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AN ANALYTICAL STUDY OF LAW RELATING TO EXTRADITION LAW IN INDIA WITH REFERENCE TO RECENT CASES

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1. ABSTRACT

Extradition is the surrender of a person accused or convicted of an offence within the jurisdiction of the requesting nation, by one nation to another.²⁴⁵⁰ The matter of extradition has huge significance in international law and relations. Extradition treaties and conventions form the most engaging part of international engagements between countries. It also forms a very important part of criminal justice system and is considered an act of good faith in terms of surrendering of an accused or convict by a country to the requesting country, where in the offence is committed in the territory of the latter State.

Most of the extradition treaties and arrangements are entered into on the principle of reciprocity, wherein when a country surrenders a person to the requesting country, the expectation or legal agreement is that that country shall do the same when so requested. This study understands the evolution of extradition as a concept of international law, the Extradition Act and important aspects of it. It also analyses and discussed the important cases in the Indian jurisdiction on the issue of Extradition and lays down the important principles laid down in those cases. Further, it analyses the extradition treaty between United Kingdom and India. This study is done with the objective to explore further the concept of extradition by studying the established principles and understand its workings.

GRASP - EDUCATE - EVOLVE

²⁴⁵⁰ P. Ramanatha Aiyar's Concise Law Dictionary, Lexis Nexis, Fifth Edition, Page.476.

2. INTRODUCTION

In general, all States have complete jurisdiction over all the people within its territory, but there are cases wherein an offender can run away to another country after commission of the offence. Thereby, the country where the offence was committed finds itself unable to exercise jurisdiction over a person in another territory to punish the said person for the offence committed, making it detrimental to the maintenance of peace and fairness in the country.

The offenders who run away to some other countries are called fugitives. These fugitives are highly detrimental in upkeeping peace and order internationally. Offenders can flee the prosecuting nation during different parts of proceedings, they might flee before they are arrested for their offence, or when they're released on bail. If fugitives are not brought back to the prosecuting country and tried for their offence, it would be unjust for the victim and it would send a message that fleeing to avoid being prosecuted is acceptable.

Hence, the need for agreements by nations to allow sending fugitives back to the prosecuting nations to avoid failure of justice was realized. States started relying on co-operation of different foreign states to overcome this issue of fugitives and started to send back such fugitives who have been accused or convicted of a crime in the State where such a crime was committed.²⁴⁵¹ This is when the practice of extradition came to picture.

Extradition is one such subject of international law which has the highest level of engagement between foreign states. *The Black's Law Dictionary*²⁴⁵² defined extradition as- "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 the other, which, being

competent to try and punish him, demands the surrender." Many have argued on the subject of whether international law can really be considered a law or not.²⁴⁵³ But this area of international law, coupled with the several treaties and arrangements within countries, bends the arguments towards international law being a law with a lot of engagement. Extradition treaties are the oldest kinds of legal agreements between foreign nations, which allow the formalization of the extradition processed and levies limitations thereto.²⁴⁵⁴

Extradition is an international process, which can be defined as complex at best. It involves various bodies and statutes like treaties, agreements between countries, municipal laws, international conventions, courts, interest of individuals, etc. There are various factors which a foreign State considers while making the decision to extradite. There was very little harmony in agreements between nations on the matters of extradition, and hence the United Nations (UN) came up with the Model Extradition Treaty 1994 and the Model Law of extradition 2004.

3. RESEARCH METHODOLOGY

3.1 Research objectives

- To analyze the evolution of extradition principles in international law.
- To study the statutes and principles governing extradition in India.
- To analyze important cases laying down important principles of extradition in India.
- To study the relations between United Kingdom and India on extradition along with a study of important cases.

3.2 Research questions

- How has the concept of extradition evolved over time in international law?
- What are various statutes and principles that govern extradition in India?

²⁴⁵¹ Edward Collins, "International Law in a Changing World", 1969, p.216.

²⁴⁵² Black's Law Dictionary, Centennial Edition, Sixth Edition, pp. 585.

²⁴⁵³ Anthony D'Amato, "Is International Law really "Law"?", 1985.

²⁴⁵⁴ Ivan A. Shearer, "Extradition in International Law", 1971.

- What are the various principles on extradition laid down by Indian courts?
- What are the important cases on the treaty of extradition between United Kingdom and India?

3.3 Scope and Limitation of the study

The scope of this study is limited to a study on important cases, principles and statute from the Indian point of view and the relations of India with other countries. This paper does not take a holistic view of extradition, since it does not study all the important conventions on extradition and the extradition practices of other countries.

4. REVIEW OF LITERATURE

*Chittella Venkataramana (2013)*²⁴⁵⁵ deals with the importance of extradition as a subject of international law and its impact on the administration of justice. The paper studies the evaluation of extradition as a concept over the centuries and its adaptation in the modern contemporary world. Further, it also discussed the ideology of human rights and its decisions by nations on the subject of extradition. It further discusses the torture aspect of decision of extradition, and its impact on India making requests for extradition to other countries. It lays down the major deterrent for countries considering India's request for extradition to be the subject of human rights with respect to torture.

*Shivam Goel (2016)*²⁴⁵⁶ deals with, in detail, the principle of double criminality, principle of political exception and the principle of specialty. This paper also explains the general procedure of extradition under by both the extraditing country and the requesting country, as well as a discussion of the procedure adopted by India for the purpose of extradition. Further, it discussed a few cases of Indian jurisdiction to ascertain the evolution of extradition, laid down by the judiciary.

*Seema Jhingan and Monica Benjamin (2018)*²⁴⁵⁷ deals with the process of seeking extradition from foreign states by India. It briefly explains the Extradition Act, the extradition treaties entered into by India, the policy in nationals, procedure of provisional arrest and cognizance by Magistrate, local municipal laws, other exceptions to disallowing extradition, Interpol issuance of notices, and various other concepts. It also deals with the aspects of Mutual legal assistance treaties and UN Conventions, along with a brief discussion on Fugitive Economic Offences Act and the practices of extradition in India.

*Nitesh Jain and Aditya Malhotra (2020)*²⁴⁵⁸ deals with the relations with respect to extradition between India and United Kingdom. It explains the treaty between the two countries and explains the domestic Act of extradition- The Extradition Act 2003. It lays down, in detail, the entire process undertaken by the authorities and judicial bodies of United Kingdom while considering a request for extradition.

5. EVOLUTION OF EXTRADITION LAWS

Extradition processes, in today's time and age, has become very frequent and useful. The crimes for which extradition is asked and allowed are varied from petty thefts to murders, drug trafficking, terrorisms, economic offenders and war crimes. Extradition, as a practice, has existed in the international regime for over three thousand years.²⁴⁵⁹ In ancient times, extradition was mainly focused on political crimes, as opposed to private crimes. This was practiced till well within the eighteenth century by States, using extradition to exercise jurisdiction over political criminals. Examples of treaties of this time would be the one made by Charles II of England with Denmark and various other nations in 1661 to extradite the offenders who were a part of or responsible for the executive of his father, Charles I, which happened during the

²⁴⁵⁵ Chittella Venkataramana, "Changing Dimensions of Extradition- A study with special reference to law, practice and experiences of India", Submitted to Andhra University for the Doctor of Philosophy in Law, Shodhganga

²⁴⁵⁶ Shivam Goel, "Extradition Law: Indian Perspective", SSRN Electronic Journal 10(6), 2016.

²⁴⁵⁷ "Indian Extradition Law- Process for seeking extradition of persons from foreign states", Seema Jhingan and Monica Benjamin, LexCounsel Law Offices, Mondaq, 2018.

²⁴⁵⁸ Nitesh Jain and Aditya Malhotra, "India's recent successes in extraditing fugitives from the United Kingdom", Mondaq, 2020.

²⁴⁵⁹ M. Bassiouni, "International Extradition and World Public order", 1974

English Civil War in 1640s. These kinds of treaties, at that point in time, were considered to be performed under the virtues of friendly and peaceful relations between countries.²⁴⁶⁰

In the eighteenth and nineteenth century, extradition was mostly directed towards military offenders. It was only by the nineteenth century that the focus of extradition treaties started to move from political offenders, military offenders, etc. towards more common crimes. For example, the Treaty of Amiens, 1802 between Great Britain and France, mentioned extradition for crimes like “murder, forgery or fraudulent bankruptcy”.

Over time, this new look towards extradition started to get adopted by more and more nations. More formalized international extradition treaties were formed, which laid down legal requirements of reciprocity of obligations and requests. Oftentimes, these treaties mentioned a list of extraditable and non-extraditable crimes. The legal backing of extradition gave national courts the jurisdiction to decide whether an extradition is required for a particular crime from a particular country or not.

Bilateral treaties started to be formed between states by late 1800s. By this time, the outlook of extradition completely changed from political crimes to common crimes. It became an issue of administration of justice, and not just punishment for political crimes. This change happened due to various reasons. Firstly, the fact that a rise in democracy along with an acceptance towards the democratic form of ruling lead to less rebellion on the government and hence less political crimes. On the other hand, common crimes which never formed part of extradition treaties before started to rise. Secondly, technological advancements in the fields of communications and travels lead to criminals easily being able to travel to different countries.

Post Second World War, states started to enter into more multilateral treaties than bilateral extradition treaties. Even though bilateral treaties were still the most common form of extradition treaties, multilateral treaties allow for large number of countries to be a part of common extradition practices and increases the ambit of extradition jurisdiction. Further, over time and with advancement in the subject and awareness of human rights, the interests and rights of the individual fugitives start to come to picture. Earlier, over respect of sovereignty, the judiciary of the other nation would not delve into an inquiry regarding the fairness of justice system of the requesting nation.²⁴⁶¹ The decision to extradite started to be influenced over a possibility of violation of basic fundamental rights like freedom from torture or right to life, etc.

This shows the evolution of extradition laws and treaties from a medium to bring back political offenders for prosecution to a medium of preservation of human right and administration of justice for the purpose of suppression of crime. The obligatory feeling of reciprocity and respect for the sovereign over extradition requests have been altered to a recognition of basic principles of humanitarian international laws.

6. EXTRADITION LAWS AND PRACTICES IN INDIA

6.1 The Extradition Act, 1962-

This Act governs the extradition process of India, with other countries. It is read with the several treaties and arrangements India has with other sovereign nations. Section 3 of the Act explains the application of treaties and arrangements, and also mentions the application on foreign States that India does not have an express treaty with. It lays down that in case of treaties, the Central Government shall pass notifies orders for treaties, and these orders shall set out the extradition treaty in detail as discussed between the foreign member states to the treaty. The treaties might lay down certain

²⁴⁶⁰ Rebecca Fraser, “The Story of Britain- From the Romans to the Pent- A narrative history” 2005, p. 327-377

²⁴⁶¹ “Extradition’s Paradox: Duty, discretion and rights in the world of non-inquiry”, Matthew Murchison, 2007.

procedures which are in modification with the Act, through the notified order. In case of no extradition treaty, a convention where both India and the Foreign State are party to, would be used as an extradition treaty for offences so mentioned in the Convention.

Section 2 of the Act lays down various definitions. Section 2(c) and 2(d) defines extradition offence and extradition treaty respectively. Extradition offence is defined as the offences provided for in the treaty, in case of India having a treaty with a foreign state; and in case of an absence of treaty, an offence which is punishable with imprisonment for not less than one year under Indian laws or the laws of the foreign state. Extradition treaty is defined as inclusive of all treaties, arrangements or agreements. India currently has extradition treaties with 47 countries and extradition agreements with 11 countries.²⁴⁶²

6.2 Extradition of Nationals

India has provisions allowing extradition of nationals. It is based on the principle of reciprocity, which entails that India shall allow extradition of a national to a foreign state, only if that foreign state has also agreed to extradite nationals within the treaty. Treaties with UK, USA, Mauritius, etc. allow for extradition of nationals. However, treaties with Germany, France, Spain, Bulgaria, etc. do not permit for the same. In such cases, it is important that the principle of dual criminality is applicable between foreign states, which means that a judicial proceeding shall begin in the country of the national if the offence committed by the national in the requesting country is also an offence in the foreign country. Reference can be made to the case of *Maria Stella Rene v. Inspector of Police*²⁴⁶³, wherein the Madras High Court did not allow for the release of passport of a national of France arrested by the Indian Police on the reasoning that if she went back to France, she won't be extradited from there because the

treaty between France and India does not provide for extradition of nationals. A similar stance was also taken in the case of *Mohammed Jafeer v. The Government of India*.²⁴⁶⁴

6.3 UN Conventions

Several UN conventions have provided for extradition as provisions to the convention, this is recognized by India since it is a signatory to a lot of such conventions. These conventions, on the subjects of terrorism, money laundering, illicit drugs, trafficking, etc. and are multi-lateral treaties signed by various countries to promote cooperation. Investigation agencies have the tendency to rely on such conventions in the absence of treaties or in cases where the application of treaty would not yield similar results. Examples of UN conventions which provide for such provisions, wherein India is a signatory are the UN Convention against Corruption (UNCOC), dealing with corruption and related offences and UN Convention against Transnational Organized Crime (UNTOC) which relates to trafficking and other transnational organized crimes. Article 44(2) and Articles 44(13) of the UNCOC mention extradition. UNCOC provides for extradition even if the offences alleged isn't an offence in the country which is requested to extradite a person, so the meeting of the principle of dual criminality is not essential in this request.

7. IMPORTANT CASES

In the case of *P. Pushpavathy v. Ministry of External Affairs*²⁴⁶⁵, it was held that a writ of habeas corpus is not made out when detention is legal and lawful. Thereby, if a fugitive criminal who is an accused in a case made out for an extradition offence is arrested in due course of law, under a legally issued warrant of arrest, by the Magistrate so directed by the Government of India, such detention is legal and lawful.

²⁴⁶² Ministry of External Affairs, Government of India. Link- <https://mea.gov.in/leta.htm> Last accessed- 18h March, 2021

²⁴⁶³ *Maria Stella Rene v. Inspector of Police* Cri. R.C. No. 602 of 2016.

²⁴⁶⁴ *Mohammed Jafeer v. The Government of India* Petition No. 1243 of 2005.

²⁴⁶⁵ *P. Pushpavathy v. Ministry of External Affairs* 2013 CRI LJ 4420

In the case of *Mohammed Zubair Fauzal Awam v. State*²⁴⁶⁶, the petitioner is a Sri-Lankan citizen who was residing in India temporarily and he claimed that he had the due permissions to stay in India by the authorities concerned. The Interpol issues a red-alert notice, which was done on the basis of an arrest warrant against the petitioner in a Sri Lankan court. On that note, a case was registered under Section 41(1)(g) of the Code of Criminal Procedure. The court held that, generally the red-alert notice issued, is done because a follow up request for extradition is expected. But since, in this case, there hasn't been any formal request of extradition by the Sri Lankan Government, the arrest and FIR under Section 41(1)(g) is not proper here. In *Bhavesh Jayanti Lakhani v. State of Maharashtra*²⁴⁶⁷, it was held that the High Court, exercising extraordinary powers under Article 226 of the Constitution of India, on the issue of fundamental rights of a citizen, would not turn away a citizen on the reason of red-corner notice being issued by the Interpol. In criminal cases, superior courts can get into the issues of whether the manner in which the red notice was enforced is legal or not, or whether the police threatening an Indian citizen about arrest is legal or not, with respect to the Extradition Act.

In *Sarabjit Rick Singh v. Union of India*²⁴⁶⁸, the Supreme Court mentioned that in proceedings for the matter of extradition, witnesses are not examined to establish allegation made by a requesting state. There is no formal trial that is conducted, neither is the meaning of evidence taken in its literal sense, but that within the ambit of Extradition Act. This Act confers jurisdiction and powers of the Magistrate, which has to be exercised with respect to making an order of commitment. No further trial proceedings or evidence-based investigation is done.

The topic of preventive detention in the cases of extradition was discussed by the Apex court in

the case of *Kubic Darusz v. Union of India*²⁴⁶⁹. The court observed that the system of extradition undertaken by the authorities is an act of assistance in terms of legal matters by the state where the request for extradition is sent for the requesting foreign state. This is done to assist the requesting state in terms of finding and arresting the person, to be presented in court. The State which chooses to extradite a person, do so on the humanitarian grounds of justice and effective achievement of correction of those who violate a law, for the better functioning of the criminal system. This is only done for countries with whom, a convention or a treaty exists on similar terms. The verdict on whether a person extradited is guilty or not is to be decided by the foreign state wherein the crime had occurred. The entire process is done to assist the foreign State in having the trial, and if convicted, deciding the punishment. Preventive detention does not help in fulfilling that goal, because preventive detention is a preventive measure. Thereby, the court held that the continued detention of the detenu was not justifiable by law due to non-consideration of his representation, which violated Article 22(5) of the Constitution of India.

In the case of *In Re: K.R.P.L. Chockalingam Chettiar*²⁴⁷⁰, the Madras High Court (Full Bench) decided the difference between extradition and deportation, while reiterating the meaning of extradition. The court referred to 23 Corpus Juris, page number 254, which defined extradition as a surrender done by one foreign state to another, of an individual who has been accused or convicted, of a crime committed within the territory of the requesting state which is more competent to try and punish the person. Thereby, extradition is different from teleportation.

On the issue of differentiating between Foreigners Act 1946 and Extradition Act, in the case of *Hans Muller of Nurenborg v.*

²⁴⁶⁶ 7 Mohammed Zubair Fauzal Awam v. State 2011 Cri LJ 2975

²⁴⁶⁷ Bhavesh Jayanti Lakhani v. State of Maharashtra 2009 9 SCC 551

²⁴⁶⁸ Sarabjit Rick Singh v. Union of India 2008 (2) SCC 417

²⁴⁶⁹ Kubic Darusz v. Union of India 1990 (1) SCC 568

²⁴⁷⁰ Re: K.R.P.L. Chockalingam Chettiar AIR 1960 Mad 548

Superintendent, Calcutta and Ors.²⁴⁷¹, held that the former allows the central government the power to expel foreigners from the territory of India. These powers are absolute and unfettered, not limited by any provision of the Constitution. However, in extradition, it is an obligation that is entered upon between nations, to hand over or surrender a person for prosecution, conviction or punishment. This is also upto the discretion of the Government to comply with the request or not, but usually under treaties and the principle of expectation of reciprocity, it is complied with. In the former Act, only foreigners are expelled, whereas in the latter one, foreigners can be sent back to their own country, foreigners belonging to some country can be sent to some other country where they allegedly committed the crime or a national can also be extradited if the terms of the treaty and the Extradition Act provide the same. In the former Act, the person is expelled and is a free man in whichever country he or she goes to, but in the latter case, the person remains under arrest even after leaving the extraditing country and is handed over to the custody of the police of the requesting country.

8. UNITED KINGDOM AND INDIA'S EXTRADITION TREATY

India and United Kingdom entered into a treaty for extradition called the Extradition Treaty 1992. Between the period of 1992 and 2016, India made around 23 requests for extradition to United Kingdom²⁴⁷², however only one individual was successfully extradited to India i.e., the extradition of Samirbhai Vinubhai Patel, for the offence of murder, extradited in 2016.²⁴⁷³ Post that, Mr. Sanjeev Chawla was extradited to India, for the offences relating to match-fixing scandal and Vijay Mallaya would soon be extradited for offences relating to banking fraud.

²⁴⁷¹ Hans Muller of Nuremburg v. Superintendent, Calcutta and Ors AIR 1955 SC 367

²⁴⁷² Lok Sabha Unstarred Question No. 2842- Extradition from UK- 02.08.2017

²⁴⁷³ Rajya Sabha Unstarred Question No. 1164- Extradition of Criminals- 28.11.2019

8.1 The Government of India vs. Sanjeev Kumar Chawla²⁴⁷⁴

With respect to the extradition of Sanjeev Chawla, India had sent a request on 1st February 2016, for the alleged offence of cheating under IPC for acting as conduit between bookies, who wanted to fix and bet on cricket matches, and the Captain of South African test team- Hansie Cronje. This was corroborated by the UK offence of "conspiracy to give or agree to give corrupt payments in England and Wales". The major issue deterring this extradition was the condition of Tihar Jail in New Delhi, which barred the extradition on the basis of right of prohibition of torture and degrading treatment guaranteed under Article 3 of the Convention rights. The Magistrate Court of UK rejected the first letter of assurance given by India and discharged him. On the appeal to High Court, the second letter of assurance was considered, and it was found inadequate with respect to protection from torture and degrading treatment. A third letter of assurance was sent by India, which detailed the living conditions to be provided to the requested accused and on that assurance, the High Court quashed the order of the Magistrate Court and directed the court to proceed. The Magistrate Court referred the matter to the Secretary of State who approved the decision of extradition. He was finally extradited to India in February 2020.

8.2 The Government of India vs. Vijay Mallya²⁴⁷⁵

India had requested the extradition of Mr. Vijay Mallya on 9th February 2017, under the offences of cheating and criminal conspiracy under IPC, read with the Prevention of Money Laundering Act 2002 and Prevention of Corruption Act 1988; for a banking fraud. This was corroborated by the UK offence of "conspiracy to defraud, making false representations, diversion and dispersal of the proceeds of lending and money laundering".

²⁴⁷⁴ (2018) EWHC 3096

²⁴⁷⁵ Dated 10th December 2018

In the case before the Magistrate Court, Mr. Mallya laid down various contentions for rejection of the request for his extradition. These contentions included- failure to establish a prima facie case, extradition sought for his political opinions, extradition to be barred for human rights under Article 3 and 6 and lastly that the evidences given by the Government of India with respect to witness statements are not admissible under Section 161 of the CrPC. The Magistrate Court rejected all the contentions of the requested person in this case and referred the matter to the Secretary of State, who approved the extradition request. The same was appealed before the High Court, and this appeal was dismissed on 20 April 2020. In June 2020, the High Court dismissed the request of Mr. Mallya's request to appeal in Supreme Court. Yet until the starting of 2021, Vijay Mallya has yet not been extradited over a "secret legal" matter, only post the resolution of which, would he be extradited.

9. CONCLUSION AND RECOMMENDATIONS

Extradition is an integral subject of international law which has seen many changes and evolved over time, such that it is one of the highest engaging subjects between countries. Thereby, it is important to further study the various aspects surrounding the concept of extradition and to study the changes which can lead to better and efficient functioning of the same. Extradition is governed by treaties and arrangements which are usually not uniform in nature, but specifically made with different countries with tailor-made policies fulfilling the requirements of the countries who are part of the bilateral or conventional treaty.

The subject of extradition is dealt with through the statute along with the treaties and arrangements. This statute and the UN Conventions have been discussed in this paper. The objective behind UN treaties on the subject is to introduce the element of uniformity to the functioning of extradition between countries. Even though it is not compulsory for a country to extradite a person to the requesting state, it is

usually complied with by India after a report by the Magistrate. This is done to maintain good and friendly relations with the country and with the expectation of reciprocity.

It is important to note that since 2002, 75 fugitive offenders have been extradited to India; 24 of which have been done in the past five years.²⁴⁷⁶ However, currently, 51 extradition requests made by India are pending at different junctures in different countries. It is thereby important to note that a majority of fugitives requested to be extradited by India have not yet been surrendered to the country. This slow and time-consuming process of extradition sends out a negative message about the justice system of India. Like quick extradition sends a strong message, a time-consuming and tenuous process of the same fails in sending the message of deterrence and additionally, does not do justice to the victim so affected. Thereby, it is very important to amend treaties in a way that allows for quick extradition processes.

The principle of dual criminality can work against India because of the demographic and nature of crimes committed in the country. Crimes like dowry deaths and female feticide is practiced on a larger scale in India than in other countries and is not recognized at all in many countries because of the crime being specific to India. In such cases, the principle of dual criminality does not apply per se. Even though these offences can be brought under the headers of other crimes, it is integral that such a principle be widely interpreted to ease the process of extradition.

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²⁴⁷⁶ <https://mea.gov.in/emtsp.htm>

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