former dependencies who have chosen to maintain ties of friendship and practical cooperation and who acknowledge the British monarch as symbolic head of their association.

The Commonwealth Secretariat was established in London in 1965 to organize and coordinate Commonwealth activities. It has 54 members. India is its member since 1947.

1966: Just after one year of the constitution of the Commonwealth, it adopted a scheme relating to the rendition of fugitive offenders within the Commonwealth, which was called the 'London Scheme of Extradition'. It became one of the key international instruments dealing with extradition.

1986: In view of the success of the 'London Scheme', the Commonwealth adopted two additional schemes for cooperation :

- (1) Mutual Assistance in Criminal matters within the Commonwealth and
- (2) The Scheme for transfer of Convicted Offenders within the Commonwealth – which were called the 'Harare Scheme'.

These schemes, however, are not the model laws. They only represent non-binding and flexible arrangements to provide a constructive and pragmatic approach to mutual cooperation in Commonwealth Countries. Their implementation may involve passing of legislation at the national level in order to give effect to the provisions of the Schemes. A 'Commonwealth Model Legislation on Mutual Legal Assistance in Criminal matters' is available to allow cooperation in line with the Harare Scheme.

## Extradition under Indian Laws

Extradition is the surrender of an alleged or convicted criminal by one State to another. It is the process by which one State upon the request of another State surrenders to the latter, a person found within its jurisdiction for trial and punishment or, if he has been already convicted, only for punishment, on account of a crime punishable by the laws of the requesting State and committed outside the territory of the requested State.

*“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 justiciable in the courts of the other State” -(AIR 1969 SC 1177: 1969 Cr. L.J 1559)Relevance of Extradition.*

It plays an important role in the international battle against crime. It owes its existence to the so-called principle of territoriality of criminal law, according to which a State will not apply its penal statutes to acts committed outside its own boundaries except where the protection of special national interests is at stake. In view of the solidarity of nations in repression of criminality, however, a State, though refusing to impose direct penal sanctions to offences committed abroad, is usually willing to cooperate in bringing the perpetrator to justice, lest he goes unpunished.

### Role of Interpol

ICPO-Interpol has been a forerunner in international efforts to improve and accelerate the existing procedure of extradition. It recommends a Draft General Agreement for Extradition of Offenders which was adopted by its General Assembly (then known as the International Criminal Police Commission) in 1948. But it remained a dead letter since then.

It published a series of circulars setting out provisional measures to be taken by police in each country when complying with a request from the police of another member country for identification and arrest of a person wanted on a warrant of arrest.

The General Assembly of Interpol passed a resolution in 1967 in Tokyo (Japan) inviting member countries to forward their extradition laws to the General Secretariat so that it could be sent to other member countries for their information. The Extradition Laws so received were thus disseminated to the other member countries.

### List of 195 Interpol members countries

Afghanistan | Albania | Algeria | Andorra | Angola | Antigua & Barbuda | Argentina | Armenia | Aruba | Australia | Austria | Azerbaijan

Bahamas | Bahrain | Bangladesh | Barbados | Belarus | Belgium | Belize | Benin | Bhutan | Bolivia | Bosnia–Herzegovina | Botswana | Brazil | Brunei | Bulgaria | Burkina – Faso | Burundi

Cambodia | Cameroon | Canada | Cape Verde | Central African Republic | Chad | Chile | China | Colombia | Comoros | Congo | Congo (Democratic Rep.) | Costa Rica | Côte d'Ivoire | Croatia | Cuba | Cyprus | Czech Republic

Denmark | Djibouti | Dominica | Dominican Republic

Ecuador | Egypt | El Salvador | Equatorial Guinea | Eritrea | Estonia | Ethiopia

Fiji | Finland | Former Yugoslav Republic of Macedonia | France

Gabon | Gambia | Georgia | Germany | Ghana | Greece | Grenada | Guatemala | Guinea | Guinea Bissau | Guyana.

Haiti | Honduras | Hungary

Iceland | **India** | Indonesia | Iran | Iraq | Ireland | Israel | Italy

Jamaica | Japan | Jordan

Kazakhstan | Kenya | Korea (Rep. of) | Kuwait | Kyrgyzstan

Laos | Latvia | Lebanon | Lesotho | Liberia | Libya | Liechtenstein | Lithuania | Luxembourg

Madagascar | Malawi | Malaysia | Maldives | Mali | Malta | Marshall Islands | Mauritania | Mauritius | Mexico | Moldova | Monaco | Mongolia | Montenegro | Morocco | Mozambique | Myanmar | Oman

Pakistan | Panama | Papua New Guinea | Paraguay | Peru | Philippines | Poland | Portugal | Qatar

Romania | Russia | Rwanda

St Kitts & Nevis | St Lucia | St Vincent & the Grenadines | San Marino | Sao Tome & Principe | Saudi Arabia | Senegal | Serbia | Seychelles | Sierra Leone | Singapore | Slovakia | Slovenia | Somalia | South Africa | Spain | Sri Lanka | Sudan | Suriname | Swaziland | Sweden | Switzerland | Syria

Uganda | Ukraine | United Arab Emirates | United Kingdom | United States | Uruguay | Uzbekistan

Venezuela | Vietnam | Yemen | Zambia | Zimbabwe

### **Sources of Extradition Laws**

1. International laws
2. Bilateral Extradition Treaties
3. Multilateral Extradition Conventions
4. 1990–Model Extradition Treaty formulated by UN General Assembly
5. National laws
6. International Courtesy - based on reciprocity

### **Process of Extradition**

Extradition is a legal act between requesting State and requested State. An extradition is purely a voluntary act of the Sovereign and it can take place even without any treaty obligation but if a treaty exists between the two countries, the same is followed in processing the extradition requests of the wanted persons. It is different from kidnapping/ abduction, expulsion/ deportation, repatriation (which takes place in a non-penal context e.g. minor children, refugees, etc). Offences concerned should have been committed on the territory of the requesting State, or by its national in a foreign country.

The process starts with the local NCB issuing Red Corner Notices. After the wanted person is located in any country, he is arrested there provisionally on the basis of the said Notice. One option is to deport the person from the Port itself either to the place of his embarkation or to the country of his citizenship. This is purely an administrative decision of the Sovereign. The NCB of the requested country informs the requesting NCB accordingly and the latter, in turn, informs the concerned police agency about the deportation of the wanted person for further necessary action by them.

- A wanted person should be available on the territory of the requested State.
- A wanted person should have committed or been an accomplice to an extraditable offence.

**Example:** The Britannia tycoon Rajan Pillai and the alleged gangster Babloo Srivastava were extradited from Singapore to India - even though there was no extradition treaty.

### **The judicial pronouncements and the State practices, however, lay down the following principles governing extradition:**

- Extradition is possible only for the extraditable offences mentioned either in any Extradition Law of the country concerned or in the treaty if executed between the two countries.
- The offences for which the extradition is sought must be an offence in both countries (dual criminality).
- The Requested Country must be satisfied that a prima-facie case is made out against the wanted person.

- A condition is imposed by the Requested Country on the Requesting Country that the offender will be proceeded against only for those offences for which his extradition has been sought/granted.
- The Requesting Country has to ensure that the offender gets a fair trial.
- The extradition requests in India are processed as per the provisions of the **Extradition Act 1962 (amended in 1993)**.

### **Power of arrest for the purpose of Extradition**

A person wanted for Extradition can be arrested under the provisions of Section 41 (1) (g) of the Cr. P. C., 1973 which authorizes the police to arrest a fugitive criminal without a warrant. However, the Police must immediately refer the matter to Interpol Wing for onward transmission to the Government of India for taking a decision on extradition of such person or otherwise.

### **Extradition Laws were enacted in India**

The Indian Extradition Act 1903 was enacted. It was repealed by the Extradition Act 1962 which came into force w.e.f 15 September 1962. The **Indian Extradition Act 1962** was further amended on 8 December 1993.

### **The amended Extradition Act of 1993 defined “Extradition Offence”**

**Sec. 2 (c)**-“extradition offence” means;

- (i) in relation to a foreign State, being a treaty State, an offence provided for in the extradition treaty with that State;
- (ii) in relation to a foreign State other than a treaty State an offence punishable with imprisonment for a term which shall not be less than one year under the laws of India or of a foreign State and includes a composite offence (committed in one State having its effect in more than one State).

**Sec. 3** – The Central Government may be notified in order to extend the provisions of this Act to the country/countries so notified.

### **Chapter-II Extradition from India to the Non-treaty States**

**Sec. 4**- Requisition for the surrender of the fugitive to be received in the MEA from foreign office of requesting State or in Indian Mission abroad.

**Sec. 5**- On receipt of requisition, the Central Government may appoint a Magistrate to enquire into the Case.

**Sec. 6**- The Magistrate so appointed shall issue a Warrant of Arrest against the fugitive criminal.

**Sec. 7**- Enquiry by the Magistrate:

- The Magistrate shall make inquiry in the manner as if the case was triable by the Court of Session or High Court.
- The Magistrate shall consider the evidence produced in support of the requisition of the foreign State and by the fugitive criminal.
- If Magistrate is of the opinion that no prima facie case is made out, he will discharge the fugitive.
- If the Magistrate is of the opinion that the prima facie case is made out, he will commit the fugitive to prison and submit his report to the Central Government along with the written statement, if any, of the fugitive for consideration of the Government.

**Sec. 8**- Surrender of fugitive criminal:

- The Central Government after considering the report and statement of a fugitive may issue a warrant for custody and removal of fugitive and for delivery at a place and to a person named in the warrant.

**Sec. 9 – Power of Magistrate to issue a warrant of arrest in certain cases**

- A Magistrate can issue a warrant of arrest against a fugitive within of a foreign State who is available in his jurisdiction and send a report of the same to Central Govt.

In case no order u/s 5 is received within 3 months, the detained fugitive will be released.

**Chapter-III - Extradition from India to the Treaty States**

**Sec. 12**–The Central Government shall issue a Notification for application of Chapter-I, III, IV & V to the relevant Treaty State.

**Sec. 14-** A fugitive may be detained in India under an endorsed or provisional warrant.

**Sec. 15-** Upon receipt of a warrant from a Treaty State, the Central Government after satisfying about the lawfulness of issuance of the warrant may endorse the warrant, which shall be sufficient authority to apprehend the persons named in the warrant and bring him before any Magistrate in India.

**Sec. 16-** Provisional Warrant for the apprehension of fugitive criminal- Any Magistrate may issue a provisional warrant for the apprehension of the fugitive criminal from a Treaty State.

**After issuing the warrant-**

- The Magistrate shall send a report to the Central Government.
- The Central Government may discharge the apprehended person if it thinks fit.
- A fugitive arrested on a provisional warrant may be remanded to custody for a period of 7 days at a time awaiting production of the endorsed warrant.

**Sec. 17 - Enquiry by Magistrate-**

- The Magistrate before whom the fugitive is produced has to make enquiry to ascertain that the authentication is correct and the offence for which extradition is sought is an extradition offence.
- If the Magistrate is satisfied, he shall commit the fugitive to prison awaiting his order for return from Central Government .
- If the Magistrate is not satisfied, pending receipt of the order from Central Government, he may detain the fugitive in custody or release him on bail.
- The Magistrate shall send a report to Central Government along with any written statement of the fugitive criminal for consideration of the government.

**Sec. 18-** Return of fugitive criminal by warrant:

- After the fugitive criminal has been committed to prison, Central Government may issue a warrant for custody and removal of the fugitive to a foreign State, at a place and to a person to be named in the warrant.

**Chapter-IV- Request for extradition from foreign states**

**Sec. 19 – Request for Extradition**

- The request is delivered to the foreign mission in India or to the foreign office in the requested State through Diplomatic Channels.

**Sec.20 – Surrender/Return of Fugitive.**

- Upon extradition, the fugitive criminal is to be delivered to the proper authority to be dealt with according to law.

**Sec. 21-** Accused or convicted person surrendered or returned by foreign State not to be tried for certain offences:

A fugitive criminal upon surrender shall not be tried in India for an offence other than –

- (a) the extradition offence for which he was surrendered; or
- (b) for any lesser offence disclosed by the facts proved for the purpose of extradition or
- (c) the offence in respect of which the foreign State has given its consent.

**Chapter- V- Miscellaneous Provisions**

**Sec. 23-** When extradition request is received for an offence, committed by the fugitive on board any vessel on high seas or any aircraft while in the air outside India, the Central Govt. and any Magistrate having jurisdiction over the port or airport, where such ship or aircraft arrives, shall have the powers conferred by the Act.

**Sec. 24-** In case a committed fugitive is not conveyed out of India within 02 months, the High Court, on an application, may order the discharge of the prisoner provided Central Government is given intimation.

**Sec. 25-** The provision of bail shall apply in respect of fugitive criminal arrested or detained and the Magistrate shall have the powers of Court of Sessions.

**Sec. 29-** The Central Govt. may refuse the surrender of a fugitive if the request is not made in good faith or in the interest of the justice or for political reasons or otherwise or if the case is trivial. It may order for cancellation of the endorsed warrant and discharge of the fugitive.

**Sec. 31- A fugitive will not surrender if :-**

- a) the request is made for an offence of political character;
- b) the prosecution for the offence is barred by limitation in the foreign State
- c) The provisions for the rule of specialty are not made by the law of foreign State or in the relevant Extradition Treaty.
- d) He is undergoing sentence under any conviction in India until after he has been discharged, by acquittal, expiry of the sentence, or otherwise.
- e) Until after the expiry of 15 days from the date of his commitment by the Magistrate.

**Sec. 31(1)-** Extradition is not permitted for the offences of political character

**Sec. 31 (2)** specifies the offences, which cannot be treated as political offences.

Extradition is also not permitted for RELIGIOUS or MILITARY offences as per ICPO Constitution.

**Sec. 34-** An extradition offence committed abroad shall be deemed to be committed in India and the fugitive liable for prosecution in India.

**Sec. 34A-** A fugitive whose surrender is refused can be prosecuted in India.

**Sec. 34B-** On receipt of an urgent request, the Central Govt. can request a Magistrate, having jurisdiction, to issue a provisional warrant against the fugitive. If the request for his extradition is not received within 60 days, the fugitive shall be released.

**Sec. 34-C – Provision of life imprisonment for death penalty**

A fugitive criminal extradited from a Foreign State which do not have death penalty, to be awarded life imprisonment only for that offence in place of death penalty. (Example- Abu Salem case of CBI).

**Treaty Countries**

- Australia
- Bahrain
- Bangladesh
- Belarus
- Belgium
- Bhutan
- Bulgaria
- Canada
- Egypt
- France
- Germany
- Hong Kong
- Korea
- Kuwait
- Malaysia
- Mauritius
- Mexico
- Mongolia
- Nepal (old treaty)
- Netherlands
- Oman
- Poland
- Portugal
- Russia
- Saudi Arabia
- South Africa
- Spain
- Switzerland
- Tajikistan
- Tunisia
- Turkey
- UAE
- UK
- Ukraine
- USA
- Uzbekistan
- Vietnam



**India has extradition arrangements with the following countries:**

Fiji	1979
Italy	2003
Papua New Guinea	1978
Singapore	1972
Sri Lanka	1978
Sweden	1963
Tanzania	1966
Thailand	1982

#### **Preparation of Extradition Request**

- Obtain and study the Extradition Treaty/Arrangements, if any, on receipt of information about availability/apprehension of a fugitive in a foreign State.
- Request the Foreign State to keep the available fugitive under surveillance/provisional arrest.
- Make efforts for the deportation of the fugitive.
- Ascertain the legal and procedural requirements including mode of authentication/translation etc. from the Foreign State. All details may not be available in the Treaty.
- Ensure reciprocity, Notification u/s 3 to be got issued making the Extradition Act applicable to the Requested State.

#### **Relevance of Chapter-II of the Act**

The warrant of arrest against the fugitive criminal must be obtained from the Competent Court as it has to be enclosed with the Extradition Request. The request may be turned down.

To ascertain whether death penalty is provided in law in Requested State or there is any other peculiarity in their penal provisions. A detailed affidavit must be prepared giving facts of the case.

The Request for extradition i.e the forwarding letter is issued by the Ministry of External Affairs addressed to the Foreign Office of the Requested State. This is a brief letter requesting for return of the fugitive in connection with the relevant criminal cases. It is generally signed by the Minister for External Affairs or the MOS. It is mentioned in the Request that the facts of the case are given in the enclosed affidavit, which would also incorporate the evidence available against the fugitive.

Since the affidavit forms part of the request, it is of great significance. It should be sworn by the **Investigating Officer or his Supervising Officer. This fact should be mentioned clearly in the opening paragraph.** The following points may be kept in view while preparing the affidavit.

It should contain-

- the stage of investigation/trial.
- the role attributed to the fugitive in the commission of the crime.

- all evidence that connects the accused with the commission of a crime.
- in case, the charge-sheet has been filed, the order of the Court taking cognizance.
- in case, the charges have been framed by the Court, it should be indicated. This would reveal the application of judicial mind.
- the facts concerning the issuance of Warrant of Arrest, Proclamation by the Competent Court and issuance of Red Corner Notice by the ICPO.

**The following should be clearly mentioned in the affidavit–**

- The concerned Court is competent to try the case under the domestic laws of India (like the Designated Court under TADA (P) Act, Special Courts under P.C. Act, etc.) and that the Court is not specially created for the trial of the fugitive.
- The offences alleged against the fugitive are still offences in India -that is to say that the relevant laws are still in force.
- The trial of the fugitive is not barred by any limitation.
- Any special feature about the admissibility of particular evidence, as per Indian laws such as confessions recorded under TADA (P) Act, MCOCA.
- The fugitive, upon his extradition, would be tried only for the offences for which the request was made or for any other lesser offence made out from the facts considered proved for the purposes of extradition.
- The accused is required to face trial in India and that upon his extradition he would need to be interrogated and further investigation conducted as permissible under the Criminal Procedure Code.
- The facts relevant to prove the identity of the fugitive are very important and should be clearly mentioned.

Finger prints are considered conclusive proof of identity. Affidavit of the Police Officer, who had taken the finger prints may be obtained and enclosed with the affidavit. Affidavit of the witnesses who can identify the fugitive mentioning that they have seen his photographs and they identify the same and further they have signed on the back of the said photograph. The said signed photograph will be enclosure to their affidavit.

**The following are to be enclosed with the Affidavit:**

- Certified/ notarized copies of FIR.
- Certified copy of Charge-sheet.
- Evidence (Oral and Documentary) it may include depositions of the witnesses in the Court during the trial and/or their statements recorded u/s 161 Cr.P.C. Some Countries require sworn Affidavits of the Witnesses.
- NBW (Original).
- Certified copy of Proclamation Order. It is advisable to get the wanted person declared a proclaimed offender by the Indian Court first and then seek his extradition from a foreign country. The judiciary in the Requested Country gives due respect to the judicial application of mind while evaluating the case against the wanted person.
- After the affidavit is prepared, it should be got vetted by the L&T Division of MEA before it is sworn.
- Copy of Red Corner Notice.
- Finger prints, photographs, passport details.
- Certified copy of Order taking cognizance and framing of charges by the Court including the charges so framed.
- Extracts of relevant laws to show dual criminality.
- Treaty details, if any.
- Translation of the enclosures, in the language of the Requested State.
- Enclosures to be numbered.
- A self-contained Note indicating the present stage of the case i.e. whether it is under investigation or under trial etc., evidence to prove the role of wanted person (s) in the crime in question; full identity i.e. the name (s), addresses, Nationality, passport details, and photographs of the wanted person (s); a certificate to the effect that the documents forwarded with the extradition request are complete in all respect.

- Copies of MOU or Treaty, if any, executed in between the Requesting Country and the Requested Country.
- The forwarding letter of the Extradition request must give an undertaking that the wanted person on extradition will be tried in the Requesting Country only for those offences for which the extradition has been sought. The request should be made in quadruplicate and sent to the local NCB for onward transmission to the Ministry of External Affairs through the Ministry of Home Affairs.
- The Ministry of External Affairs thereafter submits the request to the Requested Country through the diplomatic channels for further necessary action by them.
- This has to be pursued closely by the investigating agency of the Requesting Country with the help of its NCB.
- The dealing officers of the investigating agency may also be required to visit the Requested Country as and when necessary to pursue the extradition request there.
- Since the extradition request is moved through the diplomatic channels in the Requested Country, the Indian Mission in that country also renders necessary help in pursuing the matter.
- However, the extradition of any person is an act of Sovereign.
- The concerned State may decide not to extradite the wanted person to another country even if the judicial authorities of that country have ruled in favor of extradition.

### **Follow up on the Extradition Request**

After the request is sent, there should be proper interaction with the Public Prosecutor of the case in the Requested State so that any assistance on facts or law, as required by him is made available. In important and sensitive cases, it would be worthwhile to appoint some legal consultant in the Requested State with the assistance/advice of the Indian Mission. This would be very helpful because the extradition proceedings are conducted under the domestic laws of the Requested State.

Once the extradition is granted, authorization from the Govt. of India should be obtained in the name of the officer, deputed for receiving the fugitive from the Requested State. Before proceeding to receive the fugitive, the authorized officer should ensure that the arrangements are made for the Air Ticket, the travel documents (Emergency Certificate), and Transit Visa, if required, for the journey of the fugitive to India.

This can be done with the assistance of the MEA/Indian Mission. While receiving the fugitive from the Requested State, a proper document should be prepared. Certified copies of the orders passed by the concerned Courts/Govt. of the Requested State, authorizing the extradition of the fugitive should also be collected, as the same would be required for production in the Court in India.

Proper security arrangements should be ensured during the journey period. Upon arrival in India, the fugitive should be put under formal arrest in the relevant case and produced in the concerned Court.

Further action may thereafter be taken for investigation/trial.

### **Difficulties in Extradition**

Criminal laws and procedures vary from country to country. Extradition in some countries is a political or diplomatic decision after the judicial decision to extradite. India does not have an extradition treaty with many countries. Most countries do not permit the extradition of their citizens to other countries. There can be refusal of request on pleas under peculiar circumstances. Extradition papers with translation are required by the Requested State within a short period (two to three months). There is no direct participation of the Requesting State in extradition proceedings. Extradition proceedings are not always successful.

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## Letters Rogatory(LR)

The Letters Rogatory (LR) in India are issued by the Criminal Courts to the Competent Authority of the Requested Country u/s 166A CrPC. And, the Letters Rogatory received in India from the foreign countries are processed u/s 166-B CrPC.

Section 166A (3) CrPC1973 stipulates that the statements recorded or the documents/things collected by the Competent Authority in the execution of the LR are deemed to be evidence collected during the course of an investigation under Chapter XII of the Cr. P. C. 1973.

Section 166B CrPC1973 similarly provides for the reciprocal arrangements for execution of LRs. received in India from any foreign country. Before sending LR to any foreign country, the copies of MOU and Treaty, etc. entered in between India and that Country should be collected.

The copies of corresponding Penal laws of the concerned foreign country should be collected to establish that the offences which are being investigated in India are offences in that Country also – dual criminality aspect. The details of Competent Authority in a foreign country should be ascertained either through our Mission abroad or through INTERPOL to whom the LRs are to be sent.

Other requirements such as affidavit of reciprocity in the concerned country are ascertained. The Indian Missions abroad do not have the power of investigation in a foreign country. Their help can, however, be taken for ascertaining the procedural information such as the treaty status, location and jurisdiction of courts or the details of Competent authorities, to whom the references are to be made for the collection of evidence through the Letters Rogatory, etc.

The services of Indian Missions abroad can also be taken for authentication of documents as provided u/s 189 CrPC. After ascertaining these facts, the permission of the Govt. of India, Ministry of Home Affairs should be obtained for moving an application in the Criminal Court for issuance of LR.

**The Ministry of Home Affairs, Government of India, has issued the following directions for dealing with the Letters Rogatory:**

**(a)- Letter No. 25016/52/2019-LC dated 04.12.2019:**

- The officers visiting abroad for investigation must obtain the prior permission of the concerned NCB of the foreign country through the NCB India.
- (b)- The L. Rs issued u/s 166A shall be sent to the Interpol wing of CBI for onward transmission to the concerned country through the diplomatic Channels and the evidence collected on receipt of L. Rs u/s 166B shall be forwarded to the Ministry of Home Affairs, Government of India for onward transmission to the concerned country through the diplomatic Channels.
- (c)- Letter No. 21/44/89-PD dated 17.8.1994
- The L. Rs. shall be issued after due consultation with the Central Government before moving the court.
- (d) MHA Letter No.25016/52/2019-LC dated 04.12.2019 – **Detailed Guidelines relating to the issuance of the Letters Rogatory.**

After obtaining clearance from the Ministry of Home Affairs, an application is made by the Investigating Agency to the Criminal Court in India with a request to issue the LR to the Competent Authority of the Requested Country for collection of evidence in that country.

The following documents are required to be enclosed with the application for issuance of the LR so that the requirements of the investigating agency is properly understood by the Court in India on the one hand and by the Competent Authority of the country, which is expected to execute the LR on the other:

**A self-contained note containing:**

- Brief facts and background of the case,
- Reasons and relevance of investigation in the concerned foreign country,

- Specific details of documents which are required to be collected in the foreign country,
- Witnesses who are to be examined in the foreign country along with a specific questionnaire for each of them.
- First Information Report with a copy duly translated in the language of the Requested Country,
- Charge Sheet, if filed, with a copy duly translated in the language of the Requested Country,
- Copies of documents duly marked with reference to the questionnaire for the concerned witnesses who are required to be referred to by the Competent Authority for collection of documents and/or examination of witnesses in the foreign country.
- Copies of MOU or Treaty, if any, executed in between the Requesting Country and the Requested Country.
- Authenticated copies of various sections of the Indian laws under which the investigations are being conducted in India or under which the Charge Sheet (s) have been filed in India.
- Copies of corresponding laws of the Requested Country with a view to cross-check the dual criminality aspect in the Requested Country before executing the L.R. by the Competent Authority in that country.
- Necessary undertakings from the Government of India like the assurance of reciprocity etc., if any, required by the Requested Country.
- Requirements of certification of the concerned documents along with the format, if any.

Note - Due care should be taken to ensure that the requests made in the LR are not of the type of a fishing inquiry because such requests are not entertained by the Competent Authority in the foreign country.

Separate application should be filed in the court for each Competent Authority keeping in view the territorial jurisdiction of the Competent Authority within which the concerned LR is required to be executed by them. The application for LR should specifically mention that India and the Requested Country are members of ICPO and the Constitution of ICPO provides for mutual assistance in criminal matters.

It should indicate that the requirements of the Requested Country have been fully complied with and the request for collection of evidence in the foreign country has been made in connection with the investigation/trial of a criminal case which is neither of a political nor military nor religious nor of racial character.

It should be mentioned in the application that as per the Laws of India, it is not necessary to give any notice to the accused before executing the LR. It should be mentioned that the oral or documentary evidence so collected in pursuance of the L.R. will be used only in the case mentioned in the request.

The requirement of translation of any document or statement of any witness etc. if required by the investigating agency should be mentioned in the application. It should be indicated in the application that in case the Competent Authority needed any clarification or assistance in the execution of the LR, the services of the Investigating Agency will always be available as and when required.

Upon submission of such application, if the Court decides to issue the LR, the court may be requested to pass a speaking order disclosing due application of mind by the court and the said speaking order of the Court should be enclosed with the Forwarding Letter issued by the Court to the Competent Authority of the foreign country.

The forwarding letter should mention all the requirements of Investigating Agency as mentioned in their application for issuance of LR and should enclose all the documents submitted by them with their application after authenticating them on each page. The letter should specifically indicate that the request for collection of evidence in the foreign country has been made in connection with the investigation/trial of a criminal case which is neither of a political nor military nor religious nor of racial character. It should also mention that as per the Laws of India, it is not necessary to give any notice to the accused before executing the LR and the evidence oral or documentary so collected in pursuance of the L.R. will be used only in the case mentioned in the L.R. In case the Competent Authority needed any clarification or assistance in the execution of the LR, the services of the Investigating Agency will always be available as and when required.

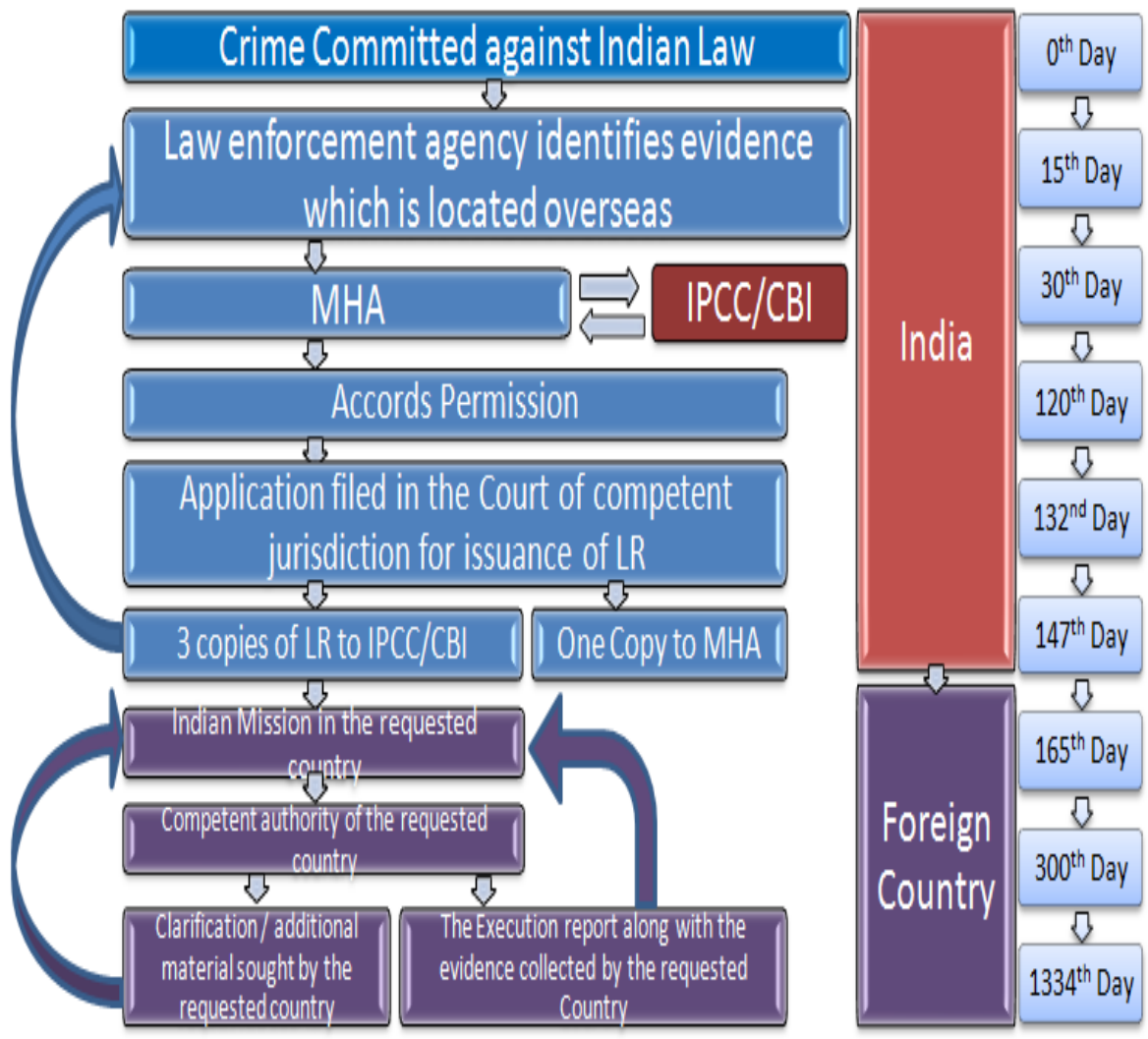
The **original LR issued by the Court along with its three legible copies** should thereafter be submitted to the local NCB for transmission to the competent authority in the foreign country through the MHA and the diplomatic channel for necessary action by the Competent Authority in the Requested country.

For the purposes of execution of the LR, if the competent authority of the Requested Country subsequently invites the officers of the investigating agency for assistance, it is advisable to send the team as early as possible after taking necessary clearance from the Central Government.

According to Section 166B CrPC and the notifications issued by MHA as mentioned above, the L Rs from the foreign countries are received by the Ministry of Home Affairs, Government of India which in turn forwards the same either to a Magistrate for recording the statements of witnesses or collection of documents/things or to any police officer for investigation according to the domestic laws of India.

The evidence so collected by the Magistrate/Police Officer in the execution of the LR U/S 166B CrPC is thereafter submitted to the MHA which in turn transmits the same to the requesting authority in the concerned foreign country for further necessary action by them.

**LR at glance**



**Letters rogatory and MLAT at a glance:**

Letters Rogatory	MLAT
Slow and cumbersome; multiple stages of the process involve diverse entities like Law Enforcement, judicial, Government, diplomatic, etc.	An MLAT is a much more effective means of Obtaining evidence swiftly.
The potential for misunderstanding between legal systems is high.	More clarity and certainty as the articles of the treaty are precise and specific pertinent to legal systems of parties.
The involvement of several civil, judicial, and diplomatic officials affects the confidentiality of the evidence proposed to be collected;	Confidentiality Clause is built into the treaty.
Executed solely as a matter of comity.No obligation to assist;	Based on a treaty that obligates each country to provide evidence and other forms of assistance needed in criminal cases.
Letter Rogatory can usually only be used during the Investigation and Trial stages of a criminal case. Restricted Scope.	Scope of MLATs to enable widest possible MLA intelligence and information collection.

**Causes of delay in processing of LR:**

- Involvement of Multifarious agencies from inception till final disposal.
- Guidelines issued by MHA are cumbersome.
- Time taken by MHA to accord approval, and by Court for the issue of LR.
- Time taken by requesting agencies to send LR to IPCC.
- Time taken by IPCC to send the LR.
- Time taken by Indian Missions abroad to submit the LR to concerned foreign authorities.

**Checklist for preparing documents to be attached with draft Request (MLA/LR) as per guidelines issued by MHA vide letter dated 4 December 2019:**

- Concurrence of Central Authority i.e., the Ministry of Home Affairs (MHA) for the issue of Letters Rogatory.
- The Letters Rogatory will be addressed to the Competent Judicial Authorities of the requested country.
- Copy of FIR containing Allegations, Names of accused, sections of laws (Extract) India, and the translated version of FIR in English or the language of requested country, if it is registered in Hindi/regional languages of India.
- The extracts of relevant sections 166 –A and 166-B of Cr.P.C. 1973, Section 78 of Indian Evidence Act 1872, and section of IPC incorporated in the FIR should be appended with LR.
- Details of investigation to be carried out in the requested country.
- Particulars of witnesses (complete name, address, telephone number if available) along with the questionnaire, etc., and description of documents/articles to be collected and procedure thereof must be mentioned in the LR in a separate Annexure.
- The declaration that the LR would be in compliance with the requirements of the Requested Country and that the case is not of a political, military, racial, or religious character.
- Declaration in the LR that as per Indian law it is not mandatory to issue the notice to the accused before examining him or issuing the LR.
- Declaration in the LR that evidence gathered in the instant case would not be used in any other case without the permission of the Competent Authority of the Requested State.
- Original Assurance of Reciprocity issued by Central Authority of India i.e., MHA will be appended with LR when there is no MLAT with the concerned country.
- To mention in the Letters Rogatory, whether the investigating officer or other officers (s) intend to visit the country concerned to assist the authority there.
- The documents etc. if enclosed with the Letters Rogatory should be clearly marked and referred to in the body of LR.

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## **Interpol – Administrative Structure**

**General Assembly** – It is the supreme governing body comprising of the delegates of the member countries. It meets once a year and takes all major decisions affecting the general policy of Interpol.

**Executive Committee** – comprises of the President, three Vice Presidents, and 9 members elected by the General Assembly.

**General Secretariat** – It is the permanent administrative and technical body headed by the Secretary-General. The technical and administrative personnel are deputed by the member countries. Every member country sends financial contributions annually to Interpol.

**National Central Bureaus (NCBs)** – It is staffed by the country's own police or government officials to work as a focal point for international cooperation. The liaison officers are nominated by all state police forces to keep a close liaison with the local NCB and to pursue the Interpol works pertaining to that state. The local NCB works as an interface between the Interpol Headquarters (IPSG) and other Interpol member countries and the national enforcement agencies of the concerned country. It operates as per the country's own laws. The NCB alone is recognized by IPSG and the member countries of Interpol as the channel of Interpol communications. It can, however, enter into direct correspondence with other non- NCB enforcement agencies also in foreign countries. The NCB India functions as a unit of CBI and the Director CBI is the ex-officio Head of this NCB.

It functions under the Ministry of Home Affairs (MHA), Govt. of India. It coordinates the execution of Police requests from abroad in India and Indian requests in foreign countries through the foreign NCBs. The Government of India has notified the NCB India as the channel for sending LR's abroad.

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## **Infrastructure of NCB, India**

### **Focal point for coordination between INTERPOL and ILOs:**

National Central Bureau (NCB) NEW DELHI functions as the focal point for Indian Law Enforcement Agencies (LEAs) and Foreign Law Enforcement Agencies for seeking and providing informal assistance on police to police cooperation basis. Operating 24/7 365, NCB, India is solely dedicated and equipped to assist the Indian Law enforcement agencies and their foreign counterparts in exchange for criminal investigative information. In carrying out these wide-ranging responsibilities, NCB-India utilizes the service of State/UT police agencies by creating a network of INTERPOL Liaison Officers (generally State CID/Crime Divisions), Central Police Organization, among others.

NCB, India is exclusively responsible for securing the publication of INTERPOL. Notices on behalf of Indian law enforcement agencies.

### **Processing the Requests for Publication of INTERPOL Notices:**

On receipt of the request for publication of INTERPOL notice(s) from Indian Law Enforcement Agencies, the Notices Desk of NCB, New Delhi (INTERPOL –IDIA) examines the request to ascertain if the same meets the criteria as required by INTERPOL. The IPN Desk in NCB, New Delhi scrutinizes the applications for any shortcoming and informs the concerned LEAs without any delay. The rectified applications are forwarded to INTERPOL for publication through I-24/7, I-Link System. After examination by INTERPOL, the Notices are published and are made available to all INTERPOL member countries. NCB, New Delhi conducts a periodic assessment of all the INTERPOL member countries. NCB, New Delhi conducts a periodic assessment of all the INTERPOL Notices and keeps a tab on the validity of the INTERPOL Notices.

NCB, New Delhi also assists the LEAs in the cancellation of all INTERPOL. Notices/ Diffusion. It is the responsibility of the concerned Indian Law Enforcement Agencies to immediately inform NCB, New Delhi (India) for cancellation, suspension, or withdrawal of the notice if the situation has so arisen.

### **Opening of LOCs in notices published by INTERPOL:**

The desks of NCB, New Delhi also open LOC in respect of all INTERPOL Notices published by IPSP on day to day basis. It also handles correspondence related to detention/arrest of LOC (open on the basis of INTERPOL Notice) subject at airport/ immigration points with concerned countries/ LEAs. It also deals with the issuance of Entry Ban LOC opened on the basis of INTERPOL-United Nation Council Special Notices and related correspondence. It maintains the data of all Red Notices subjects wanted by Indian authorities and provides fortnightly status to MHA. It also compiles the data of all LOCs, issued by various CBI Branches on the basis of monthly report of LOCs opened/deleted and submitted by the branches to IPCU.

### **Compiling details of LOCs issued by CBI Branches:**

Look-out circulars (LOCs) against the persons of interest in a criminal investigation can be issued by the CBI Branches as per MHA (Foreigners Division) guidelines for issuances of LOCs vide OM No. 25016/31/2010-Imm. Dated 27.10.2010 and updated addendums. LOCs may be got issued by the Head of Branch (not below the rank of SP) or the designated officer of INTERPOL (NCB, India) by making a direct reference to the Bureau of Immigration (BOI). Every branch shall submit a monthly basis consolidated report including NIL report on the status of their LOCs to the DD (IPCU for maintaining the records of LOCs opened as a database. The LOCs opened on the basis of the INTERPOL Notices will be looked after by the NCB, India in all respects.

### **Updating of INTERPOL databases:**

NCB, New Delhi also regularly updates the Stolen and Lost Travel Documents (SLTD) database of INTERPOL with data of Stolen/Lost/Revoked Indian Passports and liaises with MEA (CPV Division) and Chief Passport Officer for

obtaining the latest data. It also provides assistance to CBI Branches with regard to stolen/Lost/Revoked Indian/Foreign Passports unearthed during the investigation.

#### **Visit of Delegations and INTERPOL related Training Programmers:**

NCB, New Delhi also processes the documentation/ approvals related to visits of CBI officers for various International/INTERPOL. Capacity Building Programmes/ foreign training courses as well as visits relating to investigation/extradition etc.

#### **Regional Desks:**

NCB, New Delhi houses five Regional Desks namely, Asia and South Pacific; the Middle East and Africa; Americas; Europe Desk and IPSG Desk. These desks receive IGCS communications seeking assistance in criminal matters, identify check, arrest message, conviction details, driving license check, identification of finger prints, missing persons, deportation, drug trafficking, searches and registration of thefts of antiquities stolen from India, etc. from various NCBs; Foreign Police Liaison Officers and Indian Law Enforcement Agencies/authorities. The functions of the regional desks are as under:-

- i) Locating wanted subjects;
- ii) Getting vital leads/information for investigation;
- iii) Confirming the location of the subject for extradition/local prosecution;
- iv) Identify check/criminal records check;
- v) Verification of Passports/Driving license etc.;
- vi) Render assistance in enquiries regarding missing persons, death reports;
- vii) Coordination and sharing of information /intelligence in matters related to drug trafficking, human trafficking, and cybercrime;
- viii) Identification/Location of the stolen antiques and
- ix) Other information within the ambit of police to police cooperation.

#### **INTERPOL Worst of List:**

The NCB, New Delhi also shares the "Worst of List" on monthly basis to CBI, EO-II, New Delhi for blocking the websites hosting child pornographic content. This list is being used by the Department of Telecommunications (DoT) to block the websites hosting child pornography content in India.

#### **Extradition related assistance:**

- a) **Extradition from Abroad to India (Subject wanted by Indian LEAs located abroad):** As and when the subject wanted by Indian Law Enforcement Agency is located anywhere in the world on the basis of the Red Notice or through INTERPOL channels, the concerned LEAs are intimated about the location. They are requested to send Provisional arrest Request (PAR) extradition request directly through diplomatic channels of MEA. In those countries where the Extradition Treaty or their domestic law/procedure specifies that Provisional Arrest request (PAR) may be sent through INTERPOL channels, the PAR is sent through INTERPOL channels also.
- b) **Extradition from India to abroad (subject wanted by other countries located in India):** As and when subject wanted by other countries are located in India on the strength of INTERPOL Notices, NCB, India intimates the concerned NCB and request them to send the PAR/Extradition request through diplomatic channels i.e MEA.
- c) **Central Authority:** Ministry of External Affairs being the Central Authority for Extradition, decided on the extradition of the subject and setting up of the Extradition court. INTERPOL channels are used for exchanging crucial information during extradition proceedings. India is having bilateral Extradition treaties with 43 countries and arrangements/ MOUs with several others. Besides, while ratifying UNTOC, the Government of India informed the Secretary-General of UN that it shall apply the Convention as the legal basis for

cooperation on extradition with other States Parties to the Convention in pursuance of Article 16, paragraphs 5(a) of the Convention.

#### **Fugitive Investigation Support Unit:**

Extradition Desk in conjunction with IPN desk (both located in NCB, New Delhi) functions as Fugitive Investigation Support Unit, for locating fugitives wanted by Indian and Foreign Law Enforcement agencies. It assists the Indian and Foreign Law Enforcement agencies in appropriate drafting of Request for Provisional Arrest/ Request for Extradition and other relevant documents. It also transmits Request for PAR/Request for Extradition and other relevant documentation through INTERPOL Communication Channels. It also liaises with Indian and Foreign LEAs to follow up. It also processes Requests relating to local prosecution of fugitives, where extradition is barred on the basis of nationality.

#### **Local Prosecution:**

Ministry of Personnel, Public Grievances, and Pensions vide Notification no.245/41/2015-AVD.II dated 27<sup>th</sup> May 2015 has designated CBI as the Nodal Authority for initiating Local Prosecution and to obtain Sanction for Prosecution from MHA under section 188 of the Cr PC. MEA forwards the request received from the countries where the extradition of own nation is not done to NCB, New Delhi for local prosecution of the accused.

Cases pertaining to large-scale Banking Fraud are sent to HOZ/BSF Zone, CBI. Those pertaining to cheating, criminal misappropriation, criminal breach of trust, embezzlement of gold, cybercrime, and any other frauds involving economic offences are sent to HOZ/EO-I Zone, CBI. Cases pertaining to Murder, Rape, Kidnapping, etc. affecting the human body are sent to the HOZ/Special Crime Zone of CBI.

#### **INTERNATIONAL POLICE COOPERATION CELL (IPCC):**

International Police Cooperation Cell (IPCC) of CBI houses exclusive desks that deal with outgoing/incoming L.Rs and the Treaty-based requests for Mutual Legal Assistance.

The IPCC deals with the followings:-

- a) Assisting Indian Law Enforcement Agencies in appropriate drafting of L.Rs;
- b) Assistance in obtaining analogous/ applicable provisions of foreign law to determine dual criminality etc.;
- c) Receiving and forwarding Court issued LRs to Indian Mission abroad;
- d) Liaising with MHA, Indian Mission, and Foreign central Authority for the execution of Indian LRs;
- e) Organizing video conference with foreign central authorities for discussion/clarifications;
- f) Receiving and examining the Incoming LRs from MHA;
- g) Forwarding the incoming LRs either to CBI Branch or Indian LEAs concerned for executions;
- h) Assisting and liaising with Indian LEAs for expeditious execution of LRs;
- i) Maintaining data related to Outgoing/Incoming LRs/ Treaty-based requests;
- j) Providing inputs/suggestions/comments on draft bilateral/multilateral Mutual Legal Assistance Treaties and MOUs /agreements etc. in criminal matters;
- k) Preparing material for various meetings in MHA/MEA/DOPT with regard to International Cooperation;
- l) Facilitating/Coordinating visit of delegations to CBI Headquarters;
- m) After receiving the Execution reports of LRs/Treaty-based letters of requests, the same is forwarded to concerned CBI branches. The CBI branch is required to examine the report and promptly convey to IPCC whether any further assistance is required in the matter.

**Investigation Desk-** It attends to the investigation requests from abroad to India and from India to abroad. It processes Letters Rogatories, extradition requests, and the circulation of Interpol Notices of the following types:-

**Red Corner Notices against wanted persons:** To seek the location and arrest a person wanted by a judicial jurisdiction or an international tribunal with a view to his/her extradition. The legal basis for a Red Notice is an arrest warrant or court order issued by judicial authorities in a country. Many of INTERPOL's member countries consider a Red Notice to be a valid request for provisional arrest. Interpol is an official channel for transmitting requests for provisional arrest in a number of bilateral and multilateral extradition treaties, including the European Convention on Extradition, the Economic Community of West African States (ECOWAS) Convention on Extradition, and the United Nations Model Treaty on Extradition.

(The details required are: name, ails if any, address-official& permanent, telephone numbers, identification mark, photo, passport details, Identify cards, PAN card, etc.)

**Green Corner Notices:**To warn about the person's criminal activities if that person is considered to be a possible threat to public safety.

**Blue Corner Notices** -for seeking information on identification, criminal record, or location of a person.To locate, identify or obtain information on a person of interest in a criminal investigation.

**Black Corner Notices** -regarding unidentified dead bodies (could be of those persons also who might have been using false identities).

**Yellow Corner Notices**—To locate a missing person or to identify a person unable to identify himself/ herself.

**OrangeCorner Notices**—To warn of an event, a person, an object, or a process representing an imminent threat and danger to persons or property.

**Purple Corner Notice:** To provide information on modus of Operandi, procedures, objects, devices, or hiding places used by criminals.

**Modus Operandi** for the commission of offences that might be of interest to the other countries.

**Conference Desk**— It looks after the preparations for General Assembly, Regional Conferences, and the conferences on specific subjects. It prepares notes for briefing the Indian Delegations in such conferences. It deals with the Treaties like Extradition Treaties and the Mutual Legal Assistance Treaties etc. It also attends to the references received from the General Secretariat.

**Drugs and Counterfeit Currency Desk** – It deals with the drug seizures in India and abroad, arrest of drug traffickers, dissemination of weekly intelligence messages received from IPSP, collection of information on drug trafficking trends and Modus Operandi, foreign currency seizures in India and Indian currency seizures abroad and obtaining of expert opinion on foreign currencies, etc.

**General Enquiries Desk**- It deals with the routine enquiries regarding verification of antecedents, passports, criminal records, finger prints and driving licenses within India at the request of IPSP or any other NCB and in the other countries with the help of IPSP and other NCBs. It also deals with humanitarian services like the intimation of death to the next of kins etc.

**Receipt and dispatch desk** -It deals with the documentation of the incoming and outgoing correspondence of the local NCB.

**The contact details are as follows:**  
**The Assistant Director, IPCC**  
**06<sup>th</sup> floor, CBI/HQ, 5B, CGO Complex**  
**Lodhi Road, New Delhi-110003.**  
**Telefax -011-24364070, Telephone-011-24392170**  
[Email-adco@cbi.gov.in](mailto:Email-adco@cbi.gov.in)

## **Interpol References for collection of Evidence/making verifications**

Made by the investigating / enforcement agencies at the Police to Police or the enforcement agency to NCB level with the approval of an officer of the rank of Inspector General of Police / Joint Director of CBI.

For verification of addresses, passport details, antecedents of certain persons including a collection of documents of general nature and examination of private witnesses, etc. in the foreign country.

Such references should contain the following details for proper understanding of the requirements of the requesting agency by the local NCB on the one hand and by the NCB of the country which has to execute the said request on the other:-

### **A self-contained note containing;**

- the facts and background of the case, the reasons, and relevance of verifications required in the foreign country, specific details of verifications required in the foreign country, specific documents which are required to be collected in the foreign country.
- to the point questionnaire for each witness separately who are required to be examined in the foreign country.
- First Information Report with a copy duly translated in the language of the Requested Country,
- Charge Sheet, if filed, with a copy duly translated in the language of the Requested Country,
- Copies of documents that are required to be referred to by the NCB concerned for conducting verifications and/or for examination of witnesses in the foreign country.
- Requirement of certification or translation, if any, has to be specifically mentioned in the request and the format of certification has also to be enclosed with the reference for reference and use by the NCB concerned.
- Authenticated copies of various sections of law under which the investigations are being conducted or under which the Charge Sheet has been filed along with the copies of corresponding laws of the Requested Country with a view to verify the aspect of dual criminality in the Requested Country before executing the request by the NCB.
- Copies of MOU or Treaty, if any, executed in between the Requesting Country and the Requested Country.

**NOTE** - Care has to be taken that the Interpol reference should contain the specific and to the point requests only as requests of general nature or any fishing inquiry are not entertained by them.

- The forwarding letter of the Interpol Reference should mention a certificate from the competent authority that the request for verification/collection of evidence has been made in connection with the investigation/trial of a criminal case which is neither of a political nor military nor religious nor of racial character.
- It should be mentioned in the forwarding letter that India and the Requested Country are members of ICPO and the Constitution of ICPO provides for mutual assistance in criminal matters.
- It should also be mentioned in the forwarding letter that the services of investigating agency shall always be available to Interpol for any clarification or assistance if required for the purposes of execution of the request, as and when necessary.
- Separate Interpol references should be prepared for each country and forwarded to the local NCB in triplicate for sending the same to the NCB of the concerned country or the Interpol Headquarters as the case may be for its execution.
- If the NCB of the Requested Country or the Interpol Headquarters invites the officers of the investigating agency for assistance in the execution of Interpol references, it is advisable to send the team as early as possible after taking necessary clearance from the Central Government.
- The NCB of the Requested Country executes the Interpol references according to their own domestic laws and thereafter forwards the evidence collected by them to the NCB of the Requesting Country who in turn passes on the same to the investigating / enforcement agency concerned for further necessary action.

- The local NCB can also be requested to ascertain the names and designations of the Competent Authority in the Requested Country to whom the Letters Rogatory (LR) are required to be sent.
- They can also be requested to ascertain the requirements of the law in the Requested Country like the format for assurance of reciprocity etc., the language in which such requests are to be translated, the status of legal mutual assistance treaty, agreement or MOU, if any, with that country so that all such requirements are met in advance while issuing the LRs for execution in that country.

#### **Preventive Requests from the Heads of National Central Bureau (NCB)**

- Such requests are made by the Head of one NCB to the Head of another NCB with a view to take immediate steps to prevent the disappearance of the proceeds of crime reported to be available in the Requested Country.
- Necessary proof of availability of the proceeds of crime in the Requested Country is required to be made available to the Head of NCB of that country while making such a request.
- The forwarding letter should mention a certificate from the Head of the NCB that the said request has been made in connection with the investigation/trial of a criminal case which is neither of a political nor military nor religious nor of racial character.
- It should also be mentioned in the forwarding letter that India and the Requested Country are members of ICPO and the Constitution of ICPO provides for mutual assistance in criminal matters.
- Further, necessary action to seize/attach the said property or to collect evidence in the said regard has to be taken separately by sending LR etc. in due course on receipt of a response from the concerned NCB.

## **Investigating Officers' Abroad Visit**

**The Investigating Officer or any other officer of his team may be required to visit abroad to follow up the following processes:**

- Interpol References including deportation or extradition, or
- The LRs sent by the Court for collection of evidence, or
- The Preventive Requests sent by the Head of one National Central Bureau (NCB) to the Head of another NCB.

Please remember that the visit of such an officer/team is only to facilitate the execution of Interpol reference or LR as the case may be and not to investigate the case directly.

### **Obtain the following:**

- Interpol clearance/prior permission of the foreign country concerned before planning the visit of the officer/team to that country.

**The Interpol channel can be used for obtaining such permission by furnishing the following information's to them in advance:**

- Exact date and duration of the mission,
- Names, designations, and the addresses of the visiting officers and the languages they can speak,
- Purpose of visit: Brief facts of the case, the definition of the offences committed, the identity of the offenders including their Nationality, names, addresses, and Nationality of the witnesses to be examined and the documents /properties, etc. proposed to be seized during the said visit,
- Whether any accused/suspect (in custody or otherwise) would also be accompanying the visiting officer/team,
- Whether the officer/team would be carrying any such item like fire arms etc. for which any special permit would be required in the foreign country.
- Political Clearance from the Ministry of External Affairs, Government from India.
  
- Administrative clearance from the concerned Ministry of the Government of India or the State Government as the case may be.
- Valid Passport and Air Ticket.
- Valid VISA from the concerned foreign country.
- The final travel plan of the visiting officer/team must be intimated to the local NCB, NCB/ Interpol of the concerned country, and to our Missions abroad.

**The visiting officers/team should carry the following briefs to facilitate their assignment;**

### **Courtesy brief:**

- Visiting/Business Cards;
- Identity Card;
- Formal Presents/Gifts to be given to the persons/officers depending upon their utility;
- Sufficient funds to reciprocate, the courtesies extended by Interpol or any other officer abroad like dinner, etc. depending upon the circumstances and the assistance provided by them in getting the job done.

### **Case brief**

- Brief resuming of the case under investigation, FIR, Original Documents needed for confrontation to the witnesses/accused in a foreign country.
- Ingredients of the concerned Laws of India to match the respective laws of the visiting country – to assess the aspect of dual criminality.



- Memorandum of understanding between the concerned countries.
- Treaty.
- Copy of Interpol References/LR or letter from the Head of the NCB on the basis of which the request is to be executed.
- In the case of L.R. the detailed speaking order of the Court issuing LR.

#### **Investigation brief**

- To the point questionnaire in respect of each witness or suspect separately (no fishing inquiry/no ambiguous questions).
- The documents referred in the questionnaire are required to be confronted by the witness (es) / suspect (s) during their examination in the foreign country.
- Request for certification as per the Banker's Book Evidence Act, etc. if required to be specifically made.
- Request for translation of documents/ statements in the English language.
- Authentication of documents as per Section 189 of the Cr. P. C from the authorized officer of the Indian Embassy abroad.

#### **The assistance by a foreign country**

- Courtesy
- Unfulfilled Obligation
- Country's own concern as a prime consideration
- The visiting officer/team should, therefore, be able to assess the quantum of cooperation forthcoming in the country concerned and try to collect maximum evidence from there as far as possible by developing proper rapport with the officers executing their request.
- The visiting officers should therefore have full knowledge of the case – to change the requirements according to the circumstances developing in foreign countries.
- AND collect bare minimum clues/evidence which could be developed in India and investigated further to collect useful evidence to prove the charges against the persons responsible for the crime.
- The evidence so collected by the NCB of the requested country should be got forwarded by them to the NCB India and the same should be brought by the visiting officers and deposited in the office of NCB India for onward transfer to the Investigating Branch.

#### **Common Laws and Procedures for International Investigation**

- Interpol which by now has been able to organize itself into a 'global village' is fully conscious of the above impediments/limitations in International investigation of criminal matters.
- As a far-reaching step towards removing the said impediments, the 177 member Nations of Interpol met in their General Assembly in India in the year 1997 and passed a resolution to have the 'Common laws and procedures for International Investigations' within the framework of respective National Laws of the Member Countries.
- Even though the solution to the burning problem lies in the implementation of the said resolution only yet it is not so easy to achieve the same because it requires substantial amendments in the National Laws of all the member countries of the world.
- It is, therefore, advisable for the member countries of Interpol to go ahead with the process of strengthening their treaties, conventions, mutual agreements, and memorandum of understanding for the time being and to follow up their implementation faithfully for the mutual benefit of each other.

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## **A CASE STUDY IN RESPECT OF LETTER OF ROGATORY**

### ➤ **INTIMATION FROM BELGIUM:**

- Receipt of request from IP-Brussels for the arrest of Dr. Mahender Singh Dahiya in connection with the murder of his wife Namita in Brussels.
- Interpol Wing requested DGP, Haryana - as Dahiya belonged to Distt. Sonapat (Haryana) – Special Team formed for his arrest.
- Filing of Anticipatory Bail Application by Dahiya in the Court of Distt. & Sessions Judge in April 1983 – Application rejected.
- The decision to locate and apprehend Dr. Dahiya by CBI.

### ➤ **REGISTRATION OF CASE IN CBI & ARREST OF DAHIYA:**

- Registration of Case RC 2/83-SIU.II/SIC.I on 7<sup>th</sup> May 1983 u/s 302 and 201 IPC (Sec. 4 of IPC).
- The arrest of Dr. Dahiya on 09.05.83 at New Delhi.

### ➤ **INTIMATION TO BELGIUM:**

- Intimation was given to IP Brussels about the arrest of Dahiya.
- Extradition Treaty of 1901 – Notification u/s 3 of Extradition Act.
- Visit of Belgian Police Officers to India – Legal requirements explained.

### ➤ **REQUEST FOR EXTRADITION OF Dahiya TO BELGIUM:**

- Receipt of request for extradition by Govt. of India – Appointment of Mr. K.C. Lohiya, MM for inquiry u/s 5 of Extradition Act, 1962.
- Report of MM holding existence of prima-facie case for extradition – Challenge of the order of Delhi MM Court by Dahiya – Rejection of his Petition by Delhi High Court.

### ➤ **INVESTIGATION IN CBI CASE:**

- Belgium Govt. abandoned the request for extradition of Dahiya on 14.11.83. Lapse of a period of 90 days - Release of Dahiya on statutory bail
- A decision in CBI to complete investigation of RC 2/83.
- Reference made to IP Brussels and IP London for investigation as most of the evidence is available there.
- IP London agreed and asked for the visit of IO.

### ➤ **LR FOR BELGIUM:**

- IP Brussels agreed to the visit of IO but insisted on a Letter Rogatory issued by a Competent Court (with French Translation).
- No provisions for issue of LR in the Cr.P.C. in 1984.
- IP Brussels was explained about the Indian Legal System and asked whether they would accept LR issued by IGP, DSPE (Director, CBI), the Sr. most Police Officer, supervising investigation – IP Brussels agreed for execution of LR.
- IO visited Brussels and UK and collected oral as well as documentary and material evidence.

### ➤ **FACTS OF THE CASE:**

### ➤ **BACKGROUND OF Dahiya AND NAMITA :**

- Dr. Mahender Singh Dahiya passed MBBS from Punjab University in 1973 and took admission in AIIMS for MS (Orthopedics).
- He got registered with Punjab Medical Council

- Obtained Passport No. K-005420 dt. 18.09.1974 from RPO, Chandigarh.
- Jagdish Singh Lochab, an Indian Citizen shifted to London (UK) in 1962 with their family. He had three daughters Namita, Amita, and Sheela, and two sons Lalit and Manoj.
- Namita got employed as Accounts Trainee with BBC.
- She became British National in 1975.
- Mr. Lochab visited in 1978 and was introduced to Dr. Dahiya, who selected him for marriage with Namita.

➤ **MARRIAGE IN INDIA-VISIT OF DAHIYA TO UK:**

- Namita came to India and her marriage with Dr. Dahiya solemnized on 05.09.1978.
- The same night she left for London. Dahiya stayed back in India.
- After finishing studies Dahiya reached London on 27.02.1979 and started living with the Lochab family at 22, Friarway, Acton, London.
- Dahiya got registered as Post Graduate student at the Royal National Institute of Orthopedics, London.
- Lochab purchased a house in the joint name of Namita and Dahiya and opened a Jt. Account with Midland Bank Ltd.
- Dahiya did not like the free mixing of Namita with men. He created a scene after the birthday party of Sheela on 07.04.79.
- Namita reacted and asked for calling off their marriage which was to be registered soon, through a letter dt.10.04.79.
- Dahiya apologized through a letter dt. 11.04.79.

➤ **MARRIAGE IN UK AND HONEYMOON TOUR:**

- Their marriage registered on 26.05.79 which was followed by a Reception that went through the whole night and in the morning of 27.05.79, the couple left for a honeymoon tour of five countries in Europe. Tour organized by Cosmos Tours.
- In the evening of 27.05.79, they reached Brussels along with other tourists in the group and stayed at Room No.415 of Hotel Arenberg, Brussels.
- The group of tourists went sightseeing and returned to the hotel at about 11.00 P.M.
- The tour guide Mr. Richard Cushnie asked the tourists to assemble in the hotel hall at 7.30 AM on 28.05.79 for their departure to the next station.
- On 28.05.79, all the tourists gathered except Dahiya and Namita
- The guide Mr. Richard Cushnie went to their room. Dahiya came out of the room and told them they decided to stay back.
- Dahiya did not allow the Pantry Clerk to check the refrigerator, kept in his room.
- When the maid servant went to the room for cleaning, she found a bathroom full of water, five hand towels on the floor, and a strong smell of soap, the curtains drawn, the room dark and Dahiya perspiring.
- Dahiya extended his stay in the hotel for one day by filling out the Hotel form.

➤ **MURDER OF NAMITA:**

- After an altercation, Dahiya had killed Namita by strangulation on the night of 27<sup>th</sup>/28<sup>th</sup> May, 1979, after they had returned from the sightseeing, dismembered her body parts & wrapped them in her clothing.
- The dismembering of the body parts was done in the bathroom.
- On 28.05.79, he took out the body parts and threw them in a dustbin kept in the corner of the street, and threw the torso in Vergote Canal.

➤ **DISCOVERY OF BODY PARTS:**

- On the morning of 29.05.79, a rag-picker found body parts of Namita in the dustbin. He called Police.
- Police searched the container and found mutilated human body parts. The hair on the head was shaven, the face mutilated and fingers severed.
- Dr. Dahiya immediately checked out of the hotel and went to London after staying for the night at Dover.
- On 30.05.79, he went to Midland Bank and withdrew 200 Pounds from the Jt. Account and went to the house of his in-laws to fetch his belongings as no one was expected to be at home at that time.
- Lalit and Manoj were in the house on Ground Floor due to a local holiday in their school. They found Dahiya packing hurriedly and a cab standing out. They called parents.
- Dahiya told his in-laws that Namita had abandoned him in Brussels.

➤ **ESCAPE OF DAHIYA:**

- Jagdish Lochab took him to Police Station where a missing person report was lodged.
- While returning from Police Station Dahiya jumped into a running bus and escaped.
- He stayed for the night with his friend at YMCA and left for Stuttgart (Germany) and on 06.06.79 reached Delhi.
- By that time, the news about his involvement in the case was disclosed and therefore he went underground and stayed in Bilaspur in M.P. and Lalitpur in U.P. till April, 1983.
- He stayed there in assumed names.
- In April, 1983 he filed the Anticipatory Bail Application.

➤ **POLICE ACTION:**

- The London Police made efforts to trace Namita but without results.
- The Police in Brussels attempted to fix the identity of the body parts recovered in the dustbin on 29.05.79 but could not succeed.
- A Press Reporter from London came to Brussels and learned about the recovery of body parts of a female. He informed the Police, who got in touch with London Police.
- The London Police informed Lochab, who arrived in Brussels with his daughter Amita.
- The body parts had already been disposed of after Post Mortem Examination.

➤ **IDENTIFICATION OF BODY:**

- Lochab and Amita identified the clothes and shoes of Namita.
- Anomalies in her teeth, smallpox vaccination marks on her arm, healed fracture in the wrist, and marks on heels which were found during her postmortem examination helped in fixing identity.

➤ **FORENSIC EXAMINATION:**

- Blood stains, lifted from the bathroom of the hotel room, and suitcases were found to be that of Namita by the Forensic Experts.
- The doctors also opined that the body parts were of an Asian Girl of about 23 years of age and that the body parts were cut by a person well versed with human anatomy or a Medical Professional.
- The doctors opined that the torso recovered on 02.08.79 and the body parts recovered earlier were of the same female.
- The doctors preserved the palm prints of Namita, which were tallied with the palm prints lifted from her notebooks by the fingerprint experts of Scotland Yard.

➤ **SANCTION FOR PROSECUTION & FILING OF CHARGE-SHEET:**

- On completion of the investigation, Sanction for Prosecution obtained u/s 188 Cr.PC from Central Govt.
- Charge-sheet filed in the Court of MM, New Delhi on 30.7.85.
- Charges framed and witnesses, available in India examined.
- 36 Witnesses belonged to Brussels and 27 to the UK.

- **DECISION TO EXAMINE PWs ON COMMISSION:**
- Provisions of Sec. 284 and 285 (3) of Cr.P.C. invoked – Govt. of India decided to examine foreign witnesses on commission.
- Arrangements between UK and India existed for examination of witnesses on commission – Notification of 1955 – No arrangements existed between the Government of India – The government of Belgium.
- Govt. of Belgium agreed to an Ad-hoc arrangement in this case.
  
- **APPLICATION IN COURT FOR COMMISSION:**
- Application filed for the issue of commission – Kept pending for about 4 years – Transfer of application to the Court of another Court of ASJ – Issue of commission at the end of 1989.
- Dahiya challenged the issue of commission in Delhi High Court – Petition dismissed – Dahiya filed SLP in the Supreme Court against the order of High Court - dismissed.
  
- **EXAMINATION OF PWs on COMMISSION:**
- The government of Belgium and the U.K requested for examination of witnesses on commission.
- 28 Witnesses examined in Brussels in June 1991 and 23 examined in the UK in 1993 –Duration – only one week at each place.
- Three unavailable witnesses were later examined in Belgium on Interrogatories (Sec. 287 Cr.P.C.).
- The examination included Cross-examination by Defence Counsel.
- Defence Counsel and accused also went abroad (Sec. 287 Cr.P.C.).
  
- **CONVICTION OF ACCUSED:**
- Accused convicted by ASJ on 27.02.99 for the offences u/s 302 and 201 IPC.
- Awarded Life Imprisonment.
- In Dec. 2002, High Court acquitted Dahiya – Benefit of Doubt.
- Appeal filed against the order of High Court in the Hon'ble Supreme Court – Appeal yet to be heard.
  
- **GENERAL LEGAL PROVISIONS:**
- Section 4 of IPC.
- The provisions of the code shall extend to any citizen outside India also. The act committed should constitute an offence in India.
- Section 188 Cr.P.C.
- When a person, who is a citizen of India, commits offence outside India, he can be tried in India at any place at which he may be found, after obtaining the sanction of the Central Govt.
- Section 285 (3) Cr.P.C.
- A witness outside India can be examined during any inquiry or trial on commission provided:
- Arrangements have been made by the Central Govt. with the Govt. of the foreign country.
- The commission shall be issued in such form and directed to such officer or Court as may be notified by the Central Government.

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**A TRIAL COURT JUDGEMENT IN RESPECT OF LETTERS OF ROGATORY.**

**Delhi District Court**

**State (Cbi) vs Unknown on 27 January, 2017**

**IN THE COURT OF SH. GURDEEP SINGH, SPECIAL JUDGE (PC ACT) CBI-05, NEW DELHI DISTRICT,  
PATIALA HOUSE COURTS, NEW DELHI.**

**Closure Report No.: 04/16**

**RC No.: ACI 2006 A 0004**

**P.S.: CBI/AC-I/New Delhi.**

**U/s: 120-B IPC, and S. 9&13 (2) r/w 13 (1)(d) PC Act**

**CNR No.: DLND01-000880-2014**

**TITLE:**

**1.State (CBI)**

**VERSUS**

1. Suresh Nanda s/o Retd. Admiral S. M. Nanda R/o: House No. 4, Prithvi Raj Road New Delhi.
2. Smt. Jaya LaxmiJaitely D/o Late Shri K.K. Chettur R/o C-30, Sujan Singh Park New Delhi.
3. Rakesh Kumar Jain s/o Sh. J. R. Jain The then Treasurer, Samata Party R/o 26, Friends Colony (West) New Delhi
4. Admiral (Retd.) Sushil Kumar s/o Late Denial GunamaniIssacs the then Chief of Naval Staff R/o E-3. JalvayuVihar, Sector-21 Noida (U.P.).
5. George Fernandes S/o Late Shri John Fernandes the then Defence Minister, Govt. of India.
6. Unknown official of M/s Israel Aircraft Industries Ltd. (IAI), Israel Ben Gurion International Airport, 70100, Israel.

**Date of Institution: 24.12.2013 Arguments concluded on: 26.12.2016. Date of pronouncement: 27.01.2017 ORDER ON CLOSURE REPORT**

1. Vide this order I shall be disposed of the present closure report filed by CBI with respect to FIR RC ACI 2006 A 0004 for the offences punishable under [Section 9](#) and [13\(2\)](#) read with [S. 13\(1\)\(d\)](#) Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act') and under [S. 120-B](#) Indian Penal Code, (hereinafter referred to as 'IPC') registered against A-1 Suresh Nanda, a private person and a middleman; A-2 Smt. Jaya LaxmiJaitely, the then President, Samata Party; A-3 Rakesh Kumar Jain, the then Treasurer, Samata Party; A-4 Admiral (Retd.) Sushil Kumar, the then Chief of Naval Staff (CNS); A-5 George Fernandes, the then Defence Minister, Govt. of India and unknown officials of M/s Israel Aircraft Industries Ltd. (hereinafter referred to as IAI), Israel.

2. The relevant facts for the consideration of this closure report are that it was alleged in the FIR that the Ministry of Defence placed a supply order for procurement of seven Barak Anti Missile Defence Systems (in short referred to as "AMD" hereinafter) and 200 missiles for a total cost of Rs. 268.63 million USD on 23.10.2000 for induction in Indian Navy to M/s IAI, Israel & its sister concern M/s RAFAEL, Israel. It is alleged that Shri Suresh Nanda paid an illegal gratification of Rs.1 crore to Mrs. Jaya Jaitley through Sh. R K Jain for exercising a personal influence on the then Defence Minister Shri George Fernandes to finalize the deal. Shri George Fernandes the then Defence Minister and Sh. Sushil Kumar, the then Chief of Naval Staff had shown undue official favour to M/s IAI, Israel & M/s RAFAEL, Israel in finalising the Barak deal.

3. It is mentioned in the closure report that the investigation revealed that Naval Headquarter and DRDO was taking up the study of Barak Missile Systems with the representative of M/s IAI, Israel since 1992. The Barak Missile system consists of (a) Automatic Missile Detection Radar (AMDR), (b) Fire Control Radar (FCR), (c) Fire Control System (FCS), (d) Vertical Launch Units (VLU), and (e) Cannisterised Missile (CM). Barak Anti Missile Defence System provided security to Navy warships against any missiles attack. Its Automatic Missile Detection Radar (AMDR) detected missiles of enemies and destroyed them en route by firing a canisterised missile installed in the warship. It also provided protection to warships against any internal and external fire.

4. To witness the live firing of Barak System and Missile and to analyse its effectiveness, an Indian team visited Israel from 13.12.1995 to 19.12.1995 and conducted a trial of Barak Missile with the help of a live demonstration given by the Israeli Navy. The head of this team was Sh. Samir Chakravorty, the then Capt. INS Dronacharya. Sh. A. K. Kapoor, Manager Trishul Project from DRDO, and four other officials of the Navy were also members of the team. The purpose of the visit was to witness the firing by the Israeli Navy and analyze its effectiveness. As per this trial report submitted by Capt. Samir Chakravorty, during the trial of the Barak Missile System, it was found to be the best AMD System available against sea skimmers the world over in the year 1995, and there was no new system available as compared to Barak AMD system in the market. In his report, he recommended that the Indian Navy considered immediate induction of the Barak-I as an AMD system on its frontline ships. It also finds mention in the charge-sheet that during the investigation of this case, the officer of Navy posted in DSR and related to the acquisition, informed that the Barak System was best available to the Indian Navy at that time and Navy has purchased it further after the contract of 2000. Sh. A. K. Kapoor, Manager Trishul Project from DRDO did not raise any question about the trial conducted in Israel

before 24.08.2000 and it was for the first time after five years of trial when Sh. A.K. Kapoor raised the objection that the Israeli authorities did not disclose the information required by him regarding the Barak Anti Missile Defence System and that the visit of the team to Israel was just for familiarization. The claim of Sh. A.K. Kapoor is contrary to trial directives of the Navy. He was a member of Price Negotiation Committee (PNC) and he could have asked for any information during that time but there is nothing on record that during PNC, the information sought from the Israeli delegation was not furnished to him. The basic purpose of holding PNC is only to fix the price and nothing else, however, while negotiating, the technical details of equipment to be purchased can be sought to arrive at a judgment whether the price of that equipment is compatible with its technicality. The order dated 10.03.2000 vide which the PNC was constituted is quite clear that the duty of the PNC was only to fix the price. According to Shri S. E. David, the other member of the team, IAI Israel had provided the technical details sought about Barak-I AMD system and AMDR, a fact which is also confirmed from the concerned record.

5. In a meeting on 02.06.1999, being a caretaker government, George Fernandes, the then Raksha Mantri (RM) stated that it was in his mind to have Barak Systems because it was against some background of what Pakistan had and what our own forces needed.

6. As per note dated 04.03.2000 of Sh. Subir Dutta, the then Addl. Secretary, Department of Defence, in a meeting on 03.03.2000, RM had taken up the review of procurement cases of defence services and the Barak procurement was specifically listed as requiring very urgent processing.

7. The proposal to appoint VADM Arun Prakash as Head of PNC, was approved by Sh. George Fernandes on 07.03.2000. After negotiation in seven meetings starting from 31.05.2000 to 25.07.2000 held separately with M/s Rafael, the price of 200 missiles was firmed up to be USD 69.13 million, whereas the price of 7 Barak AMD systems and accessories as well as test equipment, etc. was USD 199.5 million. Thus, the total procurement cost was USD 268.63 million. Sh. A. K. Kapoor was also a member of PNC as a DRDO representative and there is nothing on record that he or any other member of PNC did not agree or was not satisfied with the final price.

8. Investigation has revealed that laid down procedure in DPP, 1992 could not be followed in entirety due to the reason that the negotiation was from a single vendor and no comparative bid was available and comparison of prices with other contemporary systems could not be done. At that time, PNC had sought prices of some other systems through attaches abroad so as to assess and make an approximation of Barak price to take help in fixing the prices, but none of such countries responded in absence of proper RFP. Thereafter, PNC recommended the procurement of Barak system at the above price. The administrative approval for procurement was given by Sh. George Fernandes on 23.09.2000 on the recommendation of Shri A.P. Sharma, Jt. Secretary and Sh. P. R. Subramanian, Financial Advisor. The deviations from DPP were considered not relevant because all procurement action had already been taken by that time and the selection of Barak System was done by Naval Headquarter after examining and evaluation of contemporary AMD Systems and Barak was found to be the only system meeting Navy's requirement. All the above procedures were required to be followed when the process of procurement was initiated. As per DPP 1992, the



Defence Minister is authorized to grant approval of the deviations from the prescribed procurement procedure in certain acquisition cases, where it may become necessary, for given reasons, to resort to a specified deviation from the prescribed procedure, when such deviations were proposed by the technical committee/expert committee/price negotiation committee, in the public interest. It also required endorsement from FA(DS) and the Administrative Secretary, when the amount of involvement is more than Rs. 20 crores. There is no specific method as to how the negotiation will be done; however, there is provision to take the price of equipment similar/comparable to the item to be purchased. Although, PNC carried out this exercise and made some approximations by taking the price of Kasthan and the Trishul with the help of DRDO and BEL, but it was not a foolproof and proper process, because first of all the Navy and DRDO did not have much knowledge about the Barak system, and secondly, Barak was a propriety item; and no other equipment was suitable and comparable to this System. The final contracts with M/s IAI Israel and RAFAEL were executed by MoD on 23.10.2000.

9. Investigation disclosed that during the year 2000, representatives of Tehelka.com carried out a sting operation, in which they video recorded many politicians and bureaucrats, including Shri R K Jain, the then Treasurer Samata Party. Tape No. 80, of these tapes, carries a conversation of Shri R K Jain with the representatives of Tehelka.com, during which he discloses that Sh. Suresh Nanda paid an illegal gratification of Rs.1 crore to Smt. Jaya Jaitley through him for Barak deal, to cause personal influence on Sh. George Fernandes, the then RM (Raksha Mantri). When this amount was handed over to Smt. Jaya Jaitley by him, he had told her to accept the amount only when she felt that they could do something for the party (M/s IAI & M/s Rafael). At this, she kept the amount and asked for two days to revert. After two days, she told Sh. R. K. Jain that she had spoken to Sh. George Fernandes in this regard, who has assured that he will make everything fine and the concerned file was called and he wrote on it that Barak would be installed on INS Viraat, the main ship of Indian Navy because Pakistan had already acquired surface to surface missile. Sh. R K Jain is further heard stating that the Scientific Advisor to Raksha Mantri had written on the file that they were developing indigenous Trishul missile and it should be installed on our Naval ships and that there is no point of buying/importing Barak system and missiles.

10. Sh. Jain is further heard stating that Sh. George Fernandes told him that he had overruled the comments of the Scientific Advisor and passed an order to purchase one Barak for INS Viraat. As they had 7 Naval ships which were real fighters, he instructed Sh. Jain told the company that they should try and push from a lower level in order to buy 07 missiles, explaining that they couldn't do with one. Then he (George) shall give them the permission to purchase the rest six. The same things happened after six months, the file went to Sh. George Fernandes again because of Sh. Nanda managed to get a letter from the company M/s IAI, Israel issued in the name of Mr. George Fernandes for this purpose.

11. This Tehelka tape was got examined by Andhra Pradesh Forensic Science Laboratory and it is unedited and genuine. However, it is worthwhile to mention that Tehelka tapes were recorded during 2000-2001 and Barak AMD system was approved by Sh. George Fernandes on 23-09-2000. Sh. R. K. Jain's knowledge about this deal creates

suspicion, as some of the disclosures of Shri R K Jain match with real events that occurred in the procurement of Barak AMD system by the Indian Navy. For example, on 06.10.1997, CCS approved modernization of INS Viraat and procurement of 1 Barak AMD system. On 02.11.1998, Mr. M. Keret, President of M/s IAI, Israel wrote a letter to Sh. George Fernandes, the then RM, Govt. of India for his personal intervention for procurement of Barak AMD system. At the initial stage in 1997, only one Barak AMD System was to be purchased for fortifying INS Viraat, but in the end, on 23.10.2000, the contract was signed for procurement of 07 Barak AMD at a total cost of 199.50 million USD from M/s IAI, Israel and 200 missiles at a total cost of 69.13 million USD.

12. It is also mentioned in the chargesheet that Sh. R.K. Jain has, however, denied the disclosures made by him in Tehelka tapes. He has accepted that he arranged only a meeting between Smt. Jaya Jaitely and Sh. Suresh Nanda, but denies the transaction of bribes between Sh. Suresh Nanda and Smt. Jaya Jaitely. Similarly, all the accused persons, viz. Sh. Suresh Nanda, Smt. Jaya Jaitely and Sh. George Fernandes has also denied any transaction of bribe amount. Analysis of mobile call details does not bring out any connection of Sh. Suresh Nanda with either Smt. Jaya Jaitely or Sh. George Fernandes. Moreover, the amount of Rs. 1 Crore being referred in the Tapes could not be identified/traced/recovered during the course of the investigation.

13. Mobile call analysis shows that 4 telephone calls have been exchanged between Sh. Suresh Nanda and Sh. R.K. Jain during the material period of 1998-1999 and reflects their acquaintance with each other. Sh. Suresh Nanda was using mobile no. 9810035001 and Sh. R.K. Jain was using mobile No. 9810018536 and 9810016177. ShriSobhan Singh (since expired), driver of R K Jain confirmed that he took Sh. R. K. Jain to the residence of Sh. Suresh Nanda 5-6 times during the relevant period. Mobile call analysis further revealed that about 50 calls were exchanged by Sh. Suresh Nanda with Mr. Abraham Bahar and Mr. Dayan, the two representatives of M/s IAI, India, reflecting the connection between Sh. Suresh Nanda and representatives of M/s IAI, Israel. Mr. Abraham Bahar and Mr. Haim Dayan the officials of M/s IAI, Israel in India during the years 1998 to 2001 were using mobile No. 9810030422 and 9810033733 respectively, and Sh. Suresh Nanda was using mobile no. 9810035001. Sh. Suresh Nanda has clarified that these officials of the Israeli Consular and Security Incharge contacted him for exploring the possibility of a safe exit from their Embassy if they were attacked by terrorists through their house. Israeli Embassy was situated nearby his house at house no.4, Prithviraj Road, New Delhi. He has also clarified that these officials met him at some party. They were interested to have meetings with the President of their company Mr. M. Keret with Sh. George Fernandes, the then RM pursued a number of their defence projects, including Barak AMD system pending with the Ministry of Defence. Mr. Abraham Bahar and Mr. Haim Dayan could not be examined during the investigation, being Israeli nationals.

14. Investigation has also revealed that as many as 27 (11 outgoing and 16 incoming) calls were exchanged between the mobile No. 9810030422 of M/s IAI, Liaison office in India, and Mobile No. 9810053161 of M/s Crown Corporation Pvt. Ltd., a company of Sh. Suresh Nanda during April, May, June & August, 1999. M/s Crown Corporation, however, did not furnish the name of the user of Mobile No. 9811052161 and informed that since most of the old employees

have left the company, therefore, it is not possible to pinpoint which officer of the company was using this mobile during the said period. Sh. Murari Acharya and Arvinder Singh Sahni, both employees of M/s IAI in India during 1998-2001 were examined, but they have denied having seen Sh. Suresh Nanda visiting liaison office of M/s IAI at New Delhi or any Director of their company to Sh. Suresh Nanda. Sh. Shiv Kumar who was the permanent driver of Sh. Suresh Nanda has denied having taken Suresh Nanda to the residence of George Fernandes, R. K. Jain, Jaya Jaitley, or any official of MoD, Navy, IAI, Rafael in New Delhi, or elsewhere.

15. Sh. M V Rao, a close associate of Sh. Suresh Nanda, who was arrested by Delhi Police with documents relating to different defence deals, including Barak Missile, has stated that Sh. Arun Saigal, an Ex-Navy Officer and a relative of Sh. Suresh Nanda had told him that Sh. Suresh Nanda was an agent of M/s IAI, Israel from 1998-2001 for its defence deals in India, and an agreement to this effect was also executed by them. However, due to some disputes, this agreement was discontinued after 2000-2001, and Sh. Vipin Khanna was appointed as its agent in his place.

16. Investigation disclosed that letter dated 02.11.1998 written by Sh. M. Keret, the then President of M/s IAI, Israel was directly received by hand by Sh. George Fernandes. President of M/s IAI requested the then RM for his intervention for Barak procurement, since PNC was pending to be held for the last two years. Sh. Rajiv Gauba, the then Personal Secretary to RM had stated that this letter was given to him by Sh. George Fernandes who sought the status of Barak procurement. Thereafter, he wrote a letter dated 05.11.1998 to MoD, seeking the status of Barak procurement. However, the investigation revealed that no immediate action was taken on this letter and many events took place before Raksha Mantri (RM) granted administrative approval to the procurement of Barak AMD system on 23.09.2000.

17. Sh. Vipin B. Shah, a Chartered Accountant during the investigation confirmed that foreign direct investment of about Rs. 400 crore was remitted to India by M/s Infotech Services Ltd., Channel Island Jersey, M/s Universal Business Solution, Mauritius and M/s Palm Technologies, Mauritius for the purchase of Hotel Claridges, New Delhi; Hotel Sea Rock, Mumbai, and land for Special Economic Zone, Near Mumbai by Sh. Suresh Nanda, but he denied knowing the source of these remittances. The investigation also revealed that Mr. Suresh Nanda has owned up/interest/investment in a number of companies abroad, namely M/s Universal Business Solution Ltd. and Palm Technologies Ltd., all at 210, St. James Court, RU St. Denis, Port Louis, Mauritius. Therefore, suspecting that such remittances may include the commission paid in Barak deal by M/s IAI, Israel to Suresh Nanda, Letters Rogatory (LR) were got issued to Israel, Mauritius, the U.K., UAE, and Germany.

**18. A comprehensive LR request was sent to Israel on 15.01.2009.**

*After much persuasion, a three-page communication was received from Israel on 16.03.2010. They did not furnish any document/information. They only clarified that due to the time factor, it was not possible on their part to provide information of the events that occurred 10 years ago, and Israeli Authorities usually destroyed their record after 7 years. They only stated that no commission, gift, or reward had been paid against the deals in question. After receipt of this reply, the matter was again taken up with the concerned authorities in Israel to execute the LR in a proper,*

comprehensive, and point-wise manner. This request has, however, been replied vide reply dated 15.03.2012 from Mr. Gal Levertov, Director, Department of International Affairs, Office of the State Attorney, Ministry of Justice, the State of Israel stating that the required documents are voluminous and sensitive and concerned with commercial secrets, national security and sovereignty and defence matters of State of Israel. It has been stated that the Directorate of Security, Israel obtained the certification from both IAI and RAFAEL Armament that no gifts, rewards, a commission of fees were paid in violation of criminal laws with respect to the transaction at issue in the Letter of Rogatory.

19. Letter Rogatory was got issued to Mauritius on 19.07.2007 and a supplementary LR request was sent on 03.11.2009. This LR was got issued to establish a money trail that passed on to the accounts of main accused Sh. Suresh Nanda, Sh. Vipin Khanna and Sh. Aditya Khanna and their various companies and business establishments at Mauritius, from the two companies of Israel M/s IAI, Israel and M/s RAFAEL, Israel. The first LR Execution Report was received from Mauritius on 27.05.2011 and the second execution report was received on 20.01.2012. Most parts of LR have been completed by Mauritius Authorities. However, the execution report does not prove that any remittance was received by companies of accused Sh. Suresh Nanda or Sh. Vipin Khanna or Sh. Aditya Khanna from Israel or had any link with M/s IAI, Israel, or Mr. Rafael, Israel.

**20. Letter Rogatory to Germany was issued on 19th July, 2007.**

Execution Report of LR was received from Germany in December, 2010. No document received establishes any kind of agreement of M/s MTU with aforesaid companies of Sh. Suresh Nanda. There is no evidence that shows that two companies of Israel viz. M/s IAI, Israel, and M/s Rafael, Israel remitted any money to M/s MTU, Germany. Most of the invoices and details of remittance relevant to the period of alleged offence were not traceable as per the execution report.

**21. Letter Rogatory was issued to United Arab Emirates on 19th July, 2007**, mainly to ascertain, whether Sh. Suresh Nanda received any commission from M/s IAI, Israel, and M/s Rafael, Israel through his bank accounts and account of his companies located in UAE. The Execution report was received from UAE in August, 2008. The UAE Authorities have informed that no bank in UAE or any company stationed at UAE is allowed to have any link or dealing with Israel, meaning thereby that companies of Sh. Suresh Nanda at UAE didn't have any link with M/s IAI, Israel, and M/s Rafael, Israel, or their subsidiaries and no remittance has been credited in the account of Sh. Suresh Nanda from any Israeli company.

**22. Letter Rogatory was issued to the United Kingdom on 19.07.2007**, However, U K Central Authorities have not executed LR request. Moreover, with the crucial reply now received from Israel, denying any commission paid in the Barak deal, the result of execution of LR by UK Authorities will have no bearing on the instant case.

**23. It is further stated that allegations are not substantiated against the accused persons and therefore, it is prayed that the closure report may please be accepted.**

24. I have heard the submissions of Ld. PP for CBI and Investigating Officer and have gone through the record.

25. I have perused reports upon Letter Rogatory of Mauritius, UAE, UK, Germany, and Israel, which were got issued to establish the money trail that passed on to the accounts of main accused Sh. Suresh Nanda, Sh. Vipin Khanna and Sh. Aditya Khanna and their various companies and business establishments at these countries from the two companies of Israel M/s IAI, Israel and M/s RAFAEL, Israel. As per report on LR of Mauritius, in the Affidavit of Barclays Bank PLC (Mauritius Branch), it is very categorically mentioned that there is 'NIL' inward remittance received from M/s IAI and M/s Rafael, Israel. Further, as per statements in respect of details of debits and credit above USD 5000, there is no transaction/ debits/ credit received from M/s IAI Israel and M/s Rafael, Israel. Similarly, no link could be established between accused Suresh Nanda and his companies and M/s IAI Israel and M/s Rafael Israel, Israel from other countries such as the United Kingdom, Israel, Germany, and UnitedArab of Emirates that accused Suresh Nanda and his any of the companies received commission/ fee from M/s IAI Israel and M/s Rafael Israel, Israel. Therefore, I do not find any reason to disagree with the conclusion arrived at by CBI.

26. **Therefore, after going through the closure report, statement of witnesses, and documents placed before me, I do not find any reason to differ with the conclusion of the Investigating Officer. Therefore, I am satisfied with the conclusion arrived at by CBI.** Accordingly, the **closure report is accepted**. The documents seized from the concerned department during the investigation are returned.

27. Original documents filed on record are returned to the IO so that the same may be handed over to the parties/ quarters from whose possession the same had been recovered.

28. File be consigned to Record Room after due compliance. Announced in open court today i.e. on 27.01.2017 (GURDEEP SINGH) SPECIAL JUDGE (PC ACT)/CBI-05 NEW DELHI/27.01.2017.

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## **SOME IMPORTANT CASES OF FUGITIVES BROUGHT TO INDIA**

The Indian Government has succeeded in bringing back 18 fugitive offenders, including alleged Agusta Westland deal middleman Christian Michel James, to India in the last five years and is strongly pursuing extradition cases of absconding Nirav Modi and liquor baron Vijay Mallya.

India has been strongly articulating the issue internationally and had presented a nine-point agenda for action against fugitive economic offenders at the G-20 Leaders' Summit held in Buenos Aires last year.

India has also pursued the agenda against fugitive economic offenders in the various forum of the G20 like Finance and Sherpa Tracks, the Anti-Corruption Working Group, and the Denial of Entry Experts Network.

### **The main nine-point agenda presented is as below:**

The Leaders' Declaration, adopted at the G20 Buenos Aires Summit, says that the member countries will explore the links between corruption and other economic crimes and ways to tackle them, "including through cooperation on the return of persons sought for such offences and stolen assets, consistent with international obligations and domestic legal systems".

The declaration, sources said, reflects the will exhibited by the G20 members to tackle the issue of return of persons sought for economic offences and stolen assets through international cooperation.

The nine-point agenda for economic offenders calls for strong and active cooperation across G-20 countries to deal comprehensively and efficiently with the menace of fugitive economic offenders.

It seeks cooperation in the legal processes such as effective freezing of the proceeds of crime, early return of the offenders and says efficient repatriation of the proceeds of crime should be enhanced and streamlined.

The other points are: "Joint effort by G-20 countries to form a mechanism that denies entry and safe havens to all fugitive economic offenders."

"Principles of United Nations Convention against Corruption (UNCAC), United Nations Convention against Transnational Organized Crime (UNOTC), especially related to 'International Cooperation' should be fully and effectively implemented."

"**FATF** (Financial Action Task Force) should be called upon to assign priority and focus to establishing international co-operation that leads to timely and comprehensive exchange of information between the competent authorities and FIUs."

"FATF should be tasked to formulate a standard definition of fugitive economic offenders."

"FATF should also develop a set of commonly agreed and standardized procedures related to identification, extradition, and judicial proceedings for dealing with fugitive economic offenders to provide guidance and assistance to G-20 countries, subject to their domestic law."

"Common platform should be set up for sharing experiences and best practices including successful cases of extradition, gaps in existing systems of extradition and legal assistance, etc."

"G-20 Forum should consider initiating work on locating properties of economic offenders who have a tax debt in the country of their residence for its recovery."

**List of prominent Eighteen (18) Fugitives' brought to India is as under:-**

Sl.no.	Particulars of the case
1	Augusta Westland Chopper deal co-accused <b>Rajiv Saxena</b> was extradited from UAE in the end of January, 2021. He was extradited along with corporate lobbyist <b>Deepak Talwar</b> .
2.	British national <b>Christian Michel James</b> was extradited from UAE on December 4, 2018 in a case of cheating and criminal conspiracy for his alleged role as middleman in Augusta Westland case.
3.	<b>Mohd. Yahya</b> , who faces cases of cheating, forgery and criminal conspiracy, was extradited from INDONESIA on October 12, 2018.
4.	<b>Vinay Mittal</b> , who faces cases of cheating, forgery and criminal conspiracy, was extradited from INDONESIA on September 9, 2018.
5.	<b>Mansoor/ FarooqTakla</b> , who faces charges of involvement in Terrorist activities, was extradited from UAE on March 8, 2018.
6.	<b>Marinoiu Mohd Farooq Yasin</b> , a Romanian national, was extradited from NICARAGUA ON March 3, 2018 in a "Bank Fraud case".
7.	<b>Abubakar Kadir Lonut Alexandru</b> , as extradited from SINGAPORE on September 23, 2017 in "Job Scam Racket case".
8.	<b>Abdul Raut Merchant Mohammad Sultan</b> , was extradited from BANGLADESH on November 8, 2016 on charge of "Murder".
9.	<b>Samirbhai Vinubhai Patel</b> , was extradited from BRITAIN on October 19, 2016 on charges of "Murder and criminal conspiracy".
10.	<b>Kumar Krishna Pillai</b> was extradited from SINGAPORE ON June 27, 2016 in attempt to murder case:.
11.	<b>Abdul Wahid Siddibapa</b> was extradited from the UAE on May 20, 2016 from "Waging or attempt to wage war against India".
12.	<b>Willy Naruenartwanic</b> , a Thai national, was extradited from THAILAND on December 9, 2015 for "Waging or attempt to wage war against India".
13.	<b>Kollam Gangi Reddy</b> was extradited from MAURITIUS on November 15, 2015 on "Charge of culpable homicide not amounting to murder and attempt to murder".
14.	<b>Anup Chetia</b> , was extradited from BANGLADESH on November 11, 2015 for "Waging or attempt to wage war against India".
15.	<b>Chhota Rajan</b> , was extradited from INDONESIA on November 6, 2015 on "Charges of murder and kidnapping".
16.	<b>Bannaje Raja</b> , was extradited from MOROCCO on August 14, 2015 on "Charges of Murder".
17.	<b>Jagtar Singh Tara</b> was extradited from THAILAND on January 15, 2015 on "Charges of murder".

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## APPENDIXES

### 1. Format & Contents of Letter of Rogatory and Mutual Legal Assistance Request :

<b>For Letter of Rogatory :</b> 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 requesting the assistance of the Government (name of the Requested Country) in the criminal matter.
<b>For Mutual Legal Assistance Request :</b> To The Central; Authority of the _____(Requested country) Certificate on behalf of the _____(Requested 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 _____(described nature of criminal proceedings.)
<b>Request:</b> _____(to be filled by the Investigating Agency/Court)_____ (This request is made by the Government of the Republic of India for assistance in accordance with the provision (describe the relevant provisions ) of the Treaty between Republic of India and ( name of the Requested Country) or United Nations Convention Against Corruption or UN 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 Assurance of Reciprocity in similar matters. Original Assurance of Reciprocity issued by the Ministry of Home Affairs, Government of Republic of India, who is Central Authority of India, is attached herewith.)
<b>Nature of Request :</b> _____(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.)]
<b>Criminal offences/Applicable Legislation/ Penalties :</b> _____(to be filled by the 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 an applicable legislative provision. State Identity of Suspect/ accused persons, if know. 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 the 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.

- a) Describe the material facts of the criminal matter including, in particular, those necessary to establish circumstances in the Requesting Country i.e, India connected to the evidence or assistance sought, and the relevance of the evidence in India in the criminal matter.
- b) Clearly state the connection of material sought. i. e., if bank records are sought, the connection of bank accounts in the requested country with the investigation being conducted in India may be specifically mentioned. If the bank accounts have been utilized in the commission of a 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 Requested State. State how the thing sought to be produced by the 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 proceedings 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 are sought and how much 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, i.e 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. Y of ABC Co. Ltd., (address) is to be orally examined on the following matters:
  - i. 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.)
  - ii. Include all available personal details of the witness (including name, nationality, location, passport information, and gender, etc.
  - iii. State the status of the witness (suspect/ accused or simply a witness)
  - iv. 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 YYY 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.);

A) Specify documents, records or items, or classes thereof.;

B) The above witness to be orally examined on the following matters for the purpose of identifying and proving the documents, records, or items produced.);

C) State relevant particulars i.e. 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 YYY Co. Ltd., (address) to be searched under a search warrant for the seizure of the following from the company :

i) Provide details of the documents, records, or items sought to be searched for and seized.

ii) Support any request for originals or documents, records or items seized with reasons.

iii) Support the belief that relevant documents would be available in the premises of the YYY Co. Ltd.,

iv) 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.

v) 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 YYY Co. Ltd., (address) to be required to produce copies of the following documents, records, or items under a production order :

i. (Describe particulars of material required to be produced and where located);

ii. (State grounds for believing that the material sought is likely to be of substantial value to the criminal matter).

iii. (Support any request for the production of originals of documents with reasons).

iv.(If the original cannot be produced, request for authenticated copies of the same).

v. For the Bank document, the indication of the name & 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 105B 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.

- i. Specify the assistance sought;
- ii. Provide the undertakings required by the law of (name Requested Party);
- iii. Provide details for 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 105C of Cr PC):

- i. Include an official, certified copy of the relevant orders(s);
- ii. Include an official, certified copy of the conviction of the person;
- iii. Include the provisions of the relevant proceeds of crime laws (including information about restraint and forfeiture regimes);
- iv. Provide confirmation that the conviction and the order are final and are not subject to appeal;
- v. Include information about the location and particulars of the assets to be restrained, forfeited, or use to satisfy a pecuniary order;
- vi. 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.);
- vii. 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).

- i. State particulars of person concerned.

**h) Assistance in tracing property suspected to be connected to a serious offence:**

E.g – Arrangement to be made to trace (description of property) believed to be in (name of Requested Party).

- i. State particulars of the property concerned.

**i) Arrangement of examination of a person as a witness through commission to assist in a criminal matter :**

Read section 285 of Cr PC;

- i. Specify clearly the relevant issue/ 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.

j) **Electronic Evidence:**

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

**MANDATORY ASSURANCE AND UNDERTAKINGS:**

It is confirmed that this request :

- i. Neither related 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 purpose 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;
- ii. 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.
- iii. 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.
- iv. **Cost:** Generally, the cost of execution of the letter of Request shall be borne by the Requesting State as per the provisions of the Mutual Legal Assistance Treaty. However, if there are significant costs involved like travel of witnesses/ cost obtaining Expert Opinion etc., mention the readiness to meet the expenditure to be incurred.
- v. Should the Judicial Authority of the Requested Country require the return of any information/ evidence/ thing obtained in according to this request at the conclusion of the criminal proceeding, the same shall be returned to the Judicial Authority of the Requested Country.
- vi. The person(s) whose attendance is requested shall not :
  - A) Be detained, prosecuted, punished, and subjected to any other restriction of personal liberty in the territory of the Republic of India for any acts, omissions of convictions which preceded the person(s) departure from the Requested Country other than that to which the request relates.
  - B) 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.
  - C) Be requested to give evidence in any proceedings or to assist in any investigation(s) other than the proceedings or investigation(s) to which the request relates, without the person's consent.
- vii. 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 (vi) 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 voluntarily returned.]

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

[Unless otherwise agreed, the Investigating Agency in 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 investigation 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 :

- i. (State details of manner and form in which evidence is to be taken and transmitted to Requesting Party, if relevant.);
- ii. (State any special requirements as to certification/ authentication of documents.);
- iii. (State if attendance by a representative of appropriate Authority of Requesting Party is required at the examination of witnesses/ execution of the 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 the 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 given 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:

E.g – “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)\_\_\_\_\_

[ Provided the details of the officers who are handling this request for liaising with Requested

Country:

State name of officers(s), Address, Telephone numbers, 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:

## 2. PROCEDURE FOR SENDING REQUEST FOR ASSISTANCE /L.Rs. (OUTGOING REQUESTS).

Sl. No	Particulars
A. 1.	Investigating Agency forwards the Draft request to IS-II Division, MHA (Central Authority) for concurrence.
2	Investigating Agency prepares a draft request (with the recommendation of DOP/Law officer concerned) and with the approval of its Director/ State Government transmits it to IS-II Division, MHA
3.	Examination of Request by IS-II Division, MHA.
a)	Provision of Bilateral Treaty/Agreement, Multilateral Treaty/agreement, or any other international convention to which India and Requested Country are signatories.
b)	Domestic Law of India.
c)	Laws of Requested Country.
B.	After Examination, the IS-II Division, MHA may :
i)	Provide the concurrence to the Investigating Agency or State Government/ UT to approach Court for issuing the LR or for sending MLA Request as the case may be;
ii)	Send it back to Investigating agency/ State Government for amendment or rectification of request or
iii)	Deny the concurrence sought.
4.	<p>Court issues L.R :</p> <p>The court on being satisfied by the request made by the Investigating Agency issues the LR. The Investigating Agency/State Government/UTs transmit it to the AD (IPCC),CBI (except ED**)</p> <p>*In case of ED with the approval of the Department of Revenue, Ministry of Finance.</p> <p>**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.</p>
5.	Central Authority of India transmits the request to Foreign Country.
6.	<p><b>In case of L.R Request:</b></p> <p>A. The Central authority through AD (IPCC), CBI transmits the LR along with a forwarding letter to the Central Authority of the Requested Country or through concerned Indian Mission/Embassy/Diplomatic Channels as mentioned in the MLAT or on the basis of assurance of reciprocity issued by the Central Authority.</p> <p>B. 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) is provided with a copy of the request for maintaining data/ record and to follow up on the execution of the request.</p>
7.	<p><b>MLA Request:</b></p> <p>a. The Central Authority transmits the MLAT request to the Central Authority of the Requested Country either directly or through concerned Indian Mission/Embassy/Diplomatic Channels as mentioned in the MLAT.</p> <p>b. 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 provided with a copy of the request for maintaining data/ record and to follow up on the execution of the request.</p>

<p>B. 1.</p>	<p><b>Transmission of L.R:</b></p> <p>a. Once the LR is issued, the Investigating Agency or State Government/UT will transmit <b>three copies</b> of therequest 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.</p> <p>b. The LR of ED after taking forwarding a letter from the 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.</p> <p>c. 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.</p>
<p>2.</p>	<p><b>The following documents are required to be sent for transmission of request LR issued by the court under section 166A of Cr P:-</b></p> <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 and 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>



### **3. PROCEDURE FOR MAKING MLA REQUEST:**

#### **STEP-1. FORWARDING THE INFORMATION TO THE CENTRAL AUTHORITY OF INDIA:**

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 the same as those required to be sent with the L.R Request.)

#### **STEP-2. ISSUE OF REQUEST BY CENTRAL AUTHORITY:**

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 as 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 the request for maintaining data/record and to follow up on the execution of the request.

**4. Procedure to be followed after Central Authority of India forward the Request to Foreign Country:**

<b>Sl. No</b>	<b>Particulars</b>
1.	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 the execution of the Request by making correspondence with the Indian Mission Abroad or Central Authority of the foreign country.
2.	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 materials, etc., concerning to the request made.
3.	If the communication is made to IS-II Division, MHA, then on receiving such communication, the IS-II Division, MHA would obtain the required clarification, 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
4.	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 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 a record and follow up.
5.	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 Investigation Agency or State Government.
6.	On receipt of the execution report, the Investigating Agency or State Government/UT promptly informs the IS-II Division, MHA about the execution of the request and shortcomings if any.
7.	In case, after receiving 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.

**5. PROCEDURE FOR EXECUTING REQUEST IN INDIA (INCOMING REQUEST):**

STEP -1. Section 166B, Section 105K and Chapter VII A of Cr PC, Section 58 to Section 61 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 request received through diplomatic channels by the 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 the request, the Central Authority can take the assistance of MEA and other relevant enforcement agencies in Indian including JD (TFC), CBI.

STEP -2. 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 Officer (ILO) of Stat/ UTs or the Law Enforcement Agency concerned. Whenever the Central Authority of India decides that the request should be refused or postponed for execution, it promptly intimates the same to the Requested Country.

STEP -3. The law enforcement/ investigating agency collects the evidence as requested and prepare an Execution Report. Three copies of the Execution Report along with the evidence collected (if any) are forwarded to aD (IPCC), CBI.

STEP -4. AD (IPCC), CBI transmits the Execution Report to the concerned Requesting Country through Diplomatic channels under intimation to IS-II Division, MHA.

STEP -5. All the Incoming Requests are executed in terms of the provisions of the extant bilateral treaties/ Agreements, Multilateral Treaties/ agreements, or International Convention and in accordance with Indian Laws.

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## Bibliography

1. **Page no. 9 to 14** CHAPTER - CRIMES: Identifying terrorist suspects; Preventing Terrorist Travel; Tracing terrorist finances, Analysis social media; Chemical & explosives terrorist; Bioterrorism.  
**Source:** Interpol Website <<<https://www.interpol.int/Crimes/Terrorism/Identifying-terrorist-suspects>>>
2. **Page no. 42 to 47** –Infrastructure of NCB, India  
**Source:** CBI Academy, Ghaziabad.
3. **Page no. 64 to 75** – Appendix IS-II Division.  
Comprehensive Guidelines.  
**Source:** MHA Website  
<<[https://www.mha.gov.in/sites/default/files/ISII\\_ComprehensiveGuidelines\\_17122019.pdf](https://www.mha.gov.in/sites/default/files/ISII_ComprehensiveGuidelines_17122019.pdf)>>
4. **Other material in the book** – own resources/reading and working experience in CBI.

## 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 not a treaty, as it can be viewed as a standalone promise that one country will do the same for another country in the 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 maybe 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. **Requested Country :**

Any country to which a request for Mutual Legal Assistance has been made.

6. **Requesting Country :**

Any country which is making a request for Mutual Legal Assistance.

7. **Tracing :**

Tracing means determining the nature, source, disposition, movement, title or ownership of property.

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