

EXTRADITION UNDER INTERNATIONAL LAW

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ABSTRACT--*Extradition under International Law deals with the surrender of criminals when they seek Asylum in another country after committing a crime. This Article deals with the conditions under which Extradition can be made. Also with regard to treaties among the Nations with regard to Extradition. Each Nations have their own Extradition Act. India has Extradition Act, 1962 and the same was Amended in the year 1993 as Extradition (Amendment) Act, 1993.*

Keywords-- *international law, extradition*

I. INTRODUCTION

The term extradition has been derived from the latin word ex-traditum which means delivery of criminals. If a person commits crime in his own country and fled to other country, he cannot be tried for that case here for lack of jurisdiction. Surrender of such criminals is referred to as Extradition. The State where the accused is found is called as the Territorial State and the State which requests the surrender of the accused is called as Requesting State. Normally such requests are made through diplomatic channels.

II. OBJECTIVE OF THE STUDY

Purpose of Extradition:

1. Extradition is a process towards the suppression of crime.
2. Warning to the criminals that they cannot escape punishment by fleeing to another state.
3. To avoid international criminals and safeguard interest of territorial states.
4. Extradition helps in conducting fair trial.
5. It also helps in International co-operation among states.
6. Reciprocity i.e. mutual exchange of rights, privileges and obligations between states.

Extradition is recognized as legal duty of a state. Hugo Grotius, the father of International Law was of the view that a State of refuge has duty to either punish the offender or to surrender him to the state seeking his return. He quotes the maxim “ Autdedreautpuniare” which says that either to punish or deliver.

III. FACTOR VS LABUBENHEIMER

In this case, the petitioner had received money fraudulently in England and left to United States of America. England summoned the USA to surrender the petitioner. The contention of the USA was that extradition was not

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recognized by the principles of International Law. The contention of England was that there was a treaty available. Mr. Justice Butler held that USA is bound by the treaty to surrender the petitioner to England. Further he contended that , “ International Law

recognizes no right to Extradition apart from treaty. The legal duty to demand his extradition and correlative duty to surrender him to the demanding country exist only when created by treaty.

IV. LAW OF EXTRADITION

Law of extradition is a dual law. Mainly it is decided by municipal court but also form part of international law because it depends on two states over the question whether or not the person should be handed over. However there is no codification as regards extradition. Only bilateral treaties among the states provide for extradition. In absence of treaty, Extradition is done by states on the basis of bilateral treaties wherein provisions are made in accordance with the Municipal Law by which they have agreed themselves to surrender the accused. Many States have National Legislations with regard to Extradition. The International Law Association has considered legal problems relating to extradition in the conference held at Warsaw.

V. CONDITIONS FOR EXTRADITION

1. Extradition Treaties:

First important condition of extradition is the existence of an extradition treaty between the territorial state and requesting state. Some states like United States of America, Belgium, and Netherlands require a treaty as an absolute pre-condition.

2. Extradition of political offenders:

It is customary rule of international law that political offenders are not extradited. Political offenders are those who commit political crime.

Basis for the non-extradition of Political Offenders:

- i) Humanity
- ii) No fair trial would be conducted
- iii) Extra legal character which requesting state might attempt to take against them.
- iv) They are not ordinary criminals

Exceptions:

- i) Multilateral treaties
- ii) War crimes and crimes against humanity
- iii) Multilateral treaties relating to hijacking, torture or hostage, injury to diplomats, etc..
- iv) Localized criminal offence
- v) Human rights abuse

However it is the discretion of the territorial state to extradit the political offender to the requesting state. No proper meaning for political offender has been stated. It just states that the political crime committed.

VI. RE CASTIONI CASE

Castioni who returned to Switzerland from abroad, joined revolutionary movement in canton of Ticino against government and committed the murder of Rossi, a member of the government on writ of habeas corpus, Castioni pleaded that it was political offence and extradition was not available. Hence his extradition was refused on the ground that it was a political crime.

Re Menuier case:

In this case a French anarchist was charged with causing explosion at a café and two persons died. Cave.J upheld his Extradition and held that in order to constitute an offence of a political character, there must be two or more parties in the state each seeking to impose the Government of their own choice on the other and that if the offence is committed by one side or the other in pursuance of that object, it is a political offence. In the present case, there are not two parties in the State.

The principles laid down in these two cases was followed for a long time by other states as well.

Criticisms of the above case:

It is too narrow and rigid. Terrorist act of local impact also gains political offence it stresses that the crime should be committed in aggression to overthrow the government but in some cases it may not be so. Aggression may be against a particular act.

Ex parte Kolczynski case:

In this case Lord Goddard, C.J., changed the principle set in Castioni case. He observed that the offences for which extradition was requested were committed in circumstances in which if surrendered the accused would although being tried for those offences, be also punished for an offence of a political character.

VII. DOCTRINE OF DOUBLE CRIMINALITY

Doctrine of double criminality denotes that the crime must be an offence recognized in the territorial state as well as requesting state. No person is extradited unless this condition is fulfilled.

Crime punishable by death in the requesting state:

In these cases where a crime is recognized in both states that the crime for which the extradition is demanded is punishable by death in the requesting state, then there arises difficulty in extraditing the person.

Soering vs UK:

Soering committed murder in USA and fled to UK. In USA for murder death punishment was granted. In UK he was found guilty for Manslaughter and not murder. Soering contented that he should not be extradited because he would be awarded death penalty. Hence British government gave sworn affidavit that death penalty will not be awarded. Accepting the affidavit USA surrendered him.

Chitat vs Canada:

Canada extradited person to California where he might be executed by gas asphyxiation, which can cause death. This is total violation of Human Rights.

VIII. RULE OF SPECIALITY

An accused can be extradited only for the offence for which he is extradited and not for any other offence.

US vs Rausher

Rausher was extradited for murder but tried and convicted for cruelty. He appealed to the Supreme Court and his conviction was quashed stating the Rule of Speciality.

Dayasingh vs Union of India

Dayasingh was extradited from USA to India. No jurisdiction to try for other case. Section 21 of Extradition Act follows the provision of International law. Justice Patnaik held an accused cannot be tried for different case as per the Rule of Speciality.

IX. PRIMA FACIE EVIDENCE

Before extraditing a person, the territorial state should be satisfied that there is prima facie evidence against the accused. C.G. Menon's case, Madras H.C held that prima facie evidence is necessary for an accused to be extradited is well recognized by International Law.

X. TIME BARRED CRIME

A Criminal shall not be surrendered if he has already been tried and served sentence for the offence committed in the territorial State. Extradition need not be granted if the offence has become time barred. To find out whether it is time barred the date of request for extradition should be found out and also the date of committing of offence.

XI. EXTRADITION OF OWN NATIONALS

When crime is committed in foreign country and accused flees to his own country he may be extradited or not. Most of the countries have adopted the principle not to extradit its own national. But some nations like Britain, India and United States have accepted to surrender criminals if the treaty provides for it.

Valentine vs US:

Citizen of US committed crime in France. Crime was one listed in Franco American Extradition treaty, 1909. He fled to US, arrested in New York by French officials. He claimed that he is national of US and Article V of the treaty states that No national should be surrendered. The Court held that he need not be surrendered as per treaty. But can be tried under US law.

XII. MILITARY OFFENDERS

Extradition treaties include military offences. There are two categories: Ordinary criminal law and those which relate specifically to military matters. Only that which relate to military matters extradition will not be applied. The General Assembly provides that if the military personnel commit a crime of genocide, they shall be extradited.

XIII. EXTRADITION OF AN OFFENCE OF FISCAL CHARACTER

Offences relating to taxes, customs, excise, etc. are considered as Fiscal. Generally Extradition for Fiscal offence is not practiced. But recently Extradition of such offences if also implemented.

Vijay Mallaya Case:

In this case Vijay Mallaya fled to London after committed financial crimes in India. Indian Government had asked for his Extradition. Though the UK Court had ordered Extradition, Appeal is still pending.

XIV. EXTRADITION OF FOREIGN NATIONALS

Foreigners are not extradited for the offences committed in foreign countries. They may be tried and punished only in that State where the crime has been committed.

XV. HUMAN RIGHTS VIOLATION

International Law does not provide for human rights safeguards at the time of extradition of a person but in recent time the principle has been changed and if the procedure of the requesting state is contrary to Human Rights Convention shall refuse extradition.

The main discussion on the finding of this topic Extradition is to find out the important part of prosecuting cross- border crime but there should always be safeguards that ensure Extradition serves the interests of justice. The Extradition papers are a way to establish one government's legal justification for removing a person from one state or country to be tried under the laws and by the courts were the crime was committed, under the agreement between the two entities.

XVI. CONCLUSION

Thus the Law of Extradition depends on Bilateral Treaties and National Laws. They are practiced in many countries based on the general principles of International Law.

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