

Law of Extradition in India with View of International Law and Treaties

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Introduction

Extradition refers to the official surrender of an alleged criminal by one state or nation to another having jurisdiction over the crime charged; the return of a fugitive from justice, regardless of consent, by authorities from the fugitive is found.² Whereas, international extradition is a response to a demand by an executive from one nation on the executive from another nation.

The following extracts deal with the historical origin of extradition. Further, an analysis is drawn on the extradition processes with reference to India. The procedures followed to extradite fugitive from and to India. The effects of the extradition treaties on states and lastly, the limitations so followed.

Development of Extradition Laws

The history of extradition dates back to time immemorial. The history has always seen the diplomatic ties between two sovereigns for the punishment of fugitive offenders. Also, the concept of extradition has been vastly seen historically in the non-western civilizations like China, Egypt etcetera.

The exhaustive study of the history of extradition reveals that two opinions prevail regarding the first extradition treaty about when and where it was signed. One of the studies reveals that in the secular world the first extradition agreement was signed between English King Henry II and Scottish King, Williams in 1174. They agreed to punish or extradite criminals of high treason. But as far as the first treaty is concerned the treaty signed by the French King Charles V and the Count of Savoy on 4th March 1376 is considered to be the first extradition treaty. During the 16th and 17th centuries, several treaties were signed between European Monarchs. Their main aim was to extradite the political asylum seekers. Despite these

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² Extradition, Black's Law Dictionary (10 ed. 2014)

treaties, rulers often disregarded them if it fits their political interests. In other words, they were not consistently applied³

The other study which is generally accepted by most of the jurists reveals that the first recorded extradition treaty in the world dates Circa 1280. In that second oldest document in diplomatic history, Romes II, Pharaoh of Egypt, signed a peace treaty with the Hittites after he defeated their attempt to invade Egypt. King Hattusili III signed it for Hittes and the document written in hieroglyphics is carved on the temple of Ammon at Karnak and is also preserved on clay tablets in Akkodrain in Hittite archives of Boghazkoi. The peace treaty provided expressly for the return of persons sought by each sovereign who had taken refuge on other's territory. Since then, however, the practice of Greece and Rome's extradition arrangements touched their way into European texts of International Law.

Broadly speaking the history of extradition can be divided into four major periods:

1. Ancient times almost concerned for political offenders.
2. 18th and half of the 19th century concerned for military offenders.
3. The latter half of 19th and half of the 20th century dealing with the collective concern for suppressing criminality.
4. Post 1948 the modern extradition laws.

While analysing the Indian history of the extradition laws one will surely give an affirmative yes to the abstract nature of law and how it changes in parlance with the society. Indian was a colony under the British rule and the very first Indian Extradition Act came into force in 1903 which primarily dealt with the fugitive criminals. Before this, there were only two acts under the British parliament namely Extradition Acts of 1870 and 1873. The Indian Extradition Laws have gone under amendment and changes leading to the modern extradition law of now. A lot of political development and a vacuum so created after the Mennon's case lead to the enactment of Indian Extradition Law of 1962 which was further majorly amended in 1993.

Effect of Extradition Treaties on States

The consensus in international law is that a state does not have any obligation to surrender an alleged criminal to a foreign state, because one principle of sovereignty is that every state

³ Siska Katalin, Historical and Legal Perspectives of the Right of Asylum and Extradition until the 19th century, Miskolc Journal of International Law, 188-197(2004)

has legal authority over the people within its borders. Such absence of international obligation and the desire for the right to demand such criminals from other countries have caused a web of extradition treaties or agreements to evolve. When no applicable extradition agreement is in place, a sovereign may still request the expulsion or lawful return of an individual pursuant to the requested state's domestic law.

This can be accomplished through the immigration laws of the requested state or other facets of the requested state's domestic law. Similarly, the codes of penal procedure in many countries contain provisions allowing for extradition to take place in the absence of an extradition agreement. Sovereigns may, therefore, still request the expulsion or lawful return of a fugitive from the territory of a requested state in the absence of an extradition treaty.

No country in the world has an extradition treaty with all other countries; for example, the United States lacks extradition treaties with the China, Russian Federation, Namibia, the United Arab Emirates, North Korea, Bahrain, and many other countries.

Therefore, we see that the extradition laws which fight for human rights in the modern world have no uniform applicable. Rather, we see a more discretion-based view on the extradition of the criminals. Thus, thought already established treatise make effects for affirmative and positive means for extradition a fugitive but we see that most countries do not have a treaty signed.

Extradition of Nationals

For Extradition of Criminals from India

Section 2(d) of Extradition Act 1962 defines an '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. 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 as:

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

2. Second, the principle of dual criminality requires that the offence for which the extradition is sought to be an offence under the national laws of the extradition requesting country as well as of the requested country;
3. Third, the requested country must be satisfied that there is a prima facie case made out against the offender/accused;
4. Fourth, the extradited person must be proceeded against only against the offence (rule of speciality) for which his extradition was requested; and
5. 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.⁴

For Extradition of Indian Nationals

The extradition of Indian nationals can only be made by the request of the Ministry of External Affairs, Government of India through request in the diplomatic channels. One must also understand that the request for extradition cannot be by the general public.

India has signed bilateral extradition treaties with as many as 42 countries and has extradition arrangements with 9 countries, for the purpose of extraditing fugitive criminals to and from its territory implying that India can file for extradition, through Ministry of External Affairs being the nodal agency, to almost any country.⁵

India is able to make an extradition request to any country. India's treaty partners have obligations to consider India's requests. In the absence of a treaty, it is a matter for the foreign country, in accordance with its domestic laws and procedures, to determine whether the country can agree to India's extradition request on the basis of assurance of reciprocity. Similarly, any country can make an extradition request to India. Extradition is possible from the non-Treaty States as Section 3(4) of the Indian Extradition Act, 1962 provides for the process of extradition with non-Treaty foreign States.

It must be of vital importance that the request or extradition of the fugitive is to be made on the prima facie mere observation that the fugitive could be involved in the commission of crime is

⁴ Extradition, MINISTRY OF EXTERNAL AFFAIRS, GOVERNMENT OF INDIA (Sep 3, 2018), <https://www.mea.gov.in/extradition-faq.htm>

⁵ Seema Jhingan & Monica Benjamin, Indian Extradition Law – Process For Seeking Extradition Of Persons From Foreign States, MONDAQ (Sep 3, 2018), <http://www.mondaq.com/india/x/710482/Crime/INDIAN EXTRADITION LAW PROCESS FOR SEEKING EXTRADITION OF PERSONS FROM FOREIGN STATES>

needed, The mandate of the court to decide on the extradition does not depend on the fact that whether the accused has committed the crime or not. The question of the committal of the crime is to be decided by the trial court which tries the said issue. Thus, the question of extradition depends upon the treaties so signed and diplomatic ties with the said State.

Limitations to Extradition

An alleged offender may not be extradited to the requesting state in the following cases:

1. No treaty – In absence of a treaty, States are not obligated to extradite aliens/nationals
2. No treaty crime – Extradition is generally limited to crimes identified in the treaty which may vary in relation to one State from another, as provided by the treaty.
3. Military and Political Offences – Extradition may be denied for purely military and political offences. Terrorist offences and violent crimes are excluded from the definition of political offences for the purposes of extradition treaties.
4. Want of Dual Criminality – Dual criminality exists when conduct constituting the offence amounts to a criminal offence in both India and the foreign country.
5. Procedural considerations – Extradition may be denied when due procedure as required by the Extradition Act of 1962 is not followed.⁶

Extradition is a complex procedure which not includes the principles established by law but also the diplomatic relations between the two states play an essential role in the same.

Also, these "non bis in idem" provisions of most extradition treaties protect subjects from transnational "double jeopardy."

Section 9 of the Model Extradition Law, 2004 framed by the UN states:

⁶ Supra 3

“Extradition [shall not be granted] [may be refused], if prosecution or punishment against the person sought is barred, under the law of [country adopting the law] or the requesting State, by lapse of time, prescription or statute of limitation at the time of receipt of the request for extradition”.

Thus, this also offers limitations to the process of extradition. Adding to this the particular state from where the fugitive is to be extradited can deny the extradition on the grounds if it finds that the extradition cannot and will not serve justice. Thus, the whole purpose for this complex procedure is to serve justice and fight for human rights worldwide. The modern world of extradition is all about suppressing the crimes in the world and fighting for the human rights of the individuals. The process of extradition no matter be how complex and may suffer from ambiguities and barriers but in the end it fights for globally suppressing the crime and increasing the standards of human rights.

Issues in Extradition Laws of the Country

1. The procedural complexity faced amounts to a lot of lacunas in the system. Sometimes the procedures are so ambiguous that it leads to the procedural vacuum and in term leads to the futile efforts resulting in the never-ending process. A list below may be analysed as to how complex the procedure and since 2002 only 65 fugitives have been extradited.⁷ The lack of uniformities among various countries also amounts to one of the major factors towards procedural complexities.

S. No.	Name	Nationality	Extradited From	Offences	Year of Extradition
1.	Aftab Ahmed Ansari	Indian	UAE	Terrorism	20.02.2002
2.	Rajendra Anadkat	Indian	UAE	Terrorism	20.02.2002
3.	Muthappa Rai	Indian	UAE	Organised Crime	29.05.2002
4.	Ravinder	Indian	UAE	Economic	January 2003

⁷ List of Fugitives Extradited By Foreign Governments to India, Ministry Of External Affairs, Government Of India (3 Sep, 2018), <https://www.mea.gov.in/toindia.htm>

	Kumar Rastogi			Offences	
5.	Iqbal Sheikh Kaskar	Indian	UAE	Mumbai Bomb Blast	19.02.2003
6.	Izaz Pathan	Indian	UAE	Mumbai Bomb Blast	19.02.2003
7.	Mustafa Ahmed Umar Dosa	Indian	UAE	Mumbai Bomb Blast	20.03.2003
8.	Anil Ramachandran Parab	Indian	UAE	Murder	21.04.2003
9.	K. Vijay Karunakar	Indian	Nigeria	Criminal Conspiracy and Cheating	05.07.2003
10.	Chetan M. Joglekar	Indian	USA	Criminal Conspiracy and Cheating	November 2003
11.	Ashok Tahilram Sadarangani	Indian	Hong Kong	Financial Fraud	06.06.2004
12.	Akhtar Husaini	Indian	UAE	Terrorism	12.06.2004
13.	Tariq Abdul Karim @ Tariq Parveen	Indian	UAE	Sara Sahara Complex Case	19.07.2004
14.	Baldev Singh	Indian	Canada	Murder	August 2004
15.	Sharmila Shanbag	Indian	Germany	Financial Fraud	September 2004
16.	Allan John Waters	British	USA	Child Sex Abuse	September 2004
17.	Umarmiyabukh ari @ Mamumiya	Indian	UAE	Murder and Extortion	December 2004
18.	CharanJeet Singh	Indian	USA	Terrorism	05.02.2005

	"Cheema"				
19.	M. Varatharajaloo @ M.V. Raja @ Louis Jaloo	Indian	UAE	Economic Offences	03.03.2005
20.	Ashok Kumar Sharma	British	Bulgaria	Cheating	May 2005
21.	Grant Duncan Alexander	British	Tanzania/Britain	Sex Abuse	30.06.2005
22.	WulfIngno Werner	Australian	Australia	Sex Abuse	05.08.2005
23.	Anil Vaju Bhai Dhanak	Indian	UAE	Criminal Conspiracy and Kidnapping	05.09.2005
24.	Monica Bedi	Indian	Portugal	Passport fraud	November 2005
25.	Abu-Salem	Indian	Portugal	Eight Criminal Cases	November 2005
26.	Harpal Singh Cheema	Indian	Canada	TADA/Arms Act.	02.05.2006
27.	Kulbir Singh Kulbeera @ Barpind	Indian	USA	Terrorism	16.06.2006
28.	Bachan Singh Sogi	Indian	Canada	Criminal Breach of Trust	19.06.2006
29.	Kosaraju Venkateswara Rao	Indian	Thailand	Criminal Conspiracy	28.06.2006
30.	Govind Srivastava	Indian	Belgium	Cheating & Forgery	10.10.2006
31.	Nitin	Indian	Mauritius	Cheating &	25.03.2007

	Umeshbhai Yagnik			Criminal Breach of Trust	
32.	Malkiat Singh @ Mitta	Canadian	Canada	Kidnapping/ Murder	04.05.2007
33.	A.N. Ghosh	Indian	Germany	Bank Fraud	August 2007
34.	Rajesh K. Mehta	Indian	Belgium	Fraud	09.10.2007
35.	Baljeet Singh	Indian	South Africa	Murder	06.06.2008
36.	Joginder Singh,	Indian	South Africa	Murder	06.06.2008
37.	Surender Kumar	Indian	South Africa	Murder	06.06.2008
38.	Narendra Rastogi	Indian	USA	Economic Offences	04.07.2008
39.	Gurpreet Singh Bhullar	Indian	Thailand	Murder	14.05.2009
40.	Gunaranjan Suri	Indian	USA	Criminal Conspiracy and Cheating	03.07.2009
41.	Narender Kumar Gudgud	Indian	USA	Financial fraud	August 2009
42.	Prem Suri	Indian	USA	Criminal Conspiracy and Cheating	03.07.2009
43.	Malay Sumanchandra Parikh	Indian	USA	Cheating	05.09.2009
44.	Vijayan Gabriel	Indian	Oman	Murder	09.05.2010
45.	Yaniv Benaim @ Atala	Israeli	Peru	Drug offences, Theft and Financial Fraud	24.08.2011
46.	Subash	US national	Germany	Criminal	06.07.2012

	Chandra Kapoor			Conspiracy	
47.	Faish Mohammad	Indian	Saudi Arabia	Criminal Conspiracy	22.10.2012
48.	Nikil Prakash Shetty @ Nishit Prakash Arasa	Indian	UAE	Criminal Conspiracy	14.06.2013 (Deported)
49.	Ashok Dharmappa Devadika	Indian	UAE	Criminal Conspiracy	02.08.2013
50.	Abdul Sathar @ Manzoor	Indian	UAE	Terrorism	08.08.2013
51.	Shammi Kumar	Indian	UAE	Murder	07.01.2014
52	Jaskaran Kalsi	Indian	Australia	Murder	17.09.2014
53	Jagtar Sing Tara	Indian	Thailand	Murder	16.01. 2015 (Deported)
54	Bannaje Raja @ Rajendra Bannaje	Indian	Morocco	Murder	14.08.2015 (Deported)
55	Chhota Rajan @Rajendra Sadashiv Nickhale	Indian	Indonesia	Murder & Kidnapping	06.11.2015 (Deported)
56	Anup Chetia	Indian	Bangladesh	Waging or attempt to wage war against Indian State	11.11. 2015. (Deported)
57	Kollam Gangi Reddy	Indian	Mauritius	Culpable homicide not amounting to murder, Attempt to murder	15.11.2015 (Deported)

58	Wily Naruenartwanch	Thai	Thailand	Waging or attempt to wage war against Indian State	09.12.2015
59	Abdul Wahid Siddibapa @ Khan	Indian	UAE	Waging or attempt to wage war against Indian State	20.05.2016
60	Kumar Krushna Pillai	Indian	Singapore	Attempt to murder among others	27.06.2016
61	Samirbhai Vinubhai Patel	Indian	UK	Murder, criminal conspiracy among others	19.10.2016
62	Abdul Rauf Merchant	Indian	Bangladesh	Murder	08.11.2016
63	Md. Sultan Abubakr Kadir	Indian	Singapore	Job scam racket	23.09.2017
64	Ionut Alexandru Marinoiu	Romanian	Nicaragua	Bank fraud	03.03.2018
65	Md. Farooq Yasin Mansoor/ Farooq Takla	Indian	UAE	Terrorism	08.03.2018(deported)

2. The countries with the view or in line with the principle of 'aut dedere aut is audi care' another major problem towards the extradition process. This is a Latin maxim which means either extradite or prosecute.

Conclusion

Introductory Issue

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After the analyses of the provisions and taking a thorough look into the history, we get to find the modern extradition law has developed with the aims of suppressing the criminality at national levels as well protecting the human rights of individuals. We also see that the complex procedures followed internationally have ambiguities and thus create a vacuum in the whole procedure. It is suggested that the modern law of United Nations dealing with the uniformity is most useful.