

Figure 3.6: List of countries having MLAT with India

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

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

¹⁴ MANDATORY ASSURANCES

(a) does not relate to the prosecution or punishment of a person for a criminal offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;

(b) is not made for the purposes of prosecuting, punishing or otherwise causing prejudice to a person on account of that person's race, religion, nationality or political opinions;

(c) does not relate to the prosecution of a person for an offence in a case where the person has been convicted, acquitted or pardoned by a competent court or other authority of (name of requesting place), in respect of that offence or of another offence constituted by the same act or omission as that offence; and

(d) does not have as its primary purpose the assessment or collection of tax.

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

¹⁵ [Letter head]

FOREIGN LAW IMMUNITY CERTIFICATE

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

[Signature and/or seal]

[Name, Designation, Office, Date]

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

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

Part IV: Service of Summons, Notices and Judicial Processes

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

4.1 In India, Section 105¹⁴ and Chapter VII A of CrPC, Section 57¹⁵ and Section 61¹⁶ of PMLA, Section 10 FEOA¹⁷, etc., provides for the reciprocal arrangements made by the Central Government of India with the foreign countries with regard to the service of summons, notices or any other judicial documents/processes.

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

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

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

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

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or

(d) a search-warrant,

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

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

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

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

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or

(d) a search-warrant,

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

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

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

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

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

¹⁵ Ibid., Page 10

¹⁶ Ibid., Page 10

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

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

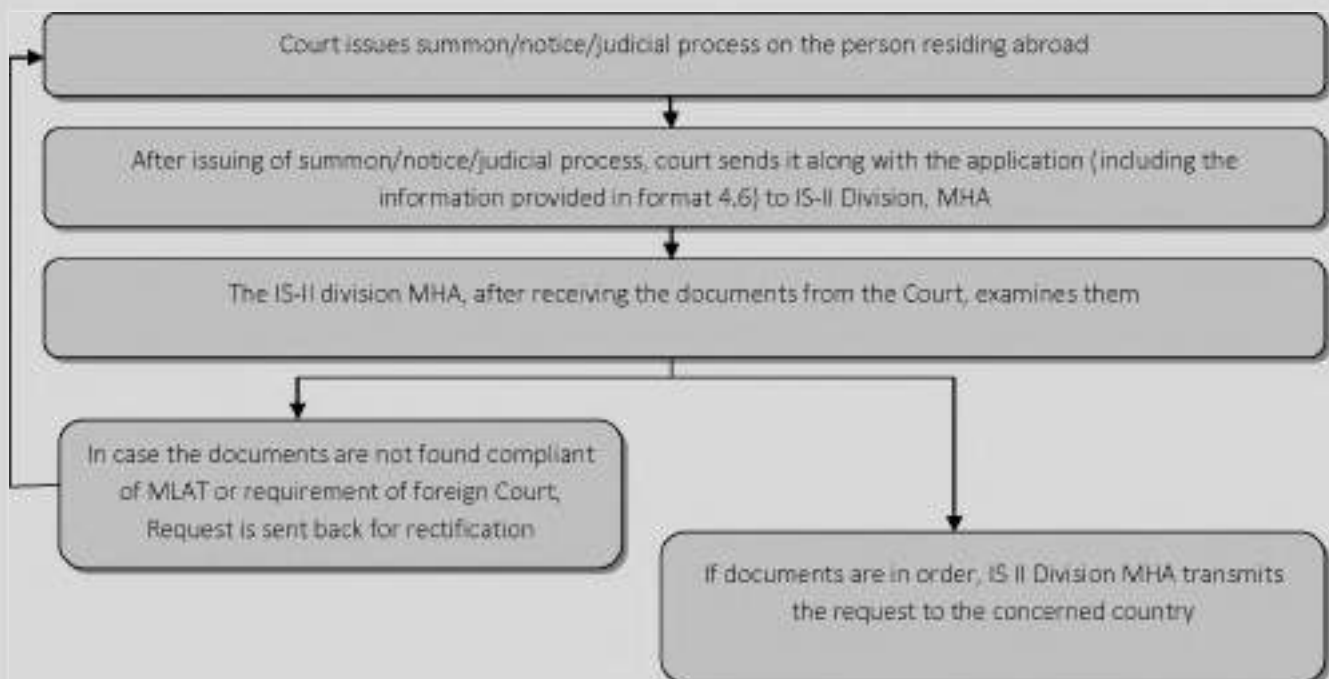
judicial processes is to be made on suspects);

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

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

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

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



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

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

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

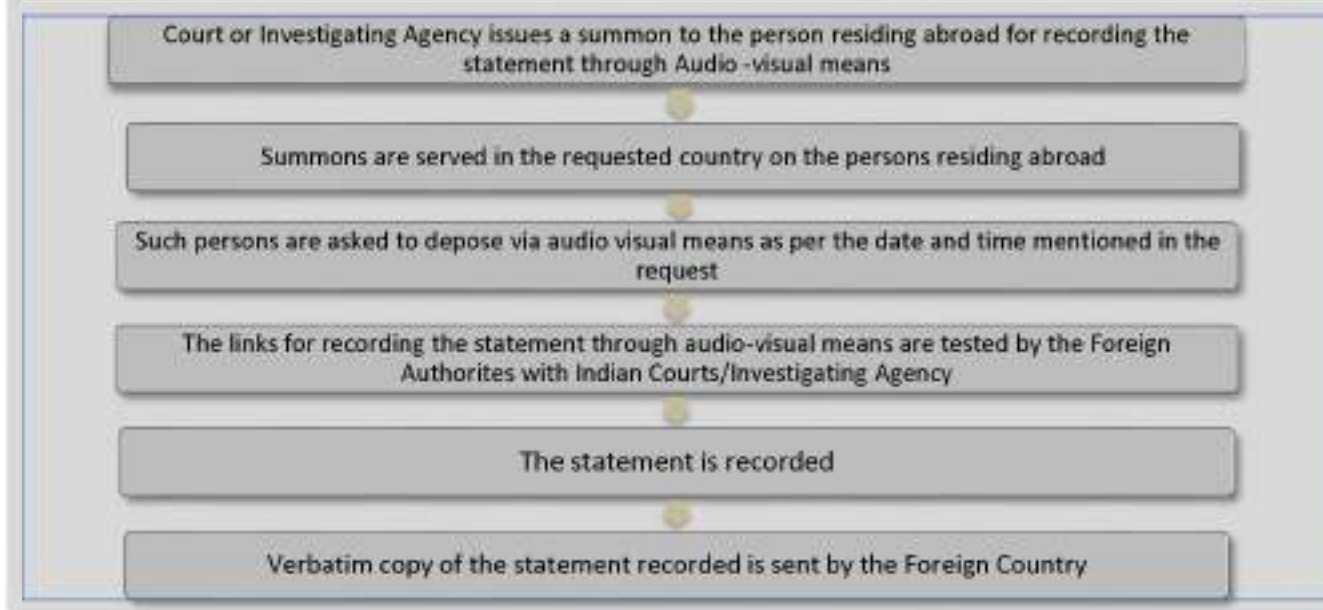
4.5 For taking statements or evidence through audio-visual means in a foreign country, a summon has to be issued by the Indian Court or Investigation Agency and forwarded along with the request to Central Authority of India for further transmission to the foreign country. After the summon is duly served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

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

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

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 software required for recording of statements by audio-visual means are:

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

4.20 The coordinator on both sides shall provide:

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

4.21 It should be ensured by the coordinators that:

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

through audio-visual means;

iii) entry into the video conference room is regulated;

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

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

i) if the document is at the Court in India, by transmitting a copy of it to the Requested Country electronically including through a document visualizer and the copy so transmitted being then put to the person;

ii) if the document is at the Requested Country, by putting it to the person and transmitting a copy of it to the Court electronically including through a document visualizer. The hard copy would also be sent subsequently to the Court by courier/mail.

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

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

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

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

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

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

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

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

received.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18)	Link for conducting video conferencing	
19)	Details of the technical requirements for establishing the link	
20)	Detail of the person who would provide technical assistance to Requested Country	Name
		Designation
		Phone number
		Email

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

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

FORM No. 33
SUMMONS TO WITNESS

To _____ of _____

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

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

Dated, this _____ day of _____, 20____

(Seal of the Court) _____ (Signature)

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

FORM No. 1
SUMMONS TO AN ACCUSED PERSON

To (name of accused) of (address)

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

Dated, this _____ day of _____, 20____

(Seal of the Court) _____ (Signature)

Part V: Miscellaneous Provisions relating to Reciprocal Arrangements

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

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

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

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

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

ii) Obtaining statement through Commission Issued by Indian Court

5.1.2 For recording of the statement of the person residing abroad, a Court in India may issue a commission under Section 285 of CrPC¹⁸, 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

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

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

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

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

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

Judge
Judicial Magistrate
Metropolitan Magistrate

iii) Making available persons in India for recording of statement

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

iv) Obtaining statement through Audio-Visual Means

5.1.4 Section 161 CrPC provides that the examination of witness may also be done by audio-visual electronic means. Further, the Hon'ble Supreme Court has held in *"State of Maharashtra vs Praful Desai"*¹⁵ that the recording of evidence by way of video conferencing might be done in cases where the attendance of the witness cannot be ensured without delay, expense and inconvenience.

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

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

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

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

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

5.2 Sometimes, it may become necessary to send Police Officer(s) from India to a foreign country for assisting foreign country in execution of 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 India does not enjoy Police powers/investigative powers in a foreign country, such visit by an Investigating Officer without the express consent of any country may be considered interference in the sovereignty of that country unless some required formalities are observed.

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

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

¹⁵ [2003 4 SCC 601]

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

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

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

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

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

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

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

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

3) Joint Investigation

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

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

C. Protection and Preservation of Data

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

5.12 The request for data protection/preservation may be sent using official ID's directly to the service provider or through the Assistant Director (NCB), Central Bureau of Investigation, 5-B, 6th Floor, CGO Complex, Lodhi Road, Jawaharlal Nehru Stadium Marg, New Delhi-110003 ((email: adipol@cbi.gov.in and Telefax:011-24364070), 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 of India informed of making such preservation requests. Generally, the data is preserved for an initial period of 90 days from the receipt of Request. During this period, the investigation Agencies including State Law Enforcement Agencies should send a proposal to IS-II Division, MHA for issue of LR or MLA Request for obtaining the data from concerned service provider. If the investigation is continuing, then after every 60 days the request for preservation of data shall be served to the country concerned.

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

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

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

Safeguards for Protection and Preservation of Data

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

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

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

D. Identification of Bank Information

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

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

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

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

E. Interception of Postal Items

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

5.20 The request for interception of postal item should include:

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

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

Do's

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

Don'ts

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

Part VI: Informal Requests

A. Introduction

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

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

B. Mode and form of making an Informal Request

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

6.4 Generally the following assistance is provided through informal channel:

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

C. Contents of Informal Request

6.5 The informal request must incorporate the following details:

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

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

Part VII: Extradition Requests

A. Introduction

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

Figure 7.1: List of Countries having Extradition Treaty with India

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

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

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

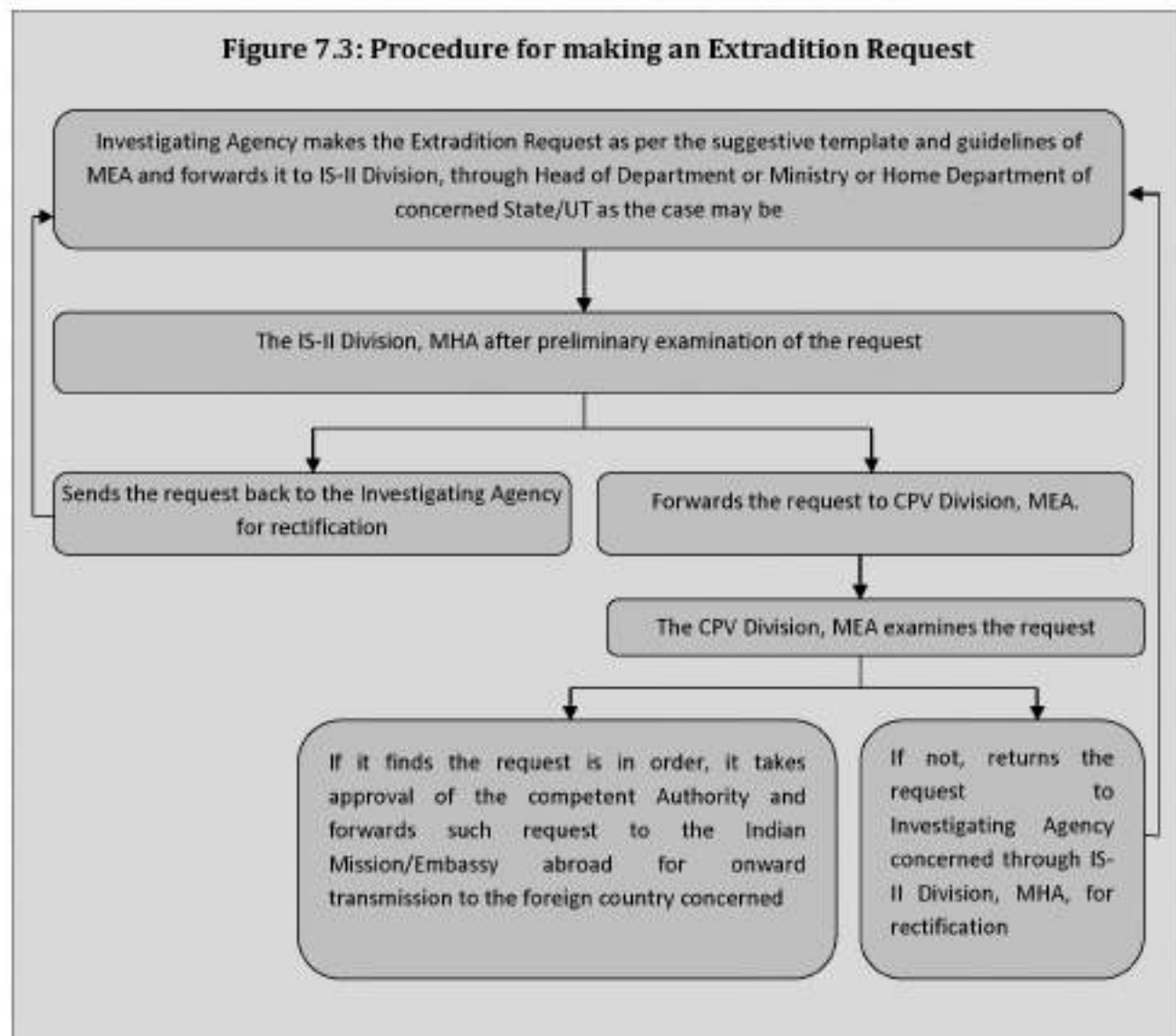
* The Extradition Arrangements with Italy and Croatia confine to Crimes related to Illicit Traffic in Narcotic Drugs and Psychotropic Substances owing to the fact that India, Italy and Croatia are parties to the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

B. Procedure for making an Extradition Request

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

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

Figure 7.3: Procedure for making an Extradition Request



C. Important Points to be considered while making an Extradition Request

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

- i) Extraditability of offences as per the Extradition Act, 1962/Treaty/Arrangement/International Convention if any;
- ii) Dual Criminality;
- iii) Assurances (death penalty, prison conditions, term of sentence, etc.)
- iv) The offences are not barred by the clause of limitation (e.g. Section 468²⁰ CrPC)

D. Grounds for Refusal of Extradition Request

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

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

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

²⁰ *Ibid.*, Page 11

Glossary

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