

An analysis of extradition laws

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Extradition is that the process by which one state, upon the request of another, affects the return of an individual for trial for a criminal offense punishable by the laws of the requesting state and committed outside the state of refuge.

The Supreme Court defined extradition because the delivery on the a part of one State to a different of these whom it's desired to affect for crimes of which they need been accused or convicted and are justifiable within the Courts of the opposite State.

Extraditable persons include those charged with a criminal offense but not yet tried, those tried and convicted who have escaped custody, and people convicted in absentia.

EXTRADITION LAW IN INDIA:

In India, the extradition of a fugitive criminal is governed under the Indian Extradition Act, 1962. This is for both extraditing persons to India and from India to foreign countries. The basis of the extradition might be a treaty between India and another country . At present India has an Extradition treaty with quite 40 countries and Extradition agreement with 11 countries.

What is Extradition Treaty:

Section 2(d) of The Indian Extradition Act 1962 defines an 'Extradition Treaty' as a Treaty, Agreement or Arrangement made by India with a far-off State, concerning the extradition of fugitive criminals which extends to and is binding on India. Extradition

treaties are traditionally bilateral in character. The consensus in law of nations is that a state doesn't have any obligation to surrender an alleged criminal to a far-off state, because one principle of sovereignty is that each state has legal authority over the people within its borders. Such absence of international obligation, and therefore the desire for the proper to demand such criminals from other countries, have caused an internet of extradition treaties or agreements to evolve. When no applicable extradition agreement is in situ , a sovereign should request the expulsion or lawful return of a private pursuant to the requested state's domestic law.

This can be accomplished through the immigration laws of the requested state or other facets of the requested state's domestic law. Similarly, the codes of penal procedure in many countries contain provisions allowing extradition to require place within the absence of an extradition agreement. Sovereigns may, therefore, still request the expulsion or lawful return of a fugitive from the territory of a requested state within the absence of an extradition treaty.

Principles Followed:

The extradition applies only to such offences which are mentioned within the treaty.

It applies the principle of dual criminality which suggests that the offence sought to be an offence within the national laws of requesting also as requested country.

The requested country must be satisfied that there's a clear case made against the offender.

The extradition should be made just for the offence that extradition was requested.

The accused must be given a good trial.

NODAL AUTHORITY:

Consular, Passport and Visa Division of the Ministry of External Affairs, administers the Extradition Act and it processes incoming and outgoing Extradition Requests.

IMPLEMENTATION:

Extradition are often initiated within the case of under-investigation, under-trial and convicted criminals.

In cases under investigation, abundant precautions need to be exercised by the enforcement agency to make sure that it's in possession of clear evidence to sustain the allegation before the Courts of Law within the Foreign State.

NEED AND IMPORTANCE OF UNDERLYING PHILOSOPHY OF THE LAW OF EXTRADITION:

Crime is increasingly turning international. Many serious offences now have cross border implications. Even in cases of traditional crime, criminals frequently cross borders so as to flee prosecution. Consistent with traditional principle of territoriality of legal code, a State won't usually apply its legal code to acts committed outside its own boundaries. However, there's a growing recognition that states should show solidarity in repression of criminality and co-operate within the international battle against crime. Though States refuse to impose direct criminal sanctions to offences committed abroad (except exceptional situations of extraterritorial jurisdiction), the states are usually willing to cooperate with one another in bringing perpetrators of crime to justice.

The device of extradition therefore, evolved under the principle of comity of countries whereby one State surrenders a criminal to the opposite state for bringing him to justice in country in whose jurisdiction offence was committed. It had been realised that trial for a criminal offense need to be conducted within the vicinity of the crime; this not only enables easy availability of evidence, but a criminal offense punished within the very vicinity of the first offence sends out a robust signal of deterrence and restores societal equilibrium, which the crime had upset.

Extradition, therefore, may be a means to resolve two apparently conflicting principles – first being that – criminal jurisdiction extends only to offences committed within geographical boundaries; Secondly, the rule that frowns over a crime/criminal going unpunished on account of jurisdictional reasons.

PROCESS OF EXTRADITION:

Receipt of data

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

Directly from diplomatic channels of the concerned country (along with the required information concerning the offence and therefore the fugitive); or

General Secretariat of ICPO-Interpol within the sort

Other settled modes of communication.

MAGISTERIAL INQUIRY:

Where a requisition is received, the Central government may order a search by a magistrate directing him to enquire into the case. The initial inquiry by the Central Government before ordering a magisterial inquiry needn't be an in depth one. No pre-decisional hearing is required to tend to the fugitive before ordering magisterial enquiry. The function of the Magistrate under this Section is quasi-judicial in nature. The magistrate directed to proceed with the enquiry needn't have territorial jurisdiction.

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.

UN CONVENTIONS:

Certain conventions of the United Nations (“UN”) also include provisions for extradition (for facing prosecution as also for serving sentence), which are recognized by India because it may be a signatory to such conventions. These conventions are multilateral treaties entered into by several countries primarily to market cooperation between such countries so as to curb trading of illicit drugs, terrorism, concealment and trafficking. Increasingly, there’s a bent of investigation agencies to invoke the provisions of those conventions, within the absence of a treaty or where the extradition treaties aren’t likely to yield productive result.

An example of UN conventions to which India may be a signatory, is that the UN Convention Against Corruption (“UNCOC”), which deals with offences of and concerning corruption, and therefore the UN Convention against Transnational Organised Crime (“UNCTOC”), which deals with offences of and concerning transnational organised crimes like trafficking. Article 44(2) of the UNCOC prescribes extradition of persons albeit the offences imagined to be committed within the requesting country aren’t offences within the requested country and the other way around (i.e. an individual are often extradited even without meeting the condition of dual criminality, which may be a prerequisite in most of the extradition treaties). Furthermore, Article 44(13) of the UNCOC stipulates that if extradition, looked for purposes of enforcing a sentence, is refused because the person sought may be a national of the requested State, the requested State shall, if its domestic law so permits and in conformity with the wants of such law, upon application of the requesting State, consider enforcement of the sentence imposed under the domestic law of the requesting State or the rest thereof.

FUGITIVE ECONOMIC OFFENDERS ORDINANCE:

India has recently promulgated the Fugitive Economic Offenders Ordinance, 2018 (“Ordinance”) on April 21, 2018, which allows initiation of varied actions against “fugitive economic offender”, who flees the country after defaulting on multi-crore bank loans and similar instances of fraud. “Fugitive economic offender” is a private against whom a bench warrant concerning a scheduled offence has been issued by any court in India, who have left India so as to avoid prosecution, or being abroad, refuse to return to India to face prosecution. Schedule offence means an offence specified under the schedule to the Ordinance, if the entire value involved in such offence(s) is Rs. 100 crores or more. Under the Ordinance, certain authorized officers can file an application within the special court for declaring such persons as fugitive economic offenders. The aforesaid officer also can, with the permission of the special court, provisionally order attachment of such persons’ properties, even before filing aforesaid application provided an equivalent is filed within 30 days from the attachment date. Such authorized officers have also been empowered to conduct survey and inspection, search and seizure of the offender’s properties. Once the

accused are declared as fugitive economic offenders, the special court has the facility to order confiscation of their proceeds of crimes and properties in India also as abroad by the Indian Government.

CONCLUSION:

Despite the extensive statutory framework and dealing machinery in situ to extradite persons from abroad into India, only 65 fugitives are extradited to India since the year 2002 and it's evident that the surrender process is sort of cumbersome and tedious, often taking years to finish and, in some cases, they even remain unsuccessful. Needless to mention, it enables the fugitive criminals accused of offences in India, to evade arrest and prosecution for years on end. The Ordinance may be a step within the right direction but the future benefits of the Ordinance and its ability to encourage the foreign States to increase cooperation to India to expedite the extradition process remains to be seen.

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