

Extradition policies and comparative laws:

A study with special reference to Indian extradition law.

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Abstract: Extradition is the surrender by one state or country to another of an individual accused or convicted of an offence outside its own territory and within the territorial jurisdiction of another country and former is competent to negotiate under mutually agreed extradition policy. The law of extradition is derived from a network of treaties, national laws and state diplomatic practices which differ in detail but form a common pattern of law and procedure. Extradition is not required by customary international law, and many states do not extradite except as bound to do so by a treaty. In the absence of an extradition treaty two states if they desire can extradite a criminal on reciprocal terms But it will not be legally binding.

I. INTRODUCTION

Extradition in simple words can be defined as an “initiative taken by different states all over the globe with an intention to suppress and curb crime.” In general scenario- No person can be punished or prosecuted in a state where he has fled away because of various restrictions over territorial boundaries and contrasting criminal laws as of different states. Therefore, extradite refers to a situation where in a state hand over (a person accused or convicted of a crime) to the jurisdiction of the foreign state in which the crime was committed.

The term Extradition has derived from two Latin words: *ex* and *tradition* the Latin prefix *ex-* means "from, out of," and *tradition* means "handing over," so extradition is the handing-over of someone from one jurisdiction to another.¹

The concurrence in international law is that no state is duty bound to succumb any alleged criminal to a foreign state. One principle under the concept of sovereignty is that every state has a legal authority over the people within its boundaries, such absenteeism of international obligations and on contrary the requirement for the right to demand such criminals from other countries, have resulted in the network of extradition treaties or agreements to be involved between the different states.

Extradition is a topic which does not comes exclusively under the domain of International law. It is a dual law where in it has operation- national as well as international. Extradition or non-extradition of a person is always determined by the municipal courts of a state but at the same time, it also becomes a part of international law as it governs the relation between the two states over the question whether such state would hand over the alleged criminal to the requesting state or not.

According to the general law, even when there is no extradition agreement between the two countries, a sovereign may still appeal for the expulsion or lawful return of the alleged criminal following to the requested state's domestic law. Also, the extradition is mutually beneficial for all the states or to say the international community as a whole. In arena of globalization and a world so technologically advanced it's not only important for the requesting state to serve justice to its people but for also the requested state for its security and safety. Extradition can play a major role in eliminating crimes if it works effectively through international corporations.

A. Definitions and Interpretation by different authors:

Extradition in simple terms can be defined as a process of sending an accused or a convict on the request of the state where the crime is been committed to the requesting state. Extradition is further subject to various verifications and inspections.

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.²

The process of surrendering of a criminal by a foreign state to which he has fled for refuge from prosecution to the state within whose jurisdiction the crime was committed, upon the demand of the latter state, in order that he may be dealt according to its laws.³

‘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.⁴

¹ ‘International Law’ Vol. I, Ninth Edition (1992), p.949.

² See Oppenheim, Op. cit., 950; Arnold Mc Nair, ‘Extradition and Ex- territorial Asylum’, Vol. XXVIII (1951) p. 174-177.

³ Black's Law Dictionary 435 (9th ed. 2009).

⁴ (United States v. Noriega, 746 F. Supp. 1506 [S.D. Fla. 1990])

The surrender by one nation to another of an individual accused or convicted of an offense outside of its own territory and within the territorial jurisdiction of the other which, being competent to try and punish him, demands the surrender.⁵

A well-established scholar of international extradition and international law, defines extradition as the delivery of an individual, usually a fugitive from justice, by one nation-state to another. This process may be based on an explicit agreement between the states in the form of a treaty, or on reciprocity.

The **Indian Extradition Act, 1962** lays down various principles and procedures in regard with the extradition treaty between India and other countries. Extradition treaty means any treaty or agreement or any arrangement with a foreign state relating to the extradition of fugitive criminals. It is further subject to various terms and conditions which both the states would have agreed upon, which may include various offence categorization and criteria.⁶

So basically, international extradition can be defined as the request for surrender and delivery by one state to another of an individual (either accused, or convicted) of a crime in the requested state's jurisdiction for the purpose of allowing the accused to stand trial or serve his sentence. It is very important to outline a basic working definition of extradition because some extradition problems occur as a result of interpretation problems. The request, delivery and prosecution of the accused are used as a reference point for discussing the actual creation of extradition arrangements between states.

B. Rationales and origin:

As a concept, "Extradition was originated with the Ancient Egyptian and Chinese civilizations. After an innocuous Hittite infraction of Egypt, an extradition agreement formed part as a peace treaty which was signed by Ramses II and the Hittite King.

One of the earliest and the most notorious, recorded case of extradition *within* Britain dates back to 1591 when in an Irish nobleman and rebel Brian O'Rourke fled to Scotland. The monarch at the time, Queen Elizabeth, demanded that O'Rourke be transferred from Scotland to England. She used the 1586 Treaty of Berwick to secure O'Rourke's custody. He was sent to the Tower of London and then executed at Tyburn on the 3rd November 1591. It was an exceptional case and an important precedent.

The first Anglo-American extradition agreement appears as a clause within the 1794 Jay Treaty. Though it was a piece of legislature that was modest and short lived, but it further established various important principles that have continued to structure the Anglo-American approach to extradition to this day – it also ensured that extradition was dictated by law and not by the foreign policies and that it was non clerical.

In the following year 1842 a treaty known as the **Webster-Ashburton Treaty** was created between the USA and Great Britain. Created to address the Northeast Boundary Dispute in America, it also specifically dealt with the surrender of alleged offenders in cases of murder, assault with intent to commit murder, piracy, arson, robbery and forgery. Most significantly, the judiciary took on an even greater role. As a result, dozens upon dozens of people were extradited to and from Britain in a relatively short space of time and during the 1860s the process of extradition came under considerable strain. The United States complained that the list of offences enumerated in the Treaty was too narrow. In the twenty-two-year period between 1846 and 1868, the total number of extradition requests from England to the United States was 53 and outgoing requests amounted to 36.⁷

In India, for the first time The Extradition Act was enacted in 1902. Prior to this enactment in India extradition was regulated on basis of the United Kingdom Extradition Act of 1870. The classical international law did not provide human right safeguards at the time of extradition of a person but in the recent past human rights safeguards are being taken into consideration at the time of conclusion of extradition treaties. Further, many countries such as Switzerland, Austria, Germany, in their extradition laws have adopted, the principle of extradition shall be refused if the procedure in the requesting State is contrary to the European Convention on Human Rights. Law of Extradition, at present, is based on the basis of bilateral treaties and national laws. Since they are practiced in many countries, they can be regarded as to have become general principles of international law. However they are binding on all the states. It is quite possible that an extradition treaty or law of a state, remains silent on any of these points, or they might contain provisions otherwise.⁸

C. Indian extradition treaties and conventions:

In India, the removal of an outlaw from India to a remote nation or the other way around is secured under the arrangements of the Extradition Act, 1962 which frames the surviving administrative reason for this region of law. The demonstration sets out the primary standards of removal law. The commitment to remove springs out of bargains/courses of action/traditions went into by India with different nations. Under Section 3 of the Extradition Act, a warning can be issued by the Government of India expanding the arrangements of the Act to the nations told. In this manner, for a complete comprehension of the law of Extradition, one needs to peruse the Extradition Act related to explicit bargains/game plans/traditions went into with different states.

Removal settlement, according to Section 2(d) of the Extradition Act signifies 'a bargain, understanding, or course of action with a remote state identifying with removal of outlaw offenders'. A removal bargain likewise illuminates the conditions point of reference for a removal. It additionally incorporates a rundown of wrongdoings which are extraditable.

It is vital to take note of that even without an arrangement; removal might be allowed on the off chance that it has the support of the guideline of correspondence.

Segment 2(d) of Extradition Act 1962 characterizes a 'Removal Treaty' as a Treaty, Agreement or Arrangement made by India with a Foreign State, identifying with the Extradition of outlaw hoodlums and incorporates any bargain, understanding or game

⁵ United States Statute (U.S.C. 18 3181)

⁶ The Indian Extradition Act, 1962 (Act 34 of 1963)

⁷ Jan Hendrik Willem Verzil , International Law in Historical Perspective, Vol. V, 270 (Martinus Nijhoff Publishers, Netherlands, 1972).

⁸ The Manual of Procedure Relating to Extradition, corrected up to 1st December, 1940, Third Edition Published by Authority, at p. 86

plan identifying with the Extradition of criminal crooks made before the fifteenth day of August 1947, which reaches out to and is authoritative on, India. Removal arrangements are customarily reciprocal in character. However the vast majority of them appear to typify something like five standards, as embraced by numerous legal professions and state practice in regard of household removal enactment.

Right off the bat, the rule of extraditable offenses sets out that removal applies just concerning offenses unmistakably stipulated thusly in the settlement; Secondly, the standard of double guiltiness necessitates that the offense for which the removal is looked for be an offense under the national laws of the removal mentioning nation just as of the mentioned nation; Thirdly, the mentioned nation must be fulfilled that there is a by all appearances body of evidence made out against the guilty party/charged; Fourthly, the removed individual must be continued against just against the offense (guideline of claim to fame) for which his removal was mentioned; and ultimately, he should be agreed a reasonable preliminary,

Present Authorities in power who have been given over with the obligation incorporates: CPV Division, Ministry of External Affairs, Government of India is the Central/Nodal Authority that directs the Extradition Act and it forms approaching and active Extradition Requests.

Removal Requests: Requests for removal in the interest of the Republic of India must be made by the Ministry of External Affairs, Government of India, which formally presents the solicitation for Extradition to the mentioned State through strategic channels. Removal isn't accessible in line with individuals from the general population.⁹

India can make a removal solicitation to any nation. India's bargain accomplices have commitments to think about India's solicitations. Without a settlement, it is an issue for the remote nation, as per its household laws and systems, to decide if the nation can consent to India's removal demand based on affirmation of correspondence. So also, any nation can make a removal solicitation to India. Removal is conceivable from the non-Treaty States as Section 3(4) of the Indian Extradition Act, 1962 accommodates the procedure of removal with non-Treaty outside States.¹⁰

India does not require a settlement to make a temporary capture solicitation to an outside nation. India can make a temporary capture solicitation to any nation. India's arrangement accomplices have commitments to think about India's solicitations. Without a settlement, it is an issue for the outside nation as per its household laws to decide if to capture the individual as indicated by India's temporary capture demand.

Likewise, India clings to the guideline of removing its very own nationals. The notice on "Removal" presented by the Government of India to the Asian-African Legal Consultative Committee at its Third Session (Colombo, 1960), leaves no uncertainty on this issue. Notwithstanding, by and by, India pursues double framework, by removing nationals based on correspondence. On the off chance that the other Arrangement State does not remove, India likewise bars removal of claim nationals. The accompanying table records the nations to which removal of Indian Nationals is banned by the reciprocal Extradition Treaty.

D. Extradition of Own Nationals:

In many cases it has been observed by the various courts that after committing a crime in a foreign country the offender flees back to his own country. Whether a state would extradite such persons, i.e. its own nationals, to a state where crime has been committed is a controversial point and practice of states considerably differs on it. Many countries such as the Netherlands, Belgium, Italy, Germany, Switzerland, and France have adopted a principle for not extraditing their own nationals to a foreign state.

Extradition treaties therefore should contain a clause for the extradition of 'all' or 'any' persons so as to include their own nationals as well. Therefore, Extradition of such person completely depends upon the wordings of the extradition treaties.¹¹

E. Landmark precedents and justifications:

Precedent literally means a rule followed or a principle applied previously by a competent authority under similar facts and circumstances". If a previous decision by a court is taken as a basis or source for deciding the case under similar facts and circumstances, it is called **Judicial Precedent**. In general sense, precedence means 'some set pattern guiding the future conduct. The fundamental principle behind the precedent is that like cases should be treated alike. In judicial field it means the guidance or authority of past decision for future cases. The importance of precedent is recognized by both ancient law and modern law. In every country, there is one Supreme authority having exclusive power of judicial authority. In India, the Supreme Court has such authority. The law declared by the Supreme Court is binding upon all the other Courts of India including High Courts under Article 141 of the Indian Constitution. High Court is the highest tribunal of the State.¹² The decision of High Court are Binding on all the Subordinate Courts.

a. In the landmark case of "*Abu Salem Abdul Qayoom Ansari V. State of Maharashtra*"¹³

FACTS: Abu Salem was accused and convicted for more than 50 cases including 1993 Mumbai serial blasts case, murder of a music director, Gulshan Kumar (1996), killing Manisha's (Indian actress) secretary, etc. He with his girlfriend was arrested in Lisbon, Portugal by Interpol by tracking his satellite phone. In 2004, his extradition was allowed by the Portugal court and in the following year he was extradited to India with a condition as according to the Extradition treaty between India and Portugal that no death penalty shall be granted to any extradited offender.

⁹ R.C. Hingorani, 'Modern International Law', Second Edition, p. 183.

¹⁰ Act XXIV of 1962

¹¹ Dr. H.O. Agarwal, 'International law and human rights', 20th Edition, p.285.

¹² Article 141 in Constitution of India, 1949.

¹³ (2011) 11 SCC214

OBSERVATION: The Extradition treaty between India and Portugal specifies that the extradited person cannot be punished with capital punishment as it is banned in Portugal, where the accused was arrested. Abu Salem with his girlfriend was extradited to India with assurance of Delhi Court that no death penalty shall be awarded to him. Presently he is serving his life imprisonment as awarded by the court of law.

b. In an another case of “*Patel Samir Vinubhai v. State of Gujrat*”¹⁴

FACTS: In 2002, 23 people of Muslim community were burned alive in Pirwali Bhagol area of ode village. Patel with 20 others persons were accused of being part of such riot at that time. He was further accused of 3 courts of murder, 2 courts for using unlawful violence etc. He fled from country and after investigation his whereabouts were found in Hamstaw, West London. He was arrested by Scotland Yard on Red Corner notice issues by Indian authorities.

OBSERVATION: The Extradition of Patel marked as first extradition from UK since the signing to UK-India Extradition Treaty of 1992. His extradition was signed by the secretary of state (Amber Rudd) after considering all relevant matters.

F. Conclusions and suggestions:

Removal in basic words can be characterized as an "activity taken by various expresses everywhere throughout the globe with an aim to stifle and check wrongdoing." when all is said in done situation No individual can be rebuffed or arraigned in a state where he has fled away on account of different confinements over regional limits and differentiating criminal laws as of various states. Along these lines, remove alludes to a circumstance where in a state hand more than (an individual blamed or sentenced for a wrongdoing) to the ward of the remote state in which the wrongdoing was submitted.

The simultaneousness in universal law is that no state is compelled by a solemn obligation to surrender any supposed criminal to a remote state. One standard under the idea of sway is that each state has a legitimate expert over the general population inside its limits, such non-appearance of worldwide commitments and on opposite the necessity for the privilege to request such lawbreakers from different nations, have brought about the system of removal bargains or understandings to be required between the diverse states. Removal is further a subject which does not come only under the area of International law. It is a double law where in it has activity national just as universal. Removal or non-removal of an individual is constantly controlled by the civil courts of a state and yet, it likewise turns into a piece of worldwide law as it administers the connection between the two states over the inquiry whether such state would hand over the supposed criminal to the mentioning state or not.

As indicated by the general law, notwithstanding when there is no removal understanding between the two nations, a sovereign may at present intrigue for the ejection or legal return of the supposed criminal after to the mentioned state's local law. Likewise, the removal is commonly valuable for every one of the states or to state the universal network all in all. In field of globalization and a world so mechanically propelled it's not just imperative for the mentioning state to serve equity to its kin however for likewise the mentioned state for its security and wellbeing. Removal can assume a noteworthy job in disposing of violations on the off chance that it works successfully through worldwide organizations.



¹⁴ (1997) 1 GLR 50