**International Criminal Law and Extradition**

“Criminal Law is gaining momentum as being an international field of law. Extradition is a part of International Criminal Law. Extradition is an act where one jurisdiction delivers a person accused or convicted of committing a crime in another jurisdiction, over to their law enforcement. Through Extradition, a government recovers from another government a fugitive offendor. It is wholly treaty based on the strategic relations of the party. Extradition is generally used to combat transnational organized crime. [[1]](#footnote-2)Some criminal offences, such as corruption offences and certain war crimes and associated allegations, can be prosecuted in a country that has little or no connection to the place where the offences are alleged to have occurred.[[2]](#footnote-3)”

“Law relating to extradition in India is governed by: the Extradition Act, 1962 and the Extradition Treaties obtaining between India and other countries. By virtue of Section 34 of the 1962 Act, the Extradition Act of 1962 has extra-territorial jurisdiction, that is, an extradition offence committed by any person in a 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. As per Section 216 of the Indian Penal Code, 1860 read with the Constitution of India, 1950 (Schedule VII, List I, Item 18), extradition may be defined as, the action of giving up a fugitive criminal to the authorities of the State in which the crime was committed.”

“In the case of Daya Singh Lahoria v. Union of India[[3]](#footnote-4), Supreme Court of India, expatiating over the importance of extradition law, stated the following, in authoritative terms: ―Extradition is a great step towards international cooperation 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 the international solidarity in the fight against crime.”

The principles albeit the law of extradition are as follows:-

1. **Principle of Double Criminality**

This principle (also known as Dual Criminality‘) states that, extradition is available only when the act in question is an offence in the jurisdictions of both the States (the requesting State and the State requested). The rationale behind this principle is that, the requested State should be at liberty to refuse to extradite the fugitive offender if they do not view the conduct of the fugitive offender as a criminal act.

1. **Principle of Speciality:**

An extradited individual can be tried only for offences specified in the extradition request; the object of this principle is to prevent blanket extradition requests. The requesting State pledges to judge the requested person only for the crime for which extradition was requested, and not for any other offence.13 As a matter of fact, post the surrender of a fugitive offender, he/she can expressly waive the rule of speciality, and can be tried for offences in addition to, or in furtherance of the offences qua which he/she was surrendered. Moreover, in certain cases, the requested State can agree to the fugitive offender being tried for other offences, in addition to offences apropos which the fugitive offender was surrendered to the requesting State.

1. **Political Exception:**

Request albeit extradition must be declined if the real purpose of the request made is to punish the person requested for his political opinion rather than for the crime committed by him. Political offences exception holds that a person cannot be extradited for an offence of political character. The term political offences has not been clearly defined in international law. What shall construe as a political offence, usually, depends on the domestic law of the requested State. It is generally accepted that, acts of terrorism do not fall under the exception of political offences, even if they are committed with political motive.

BARS TO EXTRADITION:

1. Failure to fulfill dual criminality

Generally the act for which extradition is sought must constitute a crime punishable by some minimum penalty in both the requesting and the requested states.

1. Political nature of the alleged crime

Many countries refuse to extradite suspects of political crimes.

1. Human rights and extradition

Human rights as a bar to extradition can be invoked in relation to the treatment of the individual in the receiving country, including their trial and sentence as well as the effect on family of the individual if extradition is granted. The repressive nature and the limitations of freedoms imposed on an individual is part of the extradition process and is the reason for these exceptions and the importance that human rights are observed in the extradition process. Therefore, human rights protected by international and regional agreements may be the basis for denying extradition requests, but only as independent exceptions.

According to Abu Salem Abdul Qayoom Ansari v. State of Maharashtra[[4]](#footnote-5), deportation and extradition are not the same. While deportation is a non- consensual order, extradition is entirely governed by existence of treaties. Bail is also not like the bail in the normal circumstances. As regards power to seek cancellation of Non-Bailable Warrants during the pendency of the Extradition Proceedings, The Madras High Court has adequately explained in State v. Subhash Chandra Kapoor[[5]](#footnote-6) that the same cannot be permitted, and only option that the accused has is to seek discharge from Central Government under Section 29 of the Extradition Act.

CONCLUSION:

Of all the factors that make for the power of a nation, the most important, however unstable, is its quality of Diplomacy and the nation’s backing which further strengthens the Diplomatic moves. But even the dominant nation has to make reasonable negotiations, using Sanctions or Assurances, in order to prevent the offended country from protesting the action.

1. https://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1072&context=bjcl [↑](#footnote-ref-2)
2. https://www.kingsleynapley.co.uk/services/department/criminal-litigation/international-crime-and-extradition [↑](#footnote-ref-3)
3. AIR 1978 SC 597 [↑](#footnote-ref-4)
4. (2011) 11 SCC 214 [↑](#footnote-ref-5)
5. 2012 SCC OnLine Mad 1801 [↑](#footnote-ref-6)