



EXTRADITION: ITS MEANING AND FUNCTION IN INDIA

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INTRODUCTION

It is quite possible for a person to escape to another State after committing a crime in his own State. Such cases have started occurring quite often with the result of development of air traffic¹. A question arises as to whether the fugitive² shall be tried in the State where he committed the crime or in a country where he has fled away. Normally, a State finds it difficult to punish a person who has committed a crime elsewhere primarily because of lack of jurisdiction, and therefore, such persons are often surrendered to the State where the crime has taken place or been committed. Surrender of an accused or a convict is referred to extradition. Thus, in the cases where the practice of granting asylum is not followed, it is known as extradition.

The term extradition has been derived from two Latin words *ex* and *traditum*. In layman's language it means 'surrender of fugitives', 'delivery of criminals' or 'handover of fugitives'. Extradition may be defined as surrender of a fugitive criminal by the State on whose territory the accused is found to the State on whose territory he is alleged to have committed a crime.

According to **Oppenheim**³, extradition has been defined as follows:

¹ 'Air traffic' means traffic created by the movement of aircraft within a given space.

² A 'fugitive' means a person who is accused of, or is convicted of, an extradition offence within the jurisdiction of a foreign State and includes a person who, while in India, conspires or attempts to commit

"Extradition is the delivery of an accused or a convicted individual to the state where he is accused of, or has been convicted, of a crime, by the state on whose territory he happens for the time to be."

The Honorable Supreme Court of India⁴ has defined extradition as follows:

"Extradition is the delivery on the part of one State to another of those whom it is desired to deal with for crimes of which they have been accused or convicted and are justifiable in the Courts of the other State. An Extradition request for an accused can be initiated in the case of under-investigation, under-trial and convicted criminals. In cases under investigation, abundant precautions have to be exercised by the law enforcement agency to ensure that it is in possession of prima facie evidence to sustain the allegation before the Courts of Law in the Foreign State."

Thus, in a nutshell, extradition can be defined as the act of delivering, an accused or a convicted person, by authority of law, from the State where the accused fled to after committing the crime to the State in which the crime was supposedly committed.

Is Extradition a Legal Duty Of a State?

Grotius was of the opinion that a State of refuge either has the duty to punish the fugitive or surrender him to the State where he committed the crime. He recognized the principal of 'prosecution or extradition' as a legal duty of the state where the offender is

or participates as an accomplice in the commission of an extradition offence in a foreign State.

³ 'International Law' Vol. I, Ninth Edition (1992), p. 949.

⁴ State of West Bengal v. Juggal Kishore AIR 1969 SCC 1171



found and this legal duty of the state according to him is based on natural law. The principle of extradition has been expressed by the maxim *aut dedere aut puniare*⁵.

The principle was invoked in the case of **Belgium v. Senegal**⁶ by Belgium in Questions Relating to the Obligation to Prosecute or Extradite in its application instituting proceedings against Senegal in 2009 before the ICJ stating that Senegal's compliance with its obligation to prosecute or extradite the former President of Chad, Hissene Habre to Belgium for the purpose of criminal proceedings. Belgium contended that under International Custom, Senegal's failure to prosecute Habre or to extradite him to Belgium violates the general obligation to punish crimes against humanity. However, in practice, the principle has not been followed by the states, and therefore it cannot become a rule of International law.

A legal duty to surrender a convicted person only arises when the treaties are concluded by the States and after all the formalities mentioned in the extradition treaty have taken place.

The first and foremost important condition of extradition is the existence of an extradition treaty between the state on whose jurisdiction the fugitive is and the state where the fugitive allegedly committed the crime i.e. the territorial state and the requesting state. For some States, such as the United States, and the Netherlands, existence of a treaty is quite important. They require a treaty as an absolute pre-condition.

⁵ The principle has been adopted in many treaties, for instance, in the four Geneva Conventions on Humanitarian Law 1949 and their Protocols of 1977; Convention on Psychotropic Substances etc.

Quattrocchi, an Italian businessman and an accused in Bofors Scam could not be extradited to India from Italy as no treaty existed between India and Italy. Negotiation for a treaty between the two began in the year 2001 but has not concluded till now.

But, India in recent past has concluded extradition treaties with many countries such as Canada(1987), U.K(1992), Russian Federation(1998), U.A.E(1999), U.S.A(1999), Spain(2002), France(2003), South Africa(2003), Kuwait(2004), South Korea(2004), Australia(2008), Bangladesh and Thailand(2013). India also made a proposal to Pakistan for Indo- Pak extradition Treaty but they refused.

It is to be observed that in the absence of any Treaty arrangements, a person may be extradited in exceptional cases on the basis of reciprocity. Germany and Switzerland extradite a person apart from a formal Treaty if their government and the requesting States have exchanged declarations of reciprocity.

In the case of **Abu Salem v. State of Maharashtra**⁷, Abu Salem, an accused in 1993 Mumbai blast and an underworld don fled to Portugal along with his wife Monica Bedi, Portugal, in the absence of a Treaty, extradited Abu Salem to India after latter gave an assurance that he would not be given a death sentence. As to extradition of Monica Bedi, a local Court of Portugal refused to extradite Monica Bedi on the ground that the crime committed by her in India was similar to that of the crime for which she was arrested

⁶ ICGJ 437 (ICJ 2012)

⁷ (2011) 11 SCC 214



in Portugal. Bedi was arrested in Portugal for possessing forged document. Indian point of view was that possessing forged documents and wanted for forged documents are two different crimes, and therefore she is required to be extradited to India for trial. Later, the Portuguese High Court ordered her extradition.

PRINCIPLES ALEBIT THE LAW OF EXTRADITION

1. ***Political Exception:*** It means that person cannot be extradited for an offence of political character. The term political offences have not been clearly defined as international law. But, what shall be construed as a political offence usually depends on the domestic law of the requested state. Also the acts of terrorism committed by a person do not fall under the exception of political offences even if they are committed with political motive.

- **Re Castioni:**⁸

In this case, Castioni who had returned to Switzerland from abroad joined the Revolutionary Movement in the Canton of Ticinio (Switzerland), and in the course of it, he committed the murder of Rossi, a member of the government. It was created on behalf of Castioni in the writ of Habeas Corpus that is offence was a political offence for which extradition was not available. He claimed protection under section 3 of the extradition act 1870. Lord Denman J. laid down that in order to bring the case within the scope of the act, and for an offence to be political it must at least be shown that the act is done in furtherance of, done with the intention of assistance, as a sort of overt act in course of

acting in a political manner, a political rising, or a dispute between two parties in the state as to which is to have the government in its hand. Is extradition was refused on the finding that his motive for the Act was political.

- **Re Meunier Case:**⁹

In the case of Re Meunier, which came before the court three years after Castioni, the principle laid down in Re Castioni was repeated. In Re Meunier, the petitioner was the French anarchist who was charged with causing explosions at a I and also in certain barracks in France, one of which resulted in the death of two individuals. His extradition was refused.

2. ***The Doctrine of Double Criminality:***

It denotes that crime which is committed by an accused must be an offence which is recognized in the territorial as well as in the requesting state. No person is extradited unless this condition is fulfilled. In other words, extradition is made available only when the act committed by the fugitive is an offence in both the states that is the requesting State and the State requested. Doctrine is based on the consideration that if the territorial state has to extradite a person that would offend the conscience of the territorial state as its own law does not regard him as a criminal. The requesting state would not ask for the surrender of a person for those crimes which are not recognized in its state.

- **Soering v. the United Kingdom**¹⁰, in this case, a German national murdered his girlfriend's parents in the State of Virginia

⁸ (1891) IQB 149

⁹ (1894) 2 QB 415

¹⁰ 28 ILM 1603 (1989)



(USA) and later he along with his girlfriend disappeared. They fled to England where they were arrested. Soering after committing murder in the United States, for which the punishment was a death sentence, fled to the United Kingdom where he was found guilty for manslaughter and not for murder. Later on, he was surrendered to U.S.A on the condition that he shall not be given a death sentence.

- In **Chitat v. Canada**¹¹, wherein Canada extradited a person to California where he might be executed by gas asphyxiation, which can cause prolonged suffering rather than immediate death. It was observed by the Committee that Canada has violated its obligations, as under the International Covenant on Civil and Political Rights, which prohibits ‘torture or to cruel, inhuman or degrading treatment or punishment’.
- In 2007, Delhi High Court allowed the extradition of Mahindra Pal Singh Kohli to the United Kingdom with the condition that he shall not be given a death sentence. The Court observed that there was sufficient material to establish a strong prima face case against him for committing the offences of raping, kidnapping and murder of Hannah Foster.

3. Rule of Specialty:

According to this principle, an accused may be tried by the state from where he fled only for that offence for which he has been extradited. In other words, the requesting state cannot punish the fugitive criminal for any offence other than that for which he has been extradited.

In the case of **Daya Singh Lahoria v. Union of India**¹², the petitioner Daya Singh who was extradited from the U.S.A in a writ petition stated before the SC of India that the criminal courts in the country have no jurisdiction to try in respect of offences which do not form a part of the extradition judgment by which he has been brought to this country and he can be tried only for the offences mentioned in the extradition decree. It was contended by petitioner that he cannot be tried for offences other than the offences mentioned in the extradition order as that would contravene with Section 21¹³ of Extradition Act, 1962 as well as with the provisions of the International law. It was held by Justice Pattnaik that an accused brought in this country under an Extradition Decree can be tried for offences mentioned in the Extradition Decree and for no other offences.

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returning to that State, be tried in India for an offence other than— (a) the 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) the offence in respect of which the foreign State has given its consent.

¹¹ CCPR/C/49/D/469/1991

¹² AIR (2001) Supreme Court, p. 1716.

¹³ Section 21 of the Extradition Act, provides that an accused or convicted person surrendered or returned by foreign State not to be tried for certain offences.—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



In India for the first time, an Extradition Act was enacted in 1902. Prior to the enactment of the Act of 1962 extradition in India was regulated on the basis of the United Kingdom Extradition Act of 1870. The surrender of Fugitive criminals amongst the countries of the British Empire was regulated by another act that is The Fugitive Offenders Act of 1881. The Indian extradition act of 1903 was enacted to provide for more convenient administration in British India and to supplement the extradition act of 1870 and to the Fugitive Offenders act of 1881. Thus, the act of 1903 was supplementary to the above two acts.

The Extradition Act 1962 defines the expression 'Extradition Treaty' as a Treaty, Agreement or Arrangement made by India with a Foreign State, relating to the Extradition of fugitive criminals and includes any treaty, agreement or arrangement relating to the Extradition of fugitive criminals made before the 15th day of August 1947, which extends to and is binding on, India. Extradition treaties are traditionally bilateral in character.¹⁴

In 1965, India prepared a list of 45 pre-independence extradition treaties which were stated to be in force.

Germany and Portugal expressed the view that extradition treaties are not operative with India, it was regarded by India that pre-independence extradition treaties with these states are still operative. When Abu Salim, an accused in Bombay blast case fled to Portugal

in 2002, it was found that India does not have an extradition treaty with Portugal but still, Portugal extradited Abu Salim to India after latter gave an assurance that he would not be given even death sentence. A similar case happened with France, when it was suspected that Dharma Teja had fled to France, the Prime Minister of India declared in the Parliament that India has no extradition treaty with France, and therefore, his extradition cannot be requested to that country.

The central authority that administers the extradition act and processes the incoming and outgoing of extradition request is the CPV Division, Ministry of external affairs and Government of India.

It is to be noted that request for extradition on behalf of the republic of India can only be made by the Ministry of External Affairs and Government of India which formally submits the request for extradition to the requested state through diplomatic channels.

Extradition is also possible from the non Treaty States and the process is provided under the Indian Extradition Act, 1962.¹⁵

Maria Stella Rene v. Inspector of Police, CBI/SCB1¹⁶, the High Court Of Madras refused release the passport of a French national (arrested in India) by the Indian Police on the ground that if she returned to France, she would not be extradited to India as the extradition treaty between France and India barred extradition of "own nationals".

¹⁴ See section 2(d) of the act.

¹⁵ Section 3(4) of the act (provides for the process of extradition with non-treaty foreign states) states that where there is no extradition treaty made by India with any foreign State, the Central Government may, by notified order, treat any Convention to which India and

a foreign State are parties, as an extradition treaty made by India with that foreign State providing for extradition in respect of the offences specified in that Convention.

¹⁶ CrI. R.C. No. 602 of 2016



In the case of **Mohammed Jafeer v. The Government of India, rep. by the Assistant Director (I), CBI and Ors**¹⁷, the High Court of Madras upheld the decision of the Indian Government which disallowed request for extradition of an Indian national to Kuwait (though the treaty was signed but not in effect at the relevant time) on the ground that the treaty bars extradition of own nationals. The court observed, “Kuwait will not extradite its nationals to India”. In this case, however, the criminal proceedings for the same offence(s) were commenced in India against the accused as the offences alleged were of theft and criminal breach of trust (which are also offences in India).

Presently, India has extradition treaties with 47 countries and extradition arrangements with 9 countries. Between 2002 to December 7 2016 62 fugitives have been extradited by foreign countries to India on the basis of extradition treaties.¹⁸

In the recent past India has also suffered setbacks with many fugitives such as Nirav Modi, Mehul Choksi, and Vijay Mallya fleeing from India to avoid criminal prosecution.

The most recent case of extradition in India is that of Sanjay Chawla, an alleged bookie and one the main accused in one of the biggest match-fixing scandal that involved South African Captain Hansie Cronje. He was extradited from United Kingdom on 13th February, 2020.

India (requesting State) assured United Kingdom (requested State) that Chawla will be accommodated in a personal cell with

proper security and will also comply with personal hygiene and medical requirements.

CONCLUSION

Extradition plays an important role on the international frontier. The process of surrendering the accused to the state in which the alleged committed the crime by the state in whose territorial jurisdiction the accused fled to is known as extradition. The concept of asylum is very old and traditional, and when this long-standing tradition is not followed by the States it is known as extradition. If a person is surrendered to the requesting State by the territorial State it is known as extradition, but if he has not been surrendered and instead given shelter and protection by the territorial State, then it is known as asylum. Starke has stated that where asylum ends extradition begins. It must be noted that before a person is extradited, the territorial State must be satisfied by the requesting State that there is a *prima facie* evidence against the fugitive for which extradition is demanded.

In **C.G Menon’s case** the Madras High Court held that ‘the need for offering evidence to show that *prima facie* the offender is guilty of the crime with which he has been charged by the country asking for his extradition has been well recognized.’¹⁹

Thus, extradition procedures have evolved and changed in response to changing social conditions, and in particular changes in relation to improved communications and easier movement of individuals between States. Political offence exception has diminished in importance as States

¹⁷ Habeas Corpus Petition No. 1243 of 2005

¹⁸ Times of India, February 20, 2018

¹⁹ AIR (1953) Madras, p. 729 at p. 763



recognized the need to address the problem of modern international terrorism²⁰, which is very different in scale and character from what it was in the 19th century.

- Maria Stella Rene v. Inspector Of Police
- Mohammed Jaffar v. The Government Of India
- Daya Singh v. Union Of India
- C.G Menon's Case

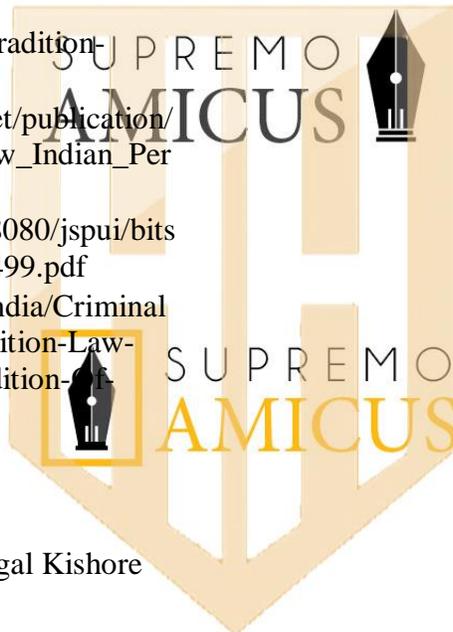
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- State of West Bengal v. Juggal Kishore
- Belgium v. Senegal
- Abu Salem v. State of Maharashtra
- Re Castinio
- Re Meunier
- Soering v. United Kingdom
- Chitlat v. Canada

²⁰Article 1(2) of the Terrorism Convention defines “acts of terrorism” as “criminal acts directed against a state” (1937). Such acts must be “intended or calculated to create a state of terror in the minds of particular persons, or a group of persons or the general public”. The Convention is silent on the purpose of the

fear generated (Chadwick, 1996). Modern terrorism can be traced back to nineteenth century revolutionary radicalism, and, in particular, the emergence of “anarchist”, “collectivist anarchist” and “anarcho-communist” groups.
