



Research Article

A STUDY OF EXTRADITION LAW IN INDIAN PERSPECTIVE

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ABSTRACT

This paper delves into the intricacies of extradition from an Indian context. Beginning with an introduction to the concept of extradition, it elucidates its underlying aims and objectives. Within the Indian framework, extradition procedures are primarily guided by the provisions of the Extradition Act of 1962. A comprehensive exploration of this act's procedures is undertaken, followed by an in-depth analysis of prominent extradition cases involving Vijay Mallya and Nirav Modi. The paper culminates in the assertion that while extradition within nations is governed by domestic extradition acts, international extradition is facilitated through treaties and conventions between nations. Essentially, extradition embodies the processes, principles, and procedures that facilitate the return exploration and return of an accused individual to the requesting state. This serves as a testament to international cooperation in combating transnational crime.

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INTRODUCTION

Extradition is formal diplomatic process whereby one state surrendering an criminal to another state for prosecution and punishment for such crimes which he committed in the jurisdiction of requesting state. This process enables the government to bring fugitives who abroad to justice, but it can be fraught with political tension. Under international law there is no general duty to extradite. It depends upon on provisions of existing extradition treaties and arrangements between two states. International extradition is the surrender by one nation to another for trying and punishment of a person who is convicted of an offence within the jurisdiction of the latter<sup>1</sup>

Meaning and definition of term Extradition

Extradition is delivery of an accused or convicted individual to state on whose territory he is alleged to have committed or to have been convicted of crime<sup>2</sup> Extradition is based on latin term "out punier out dedre"- which means either Punish or Surrender.

According to Black's Law Dictionary<sup>3</sup>, Extradition me.ans: "The Surrender by one state or country to another of an individual accused or convicted of an offence outside its own territory within the territorial jurisdiction of other., which, being competent to try and punish him, demands the surrender."

According to J.G. Starke, "The Extradition denotes the process whereby under treaty or upon a basics of reciprocity one state surrenders to another state at its request a person committed accused or convicted of criminal offence, committed against the law of requesting state, such requesting state being competent to try the alleged offender<sup>4</sup>.

Thus, Extradition is founded on the broad principle albeit that it is in the interest of civilized communities that criminals should not go and unpunished and on that account it is

recognize as a part of comity of nations that one state should provide assistance and mutual help to another state to bring the off

Rosiline George v. Union of India<sup>5</sup>

In this case Supreme Court held that, the term Extradition denotes the process whereby under a concluded treaty one state surrenders to any other state at its request, a person accused and convicted of criminal offence committed against the law of requesting state and such state is competent to try the alleged offender.

Aim and objectives of extradition

In this Globalization era, crime is increasingly turning international. Many serious offences have cross-border implication criminals cross borders in order to escape prosecution and in such situation state become helpless to exercise its jurisdiction in order to punish the guilty person. "This inability of state to exercise its jurisdiction with in territory of another state would seriously undermine the maintenance of law and order that's why the practice of returning a person who is accused or who has been convicted of crime to state in which crime was committed adopted by states"<sup>6</sup>

The object of process of extradition is to prevent and reduce crimes in the international field. It prevents crimes and punish offenders. In the recent years, the provisions relating to extradition find mention in bilateral multilateral treaties. The universal recognition of human rights has enhanced the prevalence and importance of extradition international cooperation is most essential in cases of extradition because there is hardly any country which has extradition treaty with all other countries in the world<sup>7</sup>.

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In *Re Arton*<sup>8</sup>, It was held that, foundation of Extradition which is delivery on the part of one state to another Who have fled from justice, is founded on the principle that the reciprocal surrender of criminals is in common interest of civilized countries.

## **Principles of Extradition**

Law of Extradition based on five principles mainly

### **1. Dual criminality**

An alleged constituted act should be offences under the jurisdiction of territorial state as well as requesting state. Even the alleged offence neednot have same name and same elements but is must be recognized offence in both states. The rationale behind this principle is that, the requested state should be at liberty to refuse to extradite fugitive offender, if they don't view the conduct of fugitive offender as criminal act.

In the case of *Daya Singh Lahoria v. Union of India*<sup>9</sup>, Supreme Court of India, expatiating over importance of extradition law stated, "Extradition is great step towards international co-operation in the suppression of crime. It is for this reason that the congress of comparative law at Hague in 1932, resolved that states should treat extradition as an obligation resulting from international solidarity in the fight against crime."

### **2. Doctrine of specialty**

An Extradited accused should not only tried for alleged offence which is mentioned in extradition request. The requesting state pledges to judge requested person only for the crime for which extradition was requested not for any other offence. In the case of *Abu Salem Abdul Qayoom Ansari v. state of Maharashtra*<sup>10</sup>- The apex court held that Doctrine of specialty is universal recognised principle of international law and partakes of Doctrines of both, double criminality and reciprocity. Section-21 of Indian Extradition Act, 1962 provides, extradited person cannot be tried for offences other than those for which he was surrendered by foreign state.

### **3. Non-Extradition of Political Criminals**

In international law extradition for political crimes is not allowed. States refuse to extradite such people who were charged with political offences. This practice began in French revolution of 1789. Most of the Extradition treaties and national laws treated political offences as non-extraditable offences. The Article 3(1) of European convention on extradition 1957 states that, "Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested party as a political offence or as an offence connected with a political offence. The term "Political Offences" has not been clearly defined in international law. "A crime a sometime considered, 'Political' if committed from Political motive or if committed both from political motive and for political purpose such as high treason, Iesemajeste and the like<sup>11</sup>.

### **4. Prima Facie case**

It means a case in which the evidence produced is sufficient which enable a decision or verdict to be made unless evidence is rebutted. It is essential for the requesting state to prove that Prima Facie case must be establish against such.an accused to whom state want to extradite. It is one of the basic

requirements otherwise sending state may refuse the request of requesting state.

### **5. Fair Investigation and Fair Trial**

Fair Investigation and Fair Trial are concomitant to preservation offundamental right of an accused. Extradition focuses on the process of removal of accused from one state to another state. Therefore, it is essential requesting state must prove extradited person must get a fair investigation and fair trial. Fair trial includes fair and proper opportunities allowed by law to prove innocence. It is fundamental guarantee of human right and rule of law which aimed at ensuring administration of justice.

## **Extradition Law- An Indian Perspective**

International extradition is an obligation undertaken by states in good faith to promote and executive justice. In india, the extradition of fugitive from India to a foreign country or vice-versa is governed by provisions of India extradition Act, 1962<sup>12</sup>and the- extradition treaties obtaining between India and other countries. By virtue of section 34 of the act 1962 has extra territorial jurisdiction i.e. extradition offence committed by any person in foreign state shall be deemed to have been committed in India and such person shall be liable to be prosecuted in India for such offence. Extradition treaty means, a treaty agreement or arrangement with the foreign state relating to extradition of fugitive criminal<sup>13</sup>. Section 3(4) of the 1962 act provides where there is no extradition treaty made by India with any foreign state, the central government may, by notified<sup>14</sup>order, treat any convention to which in India and foreign states are parties, as an extradition treaty made by India with any foreign state providing for extradition in respect of offences specified in that convention.

### **Procedure Under the (Indian) Extradition Act, 1962 (Act)**

Indian Government has signed bilateral Extradition Treaties with forty-two countries and has Extradition Arrangements with nine more countries to quicken and ease the process of extradition. Under Section 3 of Indian extradition

"Act 1962, provides a notification could be issued by the Government of India extendingthe provisions of the Act to the country/countries notified. Extradition treaties are bilateral treaties which provides a define legal framework and obligates the contracting states to extradite to each other individual which are accused or convicted of extraditable offence.

India is also a party to the 1997 International Convention for the Suppression of Terrorist Bombings. This also provides a legal basis for Extradition in Terror Crimes.

In May 2011, the Indian Government ratified two UN Conventions - the United Nations Convention against Corruption (UNCAC) and the United Nations Convention against Transnational Organized Crime (UNCTOC) and its three protocol.

The Ministry of External Affairs India's Nodal Government body for extradition matters provides a detailed account of fugitive who surrendered from different countries. A large number of such fugitives have been accused of grave offence like murder, terrorism and criminal conspiracy In terms of the Comprehensive Guidelines for Investigation Abroad and Issue of Letters Rogatory(LRs) issued by the Ministry of Home

Affairs, extradition requests are made only after the filing of a charge sheet, taking the cognizance of same offence and issue the process to arrest offender.

The extradition request must contain an order of the Magistrate which justify such accused person's committal to trial on the basis of the evidence made available in the charge-sheet, with directions seeking to secure the presence of the accused in Court to stand trial in the said court from the country of present stay, along with a copy of the First Information Report (FIR) duly counter-signed by the competent judicial authority. This request must be accompanied by an original and open-dated warrant of arrest states the offences for which the accused has been charged.

The foreign government then begins the extradition inquiry and the Magistrate or other designated authority issues an order for extraditing the requested person

Extradition may be denied where due procedure under the Extradition Act of 1962 is not followed.

### **Extradition and International Treaties**

Legal framework: Extradition treaty between India and UK

Extradition is a complex process which involves the relevant extradition treaties or arrangements India and UK has signed extradition treaty in 1992 but only successfully two accused were extradited. Recently India has some success in the term of extradition proceeding against Mr. Vijay Malaya and Mr. NeeravModi.

### **Vijay Mallya Case**

India Government submitted an extradition request on 9 February 2017 seeking the extradition of Dr. Vijay Mallyain relation to his involvement in a banking fraud and for the commission of the offences of cheating and criminal conspiracy under the IPC read with offences under the Prevention of corruption Act, 1988 and Prevention of Money Laundering Act, 2002 which corresponded to the notional UK offences of 'conspiracy to defraud', making false representations', 'diversion and dispersal of the proceeds of lending and 'money laundering'.

In his defence, Dr. Mallya argued that Indian Government failed to establish a prima facie case. Furthermore, he contended that his extradition was sought for extraneous grounds such as only his political opinions. Dr. Mallya also argued that his extradition was barred since the same was not compatible with his Convention rights within the meaning of the Human Rights Act. Specifically, Dr. Mallya argued that there would be a risk to his right to a fair trial (Article 6) and prohibition of torture' (Article 3). Dr. Mallya also made detailed arguments objecting to the admissibility of the GOI's evidence including witness statements under Section 161 of the Code of Criminal Procedure 1973("CrPC"). DrMallya relied upon the evidence of several experts including a report prepared by Dr. Alan Mitchell regarding prison conditions (this expert also provided evidence during Mr. Chawla' extradition hearing). For its part, aside from placing on record substantial evidence in support of its allegations, Indian Government also gave a number of assurances regarding prison conditions.

The Magistrate Court held that that there was a prima case that Dr. Mallya had committed the offence of conspiracy to defraud and conspiracy to launder money. It did not find any evidence to support Dr. Mallya's contention that his extradition was being sought for the purpose of prosecuting or punishing him on account of his political opinions. The Magistrate Court also accepted the assurances given by Indian Government with respect to prison conditions and held that there were no grounds for believing that the Requested Person would face a real risk of being subjected to treatment contrary to Article 3. Likewise, it also held that there was no evidence that Dr. Mallya was at a real risk of suffering a flagrant denial of justice in terms of Article 6. Notably, the Magistrate Court held that the witness statements under Section 161 of the CrPC were admissible. Consequently, the case was sent to the Secretary of State for a decision to be taken on whether to order his extradition. The Secretary of State approved Dr. Mallya's extradition.

Dr. Mallya sought leave to file an appeal to the High Court against the decisions of the Magistrate Court and the Secretary of State under various grounds. Permission was refused on all grounds save one: the ground that the Magistrate Court was wrong to conclude that there was evidence" which would be sufficient to make a case requiring an answer by the person if the proceedings were the summary trial of an information against him".The thrust of Dr. Mallya's defence was that the Magistrate Court had erred in determining that the prima facie test had been satisfied and in admitting the evidence filed by Indian Government. The High Court rejected both contentions, it held that the Magistrate Court was correct in determining that there was a prima facie case and that Indian Government's evidence, including the witness statements under Section 161 of the CrPC, were admissible. The appeal was dismissed on 20 April 2020. Dr. Mallya's application seeking leave to file an appeal before the Supreme Court was dismissed on 14 May 2020. Consequently, unless Dr. Mallya is able to secure relief from the European Court of Human Rights, his extradition to India is now imminent<sup>15</sup>.

### **Diamond merchant NiravModi extradition case**

NiravModi, 49, is a diamond merchant who is facing charges of fraud and money laundering in India in connection with the Punjab National Bank (PNB) scam of approximately \$1.5 billion. NiravModi fled India when the PNB scam was unearthed, and multi agency probe began. NiravModi is currently lodged in a London prison. 'NiravModi is being probed by two agencies in India the Central Bureau of Investigation (CBI) and the Enforcement Directorate (ED). Nirav, Modi broadly faces three sets of criminal cases. The primary case against NiravModi relates to a large-scale fraud committed upon the PNB. He is accused of fraudulently obtaining several letters of undertaking (LoUs) to finance his loans from the PNB. The other set of charges involves money laundering. He is accused of laundering the money that he fraudulently secured from the PNB. The ED is probing this case. The Westminster magistrate court in London ruled in the favor of Indian Government and paved the way for extradition. NiravModi will exhaust all the legal remedies including appealing in higher courts as well as seeking asylum in the UK before Indian Authorities would be able to bring him back. The minister of External Affairs has said Indian Government will liaise with authorities in the United Kingdom for extradition of Nirav Modi<sup>16</sup>.

## CONCLUSION

Extradition is regulated within countries by extradition act and between countries by treaties and conventions. It is the act of making return theaccuse for the trial to requesting country where he committed the offence and fled away.It the great step toward international co-operation in this separation of crime.

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2. Oppenheim, L. *International Law, Volume-I*. 8th Edition. 696p.
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4. Starke, J.G. *Introduction to International Law*. 10th Edition; 1989. 352p.
5. 2 SCC 80, Para 16.
6. Collins, Edward. *International Law in a Changing World*. 1969. 216p.
7. Collins v. Loisel, 259 US 309 (1922).
8. 1 QB 108.
9. 4 SCC 516.
10. 11 SCC 214.
11. Oppenheim, L. *International Law*. Reference to note 2. 963p.
12. The Preamble of 1962 Act describes: "An Act to consolidate and amend the Law relating to the extradition of fugitive criminals and to provide for matters connected therewith or incidental thereto." The 1962 Act comprises 37 sections, divided into five chapters.
13. As per section 2(c) of the 1962 Act, an extradition treaty is a treaty between two or more nations that provides for the extradition from each of the countries to any of the others, of persons charged with specific offenses.
14. As per section 2(H) of the Indian Extradition Act 1962, a notified order refers to an order notified in the official gazette.
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