

THE MEANING AND ESSENTIAL CONDITIONS FOR EXTRADITION

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INTRODUCTION:

Today the world has become like a small box, each and every corner of the world is well known to all. We can move easily to any corner of the world. At the same time, it is also very easy for a person to escape to another state after committing a crime in his own state. The problems arise when a person after committing crime runs away to another country. States in the world finds difficult to punish a person who has committed a crime elsewhere because lack of jurisdiction at the same time states cannot exercise their jurisdiction over other states also.

So, something was required to handle this kind of situation and to maintain peace and security in the world. This social need was fulfilled by the concept of Extradition. Extradition is the surrender of a criminal to one country by another. It also helps in maintaining the territoriality of the penal code, which says that a country should not apply its criminal law to a person who committed an offence outside its territories except when the crime is, related the countries national interest. The process is regulated by treaties between two countries¹.

MEANING OF EXTRADITION:

The term 'extradition' is derived from two Latin words 'ex' and 'traditum', means 'delivery of criminals', 'surrender of fugitives' or 'handover of fugitives'. Under international law it is a bilateral treaty and there is no obligation or general duty of states to extradite criminals.

Extradition is the official process whereby one nation or state surrenders a suspected or convicted criminal to another nation or state. Between nation states, extradition is regulated by Treaties. Where extradition is compelled by laws, such as among sub-national jurisdictions, the concept may be known more generally as rendition.

Extradition can be described as the process by which a country upon the request of other surrenders to the latter a person found within its jurisdiction for trial and punishment or, if he has already been convicted, only for punishment, on account of a crime punishable by the laws of the requesting country and committed outside the

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1.TNN Apr 18, 2011, 01.39am IST, India has extradition treaties with 31 countries, (e-paper or online paper)

territory of the requested country. It is to be noted that extradition for the purpose of criminal prosecution is the exercise of a sovereign function, which the courts cannot review.²

According to **Oppenheim** 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.³

According to **Stark**, “The term extradition denotes the process whereby 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.”⁴

ESSENTIAL CONDITIONS OR RESTRICTIONS FOR EXTRADITION:

- The first important condition of Extradition is the existence of a ‘**Formal Treaty**’ between requesting and sending states, not simply an agreement or notification. India has concluded extradition treaties with many countries such as –

Belgium 1958, Canada 1987, U.K. 1992, Bhutan 1997, Russia Federation 1998, U.S.A. 1999, Spain 2002, France 2003, Germany 2004, South Africa 2005, Kuwait 2004, South Korea 2004, UAE approves extradition treaty with India in 2012 etc., (till now India has been signed extradition treaties with more than 31 countries only in the world)⁵

(India made a proposal to Pakistan during the Home Secretary level talks held in Islamabad in 2004 for Indo – Pak extradition treaty, but Pakistan rejected the Indian proposal by saying that time has not arrived for such a step).

- The persons who are accused of ‘**Political Crime**’ are not extradited.

Political crime means the crime committed for the furtherance of political objectives.

According to Oppenheim, ‘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, lese majeste and the like.’⁶

² White v. Marshall, 11 Ohio, Dec. 779 (Ohio C.P. 1901).

³ L. Oppenheim, International Law, Vol. I, Ninth Edition, 1992, Edited by Sir Robert Jennings and Sir Arthur Watts, Longman Group U.K. Ltd., and Mrs. Tomoko Hudson, p.948-949,

⁴ J.G. Starke, Introduction to International Law, Tenth Edition (1989), p.352,

⁵ Supra Note no.1 (online paper or e-paper)

⁶ Supra Note no 2, p.707,

This practice was started from the French Revolution of 1789. Now all the states in the world are following this principle. It is a customary rule of international law but now it has become a general rule of international law.

Basis for the non-extradition of Political offenders:

- Political offenders are not dangerous for the territorial State like ordinary
- Criminals,
- This rule is on the basis of elementary consideration of Humanity,
- No state would like to extradite a person if he/she is not a criminal, it is not in compliance with the law of natural justice also,
- In case Political offenders are extradited, it is feared that they would not be treated fairly,
- The requesting state may attempt to take against them on any measures of extra-legal character,

Because of the above-mentioned reasons, accused of political criminals are considered as one of the exceptions of extradition. But if the crime committed is crime against humanity, purely localized criminal offences and guilty of human rights abuses.⁷

Cases: 1. **Re Castioni** (Swiss v. UK, 1891) not extradited bcz he was a political offender
2. **Re Meunier** (France v. UK, 1894) extradited because he was an anarchist.

- The persons accused of '**Military Crimes**' are also not extradited. Military offences can be divided into two groups
 - Those which constitute offences under ordinary criminal law,
 - Those which relate specifically to military matters.

Only second category qualifies as military offences and to which extradition will not apply.

Example: Desertion.⁸

- Persons accused of '**Religious crimes**' are also not extradited,
- **Rule of Speciality** – after the extradition the receiving State must try him for that specific offence for which his extradition was sought for, in fact the requesting state is under a duty not to try or punish the fugitive criminal for any other offence than that for which he has been extradited. This rule has been made to provide safeguard to the fugitives against fraudulent extradition.

⁷ Extradition of Soares Mason 694, F Supp. 676 (N.D.Cal. 1988) at 705,

⁸ Starke, op. cit., 319, Also Oppenheim, op. cit., p. 959.

Case: 1. **United States v. Rauscher** (1886) 119 US 407. In this case accused was extradited for the charge of murder, but he was tried and convicted in U.S.A., for causing cruel and unusual punishment on a member of the crew. On appeal to Supreme Court of US, Supreme Court of US quashed the conviction and ordered for the release of the prisoner on the ground that it was not for the offence for which he was extradited.

2. **Daya Singh Lahoria v. Union of India**, this case is almost similar to above case. Supreme Court held, the Criminal courts of this country will have no Jurisdiction to try such fugitive for any other offence other than for offences mentioned in the Extradition Decree.⁹

- **Double Criminality** - the specific offence for which the extradition is sought must be an offence in both requesting and the state extradited the accused. No person is extradited unless this condition is fulfilled.
- **Prima facie case** – there should be sufficient evidence for the crimes for which extradition is requested. Before a person is extradited, the territorial State must satisfy itself that there is a Prima facie evidence against the accused.
The purpose for this rule is to check the fraudulent extradition. The territorial state has to see that the demand is not motivated by any political reasons.
- Example: 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.'¹⁰
- The **conditions** mentioned in the extradition treaty between the states and other formalities must be also complied with, (Ex. Savarkar's case 1911),
- When a person is accused of having committed a crime and his extradition is sought for, it is not necessary that the accused must be **present** in the State where the alleged crime was committed, (Ex. Rex vs. Godfrey, 1925),

PURPOSE OF EXTRADITION:

The significance of extradition is to forbid criminals who flee from a jurisdiction to escape from punishment for a criminal offence they have been accused or convicted of. The aim of extradition is to restrain crimes and punish the persons accused or convicted of crimes. If a person commits some crime in one country and to escape punishment flees from that country to another country, then through the process of extradition, he will be brought back to the jurisdiction of the territory where he had committed the crime and is tried and punished for the crime

⁹ AIR Supreme Court, 2001, p. 1716.

¹⁰ AIR (1953), Madras, p. 729,

accordingly. In this way, the purpose of the process of extradition is to prevent and mitigate the crimes in the global arena.

PRINCIPLES OF EXTRADITION:

Extradition treaties are traditionally bilateral in character. Yet most of them seem to embody at least five principles, as endorsed by many judicial pronouncements and state practice in respect of domestic extradition legislation.

First, the principle of extraditable offences lies down that extradition applies only with respect to offences clearly stipulated as such in the treaty.

Second, the principle of double criminality requires that the offence for which the extradition is sought be an offence under the national laws of the extradition requesting country as well as of the requested country.

Third, the requested country must be satisfied that there is a prima facie case made out against the offender/accused.

Fourth, the extradited person must be proceeded against only against the offence for which his extradition was requested.

Finally, he must be accorded a fair trial (this is of course part of international human rights law now). Judiciary and other legal authorities are likely to apply these principles equally to situations where no extradition treaty exists.

REFUSAL OF EXTRADITION:

A request for extradition may be refused under the following circumstances:

- If the offence is a "political offence";
- If the person concerned had 'already been tried' for the same offence and acquitted or convicted;
- if the request relates to an offence the prosecution of which is 'time-barred';
- If the request relates to an offence committed by an alien outside the territory of the requesting state but 'violates the principle of double criminality'; or
- If the requested state prosecutes the person concerned for the extraditable offence committed within its territory, or is being investigated or tried by the requested state.

THE POSITION OF EXTRADITION LAW IN INDIA:

In India, the Extradition Act, 1962 and Extradition (Amendment) Act, 1993 is dealing with this matter. The Extradition Act, 1962 regulates the surrender of a person to another country or the request for arrest of a person in a foreign land. The act specifies that any conduct of a person in India or in a foreign state that is mentioned in the list of extradition offence and is punishable with minimum one year of imprisonment qualifies for extradition request.

The process has to be initiated by the Central Government. We have extradition treaties with only 31+ countries. In the case of countries with which India does not have such a treaty, the central government can by notified order treat any convention to which India and the foreign country is a party as the extradition treaty providing for extradition with respect to the offences specified in that convention. If the extradition request has come from two or more countries, then the government has the rights to decide which of them is the fittest for the request. Since 2000 India has extradited 42 fugitive criminals who were handed over by the foreign countries to India.¹¹

For example, in extradition of Abu Salem and Monica Bedi's case, India does not have any extradition treaty with Portugal. When Abu Salem, an accused of 1993 Mumbai blast (under world don) fled to Portugal along with his wife Monica Bedi, Portugal in the absence of treaty extradited Abu Salem to India after India gave an assurance that he would not be given death sentence. (Later high court of Portugal passed an order on July 14, 2004 along with reasons for his extradition to India).

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 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. The extradition order came after the Supreme Court directed the High Court to review the order of the Lower Court.¹²

CONCLUSION:

Extradition plays an important role in the international battle against crime. It owes its existence to the so-called principle of territoriality of 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.

India must show the way and lead the world in its valiant and courageous battle against international crime and international terrorism.

To maintain or to establish peace and security in the world today is possible only through cooperation among the states only. This co-operation may be by extraditing the alleged criminals or by allowing foreign states to extend their jurisdiction in their territory with necessary condition only to arrest criminals who had committed crimes in their territory.

¹¹ Supra Note no.1,

¹² Times of India, December 2, 2003.