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76/03/2020

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11/3/2020

Decided

IN THE HIGH COURT OF DELHI AT NEW DELHI

NO. 13259. /Crl. Br. DATED 11/03/2020

FROM:

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

TO:

1. The District & Sessions Judge (Headquarters), Tis Hazari Court, Delhi.
2. The District & Sessions Judge, District – Central, Tis Hazari Court, Delhi.
3. The District & Sessions Judge, District – West, Tis Hazari Court, Delhi.
4. The District & Sessions Judge, District – North-West, Rohini, Delhi.
5. The District & Sessions Judge, District – North, Rohini, Delhi.
6. The District & Sessions Judge, District – East, Karkardooma Court, Delhi.
7. The District & Sessions Judge, District – North-East, Karkardooma Court, Delhi.
8. The District & Sessions Judge, District – Shahdara, Karkardooma Court, Delhi.
9. The District & Sessions Judge, District – South, Saket Court, New Delhi.
10. The District & Sessions Judge, District – South-East, Saket Court, Delhi.
11. The District & Sessions Judge, District – South-West, Dwarka Court, New Delhi.
12. The District & Sessions Judge, District – New Delhi, Patiala House Courts, New Delhi.
13. The District & Sessions Judge-cum-Special Judge, Rouse Avenue, New Delhi.
14. The State through Learned Standing Counsel (Criminal), Lawyers Chamber, Delhi High Court, Delhi.
15. The Commissioner of Delhi Police, Delhi Police Headquarters, ITO, Delhi.
16. The Deputy Registrar, Rule Branch, Delhi High Court, Delhi.
17. The Deputy Registrar, IT Branch, Delhi High Court, Delhi.

Crl. Ref. 2/2019

Court on Its Own Motion

.....Petitioner

Versus

State

.....Respondent

Criminal Reference for Consideration and Guidance under section 395 (2) Cr.P.C.

Sir,

I am directed to forward herewith for immediate compliance/neccessary action, a copy of judgement/order dated 28/02/2020 passed by Hon'ble Division Bench of this court in the above noted case.

Necessary directions are contained in the enclosed copy of order.

Yours faithfully

Encl: Copy of Judgement/Order dated 28.02.2020
& dated 29.11.2019

Memo of Parties
Copy of MHA Guidelines

Seen, be circulated 5-3-20
to all the Judicial
officers in N/E Distt. & Computer Branch
for uploded on websites of NE Distt.
Admin. Officer (J)/Crl.I
for Registrar General

D&S. J / NE
13/3/2020

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL. REF. 2/2019

COURT ON ITS OWN MOTION

..... Petitioner

Through Ms.Rebecca John, senior counsel as
amicus curiae with Mr.Harsh Bora
and Ms.Pravita Kashyap, Advocates.

versus

STATE

..... Respondent

Through Mr.Rahul Mehra, standing counsel
(Crl.) for the State with Chaitanya
Gosain, Advocate for the State and SI
Ranbeer Singh, PS S.J.Enclave.
Mr.T.P.Singh, Sr.Central Govt.
Counsel for UOI/MHA.
Mr.Sumer Sethi and Ms.Dolly
Sharma, Advocates for DSLSA.
Ms.Yanmi Phazang, Legal
Supervisor, Rape Crisis Cell, DCW.

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Date of Decision: 28th February, 2020.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J: (Oral)

1. The subject-matter of the present Criminal Reference is reproduced below:

"There is no law/guidelines by which the court can seek intervention/involvement of the MHA and/or concerned Embassy/High Commission/Consulate for making necessary arrangements for recording of testimony of the victims/witnesses

who are foreign nationals in cases of sexual assault even when the victim is very much available and has offered to get her testimony recorded. There is an urgent need to redress the issue so that the cases involving victims, who are foreign nationals, do not result in imminent acquittal for want of recording of testimony of the victim/witnesses and further that the case does not remain pending in the system inordinately."

2. It was brought to our attention that on 11th February, 2009, the Ministry of Home Affairs (hereinafter referred to as 'the MHA') issued the 'Comprehensive Guidelines Regarding service of summons/notices/judicial process on persons residing abroad' ('2009 Guidelines') that laid down the procedure for the service of summons on witnesses residing abroad, for the purpose of recording their evidence. These guidelines of 2009 clarified that the MHA on behalf of the Central Government had entered into reciprocal arrangements with foreign governments for service of summons/warrants/judicial processes, as required under Section 105 of the Code of Criminal Procedure. The reciprocal arrangements were in the form of Mutual Legal Assistance Treaties ('MLAT') with other countries.

3. During the pendency of the present proceedings, the MHA revised and updated its 2009 Guidelines with a view to comprehensively codify guidelines covering a gamut of issues including issuance of Letters Rogatory, mutual legal assistance requests, service of summons, notices, judicial processes including request for video conferencing, protection and preservation of data and extradition requests.

4. The comprehensive and updated Guidelines on Mutual Legal Assistance in Criminal Matters (the 'MHA Guidelines, 2019') was approved

by the Ministry of Home Affairs and have also been placed before this Court.

5. Vide order dated 29th November, 2019, this Court took on record the detailed report handed over by the learned Amicus Curiae and extracted salient features of the said report. The Union of India and the Government of NCT of Delhi were directed to file a response to the report of the learned Amicus Curiae.

6. The Union of India (through the Ministry of Home Affairs) has filed its response on 17th January, 2020 endorsing the comments of the learned Amicus Curiae.

7. The Delhi Police has also filed a status report dated 11th February, 2020 through the learned Standing Counsel (Criminal). The Report submitted by the learned Amicus Curiae had recommended that the Investigating Officer should collect relevant personal information, including passport and visa details of the witness residing abroad so that the process is immediately commenced for the issuance of summons to such witness as per the MHA Guidelines, 2019 and trial is set into motion. In paragraph 4 of the status report filed by the Delhi Police, it is stated that instructions have been issued by the DCP, Legal Cell, Police Headquarters, Delhi, vide No.762-90/Court Cell (DA-I)/PHQ dated 20th January, 2020 to all supervisory and Investigating Officers to ensure strict compliance with the suggestions of the learned Amicus Curiae, incorporated in the order of this Court dated 29th November, 2019.

8. In response to the learned Amicus Curiae's suggestion that necessary amendments be made to the Delhi Criminal Courts (Payments of Expenses to Complainant and Witnesses) Rules, 2015, to incorporate the costs and payments for transmission of summons, notices and judicial processes, payments to witnesses including expert witnesses etc., the Government of NCT of Delhi has placed on record a letter dated 23rd January, 2020 issued by the Principal Secretary (Law, Justice and LA). By way of this letter, it has been brought to this Court's notice that since the Delhi Criminal Courts (Payments of Expenses to Complainant and Witnesses) Rules, 2015, have been notified on the basis of a set of rules forwarded by this Court vide letter 8256/Rules/DHC/2013 dated 18th March, 2013, this Court has been requested to take necessary action for amending the rules and to forward the recommendations/set of rules to the Department of Law, Justice and LA, for compliance.

Directions to the Government of NCT of Delhi

9. The learned Amicus Curiae proposes that the following amendment be made to the Delhi Criminal Courts (Payments of Expenses to Complainant and Witnesses) Rules, 2015:-

"Chapter 5

Payment of expenses in cases of persons residing abroad

***16. The expenses for service of summons, notices and judicial processes, on persons residing abroad, and for recording of statement or collecting of evidence through video-conferencing:-
The actual expenses for service of summons, notices and judicial***

processes, on persons residing abroad, expenses sufficient to defray the cost of travelling of the witness within the territory of the Requested Country to a point where evidence is to be recorded through video-conferencing, the cost of establishing the live video-conferencing link, the remuneration of interpreters/translators provided by the Requested Country, expenses of preparing soft copies, certified copies of the relevant evidence and documents by the Coordinator at the Requested Country to the Court, and such other ancillary expenses as may arise, shall be paid on receipt of such demand for payment from the Requested Country, as applicable under the provisions of the Mutual Legal Assistance Treaty, or any other bilateral or multilateral treaty, or any other international instrument existing between India and the Requested Country, as the case may be."

10. The above proposed amendment may be placed before the Rules Committee of this Court for consideration, and if approved, be forwarded to the Principal Secretary (Law, Justice & LA), Government of NCT of Delhi, for necessary compliance.

Video-Conferencing Guidelines

11. This Court has also issued guidelines laying down the procedure to be followed for Video Conferencing titled as 'Video Conferencing Guidelines Issued by the High Court of Delhi: Guidelines for the Conduct of Court Proceedings between Courts and Remote Sites', which were subsequently incorporated as Annexure B to the Delhi High Court (Original Side) Rules,

2018, and are applicable to both civil and criminal cases.

12. Having gone through the Report of the learned Amicus Curiae, and the need to ensure that the Video-Conferencing Guidelines issued by this Court are in conformity with the MHA Guidelines, 2019, we deem it appropriate to issue the following directions:

Directions for the High Court of Delhi

1. Replace existing Rule 3.4(i) with the following:-

(i) Where the person to be examined is overseas, the Court may specify the coordinator out of the following :-

- a) the official of the Consulate/Embassy of India,*
- b) duly certified Notary Public/Oath Commissioner*

Notwithstanding the above, in criminal cases, the Coordinator at the remote point shall be appointed by the Competent Authority in the Requested Country in terms of paragraph 4.9 of the MHA Guidelines, 2019, and may be any of the following:

- a) the Central Authority of Requested Country,*
- b) if the law of Requested Country permits, the official of Consulate/Embassy of India."*

2. Incorporate the following as Rule 6.12:-

"6.12. In criminal cases, all relevant documents sought to be put to the witness by the Prosecution/Complainant and the Defence, must be scanned, identified and numbered, and

translated into a language that the witness is familiar with (if required). The same should be sent to the Coordinator in the Requested Country prior to the hearing, under strict instructions of confidentiality”

13. The above proposed amendments may be placed before the Information Technology Committee of this Court, for consideration.

Practice Directions for all Trial Courts

14. This Court is of the view that certain practice directions may also be issued to all criminal courts in order to streamline the procedure for service of summons, notices, and judicial processes, on witnesses residing abroad, and for recording their evidence through video-conferencing.

1. For the purpose of service of summons/notices/judicial processes on persons residing abroad, the Trial Courts must follow the procedure as laid out in the MHA Guidelines, 2019. The designated Central Authority in India is the Ministry of Home Affairs, and not the Ministry of External Affairs or any Indian Embassy or Consulate abroad.
2. It is clarified, however, that the Ministry of Home Affairs does not facilitate the execution of non-bailable warrants of arrest on an individual residing abroad. Such requests are in the nature of extradition proceedings and ought to be forwarded to the Ministry of External Affairs, CPV Division, Patiala House Annexe, Tilak Marg, New Delhi – 110001. Reference may be made to Part VII of the MHA Guidelines, 2019.

3. For service of summons/notices/judicial processes on persons residing abroad, Trial Courts should ensure compliance of Figure 4.6 of the MHA Guidelines, 2019, under its sign and seal. Trial Courts should additionally comply with the requirements of the checklist contained in Figure 4.3.
4. At the time of issuance of summons on a person residing abroad, the order of the Trial Court should also indicate whether evidence is to be recorded through video-conferencing.
5. It must be borne in mind that the MHA requires a minimum of ten weeks for the purpose of transmission of summons/notices/judicial processes on persons residing abroad. The process of establishing video-conferencing links between the Court and the Requested Country can begin only after service is completed. Trial Courts should therefore fix date(s) for recording of evidence, at least 12-13 weeks after its order issuing summons to the said witness.

Trial Courts should separately fix an intermediate date between the date of issuance of summons and the date of recording of evidence, to seek confirmation from the prosecuting agency about the service of summons, and to additionally seek details/information regarding the technical coordinator in the Requested Country, along with the details of the technical link for conducting video-conferencing on the date(s) fixed.

6. Based on the information received on the intermediate date, the Trial Court should direct its own Coordinator to forthwith establish contact with its counterpart in the Requested Country, conduct a mock test of the video-conferencing link prior to the date of recording of evidence, and

submit a report in this regard at least three days prior to the date fixed for recording of evidence. On the receipt of the report from Court Coordinator, the documents relied upon by the prosecution and the Defence should be identified, scanned, and numbered, and sent to the Coordinator in the Requested Country, under strict instructions of confidentiality. An identical set of the above documents should be made a part of the Court record.

7. Due to the time taken and the costs involved in summoning witnesses residing abroad and setting up video-conferencing facilities, besides the involvement of bilateral agencies in both countries, Trial Courts should ensure that the date(s) fixed for recording of evidence through video-conferencing are utilised productively. If for some reason the Presiding Judge is unable to hold Court on the date(s) fixed, s/he should ensure, as far as possible, that the evidence is recorded by the Link Judge.

Directions to the Delhi Police

15. We have also gone through the status report filed on behalf of the Delhi Police dated 11th February, 2020. In view of Paragraph 4 of the status report, no further orders or directions are required to be issued to them with regard to collection of personal information of the witness residing abroad. However, the Investigating Officer of the case must ensure that information regarding service of summons and details pertaining to video-conferencing links are provided to the Trial Court after obtaining the same from the MHA.

Directions for Training

16. We are also of the view that training sessions for judicial officers, technical staff, and police officials must be conducted to familiarize them with the procedures contained in the MHA Guidelines, 2019, the Video-Conferencing Guidelines issued by the High Court of Delhi, and the Delhi Criminal Courts (Payment of Expenses to Complainant and Witnesses) Rules, 2015.

17. The learned Amicus Curiae has further submitted that a copy of the MHA Guidelines, 2019, must be uploaded on the websites of this Court as well as of the District Courts. We accordingly direct the same.

18. Registry is directed that a copy of this order and the earlier order dated 29th November, 2019, be circulated to the courts below.

19. In view of the above, no further orders are called for in the present matter and the Registry is directed not to list the same any further.

FEBRUARY 28, 2020
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MANMOHAN, J
[REDACTED]
SANGITA DHINGRA SEHGAL, J

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REF. 2/2019

COURT ON ITS OWN MOTION

..... Petitioner

Through: Ms. Rebecca John, Senior Advocate as
Amicus Curiae with Mr. Harsh Bora,
Ms. Praavita Kashyap and Ms. Megha
Bahl, Advocates.

versus

STATE

..... Respondent

Through: Mr. Rahul Mehra, Standing Counsel
(Crl.) with Mr. Chaitanya Gosain,
Mr. Anand Thumbayl and Mr. Amanpreet
Singh, Advs for the State with SI
Ranveer
Singh, PS Safdarjung Enclave.
Mr. T.P. Singh, CGSC for UOI/MHA
with Mr. Soumava Karmakar,
Advocate, Mr. Rakesh Kumar Sinha, SO
and Ms. Mehak Rastogi.
Ms. Yanmi Phazang, Advocate for Rape
Crisis Cell Legal Supervisor, DCW.
Mr. Randhir Kumar and Mr. Abhijit
Dua, Advocates for applicant.
Mr. Sumer Sethi, Adv (DSLISA)

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

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29.11.2019

Learned counsel for the Union of India has handed over a photocopy
of Guidelines on Mutual Legal Assistance in Criminal Matters, 2019 issued

by the Ministry of Home Affairs, Government of India. The said Guidelines deal not only with service of summons, notices and judicial process but also with regard to the Video Conferencing. The said Guidelines are taken on record.

Ms. Rebecca John, Senior Advocate, Amicus Curiae states that the Guidelines finalised by the Ministry of Home Affairs, Government of India incorporate all the suggestions made by her.

Consequently, the reference dated 10th December, 2018 made by Ms. Illa Rawat, Addl. Sessions Judge, Spl. Fast Track Court, Saket Court, New Delhi is answered in accordance with the new guidelines.

We place on record appreciation for the services rendered by the Ministry of Home Affairs Officials as well as the learned Amicus Curiae.

The Court of Sh. Harish Dudani, Addl. Sessions Judge, Spl. Fast Track Court, Saket, New Delhi is directed to proceed with the trial in S.C No. 06/2018 arising out of FIR No. 436/2017 fixed on 3rd, 4th and 5th December, 2019 in accordance with the guidelines on Mutual Legal Assistance in Criminal Matters, 2019 issued by the Ministry of Home Affairs.

However, learned Amicus Curiae states that certain practice directions will have to be issued by this Court and the current Video Conferencing Guidelines of the Delhi High Court would have to be amended to make the whole process seamless. She also emphasises that the State would have to create a fund to meet the costs of Video-Conferencing and the Delhi High Court Video-Conferencing Guidelines along with the Delhi Criminal Courts (Payment of Expenses to Complainant and Witnesses) Rules, 2015, are

required to the amended. The report handed over by learned Amicus Curiae is taken on record. The salient features of the report of the learned Amicus Curiae are reproduced hereinbelow: -

A. "SUGGESTED AMENDMENTS TO THE VIDEO-CONFERENCING GUIDELINES ISSUED BY THE HON'BLE HIGH COURT OF DELHI"

1. *The Delhi High Court Video-Conferencing Guidelines require amendments to bring them in conformity with the MHA 2019 Guidelines and MLAT requirements.*
2. *The MHA 2019 Guidelines (Figure 4.2, paragraph 4.8 to 4.17 at Pages 32 and 33 of Part IV) makes it clear that a Coordinator at the Requested Country may be appointed by the Central Authority of the Requested Country, while the Delhi High Court Guidelines states at Clause 3.4; (i) The Coordinator at the remote point may be any of the following: (ii) where the person to be examined is overseas, the Court may specify the coordinator out of the following (a) the official of Consulate/Embassy of India, (b) duly certified Notary Public/Oath Commissioner. This contradiction must be resolved.*
3. *Clause 7 of the Delhi High Court Guidelines currently provide for documents to be put to a witness using a document visualiser. The insistence on the use of a document visualiser for transmission of documents while evidence is being recorded may require modification, as Trial Courts in Delhi are not equipped with document visualisers.*
4. *It is recommended that the exhibition of documents through a 'screen-sharing' process (where a scanned copy of a document simultaneously appears on screens at the court point and at the remote point in the Requested Country) be provided for in the Delhi High Court Guidelines.*
5. *It is recommended that the Delhi High Court Guidelines provide that all documents relevant to the witness must be scanned, identified and numbered, and translated into a language that the witness is familiar with (if required), and sent to the Coordinator in the Requested Country a day before the hearing, with instructions that the same shall not be shown to*

the witness before the hearing. An identical set of the said scanned, identified and numbered documents must also be available to the Court for convenience.

6. The Delhi High Court Guidelines should make provision for the documents that the Defence wishes to put to the witness during the cross-examination. These must also be scanned and be made available to the Coordinator at the Court prior to the recording of the evidence.
7. Clause 5.1 of the Delhi High Court Guidelines takes into account the Delhi Criminal Courts (Payment of Expenses to Complainant and Witnesses) Rules, 2015.' It is clarified that the costs of organising depositions through video-conferencing are in general governed by the Mutual Legal Assistance Treaty (MLAT) with the Requested Country and the Delhi Criminal Courts (Payment of Expenses to Complainant and Witnesses) Rules, 2015 are also required to be amended along with the Delhi High Court Guidelines.

B. RECOMMENDED PRACTICE DIRECTIONS

I. TO COURTS

1. It must be clarified that for the purpose of service of summons, notices or judicial processes to be served on persons residing abroad, the designated Central Authority in India is the Ministry of Home Affairs and the Ministry of External Affairs or any Indian Embassy or Consulate abroad, has no role to play in this regard.
2. Figure 4.6 at Part IV of the MHA Guidelines, 2019 must be completed, signed, and sealed by the Court. The Checklist incorporated in Figure 4.3 must also be carefully read and all the documents required in the Checklist must then be forwarded to the MHA at the earliest.
3. At the time of issuing summons, the order of the Court must necessarily indicate whether recording of evidence of the witness residing abroad can be conducted through video-conferencing.
4. **Fixing of Dates:** Courts are requested to fix dates 12-13 weeks after issuance of summons so that the process of transmission & service of summons is completed and video-conferencing links and other ancillary coordination is

completed between the Coordinator at the Requested Country and the Court Coordinator in India.

5. **Intermediate Date:** It is suggested that as far as possible Courts fix an **intermediate date** between the date of issuance of summons and the date of recording of evidence for seeking a compliance report as also seeking necessary details for establishing video-conferencing links.
6. **Coordination between Coordinators** – After the intermediate date Courts may direct the Coordinator at the Court to submit a report of compliance at least three days prior to the date fixed for recording of evidence. By this time, prosecution documents should be identified, scanned and numbered and sent to the Coordinator in the Requested Country.
The Defence may also be asked to do the same and submit its scanned documents to the Coordinator at the Court prior to the date of hearing.
7. The Court must avoid placing the burden of communicating the summons on litigants themselves. The interface must be only between the Court, concerned police officials and the MHA, and not on individual litigants as they are incapable of fulfilling the requirements of the process.

II. TO THE GOVT. OF DELHI

1. The Delhi Criminal Courts (Payment of Expenses to Complainant and Witnesses) Rules, 2015 may be amended and a separate chapter regarding the payment of costs of video-conferencing, and all other ancillary payments described in various MLATs may be incorporated. It is reiterated that such scheme/fund must be in consonance with MLAT requirements executed between India and other countries.

III. TO THE INVESTIGATING AGENCY

1. The Investigating Officer should collect relevant personal information, including Passport number, Visa number, date of expiry of Visa, tentative date of return to country of origin and permanent residence, email address, phone number, details of advocate or contact person in India (if any), to enable ease of future communication. In the case

(27)

of offences punishable under Sections 376, 376AB, 376B, 376C, 376D, 376DA, 376DB, of the Indian Penal Code, 1860 and the Protection of Children from Sexual Offences Act (POCSO Act), 2012, the said relevant personal information must be recorded on a separate confidential document and submitted to the concerned Court at the stage of filing of the Charge-sheet.

2. In all other cases, the Charge-sheet itself may contain the following additional information:

- i. Column 9 of the Charge-sheet must include information pertaining to the nationality and permanent residential address of the complainant, and whether the complainant is residing in India or not.
- ii. Likewise, Column 13 of the Charge-sheet, which gives particulars of witnesses to be examined, must contain details of the permanent address of a witness not residing in India and all such other details as mentioned above.

These recommendations are not inflexible in nature and the concerned Court may develop its own practice depending upon the challenges of the case in question."

The Government of NCT as well as the Ministry of Home Affairs, Government of India are directed to file a response thereto within four weeks.

List for directions on 21st January, 2020.


MANMOHAN, J


SANGITA BHINGRA SEHGAL, J

NOVEMBER 29, 2019

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True copy
— response filed
— Short Affidavit of UOI on record
— Affidavit of OLSA & De W on record
— Short compilation of state on record



Guidelines on Mutual Legal Assistance in Criminal Matters

MINISTRY OF HOME AFFAIRS

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Part B Overview

A. Mutual Legal Assistance in Criminal Matters

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

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

1.3 The Mutual Legal Assistance Treaties (MLATs) in criminal matters are the binding bilateral treaties, entered between the countries for providing international cooperation and assistance. India has entered into Mutual Legal Assistance Treaties/Agreements with 41 countries (August 2019) as follows:

Figure 1.1: List of countries having MLAT/Bilateral Agreements with India			
Arab Republic of Egypt (2009)	Kingdom of Morocco (2018)	Republic of Indonesia (2011)	
Bosnia & Herzegovina (2010)	Kingdom of Spain (2007)	Republic of Kazakhstan (2005)	State of Israel (2015)
Canada (1998)	Kingdom of Thailand (2004)	Republic of Korea (2005)	
Commonwealth of Australia (2011)	Kyrgyz Republic (2014)	Republic of Mauritius (2005)	Sultanate of Oman (2015)
Confederation of Switzerland (1989)	Malaysia (2012)	Republic of Singapore (2005)	
Democratic Socialist Republic of Sri Lanka (2010)	Mongolia (2004)	Republic of Tajikistan (2003)	Union of Myanmar (2010)
French Republic (2005)	People's Republic of Bangladesh (2011)		
Hong Kong Special Administrative Region of the People's Republic of China (2009)	Republic of Azerbaijan (2013)		United Kingdom of Great Britain and Northern Ireland (1995)
Islamic Republic of Iran (2010)	Republic of Belarus (2009)	Republic of Uzbekistan (2001)	
Kingdom of Bahrain (2005)	Republic of Bulgaria (2008)		United States of America (2005)
Kingdom of Cambodia (2018)			

Figure 1.2: List of International Conventions signed by India having provisions related to Mutual Legal Assistance	
1)	United Nation Convention Against Transnational Organized Crime, 2000 (list of member countries: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsg_no=VI-12&chapter=18&clang=en)
2)	United Nation Convention Against Corruption, 2003 (list of member countries: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtidsg_no=VI-14&chapter=18&clang=en)
3)	United Nation Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substance 1988 (Vienna Convention) (list of member countries: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtidsg_no=VI-19&chapter=6&clang=en)
4)	UNHCR Convention (list of member countries: https://www.hnch.net/en/state-xiv/india.html)
5)	SAARC Convention (list of SAARC countries: http://saarc-sec.org/about-saarc)
6)	Commonwealth Scheme (list of Commonwealth countries: http://thecommonwealth.org/member-countries)

B. Letter Rogatory (LR)

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

1.5 In India, Section 166A of Code of Criminal Procedure, 1973 (CrPC) lays down the procedure of sending 'letter of request' through competent Court on the request of the Investigating Officer. The procedure for execution of a request received from the foreign Court or competent Authority has been enshrined in Section 166B of CrPC. In General, the assistance sought under Letter Rogatories is for service of documents and taking of evidence. Letter Rogatory may be made to any country on the basis of Bilateral Treaty/Agreement, Multilateral Treaty/Agreement or International Convention or on the basis of *assurance of reciprocity*.

1.6 With the countries where India is not having any Bilateral Treaty/Agreements, Multilateral Treaty/Agreements or Convention assistance is provided on the basis of assurance of reciprocity.

C. Mutual Legal Assistance Request (MLA Request)

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

D. Difference between Mutual Legal Assistance Request and Letter Rogatory

Figure 1-3: Difference between MHA Request and Letter Rogatory

	Mutual Legal Assistance Request (MHA Request)	Letter Rogatory
Nature	It is a request for assistance in criminal matters, such as investigation, evidence gathering, and prosecution, made by a foreign country to the Central Authority of India.	It is a request for assistance in criminal matters, such as investigation, evidence gathering, and prosecution, made by a foreign country to the Central Authority of India.
Scope	It covers a wide range of criminal matters, including terrorism, drug trafficking, money laundering, and organized crime.	It is limited to the collection of evidence and the identification of witnesses in criminal matters.

E. Central Authority of India

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

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

Under Secretary (Legal) Internal Security-II Division, 2nd Floor, Ministry of Home Affairs, Major Dhyani Chand National Stadium, New Delhi-110001 India	Tele Fax: 011-23075383 Telephone: 011-23070164 Email: us-legal@mha.gov.in
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1.9 The Central Authority of India i.e., Ministry of Home Affairs perform the following functions with respect to providing and obtaining mutual legal assistance in criminal matters :

- i) It ensures that the widest measure of legal assistance is provided by India.
- ii) It promptly executes the request or gets it executed through the appropriate Authority, in accordance with the Indian laws and in the manner specified by the foreign country.
- iii) It reviews all requests received by it from the investigating agencies/State Government/Judicial Authorities and take appropriate actions. If necessary, it corresponds with agency or court sending the request regarding the inadequacy or the need to supplement a request and provide information on how they can be improved.
- iv) It answers queries and provides information to the countries wishing to make requests.
- v) It coordinates arrangements for the representation of the foreign country in India for any proceedings arising out of a request for assistance.
- vi) It periodically participates in the bilateral consultations with the Central Authority of the other Contracting States to take measure for the prevention, suppression of crime and early execution of requests.

F. Types of Request

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

- i) identifying and locating persons and objects;
- ii) taking evidence and obtaining statements;
- iii) assisting in the availability of person in custody or others to give evidence or assist in investigations or appear as a witness;
- iv) effecting service of judicial documents;
- v) executing searches and seizures;
- vi) providing information, documents, records and other evidentiary items;
- vii) taking measures to identify, locate, attach, freeze, restrain, confiscate or forfeit the proceeds and instrumentalities of crime;
- viii) taking measures to restitute the embezzled public funds;
- ix) delivery of property including lending exhibits;
- x) protecting and preserving computer data;
- xi) any other form of assistance not prohibited by the law of the Contracting States.

G. Ground for Refusal or Postponement of Request for Assistance

1.11 The request for assistance shall be refused if:

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

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

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

Part II: Procedure for Sending Request for Assistance (Outgoing Requests)

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

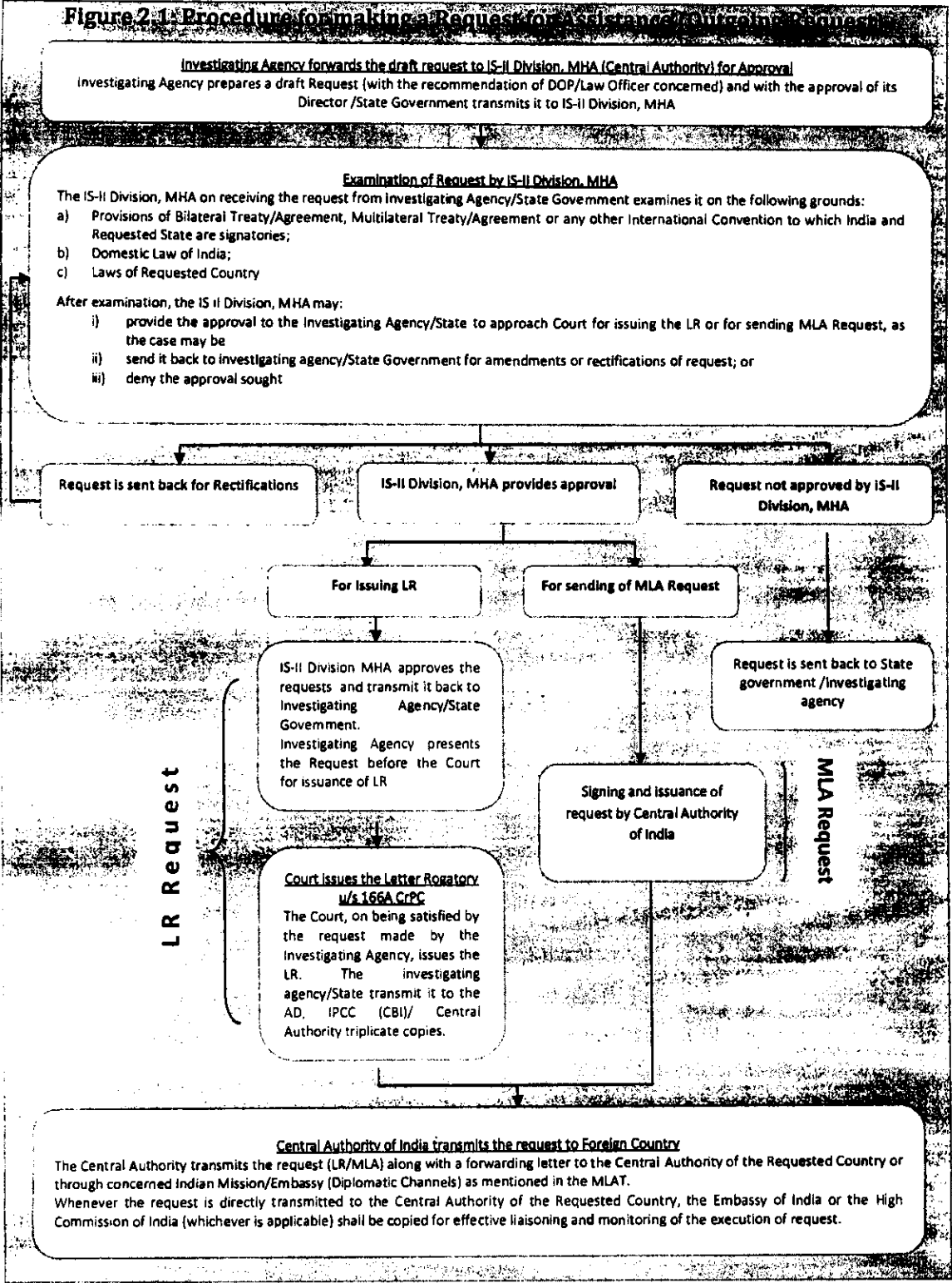


Figure 2.2: Step-by-Step Procedure for making Letter Rogatory Request (Sec 166A CrPc) ¹	
Step 1	<p>Drafting of Request by Investigating Officer or Agency and transmitting it to IS-II Division, MHA</p> <p>⇒ The Investigating Officer compile the facts related with the case and brings out assistance needed from the foreign country. The draft of the request along with the opinion/recommendation of Director of Prosecution (DOP) is sent to the Director /State Government.</p> <p>⇒ After receiving the approval from the Director / State Government, the Draft request (one copy) is transmitted to the Central Authority of India. Such draft request is routed through the Home Department of State in case of State Police or is sent to the Central Authority by the Central Agencies with the approval of their respective Ministries.</p> <p>⇒ The IS-II Division, MHA (Central Authority) examines the draft request and may:</p> <ol style="list-style-type: none"> provide the approval to the Investigating Agency/State to approach Court for issuing the LR; or send it back to the Investigating Agency/State for amendments or rectifications of request; or deny the approval sought. <p>It is to be noted that all requests for issue of Letters Rogatory by Investigation Officer/ Agency are to be sent to the IS-II Division, MHA (Central Authority of India) for approval before being presented to the Court for issuance.</p> <p>The Central Authority may consult the contact person of the Investigating Agency whenever required in relation with the request.</p> <p>The following documents are required to be sent along with the draft request to IS-II Division, MHA:</p> <ol style="list-style-type: none"> Copy of FIR; English translation of FIR if filed in vernacular language; Opinion/recommendation of Director of Prosecution or the senior-most Law Officer commenting on the need for making such Request; Copy of MLAT/ MoU/Arrangement/International Convention applicable for making the request; Application by Investigating Agency to the Court for issuing LR; Applicable Laws of Requested Country; Any other necessary document related to evidence sought from the foreign country.
Step 2	<p>Presenting the approved request before the Court</p> <p>After obtaining the approval of the IS-II Division, MHA for presenting the request before the Court, the Investigating Officer files an Application in the Court of competent Jurisdiction for issuing of Letters Rogatory addressed to the competent Authorities of the Requested Country.</p> <p>The following documents are required to be presenting before the Court for issue of LR</p> <ol style="list-style-type: none"> Request approved by the Central Authority; Application by Investigating Agency to the Court for issuing of LR request along with the request

¹ Sec 166A. Letter of request to competent authority for investigation in a country or place outside India. — (1) Notwithstanding anything contained in this Code, if, in the course of an investigation into an offence, an application is made by the investigating officer or any officer superior in rank to the investigating officer that evidence may be available in a country or place outside India, any Criminal Court may issue a letter of request to a Court or an authority in that country or place competent to deal with such request to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case and to forward all the evidence so taken or collected or the authenticated copies thereof or the thing so collected to the Court issuing such letter.

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

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

	<p>approved by IS-II Division, MHA;</p> <p>c) Extract of the sections of Indian law with highlighted sentence or penalty for the offence.</p>
	<p>Note: Certain documents may be relevant to the investigation but are not related to the request and are <u>not required</u> to be attached for presenting the request before the Court. These documents are:</p> <ul style="list-style-type: none"> • Case dairy • Copy of FIR • English translation of FIR • Opinion of DOP/Law Officer • Relevant portion of MLAT/ MoU/Arrangement/International Convention applicable for making the request
Step 3	<p>Court to issue LR under Sec 166A CrPC</p> <p>The Competent Court may decide to issue a Letter Rogatory addressed to the competent Authority in the Requested Country as prayed for or otherwise. If the Court is satisfied with the request, it will issue a Letter of Request under its seal and authority under Section 166 A of CrPC.</p>
Step 4	<p>Transmission of Letter of Request to IS-II Division, MHA</p> <p>Once the Letter of Request is issued, the Investigating Agency/State will transmit <u>three copies</u> of the request to the AD, IPCC (CBI). AD, IPCC will take the forwarding letter from IS-II Division, MHA and then send it to the Central Authority of the country concerned. The Investigating Agency/State can also transmit three copies of LR directly to the IS-II Division, MHA in emergency conditions.</p> <p>The following documents are required to be sent for transmission of request to the Central Authority</p> <ol style="list-style-type: none"> LR issued by the court under section 166 A of CrPC Extract of the sections of Indian law with highlighted sentence or penalty for the offence. List of witnesses to be examined (if any) List of questions to be asked from the witness (if any) List of documents to be collected (if any) (Description of documents/articles to be collected & procedure for the same to be provided) Certified copy of the order for attachment or forfeiture of property (if any)

Figure 2.3: Step-by-step Procedure for making Mutual Legal Assistance (MLA) Request

Step 1	<p>Forwarding for information to the Central Authority</p> <p>The Investigating Agency forwards a self- contained proposal with the recommendation of Director of Prosecution (DOP) and approval by Director/State Government to IS-II Division, MHA. (The documents to be attached with the MLA Request are same as that required to be sent with the LR Request)</p>
Step 2	<p>Issue of Request by Central Authority</p> <p>The IS-II Division, MHA compiles the draft along with the relevant documents and prepares an MLA Request. The MLA request is signed by the officer designated at IS-II Division, MHA and is transmitted along with a forwarding letter to the Central Authority of the Requested Country.</p> <p>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 shall be provided with a copy for effective liasioning and monitoring of the execution of request.</p>

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

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

- i) After transmission of the request to the foreign country, the IS-II Division, MHA takes the follow-up action for execution of the Request by making correspondence with the Indian Mission abroad or Central Authority of the foreign country.
- ii) The Central Authority of the foreign country/Mission may directly communicate with the Central Authority of India or the contact person of Investigating Agency in case it seeks clarifications, additional material etc., concerning to the request made.
- iii) On receiving such communication, the IS-II Division, MHA would obtain the required clarifications, additional materials, etc., from the investigating Officer concerned and transmit the same to the foreign country either directly or through diplomatic channels.

or

On receiving such communication, the contact person of investigating Agency would obtain the required clarifications, additional materials, etc., from the investigating Officer concerned and transmit the same to the foreign country either directly or through diplomatic channels under intimation to the Central Authority of India.

- iv) After executing the request, the foreign country will forward the Execution Report to IS-II Division, MHA or Indian Mission along with the evidence and supporting material.
- v) In case, after receiving of the Execution Report, new facts have come to light and it is felt by the investigating Agency to seek further information from the concerned country, a supplementary request may be sent. The procedure for making a subsequent or additional request is the same as that of sending any other request.

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

2.2 Section 166B² of CrPC 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. After receiving the request, the Central Authority of India examines whether the request is complete and fit to be executed in India.

2.3 In case the request is found to be fit for execution, the Central Authority will send it for execution

² Section 166B. Letter of request from a country or place outside India to a Court or an authority for investigation in India.—(1) Upon receipt of a letter of request from a Court or an authority in a country or place outside India competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to an offence under investigation in that country or place, the Central Government may, if it thinks fit—

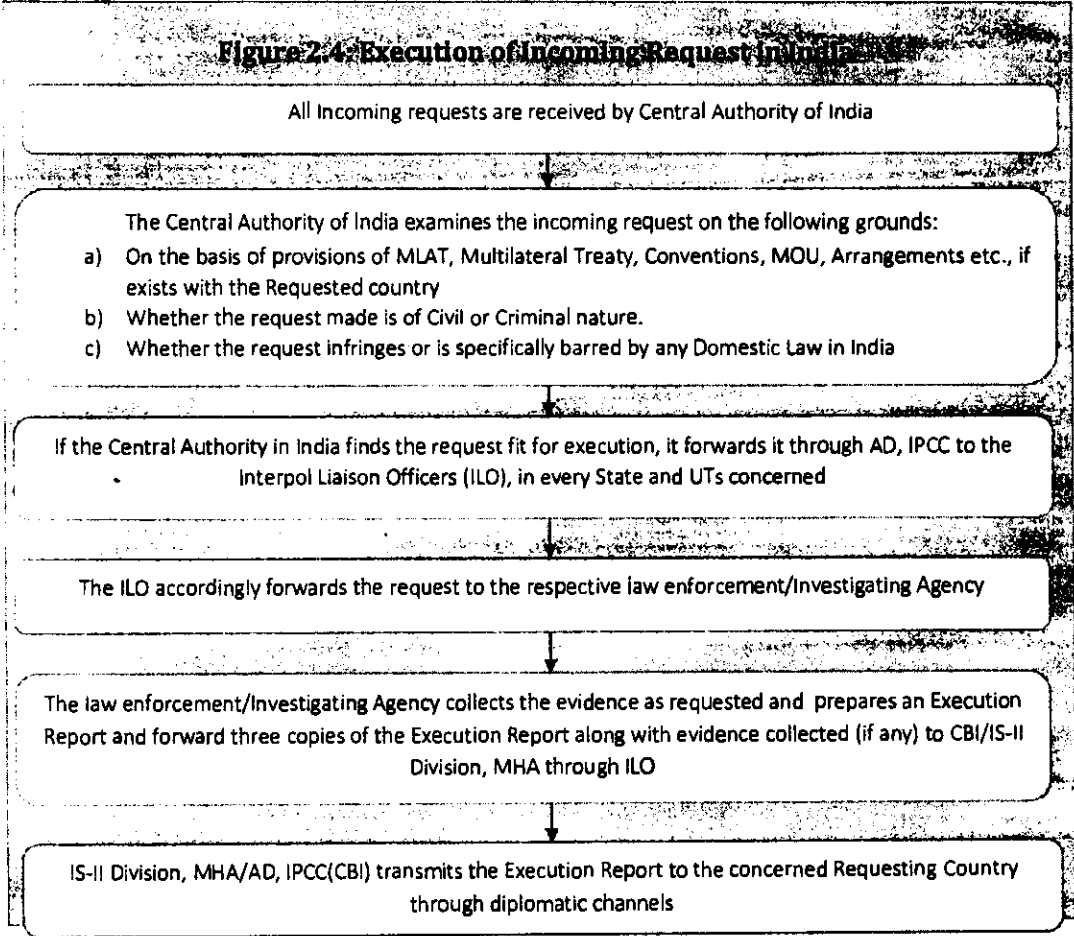
(i) forward the same to the Chief Metropolitan Magistrate or Chief Judicial Magistrate or such Metropolitan Magistrate or Judicial Magistrate as he may appoint in this behalf, who shall thereupon summon the person before him and record his statement or cause the document or thing to be produced, or

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

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

through AD, IPCC to the Interpol Liaison Officers (ILO), of State and UTs concerned. Whenever the Central Authority of India opines that the request should be refused or postponed for the execution, it should promptly intimate the same to the Requesting Country.

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



Part III: Form, Content and Language of Request

A. Form of Request

3.1 A request for assistance shall be made in writing. However, in urgent circumstances, a request may be made orally or by email or facsimile or any other agreed forms of electronic media or through INTERPOL but shall be confirmed in writing with all relevant documents within 15 days after making such request.

3.2 The preferred format of the request should be: Paper size: A4; Margins: 1 cm all sides; Justification: Full; Font: Times New Roman; Font size: 11; Line spacing: Single; Page No.: Bottom, centre aligned.

B. Content of Request

3.3 The request for assistance shall include the following information:

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

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

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

C. Language of Request

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

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

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

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

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

- ☐ 1. Draft Application containing brief facts of the case
- ☐ 2. Original copy of the legal opinion of the Director of Prosecution or Senior Law Officer
- ☐ 3. Copy of application from Investigating Agency requesting the Court to issue LR
- ☐ 4. Copy of FIR and translated version of FIR (if filed in any vernacular language)
- ☐ 5. Extracts of relevant Sections of Indian Law
- ☐ 6. Applicable laws of Requested Country
- ☐ 7. Copy of Extract of the MLAT / Treaty/Convention with the country concerned under which request is made
- ☐ 8. Any other necessary document related to evidence sought

Figure 3.3: Check List of Documents to be sent to Central Authority after Letter Rogatory has been issued by Court

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

- ☐ Covering Letter by Investigating Agency or Court
- ☐ LR issued by Court under Section 166A of CrPc
- ☐ Extract of sections of Indian law with highlighted sentence or penalty for the offence.
- ☐ English translation of all the documents attached and translation in the language required by the requested country (wherever required)

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

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

Figure 3.4: Executive Summary of the Information to be Included in the Request

1)	Purpose for making request	
2)	Nature of request	
3)	Basis of request	<input type="checkbox"/> MLAT <input type="checkbox"/> Any other Bilateral Treaty or agreement <input type="checkbox"/> Multilateral Treaty <input type="checkbox"/> Hague Convention <input type="checkbox"/> Arrangement with India <input type="checkbox"/> Arrangement of Reciprocity
4)	Issuing Authority	Name: Address: Name of the contact person at Issuing Authority: Designation: Phone Number: Email:
5)	Investigating Authority	Name: Address: Name of the contact person who can give clarification on the case: Designation: Phone Number: Email:
6)	Contact details of person/officer who could be contacted for clarifications about the document	Name: Designation: Phone No.: Fax: Email ID:
7)	Case details	FIR No.: Section under which FIR has been registered: Court Case Number:
8)	Brief summary of the case	Nature of proceedings (Civil/Criminal): Brief fact of the case: Link between alleged offence(s) and assistance requested: Applicable laws and maximum penalties for the offence(s): Limitation Period: Current Status of the case:
9)	Any other relevant information for proper execution of request	
10)	Any specific manner/procedure to be followed for execution of request	
11)	Cost for executing the request	
12)	Timeline for executing the request	
13)	Limitation of Use	
14)	Confidentiality requirement (if any)	
Date:		(to be signed and stamped by the Issuing Authority)

Figure 3.5: Format of the Request for Mutual Legal Assistance

To: The Competent Authority of the (Requested Country)

**REQUEST FOR MUTUAL LEGAL ASSISTANCE
IN A CRIMINAL MATTER**

CERTIFICATE ON BEHALF OF THE (REQUESTING PARTY)

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

REQUEST

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

Or

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

NATURE OF REQUEST

This request relates to [describe the subject of criminal matter]. The Authority/agency conducting the investigation/prosecution of the criminal matter is [describe authority/agency concerned with the criminal matter].

[Indicate whether judicial proceedings have been, or are to be, instituted or concluded, as the case may be, and provide details of such proceedings (example the level of the court)].

CRIMINAL OFFENCES / APPLICABLE LEGISLATION / PENALTIES

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

PERIOD OF LIMITATIONS: Here, it may also be mentioned that the offence is not time-barred or punishment is not lapsed, citing relevant provision of period of limitation of Indian Law.

STATEMENT OF FACTS (this column is to be filled up on case to case basis)

1. 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. Clearly state the connection of material sought. E.g. If bank records are sought, the connection of bank accounts in requested state with the investigation being conducted in India may be specifically mentioned. If the bank accounts have been utilized in the commission of crime, that may also be invariably mentioned.
2. Indicate whether and how any person(s) has carried on or benefited from the offence(s) committed in the Requesting State. State how the thing sought to be produced by this Request (whether by itself or with another thing) will be of substantial value to the criminal matter.
3. State also whether a foreign confiscation order has been or may be made in such proceeding and whether any person(s) affected or will be affected by such an order has been notified of the proceedings in accordance with the Domestic Law. Provide details of seizure, confiscation, restitution of the property to the Requested Party against which restraint / enforcement is sought and how such property is *bono fide* linked to the offence.

PURPOSE OF THE REQUEST

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

ASSISTANCE REQUESTED (use only relevant portion which is related to the case)

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

- (a) **examination of a witness in the Requested Party;**
(e.g.) Mr. X of ABC Co. Ltd., (address) is to be orally examined on the following matters:
(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).
- Include all available personal details of the witness (including name, nationality, location, passport information and gender etc)
 - State the status of the witness (suspect/accused, or simply a witness)
 - Include a clear explanation of how the information sought from the witness is relevant to the case.
- (b) **production of documents, records or items before a court (and obtaining of oral evidence of the witness producing such material for the purpose of identifying and providing the material produced);**
(e.g.) Director of ABC Co. Ltd., (address) is required to produce (describe the form of evidence e.g. "certified copies") the following documents, records or items for the period (state relevant time frame):
- (Specify documents, records or items or classes thereof).
 - (The above witness to be orally examined on the following matters for the purpose of identifying and proving the documents, records or items produced)
 - (state relevant particulars, e.g. to provide confirmation as to his position in a company/office and that he is responsible for keeping/ maintaining /holding the documents, records or items in relation to the subject-matter of the investigation; that he is authorized by the relevant law of the Requested Party to make the statement ; to confirm that he has access to the documents, records or items kept in relation to the subject-matter of the investigation in the normal course of his duties; to confirm the authenticity of the copies of the documents, records or items supplied; to confirm that the documents, records or items were created in the ordinary course of business)
- (c) **search of person or premises for documents, records or items; (read section 105 of Cr. PC)**
(e.g.) The premises of ABC Co. Ltd., (address) to be searched under a search warrant for the seizure of the following from the company:
- (provide details of the documents, records or items sought to be searched for and seized),
 - (support any request for originals of documents, records or items seized with reasons),
 - (support the belief that relevant documents would be available in the premises of the ABC Co. Ltd.)
 - 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.
 - State how the items seized will be relevant to the case.
- (d) **production of documents, records or items through production orders;**
(e.g.) Manager of ABC Bank Ltd., (address) to be required to produce copies of the following documents, records or items under a production order:
- (describe particulars of material required to be produced and where located).
 - (state grounds for believing that the material sought is likely to be of substantial value to the criminal matter).
 - (support any request for the production of originals of documents with reasons).
 - (if original cannot be produced, request for authenticated copies of the same).
 - For bank document, indication of the name and address of the bank, account number, account holder name, time period for the production of the bank statements, types of banking documents requested (account opening documents, statements, wires, loan agreements, among others), relation of the bank account with the crimes committed along with the certificate provided in the respective Statute.
- (e) **Arrangement of travel of person/persons in custody or an expert from (name of Requested Party) to assist in a criminal matter; (read Section 105B of Cr. PC)**
(e.g.) Arrangements to be made for Mr. X (address) to travel to (name of Requesting Party) to give assistance in a (criminal matter) by rendering the following assistance:
- (specify the assistance sought).
 - (provide the undertakings required by the law of (name of Requested Party).
 - (provide details of the allowances to which the person will be entitled, and of the arrangements for security and accommodation for the person, while the person is in (name of Requesting Party) pursuant to the request).

- (f) **Enforcement of a forfeiture order/request to assist in the restraining of dealing in property; (Read section 105 C of Cr. P.C).**
- include an official, certified copy of the relevant order(s)
 - Include an official, certified copy of the conviction of the person
 - Include the provisions of the relevant proceeds of crime laws (including information about restraint and forfeiture regimes)
 - provide confirmation that the conviction and the order are final and are not subject to appeal
 - Include information about the location and particulars of the assets to be restrained, forfeited or used to satisfy a pecuniary order
 - Include as much information as possible to link the criminal conduct of the person to the assets located in the Requesting country (including evidence of transfers or other financial information)
 - 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).
- (state particulars of person concerned).
- (h) **assistance in tracing property suspected to be connected to a serious offence;**
(e.g.) Arrangements to be made to trace (description of property) believed to be in (name of Requested Party).
- (state particulars of property concerned).
- (i) **Arrangement of examination of a person as witness through commission to assist in a criminal matter; (read Section 205 of Cr. P.C)**
- (Specify clearly the relevant issues/ areas relating to the subject-matter of the criminal proceedings/investigation in 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)
 - Attach original order of the court issuing the commission.
- (j) **Electronic Evidence**
if electronic evidence is being sought, the connection if relevant email/Twitter/Facebook account with crime and criminal may be mentioned. How the said account has been used in the commission of crime may also be highlighted. It may also be mentioned that preservation request has already been sent to concern ISPs.

MANDATORY ASSURANCE AND UNDERTAKINGS

It is confirmed that this request:

- Neither relates to the investigation, prosecution or punishment of a person for a criminal offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character nor it is made for the purposes of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of that person's race, religion, sex, ethnic origin, nationality or political opinions;
- 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.
- 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.
- Cost:** Generally, the cost of execution of letter of Request shall be borne by requesting State as per the provisions of the Mutual Legal Assistance Treaty. However, if there are significant costs involved like travel of witnesses/Cost of obtaining Expert Opinion etc., mention the readiness to meet the expenditure to be incurred.
- Should the Judicial Authority of the Requested Country require the return of any information / evidence / thing obtained in pursuant to this request at the conclusion of the criminal proceeding, the same shall be returned to the Judicial Authority of the Requested Country.
- The person(s) whose attendance is requested shall not:
 - be detained, prosecuted, punished and subjected to any other restriction of personal liberty in the territory of Republic of India for any acts, omissions or convictions which preceded the person(s) departure from the Requested Country other than that to which the request relates.
 - be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that

had occurred before the person's departure from the Requested Country.

- iii. be required to give evidence in any proceeding or to assist in any investigation(s) other than the proceeding or investigation(s) to which the request relates, without the person's consent.

- (g) In the matter of investigation of an offence for which the maximum punishment prescribed under the law is death, an assurance for non-execution of such penalty by commutation or remission of such penalty may be given on a case to case basis.

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

LIMITATION OF USE

Unless otherwise agreed, the Investigation agency of India, who is conducting investigation in the present case, shall not, without the consent of the Requested Country, use or transfer information or evidence provided by the Requested Country for investigations or proceedings other than those stated in the request. However, in cases where the charge is altered, the material provided may be used in so far as the offence, as charged, is an offence in respect of which mutual assistance could be provided under the present Treaty.

EXECUTION OF REQUEST

Procedure to be followed:

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

(e.g.) Permission is requested for an officer of (name of appropriate authority in Requesting Party) to travel to (name of Requested Party) to remain present during the examination of witness and to assist the authorities of Requested Country (if required) during the execution of this request.

PERIOD OF EXECUTION

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

CONFIDENTIALITY:

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

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

LIAISON

Provide the details of the officers who are handling this request for liaising with Requested Country:

State name of officer(s):

Address:

Telephone Number:

Facsimile Number:

Electronic mail address:

Please accept the assurance of our highest consideration.

(Signature along with seal)

Name of the Presiding Officer of the case:

Office:

Date:

Figure 316: List of countries having MLAT with India					
S.No	Country and Year of MLAT Agreement	Central Authority- Address and Email ID	Language requirement as per MLAT	Specification requirement for making a request	
1.	Australia	Assistant Secretary International Crime Cooperation Central Authority International Crime Cooperation Division Attorney-General's Department 3-5 National Circuit BARTON ACT 2600 AUSTRALIA Telephone: +61 2 6141 3244 Facsimile: +61 2 6141 5457 Email: mutualassistance@ag.gov.au	Requests shall be submitted in the English language	An assurance of death penalty is required if any of the offences under investigation has capital punishment.	
2.	Azerbaijan	Ministry of Justice AZ 1073, Baku, Inshaatçilar ave.1 Tel: (994 12) 430-09-77 Fax: (994 12) 430-09-81 Email: mlhau@azdata.net Web site: www.justice.gov.az	Contracting States shall use their national language attaching the translation in the national language of the other Contracting State or in the English language	No specific requirement.	
3.	Bahrain	Ministry of Justice 82 Rd No 1702, Manama, Bahrain	Requests and supporting documents shall be accompanied by a translation into one of the official languages of the Requested State or into English	No specific requirement.	
4.	Bangladesh	Ministry of Home Affairs	Requests and supporting documents shall be accompanied by a translation into English.	No specific requirement.	
5.	Belarus	General Prosecutor's Office of the Republic of Belarus and the Supreme Court of the Republic of Belarus	Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in English.	No specific requirement.	
6.	Bosnia and Herzegovina	Ministry of Justice of Bosnia and Herzegovina 1 Trg BiH Street, 71 000 Sarajevo Tel: + 387 33 223 501, 223 502 Fax: +387 33 223 504	Requests with supporting documents shall be submitted in the English language, if required, accompanied by a translation in the language of the Requested State	No specific requirement.	
7.	Bulgaria	Ministry of Justice Address: 1 Slavyanska str. 1040, Sofia, Bulgaria Email: priemna@justice.government.bg Phone: +359 (2) 9237 535	Requests for legal assistance and supporting documents shall be accompanied by a certified translation in English or in the language of the Requested State	No specific requirement.	
8.	Cambodia	Ministry of Interior N° 275, Norodom, Phnom Penh; Phone: 855-23 721 190; Phone: 855-23 721 905;	Request shall be submitted in the English language.	No specific requirement.	
9.	Canada	International Assistance Group Litigation Branch, Criminal Law Division Department of Justice Canada 284 Wellington Street, 2nd Floor Ottawa, ON K1A 0H8 Telephone: +613 957 4832 After hours: +613 851 7891 Facsimile: +613 957 8412 E-mail: cdncentralauthority@justice.gc.ca	Requests and supporting documents shall be accompanied by a translation into one of the official languages of the Requested State (French Translation)	An assurance of death penalty is required if any of the offences under investigation has capital punishment.	
10.	Egypt	Ministry of Justice Lazoughly Square Abdeen, Cairo Governorate, Egypt	Requests and supporting documents shall be accompanied by a translation in English or in the language of the Requested State	No specific requirement.	

11.	France "French Republic" MLAT-2005	Ministry of Justice Ministère de la Justice et des Libertés Direction des Affaires criminelles et des Grâces Bureau de l'Entraide Pénale Internationale 13 place Vendôme 75042 Cedex 01 Telephone: +331 44 86 14 22, Facsimile: +331 44 86 14 11	Requests and supporting documents shall be accompanied by a translation into one of the official languages of the Requested Party. (French Translation)	An assurance on death penalty is required if any of the offences under investigation has capital punishment.
12.	Hong Kong "Hong Kong Special Administrative Region of the People's Republic of China" MLAT-2005	Secretary for Justice The Mutual Legal Assistance Unit Department of Justice 47/F, High Block Queensway Government Offices 66 Queensway Hong Kong Telephone: (852) 2867 4343 Facsimile: (852) 2523 7959	Requests shall be in, or translated into, an official language of the Requested Party. All documents submitted in support of a request shall be accompanied, if so required by the Requested Party, by a translation into an official language of the Requested Party	No specific requirement.
13.	Iran "Islamic Republic of Iran" MLAT-2010	Central Authority is the Judiciary	Requests and supporting documents shall be accompanied by a translation in English or in the language of the Requested State (Persian translation)	No specific requirement.
14.	Indonesia "Republic of Indonesia" MLAT-2011	Ministry of Law and Human Right H.E. Minister for Law and Human Rights Directorate General of Legal Administrative Affairs, Jl. H.R. Rasuna Said Kav. 6-7 Jakarta 12940 Indonesia Telephone: +62 21 520 23 91 Facsimile: +62 21 526 10 82	English and the Indonesian translation (Bhasha Indonesia)	No specific requirement.
15.	Israel "State of Israel" MLAT-2015	Ministry of Justice 216 Yaffo St. Jerusalem (Sha'arei H'air building) Israel Tel. ++972-2-6595601 Fax ++972-2-6595611	Requests shall be submitted in the English language	No specific requirement.
16.	Kazakhstan "Republic of Kazakhstan" MLAT-2005	Office of the Attorney General	Requests and supporting documents shall be accompanied by a translation into one of the languages of the requested Party. (Translation in Kazakh or Russian)	No specific requirement.
17.	Kyrgyzstan "Kyrgyz Republic" MLAT-2014	General Prosecutor's Office 010000, the Republic of Kazakhstan, Nur-Sultan city, Mangilik El avenue, 14 Chancery: +7 (7172) 71-28-68	the Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English or Russian languages	No specific requirement.
18.	Kuwait "State of Kuwait" MLAT-2007	Ministry of Justice (Criminal Execution Office & Foreign Communications)	Requests and supporting documents shall be accompanied by a translation into one of the official languages of the Requested Party or into English.	No specific requirement.
19.	Malaysia "Malaysia" MLAT-2012	Attorney General of Malaysia c/o International Cooperation Unit Attorney General's Chambers No. 45 Persiaran Perdana Precinct 4, 62100 Putrajaya, MALAYSIA Telephone: (+603) 8872 2000 Facsimile: (+603) 8890 2218	Requests and supporting documents thereto and other communications related to the request shall be submitted in the English language.	No specific requirement.
20.	Mauritius "Republic of Mauritius" MLAT-2006	Attorney General's Office Ground Floor, 2nd, 3rd, 4th, 5th, and 6th floor Ranganaden Seeneevassen Building Port Louis, MAURITIUS Phone : (230) 203-4740 Fax : (230) 212-6742 Email : ago@govmu.org	Requests shall be submitted in the English language	No specific requirement.
21.	Mexico "United Mexican States" MLAT-2009	Office of the Attorney General Dirección General de Extradiciones y Asistencia Jurídica Procuraduría General de la República Avenida Paseo de la Reforma N° 211-213, Segundo Piso, Colonia Cuauhtémoc, Delegación Cuauhtémoc, México, Distrito Federal, C.P. 06500, Telephone: +52 55 53 46 81 13, Facsimile: +52 55 53 46 09 02, E- mail: fresendiz@pgr.gob.mx	Requests and supporting documents shall be in the language of the Requested Party or in English	No specific requirement.

		General Prosecutor's Office	Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English language.	No specific requirement.
23.		Ministry of Justice Ministry of Justice Mamounieh Square, PO Box 1015, Rabat, Morocco Phone: +212 5372-13737	Arabic translation	No specific requirement.
24.		Ministry of Home Affairs Office Building No.8, Administrative Zone Naypyitaw, UNION OF MYANMAR Telephone No. : +95-1-412-135 Facsimile No. : +95-1- 412-015	Requests shall be submitted in the English language.	No specific requirement.
25.		Prosecutor General's Office of the Russian Federation Main Department of International Legal Cooperation 15a, Bolshaya-Dmitrovka, GSP-3 Moscow-125993 Russia Telephone: +7 495 692 32 06 Facsimile: +7 495 692 29 79; +7 495 692 16 60; E-mail: transgprf@mail.ru	Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting party or in the English language. (Russian Translation)	No specific requirement.
26.		Director-General International Affairs Division The Attorney-General's Chambers 1 Upper Pickering Street Singapore 056288 REPUBLIC OF SINGAPORE	All requests and supporting documents submitted by the Requesting State shall be in English.	Foreign Law Immunity and Mandatory assurances are required.
27.		Director General of the Department of Justice & Constitutional Development Private Bag x81 PRETORIA 0001 +27 315 1111	Requests shall be submitted in the English language	An assurance on death penalty is required if any of the offences under investigation has capital punishment.
28.		International Criminal Affairs Division Criminal Affairs Bureau Ministry of Justice, Republic of Korea Gwacheon-Si Gwanmoon-Ro 88, Government Complex Building #3, Postal Code 427-720 Telephone: +82 2 2110 3555 Facsimile: +82 2 3480 3113	Requests with supporting documents and other communications made shall be made in the English language accompanied by a translation into the Korean language	No specific requirement.
29.		Ministry of Justice Ministerio de Justicia Subdirección General de Cooperación Jurídica Internacional c/San Bernardo, 62 28071 Madrid, Spain Telephone: +34 91 390 22 98/44 33 Facsimile: +34 91 390 44 57	Requests and supporting documents shall be accompanied by a translation into the official language of the Requested Party or English	An assurance on death penalty is required if any of the offences under investigation has capital punishment.
30.		Ministry of Justice and Law Reforms Secretary Ministry of Justice and Prison Reforms Superior Courts Complex Adhikarana Mawatha Colombo 12, Sri Lanka Fax : +94 112 445 447 Email : secretary@moj.gov.lk	Requests shall be submitted in the English language.	No specific requirement.
31.			French, German or Italian translation is required.	An assurance on death penalty is required if any of the offences under investigation has capital punishment.
32.		Royal Oman Police	Requests and supporting documentation shall be accompanied by a translation into one of the official languages used in the Requested State (Arabic translation)	No specific requirement.

33.	Tajikistan "Republic of Tajikistan" MLAT-2003	Prosecutor's Office of the Republic of Tajikistan 734025, Dushanbe city, Tehron 36 Street (+992 37) 2215327 Email: dushanbe@prokuratura.tj	Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English language	No specific requirement.
34.	Thailand "Kingdom of Thailand" MLAT-2004	International Affairs Department Office of the Attorney General, Rajaburi Direkridghl Building, Government Complex Chaeng Watthana Road, Lak si Bangkok 10210, Thailand Telephone: +66 2 142 1660 Facsimile: +66 2 143 9797 Email: Inter@ago.go.th	Requests shall be submitted in English language	No specific requirement.
35.	Turkey "Republic of Turkey" MLAT-1999	Ministry of Justice General Directorate of International Law and Foreign Relations Mustafa Kemal Mahallesi 2151. Cadde No:34/A 06520 Söğütözü, Ankara, Turkey Telephone: +90 312 2187821 Facsimile: +90 312 2194523 E-mail: uhdigm@adalet.gov.tr	Request and documents to be provided in the English language	No specific requirement.
36.	Ukraine "Ukraine" MLAT-2003	General Prosecutor's Office of Ukraine (concerning requests by pre-trial investigation authorities) and the Ministry of Justice of Ukraine (concerning requests by courts)	Requests and supporting documents shall be accompanied by a translation into English	No specific requirement.
37.	United Arab Emirates "United Arab Emirates" MLAT-1999	Ministry of Interior 1st Street, W 56 - Abu Dhabi United Arab Emirates	Requests and supporting documents shall be accompanied by a translation into one of the official languages of the Requested Party. (Arabic along with English Translation)	No specific requirement.
38.	United Kingdom "United Kingdom of Great Britain and Northern Ireland" MLAT-1999	UK Home Office 5th Floor Fry Building 2 Marsham Street London SW1P 4DF Telephone: +44 20 7035 4040 Facsimile: +44 20 7035 6985	Request and supporting documents shall be drawn in the language of Requesting Party and shall be accompanied by a translation into that of the Requested Party.	An assurance of death penalty is required if any of the offences under investigation has capital punishment.
39.	United States of America "United States of America" MLAT-1995	Office of International Affairs Criminal Division United States Department of Justice 1301 New York Avenue, N.W. Washington, D.C. 20005 ; Telephone: +1 202 514 0000; Facsimile: +1 202 514 0080	The request shall be in English	No specific requirement.
40.	Uzbekistan "Republic of Uzbekistan" MLAT-2003	Prosecutor's Office of the Republic of Uzbekistan 66 Yahyo Guliyamov Street, Tashkent 142000, Uzbekistan Phone: +998 71 232 10 07	The Contracting Parties shall use their national language attaching the translation in the national language of the other Contracting Party or in the English language.	No specific requirement.
41.	Vietnam "Republic of Vietnam" MLAT-2002	International Cooperation and Mutual Legal Assistance in Criminal Matters Department Mutual Legal Assistance in Criminal Matters Division, Supreme People's Procuracy, 44 Ly Thuong Kiet street Hoan Kiem district, VIET NAM Telephone: +84 4 38 255 058 ext. 103 or 105; Facsimile: +84 4 39 361 637 Email: http://mla@vks.gov.vn	A request, any supporting documentation and any communications shall be in the language of the Requesting Party and be accompanied by a translation into the language of the Requested Party or in the English language	No specific requirement.

Part IV: Service of Summons, Notices and Judicial Processes

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

4.1 Section 105³ and Chapter VII A of the Criminal Procedure Code, 1973 provides for the reciprocal arrangements made by the Central Government of India with the foreign governments with regard to the service of summons, notices or any other judicial documents/processes.

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

4.3 The request for service of summons/notices/ Judicial process on the persons residing abroad should include:

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

³ Sec 105. Reciprocal arrangements regarding processes.—(1) Where a Court in the territories to which this Code extends (hereafter in this section referred to as the said territories) desires that—

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

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

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

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

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

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

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

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

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

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

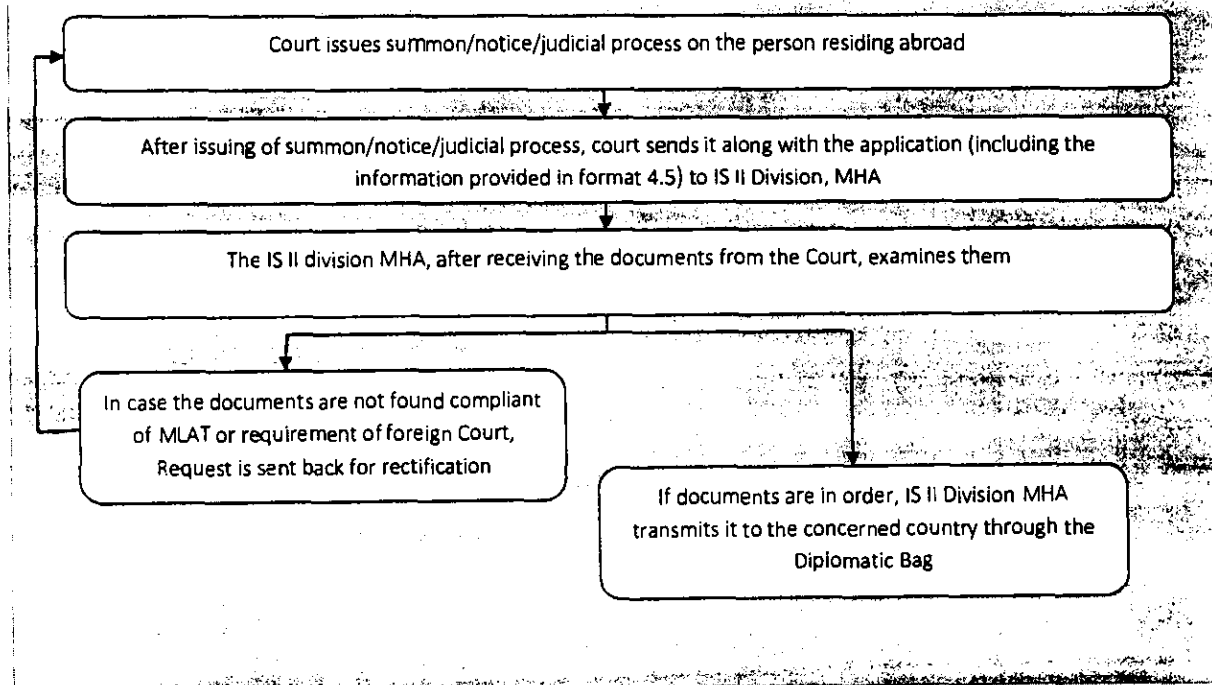
Provided that in a case where a summons or search-warrant received from a contracting State has been executed, the documents or things produced or things found in the search shall be forwarded to the Court issuing the summons or search-warrant through such authority as the Central Government may, by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

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

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

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

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



B. Important Points to be noted for making a Request for Service of Summon/notice/judicial processes

- 1) It is to be noted that foreign Courts or authorities require at least a period of 10 weeks for transmission of request and service of Summon/notice/judicial processes upon the person concerned. The next date of hearing/appearance for the case may be decided accordingly.
- 2) In the case of countries referred to in Figure 4.4 and other non-English speaking countries, the summons, notices or judicial documents should be accompanied with the certified/authenticated translation (in duplicate) in the official language of the country where such document is proposed to be served.
- 3) The documents are served by the Requested Country as per their domestic laws and procedure.
- 4) For the purpose of Figure 4.5 the issuing authority shall be the authority issuing summon/notice/judicial processes.
- 5) The execution of non-bailable warrants of arrest amounts to extradition. Hence, they do not come under the ambit of service of judicial documents. However, only the service and not the execution of Non-Bailable warrants can be done by IS-II Division, MHA.
- 6) The service of summon/notice/judicial processes in the cases related to serious crime against women and minors needs to be attempted carefully. After receiving the complete request (as per the information provided in Figure 4.3, Figure 4.4 and Figure 4.5), the IS-II Division, MHA, with its best endeavors, shall get the summon/notice/judicial processes transmitted to the country concerned expeditiously, preferably within 10 working days.

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

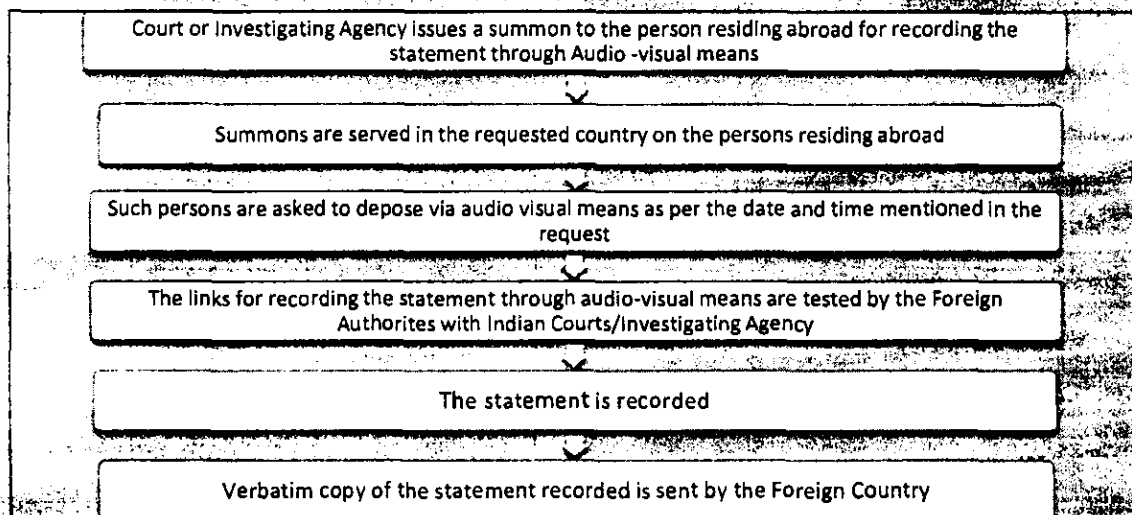
4.5 For taking statements or evidence through audio visual means in a foreign country, a summons has to be issued by the Indian Court or Investigation Agency and forwarded along with the request to Central Authority of India for further transmission to the foreign country. After the summons is duly served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

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

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

D. Procedure for Recording of Statement through Audio-Visual Means

Figure 4.2: Procedure of recording statement through audio-visual means



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

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

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

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

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

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

mind his age, gender and physical condition.

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

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

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

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

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

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

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

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

4.20 The coordinator on both sides shall provide:

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

4.21 It should be ensured by the coordinators that:

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

through audio-visual means;

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

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

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

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

E. Execution of Request for Service of Summon/Notice/Judicial processes Issued by the Foreign Courts/Authorities

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

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

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

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

4.27 The concerned Authorities after service of these documents upon the person shall prepare a report of service of such documents and forward the report along with proof of service in original as per the domestic law and procedure of India or in the manner mentioned in the Request. The proof of service along with connecting documents shall be forwarded to IS-II division, Ministry of Home Affairs, Major Dhyan Chand National Stadium, New Delhi-110001. The Central Authority of India shall further forward the proof of service along with the connecting documents to the Requesting Country through diplomatic channels or through the same channel through which the request for service was received.

4.28 The competent Authorities assigned the task of service shall endeavor to serve the documents promptly and expeditiously, in no case later than two weeks.

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

Figure 4.3: Check List of the Documents to be sent to Central Authority for Service of Summon/Notice/Judicial Processes

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

- ☐ Covering Letter by Registrar/Court Official or Investigating Agency addressed to Central Authority of India
- ☐ Duly filled, signed and stamped Application containing brief facts of the case for the request for service of summons/ notice/ judicial processes (Refer to figure 4.5)
- ☐ Original summon (in duplicate)/notice/judicial process signed and stamped by Court (See Figure 4.6 and 4.7) along with the information provided in figure 4.5 of these guidelines.
- ☐ Translated copy of Application and summon/notice/judicial document if required by the Requested Country
- ☐ Certified Order of Court providing for recording of statement through audio-visual means (in case the option of recording of evidence through audio-visual means is provided by the court)
- ☐ Copy/extract of applicable sections under which accused/defendant is being proceeded against.

Figure 4.4: Country-wise Requirements for Execution of Request for Service of Summon/Notice/Judicial Processes

S.No	Country	Requirements for making a request
1.	Australia	Australian Authorities levy charges for service of documents. Indian Court/Authority has to give an undertaking stating that whatever charges are levied by the Australian Authorities will be paid by the Court or Agency or person concerned.
2.	Armenia	No specific requirement. Request has to be made in English.
3.	Azerbaijan	No specific requirement. Request has to be made in English.
4.	Bangladesh	No specific requirement. Request has to be made in English.
5.	Bhutan	No specific requirement. Request has to be made in English.
6.	Bolivia	No specific requirement. Request has to be made in English.
7.	Bulgaria	No specific requirement. Request has to be made in English.
8.	Cameroon	No specific requirement. Request has to be made in English.
9.	Canada	No specific requirement. Request has to be made in English or French as per the requirement.
10.	Cyprus	No specific requirement. Request has to be made in English.

11.	France	French translation of judicial document and supporting documents is required.
12.	Hong Kong	Request has to be made in English or Chinese.
13.	Iran	Persian translation of the documents is required.
14.	Indonesia	Required Assurance:- If personal service of judicial documents is required, the Requesting Country should attach a copy of their legislation stating that why personal service is required. Otherwise, they will arrange service of judicial documents by registered post, subject to the appropriate undertaking as set out in section 82(8) being provided. Request has to be made in English with Indonesian (Basha Indonesia) translation.
15.	Israel	No specific requirement. Request has to be made in English.
16.	Kazakhstan	Kazakh or Russian translation of judicial and supporting documents is required for making a request.
17.	Kyrgyzstan	No specific requirement. Request has to be made in English.
18.	Kuwait	No specific requirement. Request has to be made in English.
19.	Malaysia	No specific requirement. Request has to be made in English.
20.	Mauritius	No specific requirement. Request has to be made in English.
21.	Mexico	No specific requirement. Request has to be made in English.
22.	Mongolia	No specific requirement. Request has to be made in English.
23.	Morocco	Arabic translation of judicial document and supporting documents is required.
24.	Myanmar	No specific requirement. Request has to be made in English.
25.	Nigeria	Request has to be made in English.
26.	Singapore	Request has to be made in English.
27.	South Africa	No specific requirement. Request has to be made in English.
28.	South Korea	Korean translation of judicial and supporting documents is required.
29.	Spain	No specific requirement. Request has to be made in English.
30.	Sri Lanka	No specific requirement. Request has to be made in English.
31.	Switzerland	French or German or Italian translation of judicial and supporting documents is required.
32.	Sultanate of Oman	Arabic translation of judicial document and supporting documents is required.
33.	Tajikistan	No specific requirement. Request has to be made in English.
34.	Thailand	No specific requirement. Request has to be made in English.
35.	Turkey	No specific requirement. Request has to be made in English.
36.	Ukraine	No specific requirement. Request has to be made in English.
37.	United Arab Emirates	Arabic translation of judicial document and supporting documents is required.
38.	United Kingdom	No specific requirement. Request has to be made in English.
39.	United States of America	No specific requirement. Request has to be made in English.
40.	Uzbekistan	No specific requirement. Request has to be made in English.
41.	Vietnam	No specific requirement. Request has to be made in English.

*For all other countries the service of summons/notices/judicial processes is done on the basis of letter of reciprocity

Figure 4.5: Format of the Request for Service of Summon/Notice/Judicial Processes

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

Option for recording evidence through audio visual mean

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

Date: (to be signed and stamped by the Issuing Authority)

Figure 4.6: Format for summons to witness as provided in CrPC

FDRM No. 33

SUMMONS TO WITNESS

To _____ of _____

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

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

Dated, this _____ day of , 20____

(Seal of the Court)

(Signature)

Figure 4.7: Format for summons to accused as provided in CrPC

FORM No. 1

SUMMONS TO AN ACCUSED PERSON

To (name of accused) of (address)

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

Dated, this _____ day of ____ 20____

(Seal of the Court)

(Signature)

Part V Miscellaneous Provisions relating to Reciprocal Arrangements

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

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

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

i) Recording of the statement by the competent authority of the Requested Country

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

ii) Obtaining statement through Commission Issued by Indian Court

5.1.2 For recording of the statement of the person residing abroad, a Court in India may issue a commission under section 285 of CrPC, subject to the domestic laws of the foreign country.

Figure 5.1: Format for Issue of Commission

IN THE COURT OF

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

To _____

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

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

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

And I further have the honour to request that you will be pleased to cause the answers of the said witness to be reduced into writing and all books, letters, papers and documents produced upon such examination to be duly marked for identification and that you will be further pleased to authenticate such examination by your official seal (if any) and by your signature and to return the same together with this commission to the undersigned through _____ (Name of Ministry), Government of India, New Delhi.

Given under my hand and the seal of the Court on this ____ day of _____ 20__

Judge
Judicial Magistrate
Metropolitan Magistrate

iii) Making available persons in India for recording of statement

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

iv) Obtaining statement through Audio-Video Means

5.1.4 Section 161 CrPC provides that the examination of witness may also be done by audio-video electronic means. Further, the Hon'ble Supreme Court has held in *"State of Maharashtra vs Pratul Desai"*⁴ that the recording of evidence by way of video conferencing might be done in cases where the attendance of the witness cannot be ensured without delay, expense and inconvenience.

5.1.5 Where a Court or other authority or agency or an officer having jurisdiction, in the course of investigation or prosecution, finds it necessary that evidence may be recorded by audio-visual means to save time and money, it may forward an application to the Central Authority of India for the said purposes. Audio-visual means may be used for:

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

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

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

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

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

5.3 When it is considered necessary to send a team of Officers abroad, the State Government/UTs may send a proposal to the Central Authority of India for obtaining the approval for the proposed visit, whenever necessary.

5.4 Subject to the law of foreign country such police officers may participate in taking of the evidence and may also pose questions to the person examined. He may also make a verbatim transcript of the proceeding.

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

⁴ (2003 4 SCC 601)

of the Investigating Officers.

5.6 The following information needs to be sent to the Central Authority for taking up the matter with the country to which such team is proposed to be sent:

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

2) Visit of Investigating officers of Foreign Country for Assisting in Execution of Request in India

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

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

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

3) Joint Investigation

5.10 A Joint Investigation Team is a team set up for a set period, based on mutually agreed terms between the Contracting States for a specific purpose in relation to the investigations, prosecution or proceedings. The procedures under which the joint investigation team has to operate Contracting States should be mutually agreed upon such as its composition, duration, location, organization, functions, purpose and terms of participation of team members.

C. Protection and Preservation of Data

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

5.12 The request for data protection/preservation may be sent using official ID's directly to the service provider or through the Assistant Director (NCB), CBI HQ, 6th Floor, Lodhi Road, who would in turn get the data preserved through Cyber Crime Investigation Cell (EOU-IX) of CBI which is being the contact point in respect of India G-8 24/7 Network. It allows Law Enforcement Agencies of India making urgent preservation requests of the digital data before it perishes. CBI will keep the Central Authority informed of making such preservation requests. Generally, the data is preserved for an initial period of 90 days from the receipt of Request. During this period, the investigation Agencies including State Law Enforcement Agencies should send a proposal to MHA for issue of Letters Rogatory for obtaining the data from concerned service provider. If the investigation is continuing, then after every 60 days the request for preservation of data shall be served to the country concerned.

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

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

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

Safeguards for Protection and Preservation of Data

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

- a) Data including personal data must be obtained and processed fairly and lawfully and must be appropriate, relevant and not excessive with regard to the purposes for which it is sought and transferred.
- b) The Requested Country should be informed about the time period for which the data is required. Such period shall be consented by the Requested Country.
- c) The transferred data shall be kept for no longer than the period required for the purpose for which it has been received and shall be returned to the Requested Country or deleted at the end of the period specified.
- d) The Requested Country shall be informed in advance in case the data has to be kept for a longer period in India.

- e) The Competent Authorities of the Contracting States shall take all reasonable measures to prevent the transfer of inaccurate, incomplete or out-of-date data. If it is established that inaccurate or non-transferable data has been transferred, it shall be immediately informed to the Requested Country and provide correct or accurate data. Any inaccurate data so received should be deleted or returned to the Requested Country.
- f) The data should not be transferred to a third country, a private individual or an international body without the consent of the Requested Country.
- g) The data transferred should be protected from accidental or unauthorized destruction, accidental loss, and unauthorized access, modification or dissemination.
- h) A record of the data transferred and its destruction should be maintained.

D. Identification of Bank Information

5.17 Where a Court or an Authority or Agency or Officer having jurisdiction in this regards for investigation into a criminal offence desires to obtain financial information of a person who is in any place in Contracting State, it may forward a request to the Central Authority to ascertain:

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

On execution of the request, such information, records or documents would be forwarded to India.

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

- Name of the Bank
- Name of the account holder
- Number of the Bank account
- The address and branch code of the bank where the account is held
- Grounds for believing that banks in the foreign Country hold account(s)
- The time period over which the information is sought
- Any other documents required Specific documents required (e.g. account opening information, bank statements, etc)] and relevance to the investigation;

E. Interception of Postal Items

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

5.20 The request for interception of postal item should include:

- Date of dispatch of the postal item
- the request must include sufficient information to identify the item,
- the course of transit, anticipated delivery time,
- any courier (if applicable) and
- an explanation of how the item relates to the criminal investigation in the Requesting Country.

Figure 5.1: Do's and Don'ts for the Investigating Officer or Agency

Do's

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

Don'ts

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

Part VII Informal Requests

A. Introduction

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

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

B. Mode and form of making an Informal Request

6.3 Where it is found to be necessary to gather information through INTERPOL or diplomatic channels the Investigation Agency is required to send a self-contained request, along with necessary details, to the Assistant Director (NCB), Central Bureau of Investigation, 5-B, CGO Complex, Lodhi Road, New Delhi-110003. It must be noted that an Investigating Agency may also email (from official Email ID) an informal request to Central Authority of India at us-legal@gov.nic.in.

C. Contents of Informal Request

6.4 The informal request must incorporate the following details:

- FIR number along with names of the accused and sections of law under which case has been registered;
- gist of the allegations in the FIR/ Preliminary Enquiry or any other investigation process;
- details of the information sought

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

Part VII: Extradition Requests

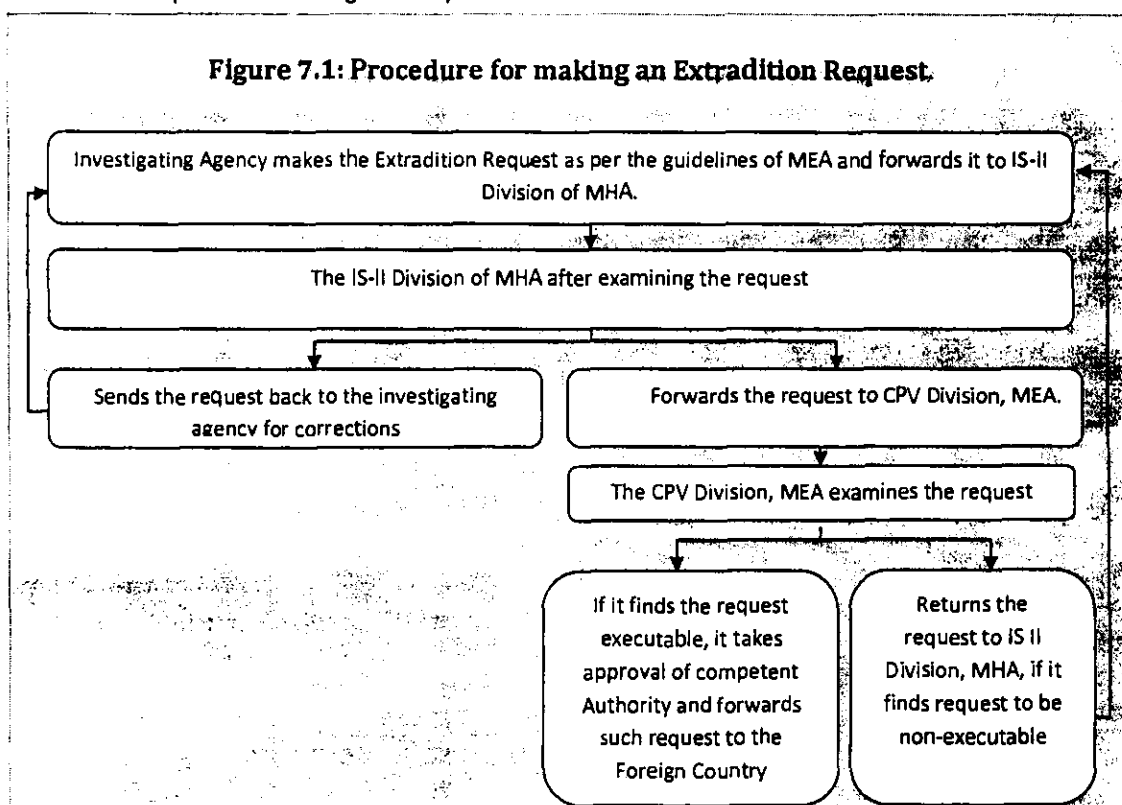
A. Introduction

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

B. Procedure for making an extradition request

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

- i) The Investigating Agency shall make the Extradition Request as per the suggestive guidelines of MEA available on <https://www.mea.gov.in/extraditionguidelinesabroad.htm> and forward it to IS-II Division, MHA.
- ii) The IS-II Division, MHA after examining the request may send it back to the investigating agency for corrections, or if the request is executable then forward it to CPV Division, MEA.
- iii) The CPV Division, MEA after examination takes the approval of competent Authority and forwards such request to the foreign country.



C. Important points to be considered while making Extradition Request

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

- Extraditability of Request as per the Extradition Act, 1962, Treaty, arrangement or Convention if any;
- Dual Criminality;
- Assurances (death penalty, prison conditions, term of sentence etc.)

The offences are not barred by clause of limitation (e.g. Section 468 CrPC)

D. Grounds for Refusal of Extradition

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

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

Figure 7.2: List of Countries having Extradition Treaty with India

1	Azerbaijan (2013)		23	Nepal (1953)	
		13	France (2003)	35	Thailand (1917)
3	Bahrain (2004)		25	Oman (2004)	
		15	Hong Kong (1997)	37	Turkey (2001)
5	Belarus (2007)		27	Philippines (2004)	
		17	Iran (2008)	39	UK (1992)
7	Bhutan (1996)		29	Saudi Arabia (2010)	
		19	Malaysia (2010)	41	USA (1997)
9	Bulgaria (2003)		31	South Korea (2004)	
		21	Mexico (2007)	43	Vietnam (2011)
11	Chile (1897)		33	Switzerland (1996)	

Figure 7.3: List of Countries with which India has Extradition Arrangement

Italy (2014)	Italy (2014)	Italy (2014)	Italy (2014)
Croatia* (2014)	Croatia* (2014)	Croatia* (2014)	Croatia* (2014)
Portugal (2011)	Portugal (2011)	Portugal (2011)	Portugal (2011)

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

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

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