



EXTRADITION – A STUDY OF THE INDIAN PRACTICE

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Abstract

*Based on the term *aut dedere aut puniari* which means “either extradite or prosecute”, extradition is adopted as a practice by the nations as a weapon to be used in the international battle against crime. Most nations take forward the procedures of extradition in accordance with bilateral treaties. In general, offences of a political character have been excluded but this would not cover terrorist activities. India has also been extraditing criminals to foreign nations as well as making requests for its nationals to be sent back. The extradition laws in India are in accordance with the Indian Extradition Act of 1962. The extradition of Abu Salem was a landmark event in regards to extradition in India.*

Keywords: extradition, fugitive criminals, foreign nations, treaty, arrangement

Introduction

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. Surrender of a person within the State to another State whether a citizen or an alien is a political act done in pursuance of a treaty or an arrangement ad hoc. Extradition plays an important role in the international battle

against crime. Most nations take forward the procedures of extradition in accordance with bilateral treaties. In the absence of a treaty between countries, there are no defined guidelines for the law to be applied and procedure to be followed. Much is dependent on the relations between countries, including cooperation and coordination between different authorities of the two countries. One option is to resort to a Mutual Legal Assistance Treaty wherein both countries agree to exchange information in order to enforce criminal laws. However, in certain cases extradition is barred in India.

The researcher in this paper has discussed the concept of extradition under International law. The provisions of the Indian Extradition Act have also been dealt with. The treaties of India with Nepal and Bangladesh are also discussed. The treaties and the extradition of Abu Salem have highlighted the practice of extradition in India in consonance with the Act of 1962.

Extradition

The practice of extradition enables one state to hand over to another state, suspected or convicted criminals who have fled to the territory of the former.¹ The law of extradition was designed to make the systems of reciprocal surrender orderly and principled, and to make abduction, military incursions and fraudulent deportations unnecessary as well as illegal. Extradition plays an important role in the international battle against crime. It owes its existence to the so-called principle of territoriality of

¹ Malcolm N. Shaw, INTERNATIONAL LAW, 6th ed., 2008, p.688



criminal law, according to which a State will not apply its penal statutes to acts committed outside its own boundaries except where the protection of special national interests is at stake. In view of the solidarity of nations in the repression of criminality, however, a State, though refusing to impose direct penal sanctions to offences committed abroad, is usually willing to cooperate otherwise in bringing the perpetrator to justice lest he goes unpunished.² The term “extradition” comes from the combination of the Latin terms *ex* and *traditum* which means the surrender of fugitives. Oppenheim defines ‘extradition’ as “the delivery of an accused or a convicted individual to the state where he is accused or has been convicted of a crime by the state on whose territory he happens for the time, to be”. In extradition, two states are involved: the state where the person is currently stationed, called the ‘territorial state’ and the state which is requesting, called the requesting state.

ICPO-Interpol has been a forerunner in international efforts to improve and accelerate existing procedure of extradition. Apart from attempts by academic bodies such as the Harvard Research Draft Convention on Extradition, the ICPO-Interpol was the first international organization to recommend to member countries a Draft General Agreement for the Extradition of Offenders, which unfortunately has remained a dead letter since it was adopted by the General Assembly of the Organization (then known as the International Criminal Police

Commission) in 1948.³ The process of extradition is regulated by treaties between the two countries. Extradition is important because it helps to maintain the sanctity of the penal code of one country or territory.

It is usual to derive from existing treaties on the subject certain general principles, for example, double criminality, i.e. that the crime involved should be a crime in both states concerned.⁴ But in the case of *United States Government v. McCaffery*⁵ it was held that extradition shall be granted if the offence is punishable under the laws of both parties by imprisonment or other form of detention for more than one year or by the death penalty and the offence constitutes a felony under the law of the United States of America. Although the general rule is that for extradition a treaty has to be there between the states but there are exceptions to it. If a country wants a person accused or convicted, and the other country is also willing to send the person, then there may not be a treaty and yet extradition can take place. This is based on the principle of reciprocity. Generally, people are sent back to trial where the jurisdiction lies because there are better chances of getting resources or collecting evidences. It is based on the term *aut dedere aut puniare* which means “either extradite or prosecute”. The prosecution must be in accordance with the laws of that country. Scholars like Hugo Grotius considered it to be a legal duty of states to either prosecute or extradite. But modern day scholars do not consider it to be legal duty. Only if there exists a treaty

² Puneet Vyas, “Laws governing Extradition- A Special Reference to Abu Salem's extradition”, <http://www.legalserviceindia.com/articles/abu.htm>

³ “Extradition”, <http://cbi.nic.in/interpol/extradition.php#pos>

⁴ Note-1, p.688

⁵ [1984] 2 All ER 570



between the states, there arises a legal obligation. Otherwise, it is only a moral obligation. The American Supreme Court has held that apart from a treaty, international law does not recognise extradition as a legal duty.⁶

In general, offences of a political character have been excluded but this would not cover terrorist activities. Asylum is sought in the case of political offences. It is said that "where extradition ends, asylum begins". It means that in such cases extradition will not take place. Before the French Revolution, political offences were not to be considered as exceptions to extradition. After the revolution, France gave asylum to all political offenders who committed offences in pursuance of his/her liberty. Today, the ambit of political offences has been narrowed down. Serious crimes of murder, man-slaughter, assassination of crowns etc., are not be considered as political offences. Under International law there is no specific definition of political offences. This has led to many discrepancies. In the modern practice, a list of offences is made under the treaties as to which offences amount to political offences. In the case of *Re Castioni*⁷ where Mr. Castioni, a Swiss national had gone on to join a revolutionary party and killed Mr. Rossi, an official of the Government. Subsequently, he fled to England. Switzerland sought the extradition of Mr. Castioni so that he could be tried for the murder of Mr. Rossi. The English Court did not extradite him and held that though it looked like murder, the act was political in nature. This was followed for a long time till

1955. In 1955 in the case of *Kolczynski*⁸ categorization of political offences was made as a) absolute and b) relative. It was held that the words "offence of a political character" must always be considered according to the circumstances existing at the time when they have to be considered.⁹ In the case of *Regina v Governor of Pentonville Prison, Ex Parte Cheng*¹⁰ it was held that 'for politics are about government'. 'Political' as descriptive of an object to be achieved must, in my view, be confined to the object of overthrowing or changing the government of a state or inducing it to change its policy or escaping from its territory the better to do so. "Similarly the House of Lords has held that view that "the motive and purpose of the accused in committing the offense must be relevant and may be decisive. It is one thing to commit an offense for the purpose of promoting a political cause and quite a different thing to commit the same offense for an ordinary criminal purpose."¹¹ Apart from political offences, certain offences are barred in India. As per the guidelines of the Ministry of External Affairs, the nodal authority in case of extradition in India, an alleged offender may not be extradited to the requesting state in the following cases:

- No treaty – In absence of a treaty, States are not obligated to extradite aliens/nationals
- No treaty crime – Extradition is generally limited to crimes identified

⁸ *Regina v. Governor of Brixton Prison, Ex parte Kolczynski and Others*, [1955] 1 QB

⁹ <http://www.uniset.ca/other/cs4/19551QB540.html>

¹⁰ [1973] AC 931

¹¹ *R v Governor of Brixton Prison, Ex Parte Schtraks* [1964] AC 556

⁶ 290 U.S. 276 (54 S.Ct. 191, 78 L.Ed. 315)

⁷ [1891] 1 QB 149



in the treaty which may vary in relation to one State from another, as provided by the treaty.

- Military and Political Offences – Extradition may be denied for purely military and political offences. Terrorist offences and violent crimes are excluded from the definition of political offences for the purposes of extradition treaties.
- Want of Dual Criminality – Dual criminality exists when conduct constituting the offence amounts to a criminal offence in both India and the foreign country.
- Procedural considerations – Extradition may be denied when due procedure as required by the Extradition Act of 1962 is not followed.¹²

The Indian Practice of Extradition

Evolution

In India the extradition of a fugitive from India to a foreign country or vice-versa is governed by the provisions of Indian Extradition Act, 1962. The basis of extradition could be a treaty between India and a foreign country.

The first Indian statute on extradition is the Indian Extradition Act of 1903. The Indian Extradition Act, 1903 was passed before the attainment of independence of India when India was still under the British rule.¹³ The effect of the new constitutional situation on the extradition arrangements between Indian

and the native state, namely, State of Tonk was considered by the Supreme Court in *Dr. Ram Babu Saksenav. The State*.¹⁴ The question was how far the extradition treaty (of 1869) between the Government of India and Tonk State was affected by the merger of the State into India. It was held that the treaty must be deemed to be ineffective. The Supreme Court of India through its judgment in the *State of Madras v. C.G. Menon*¹⁵, held inapplicable in India the Fugitive Offenders Act, 1881, which was a part of the extradition law of India, regulating the extradition of fugitive criminals inter se the commonwealth countries. Thus, it is apparent that necessity is felt by the independent India for passing a new legislation to deal with Extradition, first, because Menon's case created a vacuum in the law of extradition from India to Commonwealth countries, and, secondly, because the legal position relating to the surrender of fugitive criminals to foreign countries and Commonwealth countries from the former Part B States was somewhat doubtful.¹⁶ The Extradition Act, 34 of 1962 duly enacted by Parliament, received the assent of the President on September 15, 1962 and came into force on January 5, 1963. The Extradition Act, 1962 consolidated the law relating to the extradition of criminal fugitive from India to foreign states.

Indian Extradition Act, 1962

It is an Act to govern extradition, the most sought after tool in the administration of criminal justice across the world. It provides legal mechanism to facilitate extradition of

¹² <http://www.mea.gov.in/extradition-faq.htm>

¹³ "Evolution of Extradition in India", p.100, shodhganga.inflibnet.ac.in/bitstream/10603/8652/11/11_chapter%203.pdf

¹⁴ AIR 1950 SC 155

¹⁵ AIR 1954 SC 517

¹⁶ Note-9, p.102



fugitive criminals from India to the requesting foreign countries. It also contains the procedure for making requests for the extradition of fugitive criminal who fled from India to other countries. Indian extradition law is primarily modeled on the established principles and practices of extradition as evolved and generally approved by the international community.

The Act consists of five chapters and two Schedules. The Extradition Act primarily seeks to meet two requirements that arise in the administration of criminal justice in India or in any other foreign state. These two requirements are:

1. Extradition of fugitive criminal from India to foreign states outside India
2. Extradition of fugitive criminals from foreign countries to India¹⁷

Under the procedure prescribed in the Act, the Magistrate is not required to investigate whether the act of the fugitive is an offence under the penal law of the country requesting extradition. Thus, the principle of double criminality has not been given due recognition in the Act.

The term ‘fugitive criminal’ has been defined as follows:

Fugitive criminal means “a person who is accused or convicted of an extradition offence within the jurisdiction of a foreign State and includes a person who, while in India conspires, attempts to commit or incites or participates as an accomplice in the commission of an extradition offence in

a foreign state”¹⁸ It is sufficient if he is a person accused of an offence. The definition includes both the accused as well as the convicted. The Act has defined ‘foreign state’ as any country outside India and it includes every constituent part, colony or dependency of such a state¹⁹. The use of the word ‘outside’ helps in removal of anomalous situation that prevailed earlier with regard to issue of extradition within the native states which were part of Union of India. The Act has provided the definition of extradition offence as follows:

Extradition offence -

(i) In relation to a foreign State, being a treaty State, an offence provided for in the extradition treaty with that State;

(ii) In relation to a foreign State other than a treaty State an offence punishable with imprisonment for a term which shall not be less than one year under the laws of India or of a foreign State and includes a composite offence.²⁰

Section 2(c) and (d) read together gives the picture that determination of ‘extradition offence’ depends basically upon the terms of extradition treaty or arrangements made with foreign states (referred to as treaty states) or the minimum quantum of punishment (which is set at one year) for the given offence (either under Indian law or foreign state) in the case of non-treaty foreign states.

Procedure for Extradition of Fugitive Criminals to Foreign States

¹⁸ Section 2 (f), Indian Extradition Act 1962

¹⁹ Section 2(e), Indian Extradition Act 1962

²⁰ Section 2(c) of Indian Extradition Act, 1962

¹⁷ “Indian Practice”, p.130, shodhganga.inflibnet.ac.in/bitstream/10603/8652/12/12_chapter%204.pdf



Chapter II and Chapter III of the Act provide the procedure for extradition of fugitive criminals to foreign states. Whereas Chapter III applies to extradition to those countries with which India has extradition treaty or arrangement, Chapter II comes into operation with regard to extradition of fugitive criminals to foreign countries with which India has no extradition arrangements.

The process of extradition is activated with the request of foreign state for surrender of a fugitive. This is so as to enable each state to bring offenders to trial swiftly as possible in the state where the alleged offence was committed, and to preclude any state from becoming a sanctuary for fugitives from justice of another state.

The Act provides that the process of extradition is started on a formal request for the surrender of a fugitive criminal belonging to a foreign state by a diplomatic representative of the foreign state at Delhi to the Central Government. Alternatively, the government of the foreign state seeking surrender of the fugitive criminal may communicate with the Central Government through its diplomatic representative in that state or country.²¹ If these modes are not suitable then the request for surrender of the fugitive can also be made by any other mode as agreed between the government of the foreign state and the Central Government of India.²²

Chapter III of the Act deals with the return of fugitive criminals to foreign states with extradition arrangements. Under Section 13,

where a fugitive criminal of any foreign state to which the Chapter applies is found in India, he shall be liable to be apprehended and returned in the manner provided by this Chapter to that foreign state. Under Section 16 the power has been given to a magistrate to issue provisional warrants for the arrest of such fugitive criminal. A fugitive criminal apprehended on a provisional warrant may, from time to time, be remanded for such reasonable time, not exceeding seven days at any one time, as under the circumstances seems requisite for the production of an endorsed warrant.²³ Section 17 deals with the procedure to be followed while dealing with a fugitive criminal when apprehended. The process is as follows:

1. If the magistrate, before whom a person apprehended under this Chapter is brought, is satisfied on inquiry that the endorsed warrant for the apprehension of the fugitive criminal is duly authenticated and that the offence of which the person is accused or has been convicted in an extradition offence, the magistrate shall commit the fugitive criminal to prison to await his return and shall forthwith send to the Central Government a certificate of the committal.²⁴
2. If not satisfied the magistrate may, pending the receipt of the orders of the Central Government, detain such person in custody or release him on bail.
3. The magistrate shall report the result of his inquiry to the Central Government and shall forward together with such report any written statement which the fugitive

²¹V.K. Bansal, LAW OF EXTRADITION IN INDIA, 2008, p.45.

²² Ibid

²³ Section 16(3), The Indian Extradition Act, 1962

²⁴ Section 17(1), The Indian Extradition Act, 1962



criminal may desire to submit for the consideration of that Government.²⁵

Under Section 18, the Central Government can issue a warrant for the custody and removal to the country of the concerned fugitive criminal and for his delivery at a place and to a person to be named in the warrant.

Surrender or Return of Accused or Convicted Persons from Foreign States

Chapter IV and Section 19 of the Act deal with the return of a fugitive criminal from a foreign state to India. A requisition for the surrender of a person accused or convicted of an extradition offence committed in India and who is, or is suspected to be, in any foreign State or a commonwealth country to which Chapter III does not apply, may be made by the Central Government:

- (a) to a diplomatic representative of that State or country at Delhi or
- (b) to the Government of that State or country through the diplomatic representative of India in that State or country

If neither of these modes is convenient, the requisition shall be made in such other mode as is settled by arrangement made by the Government of India with that State or country. Whenever any person accused or convicted of an offence, which, if committed in India would be an extradition offence, is surrendered or returned by a foreign State, such person shall not, until he has been restored or has had an opportunity of

returning to that State, be tried in India for an offence other than:

- (a) an extradition offence in relation to which he was surrendered or returned or
- (b) any lesser offence disclosed by the facts proved for the purposes of securing his surrender or return other than an offence in relation to which an order for his surrender or return could not be lawfully made or
- (c) an offence in respect of which the foreign state has given its consent.²⁶

Guidelines of Ministry of External Affairs of India

Extradition request for an accused/ fugitive can be initiated after charge sheet has been filed before an appropriate Court and said court having taken cognizance of the case has issued orders/directions justifying accused/fugitive's committal for trial on the basis of evidence made available in the charge sheet and has sought presence of the accused/fugitive to face trial in the case. All extradition requests should be supported by documents and information enumerated by the Ministry in its website.²⁷

The request for extradition and the documents thereof should be prepared as per the requirements of the extradition treaty between India and the country concerned from which the fugitive is to be extradited to India.²⁸

²⁵ Section 17(3), The Indian Extradition Act, 1962

²⁶ "Indian Practice", p.184, shodhganga.inflibnet.ac.in/bitstream/10603/8652/12/12_chapter%204.pdf

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<http://www.mea.gov.in/extraditionguidelinesabroad.htm>

²⁸Ibid



Extradition of Fugitive Criminals to Foreign States

Sections 4 to 11 under Chapter II of the Act discuss the procedure to be followed while extraditing a fugitive criminal to foreign states. Chapter II is generally applicable to extradition requests. In other words Chapter II is general and Chapter III is exceptional. As already mentioned, Chapter III is applicable to treaty states as per the terms of the concerned treaty. The Delhi High Court has observed that “Our inquiry reveals that only two treaties, that is between India and Bhutan and India and Turkey, make Chapter III applicable. In all other cases of treaties or arrangements, it is Chapter II, along with the provisions other than Chapter III that are enforced.”²⁹Section 5 prescribes that where a Requisition is received in the manner set-down in the preceding provision, the Central Government has the discretion to issue an order to any Magistrate who would have had jurisdiction to inquire into the offence if it had occurred within his jurisdiction directing him to inquire into the case.³⁰The Act has endowed the Central government with unfettered right to turn down the request for extradition. Describing the discretionary powers of the Government, the Supreme Court in *Hans Muller v. Superintendent, Presidency Jail*³¹ has maintained that “The law of Extradition is quite different. Because of treaty obligations it confers a right on certain countries (not all) to ask that persons who are alleged to have committed certain specified offences in

their territories, or who have already been convicted of those offences by their courts, be handed over to them in custody for prosecution or punishment. But despite that the Government of India is not bound to comply with the request and has an absolute and unfettered discretion to refuse.”Under Section 6 the Magistrate must simultaneously issue a warrant for the arrest of the fugitive. Section 7 of the Act with its four sub sections deals with the procedure before the magistrate in inquiry. Sub section (1) governs the jurisdiction and powers of the magistrate. It is of great importance as it bestows on the magistrate powers of inquiry akin to that of the Court of Session or High Court. Sub section (2) provides about the need to consider evidence required for determination of the extraditability and non-political character of the offence. Sub section (3) gives power to magistrate to discharge the fugitive criminal if no prima facie case is made out. In case a prima facie case is made out, Sub Sec(4) accords power to magistrate to commit the fugitive criminal to prison to await the orders of the Central Government. The report of his enquiry has to be sent to the government. If the fugitive criminal desires to make any submission to the Central Government, a written statement to that effect may be sent along with the report of the magistrate. Under Section 8, when the Central Government decides to surrender the fugitive criminal to the requesting state, it may issue warrant for the custody and removal of the offender for his delivery at a decided place and to a specified person. Section 9 is about the power of magistrate to issue warrant for the arrest of a fugitive criminal if in his opinion on the basis of such information and evidence which he received in that regard, it would

²⁹ Ram K Madhubani v. Union of India, CDJ 2008 DHC 1838

³⁰ Section 5, The Indian Extradition Act, 1962

³¹ Hans Muller v. Superintendent, Presidency Jail, AIR 1955 SC 107



have been justifiable to arrest him if the offence of which he is accused of or has been committed within the local limits of his jurisdiction. Section 10 assumes importance in the context of application of sub section (2) of Sec 8 because it deals with the manner of receipt of evidence. It provides that the documents duly authenticated are to be taken in as evidence. The necessary documents to be in proceedings against the fugitive are the warrants issued by a court of foreign state in case of an accused and the certificate of conviction in case of convict and also the depositions of or statements on oath taken by any court of justice outside India or their photocopies. All these documents are to be duly authenticated before being taken as evidence in the inquiry.

Provisional Arrest

In case of urgency, India may request the provisional arrest of the fugitive, pending presentation of an extradition request. A provisional arrest request may be appropriate when it is believed that the fugitive may flee the jurisdiction. A request for provisional arrest may be transmitted through diplomatic channels through CPV Division of Ministry of External Affairs. The facilities of International Criminal Police Organization (ICPO- INTERPOL) may also be used to transmit such a request through National Central Bureau of India, CBI, New-Delhi.³² The Police/Law Enforcement Agency concerned in India, prepares the request for a provisional arrest and sends it to the Ministry of External Affairs, which in turn forwards the same to the concerned authority of the foreign

country through diplomatic channels. India does not need a treaty to make a provisional arrest request to a foreign country. India can make a provisional arrest request to any country. India's treaty partners have obligations to consider India's requests. In the absence of a treaty, it is a matter for the foreign country in accordance with its domestic laws to determine whether to arrest the person according to India's provisional arrest request.³³

Extradition Treaties between India and Other Countries

India and Nepal

India has signed an extradition treaty with Nepal in the year 1953. As per Article I of the treaty, strict reciprocity will be followed to extradite persons accused or convicted of a crime in the territory of one Government if found in the territory of the other under the conditions stated in the Treaty. However, neither of the governments will be liable to surrender persons belonging to other countries except if they are accused of having been committed the offence of desertion from the Armed Forces.³⁴

The offences for which an offender can be extradited between the countries are enlisted under Article III which includes:

- (1) Murder or attempt or conspiracy to murder.
- (2) Culpable homicide not amounting to murder.
- (3) Grievous hurt.
- (4) Rape.
- (5) Dacoity.
- (6) Highway robbery

³³Ibid

³⁴ Article II, India-Nepal Extradition Treaty available at www.oecd.org/corruption/asiapacific/mla

³² <http://www.mea.gov.in/extradition-faq.htm>



- (7) Robbery with violence.
- (8) Burglary or house-breaking.
- (9) Arson.
- (10) Desertion from Armed Forces.
- (11) Offences against the laws prohibiting the export and import of goods.
- (12) Embezzlement by public officers.
- (13) Serious theft, that is to say cases of theft where violence has been used or where the value of the property stolen exceeds Rs. 500 and cattle stealing.
- (14) Abduction or kidnapping.
- (15) Forgery and the use of what is known to be forged, counterfeiting or altering money or uttering or bringing into circulation counterfeited or altered money.
- (16) Receiving of illegal gratification by a public servant.
- (17) Escaping from custody while undergoing punishment after conviction for any of the offences specified in clauses (1) to (16).³⁵

The treaty specifies that neither of the government will surrender any person unless a requisition is duly made to the concerned government. Articles VI and VII of the treaty reflects the principle of double-jeopardy i.e. if the person has already been tried and discharged or punished by one government, he shall not be surrendered or detained. Article V envisages that no person shall be extradited for any political offence. Thus this treaty between India and Nepal reflects the principles followed under International Law. The crimes for which an accused can be extradited are crimes which mandate punishment of imprisonment for minimum one year. Under this treaty all

³⁵ Article III, India-Nepal Extradition Treaty available at www.oecd.org/corruption/asiapacific/mla

costs in pursuance of it shall be borne by the requesting state.³⁶

India Bangladesh Extradition Treaty

The extradition treaty between Bangladesh and India came into effect 2013.³⁷ Prior to this treaty, it is important to note that Congress led coalition government in India and Awami League government in Bangladesh engaged in many negotiations. In 1996, Sheikh Hasina's government in Bangladesh had signed Ganges Water Treaty and Chittagong Hill Tracts Peace Agreement in 1997. During second term of Sheikh Hasina government, a number of accords were signed between the two countries in 2010: Agreement on Mutual Legal Assistance on Criminal Matters; Agreement on the Transfer of Sentenced Persons; and Agreement on Combating International Terrorism, Organized Crime and Illicit Drug Trafficking.³⁸ Under this treaty, an extradition offence is defined as any conduct which under the laws of both the countries is punishable by a term of imprisonment for a period of at one year³⁹, irrespective of whether they fall within the same category or not⁴⁰. This provision is similar to the standards set by international

³⁶ Article X, India-Nepal Extradition Treaty available at www.oecd.org/corruption/asiapacific/mla

³⁷ Haroon Habib, "India-Bangladesh extradition treaty takes effect" available at <http://www.thehindu.com/news/national/indiabangladesh-extradition-treaty-takes-effect/article5265681.ece>

³⁸ Dr. Saurabh, "Indo-Bangladesh Extradition Treaty" ICWA View Point, March, 2013, available at www.icwa.in/pdfs/VPIndoBangladesh.pdf

³⁹ Article 2, India Bangladesh Extradition Treaty, 2013 available at cbi.nic.in/interpol/ext_treaties/Bangladesh.pdf

⁴⁰ Article 2(4), India Bangladesh Extradition Treaty, 2013 available at cbi.nic.in/interpol/ext_treaties/Bangladesh



law. Economic offences related to taxation and revenue has also been brought under the purview of this treaty. Under this treaty, political offences have been exempted. The following offences have been explicitly determined to be not of political nature:

1. Murder
2. Men-slaughter or culpable homicide
3. Offences causing bodily harm or injury
4. Offences endangering life or causing serious damage to property
5. The making or possession of explosive substances with the intention to cause serious damage to property or endanger life
6. Incitement to murder
7. Possession of firearm with the intention to cause serious damage to property or endanger life
8. Use of firearm to resist or prevent the arrest or detention of himself or another person
9. Kidnapping, abducting, false imprisonment or unlawful detention including taking hostage⁴¹

The extradition treaty has refusal provisions too. Extradition of any person may be refused by the country concerned on grounds of national security. Also, political detainee would not be brought under the purview of this treaty. The trivial nature of the offence can also cause refusal of extradition.

The treaty can also be terminated at the notice of any one of the parties. The

notice is to be given through the diplomatic channel and on receipt of such notice, within six months the treaty will be terminated.

Through this treaty, India sought to deport AnupChetia, General Secretary of the United Liberation Front of Assam (ULFA) and other criminals taking shelter in Bangladesh. ULFA, a separatist group in northeast India, seeks to establish a sovereign Assam. Anup Chetia was arrested in Bangladesh in 1997 and sentenced to seven years in prison for illegal entry and possession of firearms. He had sought political asylum in Bangladesh thrice in 2005, 2008 and in 2011 after his 1997 arrest. Despite the expiry of his term, Chetia was in jail under a 2003 High Court directive asking authorities to keep him in safe custody until a decision was taken on his asylum plea.⁴² On the other hand, Bangladesh is seeking India's help in nabbing the killers of Bangladesh's founding father Sheikh Mujibur Rahman. Captain Abdul Mazed and Risalder Moslehuddin, the suspects, are believed to be hiding in India. Mutual legal assistance also forms a part of the treaty between India and Bangladesh. Bangladesh has earlier handed over to India a number of top ULFA leaders, including Arabinda Rajkhowa on December 2, 2009. They have joined peace talks with the Indian

⁴¹ Article 6, India Bangladesh Extradition Treaty, 2013 available at cbi.nic.in/interpol/ext_treaties/Bangladesh

⁴² "AnupChetia handed over to India: All you need to know about the ULFA leader", available at <http://indianexpress.com/article/india/india-news-india/anup-chetia-handed-over-to-india-all-you-need-to-know-about-the-ulfa-leader/>



government.⁴³ But they were not extradited under a treaty. India had made requests and as per that they were handed over by the Bangladesh government.

Extradition of Abu Salem

When Abu Salem entered the US, they tipped off the Federal Bureau of Investigation (FBI), which tailed him. Abu managed to get out of the US and entered Portugal through Lisbon after rigging up his papers. They went on to tip the Lisbon authorities that immediately seized the Indian gangster. And, the tables turned. Abu Salem found himself on the receiving end and, the Mumbai police, on their part had, scores to settle with the gangster whose extradition from Portugal is shrouded with as much controversy as his role in the city's blackest blasts.⁴⁴ There was no extradition treaty between India and Portugal in 2005 when he was extradited along with Monica Bedi. The absence of such a treaty initially created legal difficulties. Indian government sought his extradition under the United Nations Convention on Suppression of Terrorism of 2000 under which all member nations have to help each other in the war against terrorism. Portugal and India are both signatories to the Convention. In the meantime, the Portuguese court sentenced Salem and Monica Bedi to four years imprisonment for illegally entering and

staying in Portugal on forged passports. The court also ordered that their extradition could be made only after they have completed their prison term. The Portuguese court ordered their extradition after the Indian government, through its lawyer, gave a solemn assurance that if convicted they would not be sentenced to death.⁴⁵ The assurance was given since European law prohibits extradition of any accused to such a country where capital punishment was still a valid punishment. However, after being produced in India, he was charged with offences of murder, extortion and kidnapping. As such, dismissing the plea of the Central Bureau of Investigation (CBI), Portugal's Supreme Court upheld its lower court's decision that extradition treaty with India was violated in Abu Salem's case by slapping of new charges against the underworld don that attract death penalty.⁴⁶ However, the Supreme Court of India held that his convictions are still valid. It held that the verdict of the Portugal court is "not binding" on courts here and Salem's extradition to India is still "valid in the eyes of law". But it allowed the CBI to drop additional charges slapped on Salem under the TADA and Explosive Substances Act after his extradition.⁴⁷ At the time of Salem's

⁴³ HaroonHabib and Vijayta Singh, "Dhaka hands over top ULFA leader to India", THE HINDU, Nov 11, 2015 available at <http://www.thehindu.com/news/national/ulfa-leader-anup-chetia-handed-over-to-india-by-bangladesh/article7865894.ece>

⁴⁴ <http://www.bbc.com/news/world-asia-india-31617989>

⁴⁵ PuneetVyas, "Laws governing Extradition- A Special Reference to Abu Salem's extradition", <http://www.legalserviceindia.com/articles/abu.htm>

⁴⁶ "Abu Salem extradition: Portugal court rejects CBI plea", THE HINDU, January 17, 2012, available at <http://www.thehindu.com/news/national/Abu-Salem-extradition-Portugal-court-rejects-CBI-plea/article13369688.ece>

⁴⁷ "Abu Salem's extradition to India still valid: Supreme Court", THE HINDU BUSINESSLINE, available at <http://www.thehindubusinessline.com/news/abu->



extradition, India had assured Portugal that no charges entailing death penalty or imprisonment of more than 25 years would be pressed against him, but such charges were later brought in. However, in the case of *Daya Singh Lahoria v. Union of India*⁴⁸ it has been held that the Criminal Courts in the country have no jurisdiction to try in respect of offences which do not form a part of extradition judgment by virtue of which the petitioner has been brought to this country and he can be tried only for the offences mentioned in the Extradition Decree.

India signed the Extradition Treaty with Portugal in 2008.

Conclusion

The law of extradition was designed to make the systems of reciprocal surrender orderly and principled, and to make abduction, military incursions and fraudulent deportations unnecessary as well as illegal. ICPO-Interpol has been a forerunner in international efforts to improve and accelerate existing procedure of extradition. Scholars like Hugo Grotius considered extradition to be a legal duty of states to either prosecute or extradite. But modern day scholars do not consider it to be legal duty. Only if there is a treaty between the states, there arises a legal obligation. In general, offences of a political character have been excluded but this would not cover terrorist activities. If an ordinary crime is committed in the course of committing an offence against the state that would be considered political because of its close association with the politics of the state. However, the treaties signed by India have a

list of offences that cannot be considered as political offences. Most of these are crimes of serious nature such as murder, arson etc.

The extradition laws in India are in accordance with the Indian Extradition Act of 1962. The Act governs extradition, the most sought after tool in the administration of criminal justice across the world. It provides legal mechanism to facilitate extradition of fugitive criminals from India to the requesting foreign countries. CPV Division, Ministry of External Affairs, Government of India is the Central/Nodal Authority that administers the Extradition Act and it processes incoming and outgoing Extradition Requests.⁴⁹ Requests for extradition on behalf of the Republic of India can only be made by the Ministry of External Affairs, Government of India, which formally submits the request for Extradition to the requested State through diplomatic channels. Extradition is not available at the request of members of the public.⁵⁰ India has signed extradition treaties with 37 nations including U.K, USA, Australia, Vietnam, Uzbekistan, Korea, Germany and France. On the other hand, India has extradition arrangements with 9 countries. The extradition of Abu Salem was a landmark event as the extradition happened without treaty based on the principle of reciprocity. Most recently, the extradition requests made by India to UK for Vijay Mallya has been debated and discussed.

salems-extradition-to-india-still-valid-supreme-court/article4991238.ece

⁴⁸ AIR 2001 SC 1716

⁴⁹ <http://www.mea.gov.in/extradition-faq.htm>

⁵⁰ ibid