

# An extradition set aside

**A recent judgment of the Kerala High Court stopping the extradition of an Indian national to the UAE will have wide-reaching consequences, says SANJEEV SIROHI.**

In a significant and positive development, the Kerala High Court on 21 December 2020 in a landmark, learned and laudable judgment titled Rakhul Krishnan vs the Union of India represented by Secretary, Ministry of External Affairs and eight others in WP (C) No. 13875 of 2020 (H) has rightly held that an international arrest warrant by itself will not suffice to arrest an accused and extradite him to UAE.

This judgment came in the matter of Sreejith Vijayan, who is an accused in a criminal case in Dubai which culminated in the issuance of international arrest warrant against him. Justice N Nagesh of Kerala High Court who authored this judgment pronounced in no uncertain terms that nationals of contracting states shall not be extradited unless there is a request made by the State concerned.

To start with, the ball was set rolling by stating that, "The petitioner has approached this Court seeking to direct respondents 1 to 4 to initiate action to implement Ext.P2 International Arrest Warrant as per the provisions of the Extradition Act, 1962 and to handover the 8th respondent to the Government of Dubai as per the provisions of the Extradition Act, 1962 and other enabling legal provisions."

While elaborating on the facts of the case, it is pointed out that, "The petitioner states that he was an NRI businessman doing business in Dubai, UAE. The 8th respondent befriended the petitioner claiming that he is a business partner of a well known hotel in Dubai. The 8th respondent borrowed an amount of Six Million UAE Dirhams from the petitioner as a financial help to his businesses. The 8th respondent promised to repay the amount before 10.06.2015. But, before the said stipulated date, the 8th respondent absconded to India without repaying the amount."

Elaborating further, it stated, "The petitioner would submit that the 8th respondent had borrowed money from several banks and other individuals in UAE and had absconded from UAE to India without discharging his debts. There are eight criminal cases registered against the 8th respondent by Dubai Police. The petitioner presented the personal guarantee cheque of 6 Million AED issued by the 8th respondent on 01.04.2016. The cheque was returned unpaid for insufficiency of funds. The petitioner filed a criminal case against the 8th respondent in Naif Police Station in Dubai. By Ext.P1, the Dubai Court convicted the 8th respondent for imprisonment for a term of two years. The petitioner initiated the procedure in Dubai criminal court to issue Interpol Red Warrant against the 8th respondent. An International Arrest Warrant was issued against the 8th respondent on 16.05.2018 as evidenced by Ext.P2."

To put things in perspective, it is stated that, "The petitioner would contend that the Government of Dubai has transmitted the



International Arrest Warrant to the 1st respondent for execution. Government of India has executed Extradition Treaty with the Government of United Arab Emirates. As per Article 2 of the said Treaty, a person sentenced by the court of the requesting State with the imprisonment for six months in respect of an offence, is liable to be extradited. The petitioner contended that the 8th respondent is a fugitive criminal and respondents 1 to 7 are liable to arrest and surrender the 8th respondent to the United Arab Emirates. However, the 8th respondent being an influential person, respondents 1 to 7 are not acting on the International Arrest Warrant. It is under such circumstances that the petitioner seeks interference by this Court."

What ensued then? "The Inspector General of Police, Crime Branch, Thiruvananthapuram Range, filed a Statement pursuant to the directions of this Court. In the Statement, it has been stated that in the case of extradition of an Indian national from India to UAE, the provisions contained in Article 5 of the Extradition Treaty is applicable. Article 5 of the Extradition Treaty reads as follows:-

"The nationals of the Contracting States shall not be extradited to the other Contracting State provided that the requested State shall submit the case to its competent authorities for prosecution if the act committed is considered as an offence under the laws of both Contracting States."

As a corollary, it is stated, "Therefore, the Inspector General would contend that for getting the fugitive extradited, the Government of UAE has to send a formal request to the Government of India through diplomatic channels, strictly as per the provisions of the Treaty and the Central Government will decide whether to extradite the subject or to submit the case to the competent authorities for local prosecution under Section 188 Cr.P.C. No such request or Ext.P2 International Arrest Warrant is received by respondents 5 to 7, contended the Inspector General of Police."

The judgment records: "On behalf of respondents 1 to 3, the Assistant Solicitor General of India filed a Statement. The ASGI stated that there is an Extradition Treaty between India and UAE currently in force. In terms of Article 5 of the Extradition Treaty, the nationals of the Contracting State shall not be extradited to the other Contracting State provided that the requested state shall submit the case to its competent authority for prosecution if the act committed is considered as an offence under the laws of both Contracting States."

Furthermore, it is noted that, "The ASGI further stated that as per Article 5 of India-UAE Extradition Treaty, the 8th respondent cannot be extradited to UAE. However, if an extradition request is made by UAE in respect of the 8th respondent, his case will be submitted to the competent authority for considering local prosecution in India."

It is stated that, "The 8th respondent also filed a counter affidavit in the writ petition. The 8th respondent contended that the Hon'ble Apex Court in Bhavesh Jayanti Lakhani v. State of Maharashtra [(2009) 9 SCC 551] has held that arrest of a fugitive criminal can be made at the instance of Central Government only when request to this effect is received from foreign country and not otherwise. In the case of the 8th respondent, there is absolutely no material to hold that the 8th respondent is a fugitive criminal under the Extradition Act or to hold that the Central Government has received any request from the UAE Government. The writ petition is therefore without any merit and is to be dismissed."

The judgment records: "Ext.P3 is the Extradition Treaty between the Government of the Republic of India and the United Arab Emirates signed at New Delhi on 25.10.1999. Article 5 of Ext.P3 Extradition Treaty reads as follows:-

"The nationals of the Contracting States shall not be extradited to the other Contracting State provided that the requested State shall submit the case to its competent authorities for prosecution if the act com-

mitted is considered as an offence under the laws of both Contracting States.' Therefore, it is evident that nationals of Contracting States shall not be extradited unless there is a request made by the State concerned."

In emphatic terms, the court found as follows: "The contention of the petitioner is that the Government of Dubai has issued an International Arrest Warrant in Case No.43177/Penal/2017 by Dubai Court ordering the arrest of the 8th respondent for pursuing him locally and internationally. Article 8 of Ext.P3 Extradition Treaty would show that the request for extradition shall be made in writing and dispatched through the diplomatic channels with supporting documents and particulars. The warrant of arrest is only one of the documents made mention of in Article 8 of the Extradition Treaty. In view of the specific provisions contained in the Extradition Treaty between the Government of Republic of India and the United Arab Emirates, an International Arrest Warrant by itself will not suffice to arrest an accused and extradite him to UAE. For extradition, definitely there should be a request for extradition in writing which should be dispatched through diplomatic channels. In the absence of such a request in terms of Article 5 of the Extradition Treaty, Ext.P2 International Arrest Warrant issued by the Government of Dubai would not be sufficient to apprehend the 8th respondent and extradite him to UAE. In the circumstances of the case, no orders can be passed or directions be given to respondents 1 to 7 to extradite the 8th respondent to UAE for prosecution. No relief can be granted to the petitioner in the circumstances of the case. The writ petition is therefore dismissed."

The judgment offers adequate reasons for not extraditing the accused to UAE. The process to extradite has been spelt out in detail and it as was not followed, and because the arrest warrant alone is insufficient, the petition was rejected. The judgment will have far-reaching consequences.

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## INTERVENTION BY THE COURT

**It took an initiative by Nepal's Supreme Court to force the government on laws for climate protection, say HARSH MAHASETH and PRANJAL RISAL**

The issue regarding environmental conservation has shifted from being a contemporary subject to an obligation for all. Despite political instability and slow economic growth, the current generation is more inclined towards tackling climate change because of its willingness to live in a clean environment. Likewise, the Supreme Court of Nepal has directed its government to enforce the Climate Change Act to promote transgenerational justice by emphasizing more on promoting sustainable development, reducing greenhouse emissions, and opting towards renewable sources of energy.

While giving out the judgement, the court-mandated a completely new law which would include rules for mitigation as well as adaptation measures. Similarly, the Court has noted that greenhouse gases are the main cause. Accordingly it directed the government to use minimum carbon-emitting technology and to search for possible sources of renewable energy to reduce the consumption of fossil fuel; forests areas are to be protected, and there shall be plantation activities to be conducted wherever necessary; to make policies for the public and private organizations working towards climate change; lastly, the announcing arrangements of scientific and legal instruments to evaluate and compensate those who have been adversely affected by pollution or environmental degradation.

In this landmark case titled Advocate Padam Bahadur Shrestha vs Prime Minister and Office of Council of Ministers and Others (2018) the petitioners discussed the alarming rise of Nepal's average temperature by an increase of 0.6 degrees every year which, as a consequence, makes the country prone to natural calamities due to its geographical features. Avalanche, drought, and unusual patterns of rainfall are a few of the issues that the nation has seen in recent years. Reflecting upon the following problems, the petitioners claimed the Climate Change Act to be an immediate need and demanded effective implementation of the Climate Change Policy, 2010, the National Adaptation Programme of Action 2010 and the National Framework for Local Adaptation Plan for Action, 2011 all over the nation to mitigate any further damage caused due to climate change, and set the restoration process in motion to avoid further impact on health, agriculture, physical infrastructure, and various other sectors.



The Supreme Court acknowledged the fact that Nepal, being a signatory to Paris Agreement on Climate Change, 2015, must fulfil its obligation to formulate climate change-related laws, which meet international standards. The Court also pointed out that Article 51(6) of the Constitution of Nepal, requires that the State must formulate preservation, enhancement and consumption-related policies with regard to natural resources and its preservation. The State must make approaches promoting sustainable development, renewable resources, environmental awareness, mitigation of risk arising from industrial and infrastructural development, preservation of biodiversity, the polluter pays principle and eradication of threat to the environment.

The Court gave its direction on 25 December 2018, and since then the Forest and Environment Ministry Secretary Mr. Bishwa Nath Oli has said that the Ministry is working on a total of eight laws that would either be formulated or be considered for an Amendment to make the country's environment laws more encompassing. Currently, the Ministry is discussing drafts of the Environment Protection Act, the Climate Change Act and the National Park and Wildlife Conservation Act to make them more inclusive of environmental conservation issues. These drafts clearly state all duties and responsibilities towards the various administrative organs, i.e. district, provincial, and federal.

Due to a lack of willingness from the respective departments, the petitioners filed a complaint before the Apex Court. Following the complaint, the Ministry of Federal Affairs and General Administration on 23 February 2020, more than a year after the Court order, wrote a letter to all local levels across the country to implement programmes related to climate change as per the existing laws. But still, there have been instances where local level governments are completely new to this issue and unaware of its impact.

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## HUMAN RIGHTS, DID YOU SAY?

**China's trial and imprisonment of a lawyer turned citizen journalist should open the eyes of the world to the brutality of its regime, says RAFIA ZAKARIA**

The early days of the novel coronavirus were soaked in unknowing. There was very little that was known about the virus, how it was transmitted, what symptoms it caused, how many had it and how many were dying of it. Some said that the Chinese government was hiding information to prevent the world from knowing how terrible the situation was. The city of Wuhan was the centre of the world's attention; the virus was supposed to have first jumped species at a wet market, moving from bat to rodent to human in the most lethal chain in modern history.

What was happening in Wuhan in those early days was a mystery, even as the whole globe — ordinary people, world-renowned epidemiologists and infectious disease doctors, world leaders — was hungry for information.

Amid this environment of darkness and fear, Chinese lawyer turned citizen journalist Zhang Zhan was a beam of light. A resident of Shanghai, Zhang travelled to Wuhan in the early days of the pandemic. In Wuhan, she became one of a few citizen journalists who made videos of what was happening inside the plagued city and posted them for all the world, not to mention the rest of China, to see. She made videos of the terrible overcrowding at hospitals and clinics. She made videos of the strictness of the lockdown and the people who were being punished by police for

minor violations of the lockdown rules.

Zhang was a critic of the Chinese government, its secretive ways and what she saw as mismanagement of the pandemic. "The government's way of managing this city has just been intimidation and threats. This is truly the tragedy of this country," the 37-year-old declared in one of her videos. Soon after this, she disappeared, messages to her went unanswered, and her social media accounts became inactive.

Eventually, her friends found out that Zhang had been arrested in May and taken to Shanghai, where she was being held under charges of spreading lies and making up false information. In prison, her lawyers said, Zhang began a hunger strike. In response, the Chinese government authorities force-fed her with a feeding tube. They restrained her arms to make sure she would not pull it out.

On 28 December 2020, as the novel coronavirus continued to rage around the globe, mutating into new and more transmissible forms, Zhang was tried in a court in Shanghai. When she was produced in court by prison authorities, she was in a wheelchair and was barely recognisable from her former self. The only words she spoke were a short statement saying that people's speech should not be censored.

Her condition did not stop the court from delivering judgement on the official

charges, which translate to "picking quarrels and provoking trouble". According to The New York Times, China uses this vague category of crime to punish all those that it perceives as critical of the government.

In the short sham of a trial, which very few people were permitted to attend, the judge easily found Zhang guilty. For the crime of sharing crucial and lifesaving information with the world at one of the most horrific moments in human history, she was sentenced to four years in prison. As the judge handed out the sentence, Zhang's mother, who had not seen her daughter ever since her arrest in May 2020, sobbed loudly.

It didn't matter, of course; the outcome of the trial had, like so many others in China, been predetermined. Zhang had dared to criticise the Chinese government, and for that she would have to suffer, be restrained and force-fed, and be imprisoned for four long years.

Along with Zhang Zhan, other critics of the Chinese government who have dared speak out about its ability to manage the pandemic were also arrested. Most of them, however, have been released, yet Zhang appears to have been handed down the harshest prison sentence, perhaps because she is not willing to admit that what she did was wrong.

Indeed, it was not wrong at all. Zhang provided a glimpse into Wuhan, the epi-

centre of the global Covid-19 pandemic, at a time when many were not even sure there was a new virus. While the Chinese government denies it, it is not known whether they would have admitted to the fact that there was a novel coronavirus that may have originated in a wet market in Wuhan at all. While they would not be able to hide it forever, the early leaked videos produced by Zhang likely created crucial pressure that forced the Chinese government to come clean.

Once upon a time, the international human rights framework ensured that women like Zhang who performed such a valuable service for the world would not be punished and left to languish in a Chinese jail. Human rights advocates would ensure that her case received attention and demand that the Chinese government release her. The failure of that system can be witnessed by the simple fact that, one week after the European Union issued a statement criticising the Chinese government for its treatment of Zhang, they turned around and signed a trade treaty with the very same government.

People often praise China by saying that it is unstoppable in its march towards world domination. They neglect to mention that China is also unstoppable in this other way, punishing the brave truth-tellers who put the welfare of the world before their own self-interest. Zhang's story should provoke some questions about all the other truths that are successfully suppressed by the Chinese government. An emerging superpower that cares more about image rather than truth is unlikely to be concerned with anything except its own survival.

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