



A CRITICAL STUDY ON EVOLUTION OF EXTRADITION LAWS IN INDIAN CONTEXT

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INTRODUCTION

States as organised socio political societies came into existence to secure happiness and security for the people which are the final object of any human associations. To secure this object, States should have particular duty not only to protect their nationals and to maintain international peace and security within their boundaries by enacting suitable legislations. For promotion of good will, justice and harmony of human society States should have mutual cooperation with each other. When State is supreme, it has the freedom and right to enact suitable law to suppress and penalize the lawbreakers and anti-social elements which violates its municipal or domestic law. A State is sovereign within its region but a State cannot implementation its rule outside its area. Therefore, where that individual committed an offence, that State only has the right to power, as no other right to punish him. When one person committed a crime in one State, he run to another State and took asylum than it's very difficult for former or first State to punish him because he took shelter in another State. According to International law State cannot exercise its power in the area of another State. It means if first or former State wants to punish him there should be an international cooperation or mutual cooperation between two States otherwise it's very difficult. Because international will not impose any obligation on State to surrender the criminal to another State. In global era when information technology and computerization is developed, territories or area or boundaries of the States have lost their values. Crimes are increasing day by day and spreading throughout the globe. Internet crime, terrorism, financial fraud, murder etc. is also rising gradually anonymous. In the present scenario crime has no boundaries or limitation but States criminal law had its own boundaries. Territorial jurisdiction plays a vital role in bringing a criminal to justice. Therefore, in cases where the fugitive escapes from the territorial jurisdiction of the State, than through by one mechanism only former State may bring back the fugitive offender from foreign State where criminal or fugitive can took shelter. That mechanism is popularly known as extradition. To come out this problem the principle of extradition is introduced and it plays an important role to bring back the fugitive or criminal before judiciary. In view of the ever-increasing threat to the world by social anti-elements, terrorism etc., and the law of extradition has a key role to play in brought back the fugitive before judiciary to alter of the law. With the incredible growth in the competence of international transport, flow in global terrorism and communication, extradition has expected importance. Extradition is called as remissio, redditio, restitution or deditio. Extradition in general is a surrender of a fugitive by one State to another in pursuance to a treaty or agreement. Extradition is the handover of a fugitive offender by one State to another State on demand of the latter for surrender. This is a tool to bring back the fugitive to the State from where he escaped after committing crime. Extradition is an accepted legal procedure, which is usually accepted by the States to bring such criminals back and acquire jurisdiction over fugitives in order to preserve peace, law and order, and security within their State. However, States are facing certain difficulties in bringing back fugitive criminal within their jurisdiction. In **Kubic Dariusz v. UOI**¹ Supreme Court held that the system of extradition of criminals represents an act of legal assistance by requested State to requesting State with the goal of carrying out a criminal trial- finding and arresting an alleged criminal in order to bring him to court or for executing sentence. The system is based on the principle of humanities,

¹ AIR 1990 SC 605,(1990) 1 SCC 568



with an effort to achieve more effectively the objective of the correction and re-education of the violator of law. It is based on the maxim “aut punier aut dedere”².

In modern era States adopted the extradition for two reasons. They are

- (1) To caution law violators that they cannot fly from the sentence by run away to a territory of another Sovereign State.
- (2) It is in the interest of the shelter State that a criminal after committed an offence he runs to another State, should not be left free because in future he may commit crime in the Refuge State and run to another State.

Therefore criminal should not escape from the punishment. Extradition is a prodigious step towards international assistance in the destruction of offence.

India is one of the biggest States in south Asia. By area India is the seventh largest State and the second highest Population State and the most populated democracy in the world.

Until we got independence from Britishers, India is not a State it was only a colony. When we got independence from Britishers on August 15th 1947, then India is a sovereign, supreme and independent State in the world. After independence Government of India enacted plenty of legislations on different subject including extradition also. As a concept, it is an ancient mechanism and it originated with the ancient Egyptian and Chinese civilizations, dating back to at least the 13th century BC, An extradition agreement formed part of a peace treaty signed between Ramesh II and the Hittite King, Hattusili III³. This text still exists. But even in modern era International law do not recognize Extradition as a law, because it is treated as a bilateral treaty between the states. Therefore, even today also several states (United States, Belgium, France etc.) shall not surrender the criminals without bilateral treaty but some states (Portugal, India etc.) on the basis of good faith, courtesy & certain conditions surrender the criminals to demanding state. After establishment of United Nation, conducted different convention on asylum, Refugees, punishment for criminals and extradition. such as Universal Declaration of Human Rights- 1948, the convention on the prevention and punishment of the crime of genocide was adopted by the United Nations General Assembly on 9 December-1948, A draft convention on territorial asylum in 1974-1975 and Model treaty for extradition adopted by General Assembly of U.N.O. - 1990 and European convention on extradition, 1957. The United States is a party to the Montevideo Convention on extradition 1933 which permits extradition of a person charged with an offence constituting a crime and punishable under the laws of the demanding and surrendering states with a minimum penalty of imprisonment for one year. Even though all these conventions, extradition are not a law but it is a will of the state. Even today through extradition treaty only criminals are extradited to another state but one lacuna is all states not have good relations with each other, then how an injured state can get justice. Therefore universal law is essential in modern era and International Court of Justice should have jurisdiction to decide extradition cases. Innumerable states have enacted extradition laws lay down procedure and extraditable crimes. Belgium was the first state which passed extradition legislation in 1833. In India our Government enacted the extradition Act in 1962; before that India was not a sovereign and independent State because India was a colonial State. Until 1947 it was under the control of Britishers. Before that three acts were enacted by British Government. Such as United Kingdom Extradition Act 1870, the Fugitive offenders Act 1881 and the Extradition Act 1903⁴. When we got independence from Britishers then our government enacted the new statute in 1962 with new changes, rules and practices it's popularly known as Extradition Act 1962. 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 territory⁵. Grant of extradition and procedure are generally matters of national law and therefore, there is no uniformity in them. From 20-02-2002 to as on 31-03-2019 more than 74 persons

² “aut punier aut dedere” means ‘the offender must be punished by the State of refuge or surrender to the which can and will punish him’.

³ Digitalcommons.imu.edu/cgi/viewcontent.cgi/?article=1545and content=ilr, 10-08-2017 at 3-30PM.

⁴ V.K.Bansal “Law of Extradition in India”, LexisNexis Butterworth’s Wadhwa. Nagpur, 1st Ed. 2008, P.1

⁵ [http://www.mondaq.com/india/x/710482/Crime/indian extradition law process for seeking extradition of persons from foreign States](http://www.mondaq.com/india/x/710482/Crime/indian+extradition+law+process+for+seeking+extradition+of+persons+from+foreign+States) date on 28/12/2018 at 3.20 p.m.



extradited from foreign country to India⁶. In 26 years U.K. has extradited to India the only person is Samirbhai vinubhai Patel. He was wanted in one of the 2002 Gujarat riots cases and Extradition has happened in October 2016. India and U.K. signed extradition treaty in 1992⁷. Since 2002 India requested to United Kingdom State to extradite 28 fugitives but only one person was extradited in October 2016 is Samirbhai vinubhai Patel. At present, the Indian fugitives living in the U.K. are

- i) Raymond Varely (he is wanted by India in cases of child abuse in Goa, sexual abuse including Sodomy, indecent assault and taking indecent photograph).
- ii) Tiger Hanif (he is wanted in a 1993 Gujarat bombing case)
- iii) Nadeem Saifi (he is one of the music composers in Bollywood film field and was wanted in Gulsan Kumar murder case of 1997).
- iv) Ravi Sankaran (is wanted in the Indian Navy war room leak case of 2005).
- v) Lalit modi (is facing charges of financial irregularities under various laws including FEMA).
- vi) Vijay Malya (is another fugitive wanted in India for financial irregularities. He is accused of defrauding Indian banks through loans of the tune of Rs 9,000/-).
- vii) Nirav Modi (is another fugitive wanted India for financial irregularities)⁸.

State of U.K. enacted extradition Act, 1989 and it was repealed. The new extradition act was enacted in the year 2003. It is an act of the U.K. Parliament which controls extradition requesting by and to the U.K. the State of Canada was enacted the Extradition Act in 1999. This Act regarding extradition to modify the evidence Act, the criminal code, the immigration Act and the mutual legal assistance in criminal matters Act and to alter and revoke other Acts in consequences. Several States enacted extradition law in domestic level with international practice. State of India entered extradition treaty with State of USA in 1997. From November 2003 to 1-04-2019 State of USA extradited 9 criminals to State of India. With the help of below table we can understand for what offence how many criminals are extradited by USA to India within 16 years⁹.

The table showing total number of criminals extradited from USA to India during 2003- 2019

Serial Number	Name of the offender	Offences	Year of Extradition	Nationality	Extradited from
01	Chethan M. Joglekar	Criminal conspiracy and cheating	Nov-2003	Indian	USA
02	Allan John Watters	Child sex Abuse	Sept-2004	British	USA
03	Kulbir Singh	Terrorism	16-06-2006	Indian	USA
04	Narendra Rastogi	Economic Offences	04-07-2008	Indian	USA
05	Gunaranjan Suri	Criminal conspiracy and cheating	03-07-2009	Indian	USA
06	Narendra Kumar	Financial Fraud	August-2009	Indian	USA
07	Prem Suri	Criminal conspiracy and cheating	03-07-2009	Indian	USA
08	Malay Sumanchandra Parikh	Cheating	05-09-2009	Indian	USA
09	Ubaidullah Rashid Radiowala	Attempt to murder, theft among others	01-04-2019	Indian	USA

⁶[https:// www.mea.gov.in/to India.htm](https://www.mea.gov.in/to%20India.htm). date on 19/06/2019 at 11.45 a.m.

⁷[https:// www. Indiatoday.in /India/story/ vijay.malya-extradition-case-1301201-2018-07-31](https://www.Indiatoday.in/India/story/vijay.malya-extradition-case-1301201-2018-07-31). Date on 19/06/2019 at 11.55 am.

⁸[https:// www. Indiatoday.in /India/story/ vijay.malya-extradition-case-1301201-2018-07-31](https://www.Indiatoday.in/India/story/vijay.malya-extradition-case-1301201-2018-07-31). Date on 20/06/2019 at 12.30 pm.

⁹[https://laws-lios-justice.gc.ca>full text date](https://laws-lios-justice.gc.ca/full%20text%20date) on 24-06-2019 at 10.45am.



When States have good relations with each other then only we can achieve the object of UNO. From 20-02-2002 to 30-03-2019 State of UAE extradited 22 fugitives to India¹⁰.

Our parliament passed the Fugitive Economic offenders Act, 2018 on 25th July 2018. This is an act of the parliament of India to confiscate properties and assets of economic offenders that avoid trial by remaining outside the jurisdiction of Indian courts. According to this act Economic offences with a value of more than Rs 100 crores, which are listed in the schedule of the Fugitive Economic Offenders Act, come under the purview of this law¹¹. Government of India enacted this act because after taking the loan from the financial institution, when they are failure to repay the loan then they leave the country to escape from the prosecution. Under criminal law there is no proper measure to confiscate their property therefore this act is an actual, efficient and legitimate way to stop these offenders from running away. In *Daya Singh Lahoria v. Union of India*¹² Supreme Court held that the law of extradition is a twin law. It is superficially a Municipal law however it is a part of international law also. In modern period demand for extradition made through consular channel.

In *Kubic Dariusz v. Union of India*¹³ case Supreme Court of India held that the system of extradition of criminals represents an act of legal assistance by one state(requested) to another state (the requester) with aim of carrying out a criminal prosecution-finding and arresting a suspected criminal in order to bring him to court.

Extradition is based on the broad principle that it is in the interest of civilized communities that criminals should not go punished and on that account it is recognised as a part of the comity of nations that one state should ordinarily afford to another state assistance towards bringing offenders to justice. The general desire of all states to ensure that serious crimes do not go unpunished. Frequently a state in whose territory criminals have taken refuge cannot prosecute or punish them purely because of some technical rule of criminal law or for lack of jurisdiction. Therefore to close the net round such fugitive offenders, international law applies the maxim, '*aut punier aut dedere*' i.e. offenders must be punished by the state of refuge or surrendered to the state which can and will punish them¹⁴. The state on whose territory the crime has been committed is best able to try the offender because the evidence is mere freely available there and that state have the greatest facilities for ascertaining the truth. It follows that it is only right and proper that to the territorial state should be surrendered such criminals as have taken refuge abroad¹⁵. International Criminal Court is also one of the machinery to curb the anti-social elements but this court not has the jurisdiction to decide all types of crimes. Because its jurisdiction is limited. It means ICC has the jurisdiction to punish war criminals, genocides, crimes against humanity, mass killing, crimes against peace etc. if ICC has the jurisdiction to decide all types of criminal wrongs, then Extradition will becomes universal law.

The principle of extradition plays an important role in international level to punish the criminals. But even though existence of extradition treaty, if criminals involve in political, religious and military crime cannot be extradited. Because the principle of extradition between two countries can be welcome in case of criminals only.¹⁶ Many countries such as the Netherlands, Belgium, Italy, Germany, Switzerland and France have adopted a rule for not extraditing their own nationals to foreign state. At the time of extraditing criminals, extraditing state can impose any type of conditions on requesting state. These are the lacuna in the principle of extradition in international level. Therefore extradition is not a rule; it's only a will of the states.

The Multilateral Montevideo Treaty of 1933 provides that various bilateral and multilateral treaties between other countries, substitutes for a list of offences the stipulation " that the act for which extradition is sought

¹⁰<https://www.mea.gov.in> date on 24-06-2019 at 11.30am

¹¹<https://en.m.wikipedia.org/wiki/Fugitive> date on 21/06/2019 at 10.40am

¹²AIR (2001)4 SCC 516.

¹³AIR 1990 SC 605, (1990)1 SCC 568

¹⁴V.K.Bansal "Law of Extradition in India", LexisNexis Butterworth's Wadhwa. Nagpur, 1st Ed. 2008, P.23

¹⁵A. shearer "Starks international law" oxford university press. 11th Ed.1994,P.317

¹⁶K.C.joshi, International law and Human rights. Eastern Book Company. Delhi, 3rd Ed.2016, P.211.



constitutes a crime and is punishable under the laws of the demanding and surrendering state with a minimum penalty of imprisonment for one year¹⁷.

PROCESS OF EXTRADITION

The law of extradition basically a municipal law but it is a part of International law. Every State enacted its own municipal law for extradition but that law should govern the principles of International law. At the time of extradition requested State follow the domestic law of extradition and treaty rules. Extradition is the power to surrender of a violator of law is absolutely a right of the national Government. Therefore, all demands for extradition must come from the administrative authority of the demanding State, which means, through that country's diplomatic representatives. This is incorporated in the various national Statutes, bilateral treaties and in multilateral conventions, as well as in various drafts and projects. Generally it is accepted that the request for the extradition of fugitive criminals must be in writing and must be conveyed by other relevant documents. This applies also to those conventions, treaties and statutes which do not precisely provide for a written requirement but merely require its diffusion through the diplomatic way. The extradition Act 1962 provides that formal request made by Government of foreign State through its diplomatic agent to the Central Government of India¹⁸ or Government of foreign State communicate to central Government of India through its embassy agents for seeking surrender of the fugitive criminal¹⁹. But this act does not constrain the foreign State to initiate the process of extradition through these ways. If these way is not appropriate or adequate for request to surrender of the person can also make through other way if it is agreed by both States in the treaty or if any other mode is convenient, the requisition made in such other mode as it is accepted by Government of the foreign State or Government of India²⁰. Mainly there are 4 junctures of the process of extradition. They are

1. A formal request made by a Government of foreign State through its embassy to the Government of India through India's embassy in that foreign State²¹.
2. Issue of warrants from Magistrate²².
3. Detention of the fugitive²³.
4. Production of the fugitive before the magistrate to see if there is adequate proof against the fugitive or not²⁴.

On the basis of above 4 stages the process of extradition is started. It means no State will extradite the criminal without formal request from foreign State. When formal request made by foreign State, then Government of India pass an order to magistrate to conduct enquiry on this issue. Then magistrate shall issue a warrant for the arrest of the fugitive criminal. What the evidence is produced by requesting State before the Magistrate, if he is satisfied, he gives a direction to Government of India to extradite the fugitive otherwise if he is not satisfied and he may discharge the fugitive. For example, in extradition treaty between Government of India and the Government of the Kingdom of Bahrain, 2005²⁵ both States accepted that if any one of the contracting State request for extradition shall be made in writing and transmitted through diplomatic manner with the ensuing supportive evidence or documents and data²⁶.

¹⁷ William W. Bishop Jr International law. Little, Brown Company. 3rd Ed. 1962, P.-573

¹⁸ Sec-4(a) of the Extradition Act, 1962

¹⁹ Sec-4(b) of the Extradition Act, 1962

²⁰ Sec-4 of the Extradition Act, 1962

²¹ Sec-4(a) and (b) of the Extradition Act, 1962

²² Sec-6 of the Extradition Act, 1962

²³ Sec-6 of the Extradition Act, 1962

²⁴ Sec-10 of the Extradition Act, 1962

²⁵ The extradition treaty between Government of India and the Government of the Kingdom of Bahrain was signed on 13th January, 2004 at Delhi and the tools of consent exchanged on July 16th, 2005 at Bahrain.

²⁶ Art-8 of the Extradition treaty between Government of India and the Government of the Kingdom of Bahrain, 2005.



An extradition treaty spells out the term of an extradition. It includes a list of crimes for which a fugitive can be extradited. It is reciprocal in terms of conditions. Generally, an extradition treaty for successful extradition requires that

- The offence is serious
- Prima facie there is sufficient evidence to proceed against the fugitive
- Principle of dual criminality;
- Possibility of fair trial to the fugitive if surrendered and
- The fugitive will get sentence proportionate to the offence²⁷.
- Punishment for offence shall not less than one year.

Before an application for extradition is made through the diplomatic channel, two conditions are as a rule required being satisfied:

- There must be an extraditable person.
- There must be an extradition crime²⁸.

But in case of extradition as a general rule that the extradition proceedings shall not applicable for political offender, Religious offender & Military offender because all these offences are not considered as a crime.

The object of extradition is to restore a fugitive or criminal to the jurisdiction of a state, in accordance with treaty obligations, which intends to try or punish him for the violation of its laws. The rights of a citizen not to be sent out to foreign jurisdiction without strict compliance with law relating to extradition are valuable rights.

Object of Extradition are

- To punish the criminals
- To give justice for Injured State
- To protect the valuable rights of states
- To prevent criminals who flee from a jurisdiction to escape from punishment
- Criminals are surrendered as it safeguards the interest of the territorial State.
- Extradition is based on mutual cooperation.
- Extradition is a step towards the achievement of international coordination in solving international disputes.
- To protect the objects of U.N.O. (to maintain peace and security throughout the world).
- Extradition acts as a warning to the criminals that they cannot escape from the punishment by fleeing to another state. Extradition therefore has a deterrent effect.
- Extradition is done because it is a step towards the achievement of international co-operation in solving international problems of a social character.

CONCLUSION

Each state exercises complete jurisdiction over all the persons within its territory. But a different problem arises when a person after committing crime runs away to another country. In such situation, peace and order can be maintained only when there is international cooperation among the states. There is, therefore, a social need to punish such criminals. In order to fulfill this social necessity, the principle of extradition has been recognized. With the international cooperation or treaties only states can punish the criminals. Otherwise he will become a dangerous to the world. But one of the lacunas in the principles of extradition is conditions. Some of the conditions of extradition are very helpful to criminals to flee from the punishment. Extradition is not a rule; it depends upon the will of extraditing state. Each state opines strongly that it has a right to give asylum for criminal because one of the main duty of U.N.O. member is to obey the object of U.N.O. otherwise it will affect peace atmosphere of the world. Therefore it is necessary to enact universal law otherwise criminals flee from the punishment and very difficult to give justice for injured states.

²⁷J.G.Starke Introduction to International law. Adithya Book Pvt Ltd. New Delh,4th Ed.1994,P.350

²⁸Ibid P. 354