

Extradition in Indian Law and International Law

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Abstract- International law defines the Extradition - Procedure for surrendering the fugitive criminals in demanded state to punish fugitive criminals - explanation of the Indian Law (Extradition Act, 1962) and United Nation modern law for surrender proceeding in fugitive criminals and demanded state - Many circumstances refuse the extraditions in lack of procedural matter - Many of countries are signed in extradition treaty, but not effective - So explanation of the lack of procedural government decision and drawback of Judiciary role.

Keywords- Extradition, Asylum, Fugitive criminals, States, Punishment, Ministry of External Affairs (MEA), Consular, Passport and Visa (CPV), Government of India (GOI), and Magistrate.

I. INTRODUCTION

In International Law many scholars are said the definition in them. They are civilized states, individuals, institution are included in International Law, but this relevant topic not supported in International law in Extradition. Extradition many of the states are denied in some circumstance and lack of procedure, particular this topic fully deals with Indian and International Law procedure for surrender and punished in fugitive criminals. Decided in land mark cases and see by one by one sub-topics.

II. DEFINITION OF EXTRADITION

Extradition in a Latin word compressing of two words “Ex-Traditio”(give up or surrender), thus International Law delivers in one country to another country.

Oppenheim defines,

“Extradition is the delivery of an accused or convicted individual to the state on whole territory he is alleged to have committed or to have been convicted of a crime by the state on whose territory he happens for the time to be.”

i. TERLINDEN VS, AMES (1902)

Extradition is the surrender of one nation to another of and individual accused or convicted of an offence outside of its own territory and within the territorial jurisdiction of the other, being competent to try and punish him demands the surrender.

III. EXTRADITION UNDER INDIAN LAW

The British India, enact the limited kingdom Extradition Act (1870), followed by the Extradition Act (1903), in presently India Extradition Act, 1962.

i. EXTRADITION ACT, 1962

Section 3 – Application of the act,

- a. The Central Government notified the order, directs the provision, and other than Chapter III, shall apply foreign state and part.
- b. If no Extradition treaty made by India and foreign state, the central government may be notified order treaty and convention relevant by foreign state and parties, to providing for Extradition.

IV. EXTRADITION PROCEDURE IN INDIA

If the foreign state was requested the India, to surrender the fugitive criminal to submit the document of Ministry of External Affairs (MEA), consular, passport and visa (CPV), and Government of India (GOI). The government of India requires the magistrate (First class magistrate) to issue a arrest warrant.

The Magistrate issues the arrest warrant in some following aspect to verify the evidence.

- a. Fugitive criminal identity.
- b. Relevant document.

If the Magistrate was not satisfied, in not proper, prima facie evidence is not made out in support of requisition of foreign state; he shall discharge in fugitive criminal. If the Magistrate satisfied in prima facie evidence against the fugitive criminal, to file the case under goes judicial inquiry and remand in them. After shall be submitting the report of Government of India in written statement by the magistrate. Government of India satisfied in report to deliver the fugitive criminal in requesting state.

V. PROCEDURE FOR EXTRADITION TO INDIA

The process for the extradition of a fugitive criminal to India from the territorial state. The magistrate requests the prime facie establishment in against the fugitive criminal in CPV, division of MEA, GOI.

The magistrate forwards the formally sent in territorial state.

- a. The identity of the fugitive criminals.

- b. Whether the offence committed.

The territorial state, court issue the warrant against the fugitive criminals to intimate to the CPV/ Indian Embassy. Finally, concerned Indian law enforcement to travel to the escort in territorial state and arrest the fugitive criminal come back to India.

i. RESTRICTION UNDER SURRENDER

Section 31, Extradition Act, 1962 (the fugitive criminals shall not be surrendered).

- a. Offence of political character.
- b. If the prosecution for the offence being barred by time.
- c. If the accused of some offence in India, not being sought.
- d. After expiration 15 days from the date his being committed to prison by the magistrate.

India signed Extradition Treaty-

Currently, India has extradition treaties in force with 48 countries, and later signed in 12 Extradition Treaty.

VI. EXTRADITION IN INTERNATIONAL LAW

i. GENEVA CONVENTIONS AND THEIR ADDITIONAL PROTOCOLS (1949), it is recognized by the states cooperation in Extradition. Thereafter many of the countries of signed in treaties total 100 countries. Various countries have also incorporated provisions from extradition in their penal codes.

ii. THE UN MODEL TREATY ON EXTRADITION (1990), extradition related matters. Article 18, dealing the grounds refusal of extradition request, Rule of Specialty, etc. its priorities of the discretion of the territorial states.

iii. THE UN MODEL LAW ON EXTRADITION (2004), Section 5 & 6 – if countries are deemed or surrender the fugitive criminals, by the torturing or punishing on the basis of his caste, ethnic origin, race, etc. shall not be granted the Extradition.

VII. CHALLENGES AND PROCEDURAL PROBLEMS OF EXTRADITION

i. CHALLENGES OF EXTRADITION:

- a) India signed some specific country in Extradition treaties and challenges of India
- b) Another challenges delay proceeding and paper submit in fugitive criminals against Extradition process.
- c) Most of the fugitive criminals are political offender and business men to consent the legal opinion of lawyers and advocates looping hole of laws.

ii. PROCEDURAL PROBLEMS OF EXTRADITION:

- a) The international law general principles to leave determination of extradition in individual state.
- b) Each and every country facing the problems of extradition in fugitive criminals to consent political consideration, legal barriers and government.
- c) They are two level of verification in extradition by the government, final decision in his hands of the government. However the applicability of the procedures to present situation and question of law.

VIII. PURPOSE OF EXTRADITION

- a) To punish the home states, by the fugitive criminals.
- b) Surrender the criminals in demanded states.
- c) To punish the criminal offence in fugitive criminals.

IX. NEW PROBLEMS OF EXTRADITION BY PRACTICAL VIEW

- a) Asylum provided the territorial state problem of Extradition.
- b) Deny the Extradition treaty.
- c) Imbalance of procedure.
- d) Different laws of Extradition in International countries.
- e) Government decision.

X. LAND MARK CASES

i. VIJAY MALLAYA'S CASE

(Dr. Vijay Mallya vs. State Bank of India)

He is business tycoon and owner of King Fisher airlines and United Breweries holding ltd. He was the debt 6,000 crores in 17 banks in India. In 2016 Mallya went United Kingdom. India requests the Extradition in 2017 in UK. The UK west minister court in land on order 2018 Extradition to India. His appeals High Court of London was rejected. So he was declared in Fugitive economic offender and Fugitive Economic Offender Act, 2018.

ii. THE NIRAV MODI EXTRADITION CASE

Nirav modi was founder of the Firestar Diamond International. 2018 the complaint was filed by the Punjab National Bank. This case goes to CBI. He was committed offence Money Laundering in 11,400 crores. In June 2018, Interpol issued a red corner notice against Money Laundering. A Westminster Court issued an arrest warrant against Nirav modi. The court ordered in extradition to India 2021.

XI. CONCLUSION

So, this article explaining the procedural matters and lack of Government decision and question of law. They are many countries are signed the treaty, but not proper enforce in them. If the countries are developed in friendly relation in all worldwide foreign countries, automatically strong the extradition treaty, the fugitive criminals are not go in asylum for another countries.

REFERENCES:

1. <https://blog.ipleaders.in>
2. Dr. S.K.Kapoor – International Law-11th Edition-1996
3. Extradition laws / Full paper – Indian legal solution
4. Extradition law in India (helpline law.com)
5. Recent Extradition cases found by India – Law Insider India
6. Free legal news, Law Article, case updates – Law time Journal