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TO IMMEDIATE NEW DELHI

TELEGRAM NUMBER 780 OF 2 NOVEMBER

YOUR TELNO 893: CHAUHAN EXTRADITION

1. THE INDIANS FORMALLY REQUESTED THE DEPORTATION OF CHAUHAN ON 4 MARCH 1976 ON THE GROUNDS OF ANTI-INDIAN ACTIVITIES, SUBVERSIVE IN NATURE AND INTENDED TO THREATEN THE TERRITORIAL INTEGRITY OF INDIA THROUGH THE ESTABLISHMENT OF A SIKH STATE. THE NOTE QUOTED CHAUHAN AS SAYING THAT ARMS WERE BEING COLLECTED TO FIGHT FOR A SIKH HOMELAND AND TO FORM A KHALISTAN LIBERATION ARMY THROUGH THE COLLECTION OF MONEY AND THE ORGANISATION OF SUPPORT.

2. THE NOTE, WHICH ALSO NOTIFIED THE WITHDRAWAL OF CHAUHAN'S INDIAN PASSPORT FACILITIES, WENT ON TO REFER TO THE FRIENDLY RELATIONS WHICH EXISTED BETWEEN INDIA AND THE UK AND THE DUTY OF STATES NOT TO PERMIT, TOLERATE OR ACQUIESCE IN ACTS ON ITS SOIL WHICH MIGHT INCITE, INSTIGATE OR OTHERWISE PROMOTE CIVIL STRIFE OR TERRORIST ACTIVITIES IN ANOTHER COUNTRY. IT ALSO REFERRED TO THE DECLARATION OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES UNDER THE UN CHARTER.

3. THE INDIANS REQUEST WAS CONSIDERED BY HOME OFFICE AS WELL AS FCO LEGAL ADVISERS. THE INDIAN HIGH COMMISSION WAS SUBSEQUENTLY INFORMED ON 7 JULY 1976 THAT WE COULD NOT COMPLY WITH THE REQUEST (A) BECAUSE IT RAN COUNTER TO BRITISH LAW AND POLICIES TOWARDS COMMONWEALTH CITIZENS IN THIS COUNTRY AND (B) BECAUSE THE IMMIGRATION ACT 1971 WAS NOT DESIGNED TO MEET REQUESTS OF THIS NATURE AND WAS NOT A SUBSTITUTE FOR THE FUGITIVE OFFENDERS ACT 1967 WHICH GIVES EFFECT TO EXTRADITION ARRANGEMENTS BETWEEN COMMONWEALTH COUNTRIES. (IT WAS APPARENTLY LEFT OPEN TO THE INDIANS TO PURSUE EXTRADITION UNDER THE FUGITIVE OFFENDERS ACT IF THEY SO WISHED, BUT THEY DID NOT DO SO NO DOUBT BECAUSE THEY LACKED EVIDENCE). THE INDIANS WERE ALSO TOLD THAT WE COULD NOT WITHDRAW CHAUHAN'S BRITISH TRAVEL DOCUMENT OR IMPOSE RESTRICTIONS ON HIS POLITICAL ACTIVITIES.

4. OUR RESPONSE TO ANY REQUEST FOR CHAUHAN'S EXTRADITION WHICH THE INDIANS MIGHT NOW MAKE, WOULD, OF COURSE, DEPEND ON THE GROUNDS THEY PUT FORWARD. IT REMAINS OPEN TO THEM TO SEEK EXTRADITION UNDER THE FUGITIVE OFFENDERS ACT 1967 BUT THEY WOULD NEED TO PRODUCE EVIDENCE AND, AS CHAUHAN WOULD RESIST ANY EXTRADITION APPLICATION, THE INDIANS WOULD HAVE TO FIGHT THE CASE THROUGH THE ENGLISH COURTS.

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5. IN THEORY, CHAUHAN COULD ALSO BE EXCLUDED OR DEPORTED AT THE DISCRETION OF THE HOME SECRETARY ON THE GROUNDS THAT HIS PRESENCE IN THE UK WAS NOT CONDUCTIVE TO THE PUBLIC GOOD. BUT THIS ACTION COULD ONLY BE TAKEN IF, AMONGST OTHER FACTORS, THERE WAS CONCRETE EVIDENCE THAT HE HAD ENGAGED IN VERY SERIOUS CRIMINAL ACTIVITIES OR THAT HE HAD PLOTTED THE OVERTHROW BY VIOLENT MEANS OF THE GOVERNMENT OF ANOTHER COUNTRY. ACTION COULD ALSO BE TAKEN ON THE GROUNDS OF PERSONAL HISTORY, CHARACTER AND CONDUCT.

6. THE HOME OFFICE SAY THAT THE LENGTH OF TIME CHAUHAN HAS BEEN IN THIS COUNTRY WOULD MAKE IT EXTREMELY DIFFICULT TO MAKE AN EXCLUSION ORDER. IF THERE WAS AN EXCLUSION ORDER CHAUHAN WOULD HAVE THE RIGHT OF APPEAL TO THREE NOMINATED ASSESSORS AND COULD, OF COURSE, APPLY FOR POLITICAL ASYLUM. IN PRACTICAL TERMS AN EXCLUSION ORDER MIGHT BE UNENFORCABLE AS CHAUHAN COULD NOT BE SENT BACK TO INDIA AGAINST HIS WISHES AND IT IS UNLIKELY THAT ANY OTHER STATE WOULD BE PREPARED TO ACCEPT HIM. (THIS OCCURRED IN THE CASE OF THE PAKISTANI AIRLINE HIACKER BUTT WHO WAS THE SUBJECT OF AN EXCLUSION ORDER BUT WHO EVENTUALLY HAD TO BE GIVEN ASYLUM IN THIS COUNTRY).

7. THERE REMAINS ONE FURTHER OPTION UNDER THE INTERNATIONAL PROTECTED PERSONS ACT 1978. IF THERE WAS EVIDENCE THAT HE HAD ACTIVELY CONSPIRED OR INSTIGATED MRS GANDHI'S ASSASSINATION HE COULD BE EXTRADITED OR, HAVE HIS CASE SUBMITTED TO THE COMPETENT AUTHORITIES IN THE UK FOR THE PURPOSE OF PROSECUTION.

8. THE ABOVE IS PRIMARILY FOR YOUR OWN INFORMATION. YOU SHOULD EXERCISE CAUTION IN DRAWING ON IT IN CONVERSATIONS WITH THE INDIANS.

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