



## EXTRADITION UNDER INTERNATIONAL LAW

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### ABSTRACT

Extradition is the delivery of the accused or a convicted individual to the state on whose territory he is alleged to have committed or to have been convicted of a crime, by the state on whose territory the alleged criminal happens to be for the time being. The state which claims jurisdiction over the underlying crime makes a request for the alleged fugitive's extradition. A court in the state which receives the extradition request determines whether the request is in order, and if so, issues a warrant for the arrest of the person. Through subsequent hearings, the state court determines whether to extradite the person.

On the other hand there are some established principles which the States need to follow while extraditing any fugitive criminal. All these happen with the treaties among the state. If there is no treaty of extradition between the states the requested state can deny the extradition. The principles which States follow for extradition is laid down in their treaty of extradition.

This Article talk in detail about Extradition under International Law, which in detail lays down the meaning and definition of extradition by different jurists and other municipal law. It also talks about the general principles or

restriction a State can impose while extraditing any fugitive. This paper includes various foreign case laws related to topic. A detail discussion about The Indian Extradition Act 1962 with various important sections of the Act and some important case laws of India related to extradition.

### KEYWORDS

- Extradition
- Treaty
- Fugitive
- States

### INTRODUCTION

Extradition is a process where one state extradite an accused or a person who is convicted of a crime from another state. Naturally, it is the right of the state to exercise the jurisdiction over all the crimes and criminals within its territory. But sometimes it happens that after committing crime runs away to another country. In such situation the affected country can not exercise its jurisdiction to punish the guilty person because state can only exercise its jurisdiction of punishment within its territory only.

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order, and if so, issues a warrant for the arrest of the person. Through subsequent hearings, the state court determines whether to extradite the person.

- **EXTRADITION TREATY**

Treaty means Agreement. Generally it is a bilateral treaty between the states to surrender the criminals to the requesting state if they flee to their territory after commission of a crime. The consensus is any state in the world does not have any such obligation to surrender the alleged criminal to another state because principle of sovereignty is that every state has legal authority over people within its border.

“The inability of a State to exercise its jurisdiction within the territory of another state would seriously undermine the maintenance of law and order if there were no cooperation in the administration of justice. The awareness among national decision makers of the social necessity of jurisdictional co-operation is illustrated by the widespread practice of returning a person who is accused or who has been convicted of a crime to the state in which the crime was committed”<sup>1</sup>

**Domenico Rancadore’s** case, he is accused of being one of the biggest mafia bosses and Italian police has listed him as one of Italy’s “most wanted criminals”. Westminster Magistrates Court rejected Italy’s extradition request in march 2014.

Roman Polanski, Swiss authorities decided not to extradite Polanski to the US in 2010 after he had been under house arrest in the mountain resort of Gstaad for nine months. The fugitive director was wanted on charges of having sex with a 13 years old girl in 1977. He was arrested on a US warrant in 2009, while collecting a lifetime achievement award in Zurich. Polanski has originally been charged with six offences, which included rape and sodomy. In 1978, he pleaded guilty to unlawful sex after a plea bargain and server 42 days in a US prison.

In the case of **United States v. Rausher**<sup>2</sup>, the Supreme Court of the United States stated the American view on extradition in these terms: “It is only in modern times that the nations of the earth have imposed upon themselves the obligation of delivering up these fugitives for justice, to the states where the crimes were committed, for trial and punishment. This has been done generally by treaties. Prior to these treaties and apart from them there was no well-defined obligation on one country to deliver. it was upon the principle of comity and it has never been recognized as among those obligations of one Government towards another which rest upon established principles of International Law”

Again in case **Factor v. Lanbenheimer**<sup>3</sup>, “The principles of international law recognize no right to extradition apart from treaty. While a government may, if agreeable to its own constitution and

<sup>1</sup>EDWARD COLLINS, INTERNATIONAL LAW IN CHANGING WORLD(1996) 216.

<sup>2</sup>United States v. Rausher, 407 U.S. 119 (1866).

<sup>3</sup>Factor v. Lanbenheimer,290 US 276, 287.



laws, voluntarily exercise the power to surrender a fugitive from justice to the country from which he had fled, and it has been said that it is under a moral duty to do so ..... the legal right to demand his extradition and the correlative duty to surrender him to the demanding country exists only when created by treaty.”

- **ESSENTIALS FOR EXTRADITION**

There are certain conditions for extradition. Extradition can be denied if it doesn't fulfil the conditions which are essential for extradition. These general principles can be formed by bilateral treaties, national laws of several states and various judicial decisions of the court.

### 1. DUAL CRIMINALITY

The state shall fulfil the dual criminality system in order to extradite the fugitive. Dual criminality means the crime which fugitive have committed must also be a crime in other state.

**Blackmer v. United States case<sup>4</sup>**, The French Court refused extradition of Blackmer in 1928 to the United States on the ground that the offence with which he was charged did not constitute a prosecutable offence *in concreto* under French Law. The French Court found that the statute of limitation for similar offences lapsed under French Law, extinguished the prosecutability of the offender, and, therefore, the act charged

could not constitute an offence under French Law.

**Again In re Plevani case<sup>5</sup>** of the Court of Cassation in France rejected the request of Italy for the surrender of one Plevani, a convict who was sentenced in 1946 for two terms of imprisonment in Italy but escaped from prison while serving sentence and took up residence in France. The refusal was on the basis of Article 5 of the Extradition Law, 1927, which categorically prohibits the extradition of person whose sentence had become time barred under French Law. Again in 1959 when Spain demanded the surrender on one Rull Hernandez, a Spanish national on the charge of fraudulent bankruptcy and absconding with assets from the government of Venezuela, it was contented that extradition should be denied since the offences charged were not known to Venezuela Law, and therefore the extradition request violated the principle of double criminality.

### 2. POLITICAL OFFENCE

**Under article 3(a) of Model Treaty on Extradition** states that:

“Extradition shall not be granted if the offence for which extradition is requested is regarded by the requested State as an offence of a political nature”

**Under Article 3(1) of European Convention on Extradition** also states that:

“Extradition shall not be granted if the offence in respect of which it is requested

<sup>4</sup>Blackmer v. United States case, 284 US 421(1928).

<sup>5</sup>rePlevani, (1955) 22 ILR 514.



is regarded by the requested party as a political offence or as an offence connected with a political offence.”

***Under Section 31(1)(a) of The Indian Extradition Act, 1962*** provides

“if the offence in respect of which his surrender is sought is of a political character or if he proves to the satisfaction of the Magistrate or court before whom he may be produced or of the Central Government that the requisition or warrant for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character”

***In Re Castioni Case, 1891***<sup>6</sup> when the offence is political offence by its nature, the offender may not be extradited.

A number of the citizens of one of the cantons of the Swiss Republic, being dissatisfied with the administration of the government of the canton, rose against the Government, arrested several members of the Government, seized the arsenal, from which they provided themselves with arms, attacked, broke open, and took forcible possession of, the municipal palace, disarmed the gendarmes, imprisoned some members of the Government, and established a provisional government. Mr Castioni on entering the municipal palace, who had taken an active part in the disturbance throughout, shot with a revolver and killed a municipal councillor during the political turmoil of Switzerland. He escaped to England, where he was

arrested and committed for extradition on a charge of murder. Later, Swiss government demand extradition of Mr Castioni. However, Mr Castioni asked not to extradite him as the issue is solely in political character. The issue was whether UK was bound to extradite Mr Castioni or not.

The Queen’s Bench held that as the offence is of a Political Character and output of a political conflict so UK is not bound to Extradite Mr Castioni.

***In Re Munier Case***<sup>7</sup>, political offences must be distinguished from the terrorist activities. If a person do not believe in political organizations his offences cannot be treated as political offences.

Mr Muenier was a French citizen, he was an anarchist and did not believed in state. So he boomed many places to destroy his state. Likewise he boomed at two army barrack and escaped to UK, when France demanded his extradition he objected showing the reason that the offence was a political offence in character.

The Court held that the offence by Mr Muenier cannot be treated as political offence so UK is liable to extradite him.

### 3. DEATH PENALTY

Extradition will not be allowed if the offender if extradited may face a death penalty in his state. ***Australia Extradition Act 1988*** provides:

Section 15B “the Attorney-General is satisfied that, on surrender to the extradition country, there is no real risk that the death penalty will be carried out upon the person in relation to any offence.

<sup>6</sup>*Re Castioni*, (1891) 1QB149.

<sup>7</sup>*Re Munier*, [1894] 2 Q.B. 415.



Also in *New Zealand Extradition Act 1999, Section 30(3)(a)* provides,

The Minister may determine that the person is not to be surrendered if—

- (a) it appears to the Minister that the person may be or has been sentenced to death by the appropriate authority in the extradition country, and the extradition country is unable to sufficiently assure the Minister that—
- i. the person will not be sentenced to death;

One of the Landmark judgement by the Supreme Court of Canada was *Kindler vs Canada*<sup>8</sup>, After being convicted of murder in Pennsylvania, Joseph Kindler escaped and fled to Canada. He was captured, escaped again and was captured again. Kindler then fought his extradition. In a four-to-three decision the Court found that there was no violation of section 7 of the Charter (the right to life, liberty and security of person) or section 12 of the Charter (protection against cruel and unusual punishment). the Court noted that while Canada itself had abolished the death penalty, Canada should respect that most other countries had not. This included the United States, with which Canada shared cultural connections and an easily crossed border. It was held that the government policy that allowed for extradition of convicted criminals to a country where they may face the death penalty was valid

<sup>8</sup>[1991] 2 S.C.R. 779 1991 SCC 70.

under the Canadian Charter of Rights and Freedoms

The *Kindler vs Canada* decision was overruled in *United States vs Burns*<sup>9</sup>, was a decision by the Supreme Court of Canada in which it was found that extradition of individuals to places where they may face the death penalty is a breach of fundamental justice under section 7 of the Canadian Charter of Rights and Freedoms. The decision reached this conclusion through a discussion of evidence regarding the arbitrary nature of execution, although the Court did not go so far as to say execution was also unconstitutional under section 12 of the Charter, which forbids cruel and unusual punishments.

#### 4. TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Many countries do not allow extradition if the fugitive may subject to torture, inhuman or degrading treatment by the requesting state.

*Soering v United Kingdom*<sup>10</sup> is a landmark judgment of the European Court of Human Rights (ECtHR) which established that extradition of a young German national to the United States to face charges of capital murder violated Article 3 of the European Convention on Human Rights (ECHR) guaranteeing the right against inhuman and degrading treatment.

<sup>9</sup>*United States v. Burns*, S.C.R. 283, 2001 SCC 7.

<sup>10</sup>161 Eur. Ct. H.R. (ser. A) (1989).



Jens Soering is a German national, who at the time of the alleged offence was a student at the University of Virginia. He and his girlfriend were wanted in Bedford County, Virginia, USA for the murder of his girlfriend's parents. The couple disappeared from Virginia in October 1985, and were later arrested in England in April 1968 in connection with cheque fraud. Soering was interviewed by Bedford County police in the UK, which led to his indictment on charges of capital murder and non-capital murder. The USA commenced extradition proceedings with the UK under the terms of the Extradition Treaty of 1972, between the USA and UK. Mr Soering applied to the European Court on Human Rights (ECtHR) alleging the breach of Article 3, Article 6 and Article 13 ECHR.

**Othman (Abu Qatada) v. United Kingdom**<sup>11</sup> was a 2012 judgment of the European Court of Human Rights which stated that under Article 6 of the European Convention on Human Rights the United Kingdom could not lawfully deport Abu Qatada to Jordan, because of the risk of the use of evidence obtained by torture.

### 5. FAIR TRIAL

Article 14 of International Covenant of Civil And Political Rights adopted by General Assembly of United Nations led down that All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall

be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Similar provision has also been incorporated in Article 6 of the European Convention on Human Rights. **In Dudko v. The Government of the Russian Federation**<sup>12</sup>, Russia had requested the extradition of Mr. Dudko on charge of illegal dealings involving his furniture business to UK. Lord Justice Thomas was presented with an argument that the judicial system in Russia was too corrupt, and would not guarantee the claimant a fair trial if he were to be extradited. The Judge decided the case on a separate technical point, but had sympathy with corruption argument. He stated that 'In the light of my conclusion the appellant be discharged because the offence was not properly specified, it would not be desirable to express a view on whether on facts of this case, the Russian system violates Article 6 or does so in such a way as to amount to a flagrant denial of Justice'.

### 6. EXTRADITION OF OWN CITIZEN

Many states prohibits extradition of their own Nationals to foreign country.

**Section 12(1) of Austrian Extradition and legal assistance Act** provides "An extradition of Austrian citizens is inadmissible".

**Article 14 (4) of Charter of Fundamental Rights and Freedom of Czech Republic** "Every citizen is free to enter the territory of the Czech and

<sup>11</sup> Application No. 8139/09.

<sup>12</sup> (2010)EWCH 1125(Admin).



Slovak Federal Republic. No citizen may be forced to leave her homeland”.

*Similarly Republic Of China (Taiwan), Article 4 of Law of Extradition* prohibits a citizen of the Republic of China from being extradited from Taiwan, unless the person acquired the citizenship after the request for extradition is made.

Also, *Constitution of the Russian Federation 1993, Article 61 A* citizen of the *Russian Federation* may not be deported from *Russia* or extradited to another State.

**Valentine v. United States**<sup>13</sup>, In this case the respondents, native-born citizens of the United States, were charged with the commission of crimes in France. These crimes were among the extraditable offenses listed in the Franco-American Extradition Treaty of 1909. The respondents fled to the United States, were arrested in New York City on the request of the French authorities, and were held for extradition proceedings. The respondents sued to prevent their extradition from the United States to France under the Treaty of 1909. The respondents challenged the courts jurisdiction, arguing that because Article V of the Treaty of 1909 excepted citizens of the United States from extradition, the President had no constitutional authority to surrender the respondents to France.

**Charlton v. Kelly**<sup>14</sup>, is a case pertaining to extradition of a U.S. citizen to Italy. In 1910, Porter Charlton confessed in New York to having murdered his wife in

Italy. The Italian vice consul requested Charlton's extradition. Hon. John A. Blair, one of the judges of the Circuit Court of the United States for the district of New Jersey, suspended Charlton's petition for a writ of habeas corpus and a warrant was issued for his arrest. This order for extradition was approved by Secretary of State Philander C. Knox.

- **THE INDIAN EXTRADITION ACT, 1962**

Jurist Oppenheim defines Extradition as:

“Extradition is a delivery of an accused or a convicted individual to the State on whose territory he is alleged to have committed or to have convicted of a crime, by the State on whose territory the alleged criminal happens to be for the time”<sup>15</sup>

According to Indian Extradition Act as defined in section 2(c)(i),

“In relation to a foreign State, being a treaty State, an offence provided for in the extradition treaty with that State”

Section 2(c)(ii) “In relation to a foreign State other than a treaty State or in relation to a commonwealth country an offence which is specified in, or which may be specified by notification under, the Second Schedule”.

Under Section 3 of the Extradition Act, a notification can be issued by the

<sup>13</sup>Valentine v. United States, 299 U.S. 5 (1936).

<sup>14</sup>Charlton v. Kelly, 229 U.S. 447 (1913).

<sup>15</sup>OPPENHEIM, OPPENHEIM’S INTERNATIONAL LAW 631 (7<sup>TH</sup>ed.).



Government of India extending the provisions of the Act to the countries notified.

Extradition Treaty as defined in Section 2(d) of the act states that ““Extradition treaty means a treaty or agreement made by India with a foreign State relating to the extradition of fugitive criminal and includes any treaty or agreement relating to the extradition of fugitive criminals made before the 15th day of August, 1947, which extends to, and is binding on, India””.

Requisition for surrender under section 4 may be made to Central government by diplomatic representatives at Delhi.

Under section 8 of the Act states that, after magisterial inquiry under section 5 if the central government is of the opinion that the fugitive ought to be surrender may issue a warrant for the custody.

Chapter I contains Sections 1 to 3. While Section 1 provides for short title, extent and commencement of the Act, Section 2 contains definitions of certain expressions and Section 3 provides for application of the Act to “Foreign States” and “Treaty States”.

Chapter II contains Sections 4 to 11 which deal with extradition of fugitive criminals to foreign states to which Chapter III does not apply.

Chapter III which contains Sections 12 to 18 deals with return of fugitive criminals to foreign States with extradition arrangements.

Chapter IV and Chapter V, they deal with “Surrender or return of accused or convicted persons from foreign States” and “Miscellaneous Matters” respectively.

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[C] The process of extradition is to be initiated by the central government. Currently, India has extradition treaties with 38 countries.<sup>16</sup>

• INDIAN EXTRADITION CASE LAWS

SUPREMO  
[M] **Ram Babu Saxena v. State**<sup>17</sup>, this case leads with section 7 of Indian extradition Act, 1903. Dr. Ram Babu Saxena was an employ under U.P. Civil Services and was deputed to the Tonk State. Tonk was an Indian state and it had an extradition treaty with the British Government according to which both States were bound to extradite certain persons who were accused of certain specified crimes.

<sup>16</sup>Maninder Debas, *Everything You Need To Know About Extradition And India's Most Wanted Criminal*, INDIA TIMES (Nov. 13, 2017, 10:10 AM), <https://www.indiatimes.com/news/india/everything-you-need-to-know-about-extradition-and-india-s-most-wanted-criminals-261818.html>.

<sup>17</sup>Ram Babu Saxena v. State A.I.R. 1950 S.C. 155.





Dr. Ram Babu Saxena was later on living in the district of Nainital. It was contended that while serving in Tonk State he committed crimes of extortion under section 383a and cheating under section 420. Dr. Ram Babu Saxena argued in defence that British Government had an extradition treaty with the Tonk State and that treaty did not provide for crimes for which his extradition was being claimed. Hence he could not be extradited under section 7 of Extradition act, 1903. In this connection he made specific reference of section 18 of the Act, 1903, which provide that no extradition could be made against the provisions of the treaty. Since the treaty did not mention the specific crimes for which his extradition was sought, he contended that it will be beyond the jurisdiction of the court and whole proceedings were illegal. But the Supreme Court of India held that section 7 of the Indian Extradition Act was rightly applied and he could be extradited. The Supreme Court held:

“.....the Act doesn’t derogate from any such treaty when it authorises the Indian Government to grant extradition for some additional offences, thereby enlarging, not curtailing, the power of the other party to claim surrender of criminals. Nor does the Act derogate in true sense of the term from the position of an Indian subject under the treaty of 1869.”

His lordship concluded; “The Extradition Treaty between the Tonk State and the British Government in 1869 is not capable of being given effect to in the present day in view of the merger of the Tonk State in the United State of Rajasthan. As no treaty exist, Section 18 of Extradition Act has no application and as Section 7 of the Act has been complied with there is no ground upon which we can interfere. Thus the Supreme Court dismissed the Appeal.

**Dharam teja’s case (6 July 19971)<sup>18</sup>**, was the managing Director of Jayanti Shipping Corporation, committed embezzlement and bungling of crores of rupees and had fled away from India. He fled from one country to another to escape his arrest. When he was in Ivory Coast, the Government of India requested the Government of Ivory Coast to extradite Dharam Teja so that proceedings against him could be started in India. The Government of Ivory Coast refused to extradite Dharam Teja on the ground that there was no extradition treaty with India. Later on, when Dharam Teja was in London the Government of India came to Knowabout his whereabouts and informed the British Government and requested it to apprehend dharamTeja and to start proceedings of extradition against him. India has an Extradition treaty with the Government of Britain under which both the countries are bound to extradite the accused of eachother who run away after committing crimes in either country.

<sup>18</sup>DR. SK KAPOOR, INTERNATIONAL LAW AND HUMAN RIGHTS 361(20<sup>th</sup>ed.).



Government of England accepted the request of India and proceedings were started against Dharam Teja in the court of law in England. The Court of law in England came to the conclusion that Dharam Teja could be extradited. Consequently, Dharam Teja was extradited to India. The Government of India started proceedings against him and Dharam Teja was convicted for having committed embezzlement and bungling of crores of rupees of Jayanti Shipping Corporation, while he was Managing Director of that Corporation.

**Hans Muller of Nuremburg v. Supt., Presidency Jail, Calcutta and Others**<sup>19</sup>, it was held that India under the Foreigners Act 1946 provides the power to the Central Government to expel foreigners from India. It is an absolute and unfettered discretion of the Central Government.

In another case of **Rajendra Kumar Jain and Ors. v. State**<sup>20</sup> through Special Police Establishment & Others it was held that political offence is one which is committed with the aim of changing the Government of a State or inducing it to change its policy.

In the case of **Bhavesh Jayanti Lakhani v. State of Maharashtra**<sup>21</sup>, In this case, it was brought to the notice that if the fundamental rights of a citizen are infringed then the High Court exercising

its extraordinary power under Article 226 of the Constitution would not reject citizens only because of red-corner notice. Access to justice is basic human right.

**Nvala Officers Extradition Case (July, 1975)**<sup>22</sup>, Commander Elijah Ebrahim Jhirhad of Indian Navy was Charged by the Government of India with misappropriating Rs. 13 lakhs of the Naval Prize Fund while he was functioning as the Judge Advocate-General of the Indian Navy in the early 1960. The matter was referred to the C.B.I. in 1966. Jhirhad had the responsibility of administering Rs. 70 lakhs of the prize fund. An ex-sailor made a complaint that he had not received his shares of the prize money. On enquiry the Naval Headquarters discovered that the fund was never subjected to audit and that commander Jhirhad had destroyed all records. A charge-sheet was filed by C.B.I. against him in 1968. But Jhirhad could not be apprehended as he fled from the country along with his family. Since the Indian authorities were trying to find out his whereabouts. The C.B.I then got in touch with the Interpol which had arrested him April 1972 in New York. Proceedings for his extradition were then launched but Commander Jhirhad went in appeal. In July 1975, the New York Judge passed the extradition orders after accepting the Indian Government pleas in this regard. Thus Commander Jhirhad has

<sup>19</sup>Hans Muller of Nuremburg v. Supt., Presidency Jail, Calcutta and Others, AIR 1955 SC 367.

<sup>20</sup>Rajendra Kumar Jain and Ors. v. State, 1980 (3) SCC 435.

<sup>21</sup>Bhavesh Jayanti Lakhani v. State of Maharashtra (2009) 9 SCC 551.

<sup>22</sup>DR. SK KAPOOR, INTERNATIONAL LAW AND HUMAN RIGHTS 361 (20<sup>th</sup> ed.).



been extradited to India and will now face trial of the charges of misappropriation of Rs. 13 lakhs of the Naval Prize Fund.

- **CONCLUSION**

As the case with all international law regimes, extradition also depends largely on mutual cooperation between the concerned nations. As goes the scenario, it is also a single basic requirement that there be an extradition treaty between the States. As is the obvious from the above mentioned case laws, it is extremely difficult to determine the status of extradition of an accused without a pre-existing treaty.

Thus it is always the need for India in light of the shifting global political and economic scene to cement its position and engage in extradition treaties with as many nations as possible for smooth and expediate custody transfer of the criminals who try to escape prosecution by exploiting this little loophole. It is the requirement for justice to be served.

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