**EXTRADITION LAWS**

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**ABSTRACT**

Extradition is a process of handover a fugitive to a state with a jurisdiction based on reciprocity. No crime is left unpunished is a key principle of extradition. Extradition legislation of home country and extradition treaty guides extradition process between and among two or more countries. In fact, extradition provides a means and methods to transfer a person to a country with jurisdiction on the ground of involvement in any terrorizing and grave issues. Double criminality, jurisdiction, and rule of specialty are precondition of extradition. No person is a subject of extradition in case of the involvement of political offence. Coordination and cooperation required among the law enforcement personnel, prosecutors, and other government officials of two states in the process of extradition often helps countries avoid international tension and diplomatic crisis. Extradition is evidently a product of diplomacy and foreign relations, even though bilateral and multilateral treaties establish its existence. As the extradition involves surrendering of criminals by one country to another through diplomatic means, the interplay between the diplomacy and extradition becomes inevitable. Thus, this Research Paper deals with these constellation of topics under the law of extradition, discusses the primary principles governing extradition and it also focuses upon the conditions as to when extradition can be denied.

Keywords:

* Double Criminality,
* Extradition,
* Political Offence,
* Rule of Speciality,
* Fair Trial, and
* Jurisdiction.

**INTRODUCTION**

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**Jurist Oppenheim defines Extradition as** :

Extradition is a delivery of an accused or a convicted individual to the State on whose territory he is alleged to have committed or to have convicted of a crime, by the State on whose territory the alleged criminal happens to be for the time.[[1]](#footnote-1)

Extradition is a cooperative law enforcement process by which the physical custody of a person (i) Charged with committing a crime or,

(ii) Convicted of a crime whose punishment has not yet been fully served, is formally transferred, directly or indirectly, by authorities of one jurisdiction to those of another at the request of the latter for the purpose of prosecution or punishment, respectively.[[2]](#footnote-2)

Extradition is normally regulated by treaties, between countries. The concept where extradition is compelled by laws, such as among sub-national jurisdictions, it may be known as rendition, generally. It is an ancient mechanism, dating back to at least the 13th century BC, when an Egyptian Pharaoh, Ramesses II, negotiated an extradition treaty with a Hittite King, Hattusili III.[[3]](#footnote-3)

A sovereign (the requesting state) typically makes a formal request to another sovereign (the requested state) through the extradition process. The requested state may arrest the fugitive and subject him or her to its extradition process if the fugitive is found within the territory of the requested state and the extradition procedures to which the fugitive will be subjected are dependent on the law and practice of the requested state.

When one state or nation gives over an individual to another state or nation for purposes of criminal trial or punishment it is referred to as extradition. Federal law, as complemented by state laws, governs the extradition of fugitives from one state to another within the U.S. Treaties govern international extraditions between nations and groups of nations. Most nations refuse to extradite individuals for acts which would not be considered a crime locally and they might also not extradite individuals accused or convicted of certain political crimes in addition to having other procedural requirements. Some nations may also refuse to extradite individuals who might be subjected to torture or be given death penalty in the requesting country.

**EXTRADITION TREATIES OR AGREEMENTS**

As per Section 2(d) of the Extradition Act, Extradition treaty means 'a treaty, agreement, or arrangement with a foreign state relating to extradition of fugitive criminals'. An extradition treaty also spells out the conditions precedent for an extradition. It also includes a list of crimes which are extraditable.

Even in absence of a treaty, extradition may be permitted if it has the backing of the principle of reciprocity. The primary consideration for the request of extradition is the assurance of reciprocity. This principle has been upheld in a number of cases

A state is under no obligation to surrender an alleged criminal to a foreign state, because one principle of sovereignty is that every state has legal authority over the people within its borders. This is the consensus in international law. The desire for the right to demand such criminals from other countries and such absence of international obligation, have caused a web of extradition treaties or agreements to evolve. A sovereign may request the expulsion or lawful return of an individual pursuant to the requested state’s domestic law even when no applicable extradition agreement is in place. This can be accomplished through the immigration laws of the requested state or other facets of the requested state’s domestic law. In the absence of an extradition agreement, the codes of penal procedure in many countries contain provisions which still allow extradition to take place. Therefore, sovereigns may still request the lawful return or expulsion of a fugitive in the absence of an extradition treaty from the territory of a requested state. There is no country in the world that has an extradition treaty with all the other remaining countries; for example, the United States lacks extradition treaties with Russia, the People's Republic of China, Namibia, the United Arab Emirates, North Korea, Bahrain, and many other countries.

**OBJECTIVES OF EXTRADITION LAWS**

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In the current scenario crime is turning increasingly international. Now many serious offences have cross border implications. Criminals frequently cross borders in order to escape prosecution even in cases of traditional crimes. A State usually will not apply its criminal law to acts committed outside its own boundaries according to traditional principle of territoriality of Criminal Law. Nevertheless, there is a growing recognition that states should co-operate in the international battle against crime and show solidarity in repression of criminality. The states are usually willing to cooperate with each other in bringing perpetrators of crime to justice though States refuse to impose direct criminal sanctions to offences committed abroad (except exceptional situations of extraterritorial jurisdiction).

Consequently, in view of the growing internationalisation of crime, easy mobility and porous borders, a need was perceived to co-operate in legal processes for transfer of criminals, with a view to ensure that the rule of law is upheld and no crime goes unpunished. Therefore, the device of extradition evolved under the principle of comity of nations whereby one State would surrender a criminal to the other state for bringing him to justice in the country in whose jurisdiction the offence had been committed. It was realized that trial for a crime ought to be conducted in the vicinity of the crime, as this enables easy availability of evidence, and also a criminal is punished in the very vicinity of the original offence thus sending out a strong signal of deterrence and restoring the societal equilibrium, which the crime had upset.

Therefore, extradition is a means to resolve two apparently conflicting principles – firstly, that the criminal jurisdiction extends only to offences committed within geographical boundaries; Secondly, the rule that frowns over a crime or a criminal going unpunished on account of jurisdictional reasons.

On one hand, the law of extradition attempts to dovetail the competing imperatives of comity of nations (respect for a foreign court); and international crime control on the other. The harmonisation of these two principles are ensured, while at the same time, it guarantees the due process and protection of basic human rights of fugitives, along with the protection from persecution, inhuman treatment cruel punishment, and torture. This balance is seeked to be achieved by Extradition laws thereby laying down a procedure that is to be satisfied prior to surrender. A zealous approach with respect to protection of personal liberty and the right to life is reflected by these procedures. This includes a judicial inquiry by a Magistrate, followed by a decision of the Central Government. There are certain guidelines as to the exercise of this power within the Extradition Act and treaty obligations with specific states.

**EXTRADITION OFFENCE**

Section 2(c) defines Extradition Offence as :-

* Offence provided in the extradition treaty with the foreign states; (with respect to treaty states)
* an offence punishable with imprisonment not less than one year under India Law or law of a foreign state. (non treaty states)
* Composite offence - offence committed wholly, or in part, in India and Foreign State, which would constitute an extradition offence in India.

**PRINICPLES GOVERNING EXTRADITION**

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* **Principle of relative Seriousness of the offence** - Extradition is usually permissible only for relatively more serious offences, and not for trivial misdemeanours or petty offences. For instance, the extradition treaty between US and India permits extradition only for those offences which are punishable with more than one year of imprisonment (apart from the condition of dual criminality, which will be dealt a little later).
* **Principle of Reciprocity** in exchange of fugitives between requesting and requested State;
* **Principle of Dual Criminality** : This is the most important principle governing Extradition Law. This requires that the offence that the fugitive is alleged to have committed, should be an offence both in the requesting as well as the requested state (however, it may be noted that this refers to the substance of the offence and not the nomenclature given to it in a specific country, which may vary). For instance : In Quattrocchi's case - the request for extradition was declined as the CBI had not filed the requisite documents making out a specific case for extradition and had not satisfied the court as to the basic requirement of 'dual criminality'. To satisfy oneself as to the requirement of dual criminality, one has to examine the treaty between the two countries and see if the offence in question finds mention there.
* **Existence of prima facie case[[4]](#footnote-4) against the fugitive** : This is a safety valve to ensure, at-least on broad probabilities, the existence of a triable case against the fugitive. This is sought to be ensured by a magisterial inquiry that is to precede the actual surrender/extradition. If the case lacks merit on the face of it, extradition may be disallowed at the very outset.
* **Principle of proportionality between offence and sentence** : Requesting state should respect the principle of proportionality between offence and sentence and punishment for that particular crime should not be excessively harsh or inhuman, in which case extradition request may be declined. The possibility of a death sentence to the fugitive by the requesting state usually leads to the extradition request being turned down or allowed only after an assurance from the requesting state that death penalty will not be carried out.
* **Whether the fugitive is seeking asylum from political persecution and trial for an offence of a political character** : This requires an enquiry into whether the accused is likely to suffer political persecution or death sentence in the requesting country. In such cases extradition is disallowed. For instance, in the Indian Context, the provision of death penalty in India and alleged human rights violations in prisons/police torture have proved to be major hurdles in acceding extradition requests from India to other countries, especially the UK with the European Commission on Human Rights (ECHR) taking a strict note of the same.[[5]](#footnote-5)
* **Possibility of fair trial in requesting state, post surrender** - Before an extradition request is processed, it should be ensured that post-surrender the fugitive will get a fair trial in the requesting country. However, it may be noted that this entails only a broad examination of judicial procedures in the requesting state. This principle also needs to be read subject to the principle of non-inquiry, which stipulates that the judicial process in the requesting country is not to be subjected to finicky evaluations and fairness of judicial procedure in requesting country is not to be normally questioned.[[6]](#footnote-6) However, this is not an absolute principle and the requested state may question the procedure of the requesting state if the same is prima facie contrary to fundamental principles of justice and there is a high risk of fugitive being prejudiced by the process of extradition.[[7]](#footnote-7) The apprehension of denial of fair trial has to be substantiated with cogent material. In a case where a man chose to reside in USA, received his education and worked there, was not allowed to plead threat or denial of fair trial in US in order to evade extradition.[[8]](#footnote-8) In the context of extradition from UK, issues such as human rights violations in jails, minority rights, possible political motivation, have weighed heavily with UK authorities in not acceding to extradition requests made by India.[[9]](#footnote-9)
* **Rule of specialty**, that is to say, when a fugitive is extradited for a particular crime, he can be tried only for that crime. If the requesting state deems it desirable to try the extradited fugitive for some other offence committed before his extradition, the fugitive has to be brought to the status quo ante, in the sense that he has to be returned first to the State which granted the extradition and fresh extradition has to be requested for the crime for which the fugitive is sought to be prosecuted.

**CONDITIONS UNDER WHICH EXTRADITION CAN BE DENIED**

1. In case the government believes that the surrendering of the accused person is not being made in good faith, or in the interests of justice, or for political reasons, and that the case is trivial then the request can be denied.
2. If the surrender is barred by time in the law of the country which seeks extradition, then in that case the person can't be extradited from India.
3. The government can also stop the process if it is perceived that the person will be charged with an offence which is not mentioned in the extradition treaty.
4. The government can put extradition on hold if the person accused could be charged for a lesser offence disclosed by the authorities.
5. If the person is serving a jail term for an offence on Indian soil, which is different from the offence for which the person is wanted abroad, then also the extradition process can be stopped. Similarly if a fugitive criminal has committed an offence which is punishable with death in India, while the laws of the foreign state do not provide death for the same offence, the criminal will get life imprisonment in India.

**PROCESS OF EXTRADITION**

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1. **RECEIPT OF INFORMATION**

The process of extradition is set into motion by the receipt of Information/Requisition regarding fugitive criminals wanted in foreign countries. This information may be received :-

* Directly from diplomatic channels of the concerned country (along with the necessary information relating to the offence and the fugitive); or
* General Secretariat of ICPO-Interpol in the form of red notices;
* Other settled modes of communication.
1. **MAGISTERIAL INQUIRY**
* Where a requisition is received, the Central government may order an enquiry by a magistrate directing him to enquire into the case. The initial inquiry by the Central Government before ordering a magisterial inquiry need not be a detailed one[[10]](#footnote-10) No pre-decisional hearing is required to be given to the fugitive before ordering magisterial enquiry[[11]](#footnote-11) The function of the Magistrate under this Section is quasi judicial in nature. The magistrate directed to proceed with the enquiry need not have territorial jurisdiction.[[12]](#footnote-12)
* On receipt of order, the Magistrate shall issue a warrant of arrest of the fugitive criminal;
* Once the fugitive criminal appears, or is brought before Magistrate pursuant to the warrants, the magistrate inquires into the case.
1. **INQUIRY**

By inquiry it is meant that the Magistrate shall :

* take such evidence as may be produced in support of the requisition of the foreign state;
* take such evidence on behalf of the fugitive criminal, including any evidence to show that offence for which the fugitive criminal is accused or convicted is not a extraditable offence.

The word 'evidence' used here is not be construed as evidence in its strict legalistic sense and must be read in context of Section 10 of the Extradition Act.[[13]](#footnote-13) The Magistrate can receive depositions, exhibits, documents in evidence during the inquiry. Judicial documents stating facts, if duly authenticated, are also receivable in evidence. This includes depositions/orders of foreign courts. It is also well established that the requesting state has the locus standi in extradition proceedings considering it has a stake in success of extradition proceedings. Therefore, the requesting state may become party to and participate in the inquiry proceedings.

1. **PROVISIONS RELATING TO BAIL**
* The option of anticipatory bail as well as regular bail is available to the accused fugitive criminal. For the purposes of this section, the Magistrate is vested with the same powers and jurisdiction as Court of Session under the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C").
* As regards power to seek cancellation of Non-Bailable Warrants during the pendency of the Extradition Proceedings : The Madras High Court in State v. Subhash Chandra Kapoor[[14]](#footnote-14) has ruled 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**

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The process in which one state or nation hands over an accused person to another state or nation for criminal trial or punishment is known as Extradition. Federal law governs when states must extradite fugitives to other states. State courts generally may not delve into the underlying criminal charge for which another state has requested extradition. International extradition most often happens pursuant to extradition treaties between nations, and the laws and procedures of the nation considering the extradition request. Generally, the law of both nations must consider the actions alleged to constitute a crime. Many nations refuse to extradite for certain political crimes. Refusing to extradite a country's own citizen and refusing to extradite an accused person who might face torture or the death penalty in the requesting country are other common exceptions to international extradition

Extradition is a great step towards international cooperation in the suppression of crime. States should treat extradition as an obligation resulting from the international solidarity in the fight against crime. With the growing internationalisation of crime and judicial developments, extradition law is in a state of great flux.

The courts are grappling with myriad issues including: interpretation of treaties and arrangements vis-a-vis municipal extradition law, balancing of due process versus principle of adherence to comity of courts, the effect of a red corner notice, the role of international agencies, the interface of powers of deportation with extradition, etc. Jurisprudence in the area of extradition law is evolving at a rapid pace and it is hoped that the Indian Judiciary will match up to global standards and resolve the extremely vexing legal challenges posed to it.

1. Oppenheim's International Law, seventh edn, p 631 [↑](#footnote-ref-1)
2. Sadoff, David A. (2016-12-24). Bringing International Fugitives to Justice: Extradition and its Alternatives. Cambridge University Press. p. 43. ISBN 9781107129283. [↑](#footnote-ref-2)
3. Dan E. Stigall, "Ungoverned Spaces, Transnational Crime, and the Prohibition on Extraterritorial Enforcement Jurisdiction in International Law" [↑](#footnote-ref-3)
4. "Prima Facie" has a definite connotation in law. It is defined as "at First Sight"; as "accepted as so until proved otherwise" or "on face of it" or "So far as it be judged from the first disclosure". For a discussion on concept of 'prima facie' see Kamlesh Babulal Aggarwal v. UOI, 2008 SCC OnLine Del 533 [↑](#footnote-ref-4)
5. Her Majesty's Knights in Sullied Armour, Bhavna Vij-Aurora, Outlook, November-14, 2016. [↑](#footnote-ref-5)
6. Schmidt Case(1987) 1 SCR 500 [↑](#footnote-ref-6)
7. Abu Salem Abdul Qayoom Ansari v. State of Maharashtra & Anr. (2011) 11 SCC 214. [↑](#footnote-ref-7)
8. Kamlesh Babulal Aggarwal v. UOI, 2008 SCC OnLine Del 533. [↑](#footnote-ref-8)
9. Her Majesty's Knights in Sullied Armour, Bhavna Vij-Aurora, Outlook, November-14, 2016. [↑](#footnote-ref-9)
10. Pragnesh Desai v. Union of India and Anr, (2004) ILR I Del 95 (DB). [↑](#footnote-ref-10)
11. Nina Pillai (Smt) & Ors. v. UOI (1997) Cr LJ 2358 (Del) [↑](#footnote-ref-11)
12. Section 5 of Extradition Act overrides principle of jurisdiction laid down in Cr.P.C- see Rosiline George v. Union of India, (1994) 2 SCC 80 [↑](#footnote-ref-12)
13. Sarabjit Rick Singh v. UOI (2008) 2 SCC 417. [↑](#footnote-ref-13)
14. State v. Subhash Chandra Kapoor, 2012 SCC OnLine Mad 1801 [↑](#footnote-ref-14)