

Extradition

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Introduction:-

The inability of a state to exercise its jurisdiction within in 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. ¹

Meaning:-

Extradition is the delivery of an 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.²

Definition:-

According to Starke, “The term ‘extradition’ denotes the process where by under treaty or upon a basis of reciprocity one state surrenders to another State at its request a person accused or convicted of a criminal offence committed against the laws of the requesting State, such requesting State being competent to try the alleged offender.

Under the International law, extradition is mostly a matter of bilateral treaty. In principle, each State considers it a right to give asylum to a foreign national.

States have always upheld their right to grant asylum to foreign individuals as an inference from their territorial supremacy, those cases where a treaty imposes an obligation to extradite them.³

Thus there is no universal rule of customary international law in existence imposing the duty of extradition.

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¹ Edward Collins International Law in a Changing World (1969), p. 216.

² L. Oppenheim, International Law, Vol. I, Eighth Edition, p. 696; See also Oppenheim’s International Law, Ninth Edition, Vol. I, Edited by Sir Robert Jennings and Sir Arthur Watts, Longman Group U.K. Ltd and Mrs. Tomoko Hudson, 1992, pp. 948-949.

³ Oppenheim’s International Law, note 2, p. 950.

Purpose:-

The purpose of extradition is to prevent criminals who flee from a jurisdiction to escape from punishment for a criminal offence they have been accused or convicted of.

The objective of extradition is to prevent crimes and punish the persons accused or convicted of crimes. If a person commits some crime in a country and to escape punishment flees from that country to another country, then through the process of extradition, such a person is brought to the jurisdiction of that country where he had committed the crime and is tried and punished for the crime. If on account of some technicalities of law or lack of jurisdiction, the criminal cannot be punished, then through the process of extradition he can be punished by being brought to the country where he committed the crime.

In the country where he committed the crime, it would be convenient to adduce the evidence against the accused.

Thus, the object of the process of extradition is to prevent and reduce the crimes in the international field. Thus the role of extradition is to prevent crimes and punish criminals. It is the interest of all countries to prevent crimes because, the country in which a person of criminal character resides, it is in the interest of such a country to ensure extradition of such a person.

Generally, extradition depends on bilateral treaty and the principle of reciprocity. But in the absence of a bilateral interest if a country request another country where the accused or fugitive resides for the time being, to extradite the fugitive, it is in the interest of security and law and order of such country to extradite the accused. Such a step not only enhances international cooperation but is also in accordance with the purposes of the United Nations.

In view of the increasing crimes the international field in recent years, the importance and prevalence of the extradition has increased.

In recent years, the provisions relating to extradition find mention in international treaties. The universal recognition of human rights has enhanced the prevalence and importance of extradition.

International cooperation is most essential in cases of extradition because there is hardly a country which has extradition treaty with all the other countries of the world.

European Convention on Extradition (1957)

European Convention on Extradition was adopted at Paris on 13th December, 1957.

Under Article 1 of the convention, the contracting parties have undertaken to surrender to each other, subject to the provisions laid down in the convention, all persons against whom the competent authorities of the requesting party are proceeding for an offence or who are wanted by the said authorities for the carrying out of a sentence or detention order.

The convention also lays down extraditable offences (Article 2), the principle of non-extradition for political offences (Article 3); Principle of non-extradition for military offences (Article 4).

Contracting parties, right to refuse extradition of its own nationals etc.

The European Convention on Extradition (1957) entered into force on 18th April, 1964.

It may be noted that the European Convention on Extradition was amended by Additional Protocol to the European Convention. The Additional Protocol was concluded on 15th October 1975. It came into force on 20th August 1979.

The European Convention on Extradition was further amended by Second Additional Protocol to the European Convention which was concluded on 17th March, 1978 and entered into force on 5th June, 1983.

It is suggested that since for the last two to three decades, number of international crimes especially acts of terrorism have witnessed a phenomenal increase, an Universal Convention on the lines of above mentioned European Convention is needed to curb the menace of terrorism.

Essential conditions of granting extradition or restrictions on surrender:-

Under international law extradition mostly depends on treaties among the States. However, the courts have also established certain principles and rules in regard to law of extradition.

In other words, we may say that following are some restrictions on surrender of fugitive criminals or essentials conditions for extradition :

1) Non-extradition of Political Criminal:-

It is a very important principle of International Law that extradition for political crimes is not allowed. "Most States refuse to commit themselves to extradite....any person charged with 'political crimes' that is to say crime committed for political purposes or crimes that are politically motivated. The difficulty of applying political exception is obviously a problem that regularly plagues the courts"⁴

⁴Collins International Law in a Changing World (1969), p. 216. See also Sections 29 and 31 (a) of the Extradition Act, 1962 referred earlier.

The practice of non-extradition for political crimes began with the French Revolution of 1789.

Later on other States also subscribe to this view although many difficulties arise in the enforcement of this principle. The most difficult problem is of the definition of the term 'political crimes'.⁵

Although the principle is now widely accepted that political criminals should not be extradited, there is probably no rule of customary international law which prevents their extradition. However, serious difficulties exist concerning the concept of 'political crimes'.⁶

Many attempts have been made to define the term 'political crime', but success has so far eluded.

"A crime is sometimes considered 'political' if committed from a political motive or if committed both from a political motive and for a political purpose or the term 'political crime' may be confined to certain offences against the state only, such as high treason, lèse majesté and the like. So far all attempts to formulate a satisfactory and generally agreed definition of the term have failed."⁷

Further, "Since a political offence will usually be at the same time an ordinary crime such as murder, arson, theft and the like, the practical difficulty in any particular case is to determine whether the alleged political element is sufficient to give the ordinary crime a sufficient political colour to ensure to the perpetrator protection from extradition. This balance is, in the first place, to be struck by the State from which extradition is requested, in applying its laws to non-extradition of political offender."⁸

Restrictions on Surrender under Indian Law:-

Section 31 of the Extradition Act, 1962, provides certain restrictions on surrender of fugitive criminals.

These restrictions are as follows:-

- Offences of political character – A fugitive criminal shall not be surrendered or returned to a foreign State Commonwealth country 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.⁹
- Prosecution for offence being barred by time – A fugitive criminal shall not be surrendered if prosecution for the offence in respect of which his surrender is sought is according to the law of that State or country barred by time.¹⁰
- Extradition treaty or provision by law of foreign State that Fugitive Criminal shall not be tried or detained in that State for any offence committed prior to his surrender or return.

⁵ Oppenheim, see supra note 2, at p. 707.

⁶ Oppenheim's International Law, note 2, p. 963.

⁷ Ibid at p. 964.

⁸ Ibid at pp. 964-965.

⁹ Section 31 (a) of the Extradition Act, 1962.

¹⁰ Section 31 (b).

- If accused of some offence in India other than offence for which extradition is sought – A fugitive criminal shall not be surrendered or returned if he has been accused of some offence in India, not being the offence for which his surrender or return is sought or is undergoing sentence under any conviction in India until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise.
- After expiration of 15 days after being committed to prison- Lastly a fugitive criminal shall not be surrender or returned until after the expiration of fifteen days from the date of the his being committed to prison by the magistrate.
- Where prosecution on trial of person extradited is made for lesser offence under Section 365 I.P.C. although said offence was not mentioned in extradition decree, it was held that if was not illegal as extradition of accused was allowed for higher offence under Section 364-A, I.P.C. This was held by the Supreme court in Suman allas Kamal Jeet Kaur v. State of Rajasthan.¹¹

Unfettered power or discretion of Central Government to discharge any fugitive criminal.-

- Despite the provisions of the Extradition Act, 1962, particularly section 3 and section 12 of the act, The Central Government has unfettered powers or discretion to discharge any fugitive criminal. If it appears to the Central Government that by the nature of the trivial nature of the case or by reason of the application for the surrender or return of a fugitive criminal not being made in good faith or in the interest of justice or for political reasons or otherwise it is unjust or inexpedient to surrender or return the fugitive criminal, it may, by order at any time stay any proceedings under this Act and direct any warrant issued or endorsed under this Act to be cancelled and the person for whose arrest the warrant has been issued or endorsed to be discharged,¹²
- It is further provided that notwithstanding anything to the contrary contained in section 3 or section 12 the provisions of section 29 and 30 shall apply without any modification to every foreign State or Commonwealth country.¹³

¹¹ AIR 2007 SC 2774.

¹² Section 29

¹³ Section 32.

Case relating to refusal to grant of extradition of two Burmese students

In November 1990, two Burmese students were persuaded to land at Calcutta airport. They had hijacked Thai International Airbus with 205 Passengers and 16-members to highlight the cause of restoration of democracy in their country. Their six point Charter of demands, written in blood, included restoration of democracy in Burma, ending military rule, release of all political prisoners and a direct dialogue with the Burmese Government.

The Indian Government refused to hand them over to Burmese or Thai authorities.

However, the Indian Government have charged them under Anti-Hijacking Act, 1982 and for criminal conspiracy.

Some Indian Cases on Extradition:-

- **Savarkar's case** :- The facts and decision of the Savarkar's case has been referred earlier while explaining the essential conditions of extradition.
- **Sucha Singh's case**:- Sucha Singh was accused of murdering Pratap Singh Kairon, the former Chief Minister of Punjab and had fled away to Nepal and on the request of the Government of India, the Government of Nepal after starting proceedings against him in accordance with the law of Nepal, extradited him.
- **The Tarasov Extradition case, 1963¹⁴**:- This case has been discussed earlier in this Chapter.
- **Mobarak Ali Ahmad v. State of Bomabay, 1957¹⁵**
- **Extradition of Abu Salem** :- Abu Salem was one of the most wanted accused persons in Mumbai Blasts of 1993. He was living in Portugal and the government of India sought his extradition.

¹³ A.I.R 1955 S.C. 867.

¹⁴ A.I.R. 1955 S.C. 367.

S.A.A.R.C. Accord on Extradition:-

On 16th June 1987, the Foreign Secretaries of South Asian Regional Countries entered into an agreement on extradition. The draft of the Agreement and recommendations were presented before the Standing Committee of Foreign Affairs Ministers. The agreements provided for the extraditions of persons accused of terrorist acts but not including acts of political nature. Later on three-day summit of SAARC, the conference adopted a convention on Terrorism on 4th November, 1987. The convention was to be ratified within six month. The convention provides for the extradition of person accused of terrorist acts. However, Article 11 of the convention provides, that if the state concerned thinks that it is not proper and expedient to extradit the accused, there shall be no obligation to extradit. Similarly, there shall be no obligation to extradite if the matter is very ordinary and the request for extradition has not been made in good faith and is not in the interest of justice. But under the convention it is the obligation of the member states to ensure the presence of the accused for prosecution under national laws. Under the convention following six crimes shall not be considered as political crimes or crimes inspired by political motives:

- Crimes relating to aircraft hijacking under the Hague Convention of 16 December, 1970 on Hijacking ;
- Crimes relating to aircraft hijacking under the Montreal Convention of 23 September, 1971 on Hijacking ;
- Crimes under the Convention of 14 December, 1973 relating to Prevention and Punishment of crimes against Internationally Protected Persons ;
- Crimes under any Convention of which SAARC States are parties and under which State parties are under obligation to prosecute or extradit the accused ;
- Crimes relating to murder, assault ; making hostage etc ; and
- Attempt to aid and advice the crimes etc.

The convention also provides that the Member States shall not consider political crimes the crimes concerning violence.

Indian- U.K. Pact on Extradition:-

In the first week of January, 1992 during his visit to India. British Home Secretary Kenneth Baker offered to sign an extradition treaty with India regarding extradition and confiscation of funds of terrorists and drug traffickers operating from Britain. This step is being taken to deter drug trafficking and terrorists on Punjab and Kashmir. The treaty is subsequently signed. The treaty was ratified on 15th November, 1993,

Earlier India had entered into in 1986 an extradition treaty with Canada. India is also making endeavors to enter into a similar treaty with United States of America.

Extradition Treaty Between India and Russia:-

India and Russia also signed an extradition treaty. This treaty was approved and ratified by Russia on 15th April, 2000.

Extradition Treaty Between India and United States:-

India and America have been cooperating with each other for a long time for curbing extremism and terrorism. In several cases in past, America has cooperated with India in respect of extradition of criminal who after committing crime had fled away to that country. Recently America extradited Daya Singh Latoria at the request of the Government of India. A couple of more extraditions are expected soon. On 25th June, 1997 India and America entered into a treaty on extradition. It is a modern treaty containing exhaustive provisions relating to new trends on extradition.

In accordance with Article 23 of the treaty, instruments of ratification were exchanged at New Delhi on 21st July, 1999. Thus the treaty came into force immediately because Article 23 provides that this treaty shall enter into force upon the exchange of the instruments of ratification.

Last but not the least. Article 18 provides for 'Waiver of Extradition'. According to it if the person sought consents to surrender to the Requesting State, the Requested State may, subject to its laws, surrender the person as expeditiously as possible without further proceedings.

Extradition Treaty between India and Germany:-

With a view to combat, India and Germany signed an extradition treaty at Berlin on 27th June, 2001. The treaty will enable the two countries to extradite a person wanted in "extraditable offences."

Under the treaty extraditable offences are the offences which are punishable by a term of imprisonment of not less than one year. Extradition shall also be granted in respect of an attempt or conspiracy to commit, or aiding, abetting, inciting or participating as an accomplice in the commission of an extraditable offences.

Extradition Treaty Between India and Spain:-

India and Spain have also signed an extradition treaty. It was signed in June, 2002.

Extradition Treaty Between India and France:-

India and France signed an extradition treaty on 24th January, 2003. Prior to the signing of the treaty France had apprehensions that the terrorists or criminals to be extradited to India might get death penalty. India removed such apprehensions by giving an undertaking that terrorists extradited to India would not be given death penalty.

The treaty was signed by Deputy Prime Minister L.k. Advani on behalf on India and Dominique Perben, Minister for Justice of France, on behalf of France.

Extradition Treaty Between India and Bulgaria:-

India and Bulgaria signed an extradition treaty on 23rd October, 2002. This treaty aims to ensure that terrorists are not able to seek sanctuary abroad.

Thus India has so far signed extradition treaties with 25 countries.