

**DE JURE NEXUS LAW JOURNAL**

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**STATE SOVEREIGNTY AND CONTEMPORARY COMPLICATIONS IN  
EXTRADITING THE FUGITIVES**

**INTRODUCTION**

The bygone aphorism, ‘None can skedaddle the long arm of the law’ is proved untrue by the law of extradition. The individuals manifest themselves in vicious activities and with the advent of globalization it’s turned out to be uncomplicated to escape to another country to surpass prosecution. Extradition is defined as the process by which one State upon the request of another surrenders to the latter a person found within its jurisdiction for trial and punishment or, if he has been already convicted, only for punishment, on account of a crime punishable by the laws of the requesting State and committed outside the territory of the requested State.<sup>12</sup> The law of extradition has risen to supreme importance to suppress cross border crimes and restraint fugitives and prosecute them.<sup>3</sup>

**APERTURE IN THE EXTRADITION AGREEMENT**

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<sup>1</sup>Pandey, Akhilesh Kumar, *Extradition Law and Policy in India*, Shodhganga, 118 (2014).

<sup>2</sup> See: P. Ramanatha Aiyar’s Concise Law Dictionary, Lexis Nexis, Fifth Edition, 476.

<sup>3</sup> Abegunde Babalola, *Extradition under International Law: Tool for Apprehension of Fugitives*, Journal of Law, Policy and Globalization, Vol. 22 (2014).

The sources of Extradition is purely based on the treaties,<sup>4</sup> regional conventions<sup>5</sup> and country's co-operation<sup>6</sup> in extraditing the fugitive but it has become complicated as many countries reject the request made for the extradition. A number of countries would look into its own interests before handing over the alleged persons as USA declined to extradite Warren Anderson<sup>7</sup> and a few are bound to abide by its domestic laws,<sup>8</sup> European countries often reject the extradition orders based on the inhumane,<sup>9,10</sup> torture,<sup>11</sup> unsatisfactory and undue delay caused in assurances to the host country<sup>12</sup>, prison conditions<sup>13</sup> and violation of human rights<sup>14</sup> by the requested country in prosecuting the offender under the article 3 of the European Convention on Human Rights,<sup>15</sup> in the same sense the domestic laws of the country are given supremacy in regard to accepting or rejecting the extradition orders.<sup>16</sup> The Principle of specialty<sup>17</sup> and double criminality<sup>18,19</sup> is also subjected to an assortment of troubles in extradition, if the act committed in the requesting country is not an offense in the country where fugitive is found<sup>20</sup> then the extradition request can

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<sup>4</sup> Formal contract between states or international organizations. The state parties to the treaties are binding from international law. The state parties are legally bind by the treaty through ratification.

<sup>5</sup> A treaty of multi-lateral nature but less formal than a treaty that covers particular matters.

<sup>6</sup> Antje C. Petersen, *Extradition and the Political Offense Exception in the Suppression of Terrorism of Terrorism*, Indiana Law Journal: Vol. 67: Iss. 3, Article 6., 771 (1992).

<sup>7</sup> The Hindu, <https://www.thehindu.com/news/national/India-U.S.-rejected-Anderson-extradition-plea-wanted-more-evidences/article16242250.ece> (last visited Oct. 19, 2020, 11: 52 AM).

<sup>8</sup> UK rejects two Indian extradition requests, [http://timesofindia.indiatimes.com/articleshow/61516020.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/61516020.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (last visited Oct. 19, 2020, 12:07 AM.).

<sup>9</sup> Soering v. United Kingdom, 161 Eur. Ct. H. R. (ser. A) (1989).

<sup>10</sup> William Magnuson, *The Domestic Politics of International Extradition*, Texas A&M University, 52 Va. J. Int'l L. 839, 853 (2012).

<sup>11</sup> The Eastern High Court has rejected an extradition on the grounds that Neil Holck risks being subjected to torture.

<sup>12</sup> Business Standard, [https://www.business-standard.com/article/pti-stories/uk-high-court-dismisses-india-s-appeal-in-murder-extradition-case-120020601892\\_1.html](https://www.business-standard.com/article/pti-stories/uk-high-court-dismisses-india-s-appeal-in-murder-extradition-case-120020601892_1.html) (last visited 26 Nov., 2020 9:32 PM).

<sup>13</sup> Daniel J. Sharfstein, *European Courts, American Rights: Extradition and Prison Conditions*, Brooklyn Law Review 67, no. 3, 745(2002).

<sup>14</sup> Abu Salem Abdul Qayoom Ansari v. State of Maharashtra & Anr. (2011) 11 SCC 214.

<sup>15</sup> Article 3 of the European Convention on Human Rights, prohibits torture and "inhuman or degrading treatment or punishment".

<sup>16</sup> *Bhavesh Jayanti Lakhani v. State of Maharashtra*, (2009) 9 SCC 551. ("The municipal laws of a country reign supreme in matters of extradition. It is thus for the State concerned to take a decision in regard to such Notices, keeping in view the Municipal Laws of the country.")

<sup>17</sup> In the case of *Daya Singh Lahoria v. Union of India*, (2001) 4 SCC 516, the Apex Court stated as follows: "A fugitive criminal brought into this country under an extradition decree can be tried only for the offences mentioned in the extradition decree and for no other offence and the criminal courts of this country will have no jurisdiction to try such fugitive for any other offence."

<sup>18</sup> Double criminality would be satisfied if it is demonstrated that the crime for which extradition is demanded would be recognized as substantially similar in both countries.

<sup>19</sup> *Factor v. Laubheimer*, United States Marshal, et al. 290 U.S. 276.

<sup>20</sup> *R. v. Governor of Pentonville Prison, ex parte Bud-long and Kember*, [1980] 1 W.L.R. 1110.

be rejected.<sup>21</sup> The double or dual criminality is based on the maxim “*nulla poena sine lege*”, which translates to “*no punishment without law*” which contradicts the Latin maxim “*Aut dedere aut judicare*” which translates to “*either extradite or prosecute*,” so the predicament in extradition has become even more complicated as the state cannot extradite as the committed offence is not crime and also cannot prosecute because there is no law to punish the fugitive. The military and political crime<sup>22</sup> is an exception to law of extradition and the host country is not bound to extradite the fugitive<sup>23</sup> and “non bis in idem”<sup>24</sup> is also a one amongst the rationale for rejecting extradition orders<sup>25</sup> as USA rejected to extradite David Headley to India<sup>26</sup>. In various instances, several countries do not hand over their citizens to the foreign courts to protect their subjects. The treaties between the countries “barring extradition of own nationals”<sup>27</sup> (the principle of reciprocity)<sup>28,29</sup> and non-cooperation or rivalry amongst countries set a perfect example for letting off the heinous criminals plays a vital role in nurturing the fugitives over the years. From the above principles, rules and laws it is evident that extradition procedure is quite cumbersome, monotonous and delayed, success rate of extradition in India is abysmally low as India was able to extradite only 65 fugitives till now<sup>30</sup> but this is not surprising as extradition process is a sovereign and territorial integrity decision and these loopholes are used by the

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<sup>21</sup> Collins v. Loisel, 259 U.S. 309 (1922).

<sup>22</sup> Ministry of External affairs, Government of India, <https://www.mea.gov.in/extradition-faq.htm> (last visited Oct. 19, 2020, 3:41 PM).

<sup>23</sup> In Re Castioni Case 1891, (1891), Q.B. 149.

<sup>24</sup> Double jeopardy

<sup>25</sup> The Times of India, <https://timesofindia.indiatimes.com/india/mumbai-attack-convict-headley-cannot-be-extradited-to-india-rana-faces-extradition-us-attorney/articleshow/76657401.cms> (last visited Oct. 19, 2020, 3:10 PM).

<sup>26</sup> BBC news, <https://www.bbc.com/news/world-asia-india-21192257> (last visited Oct. 19, 2020, 4:28 PM).

<sup>27</sup> *Maria Stella Rene v. Inspector of Police, CBI/SCB*, CrI. R.C. No. 602 of 2016 and *Mohammed Jafeer v. The Government of India, rep. by the Assistant Director (I), CBI and Ors*, Habeas Corpus Petition No. 1243 of 2005.

<sup>28</sup> In practice, India follows dual system, by extraditing nationals on the basis of reciprocity. If the other treaty State does not extradite, India also bars extradition of own nationals. The following table lists the countries to which extradition of Indian Nationals is barred by the bilateral Extradition Treaty. For ex. France (shall not be extradited), Germany (shall not be extradited), Spain (shall not be extradited), UAE (shall not be extradited), Saudi Arabia (may not be extradited), Bahrain (may not be extradited), Belarus (may not be extradited) etc.,

<sup>29</sup> Ministry of External Affairs, <https://www.mea.gov.in/extradition-faq.htm> (last visited on Nov 23, 2020 10:10 AM).

<sup>30</sup> [Seema Jhingan](#) and Monica Benjamin, Indian Extradition Law – Process For Seeking Extradition Of Persons From Foreign States, Mondaq (last visited on Oct. 19, 2020, 3:54 PM).

fugitives to evade prosecution, in fact it gives a confidence to every offender to commit additional crimes as fugitives subvert the nation's criminal justice system.

### **'SOVEREIGNTY EQUALITY PRINCIPLE' SERVING AS A HIDEOUT FOR CRIMINALS**

The concept of sovereignty in the International realm is that of creating and formulating the aspect of statehood in the international community which would possess the rights and duties after satisfying the established standards. This would also indirectly mean that the other states are restricted from intervening in the domestic relations of the state<sup>31</sup>. The 'independence from other states' became a fundamental and exclusive principle of the sovereign states. The concept of jurisdiction is directly linked to the notion of Sovereignty as the jurisdiction is an outcome of law which is made by the sovereign states which is applicable within its territory. The state can only request the other states for extradition but it cannot force the extradition in any situation, this kind of situations gives arise to nurture the criminals in fleeing to another country.

### **UPSHOTS OF PRINCIPLE OF SOVERIGNTY**

1. Exclusive and absolute jurisdiction over the state's territory and its permanent subjects
2. A obligation of non-involvement and non-intervention over the other sovereign state's jurisdiction

Each respective country exercises absolute jurisdiction over the offence committed by an offender within its territory but it is crucial and challenging when the offender escapes to another country to evade prosecution. The country finds it very difficult to get hold of the person to prosecute because affected country is powerless to exercise its jurisdiction over another sovereign country. These inimical situations cause tensions to the country's peace and order, agony in common public and delayed or denied justice to the victims<sup>32</sup>. "Usually states have

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<sup>31</sup> E. Lauterpacht (ed.), International law, Collected Papers of Hersch Lauterpacht, Vo/.3, The Law of Peace, Part II-VI (Cambridge University Press, Cambridge, 1977) at p.7.

<sup>32</sup> The Nambian, <https://www.namibian.com.na/131269/archive-read/Extradition-Act-sets-bar-too-high>, apr 12 8:26pm - In spite of the Indian police are alleging that they have evidence that Furic committed sexual acts with four children in the Indian state of Odisha (Orissa) near the end of November 2013, the Indian extradition request that was sent to the Namibian government did not meet some of the strict requirements set out in the Extradition Act. Some of the witness statements that formed part of the extradition request were not certified as translations done by a sworn translator, and documents in the extradition request were also not properly authenticated as

always upheld their right to give asylum to foreign nationals as an inference from their territorial supremacy, those cases where a treaty imposes an obligation to extradite.”<sup>33</sup> In the light of the Extradition practice, the countries have always been stuck between protecting the individual rights and sovereignty and integrity interests. The equilibrium of the two has to be assured for the safe governance of the country but it has failed because most of the situations has proved the

### Is there an international duty to extradite fugitives?

The international law does not impose or compel states to extradite the fugitives, it is the discretion of the states to either extradite or refuse the request. In spite of extradition agreements and arrangements between the countries, the country can still refuse the extradition request from the government<sup>34</sup>. It can happen both ways; there are a situation where in a country has extradited a fugitive even without a bilateral agreement and there are situations when countries have refused to extradite in spite of having an agreement<sup>35</sup>. The fact that the states are member to the bilateral treaty which has provisions regarding to the process of extraditing an alleged offender will not establish a legal duty or obligation to surrender the fugitive to the requesting state by default.

### **GEO-POLITICS AND BODY OF LAWS AMONGST NATIONS**

The complications of extradition are ever entirely legal issues, they are perpetually political.<sup>36</sup>The extradition agreements or arrangements are subjected to geographical boundaries, domestic politics, respective country's laws, and relations between the countries<sup>37</sup>. The

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required in terms of the Extradition Act, this has now resulted in the failure of an attempt to extradite a French citizen to India, where he is wanted over alleged sexual offences involving children.

<sup>33</sup> Oppenheim, “International Law,” p. 250.

<sup>34</sup> Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta and ors., AIR 1955 SC 367-It was held that the Government of India is not bound to comply with the request and has an absolute and unfettered discretion to refuse.

<sup>35</sup> Economic Times, <https://economictimes.indiatimes.com/news/politics-and-nation/uk-rejects-2-indian-extradition-requests/articleshow/61516434.cms> (last visited April 5<sup>th</sup> of 2020, 8:43 PM).

<sup>36</sup> Ashley J. Tellis, It Won't Be Easy To Extradite Anderson, CE, June 26, 2010.

<sup>37</sup> The NDTV, <https://www.ndtv.com/india-news/india-lists-50-most-wanted-fugitives-hiding-in-pakistan-455512>, apr 13 2:56.- India today released a list of 50 "most-wanted fugitives" hiding in that country. The list includes underworld don Dawood Ibrahim, 26/11 mastermind and LeT founder Hafiz Saeed and dreaded terrorist Zaki-ur-Rehman Lakhvi and has been given to the Pakistan government, which has continuously denied that terrorists and criminals that India wants are hiding there. Hafiz Saeed, who is involved in Mumbai terror attack and various other attacks in India, tops the list which also includes Jaish-e-Mohammed chief Maulana Masood Azhar, the main accused in the 2001 Parliament attack case. He was released in exchange of hostages in the Khandhar hijack episode

extradition agreements basically are bilateral and the processes are governed exclusive by the treaties except in special cases<sup>38</sup> so, this aspect is considered to be the prima facie loophole in the process of extraditing a fugitive because the limitations, conditions and restrictions on extraditing a fugitive is been constructed predominantly for the nations' welfare and interest but eventually this has been exploited by the fugitives to evade prosecution.<sup>39</sup> "The inability of a state to exercise its jurisdiction within its territory of another state would seriously undermine the maintenance of law and order if there is no co-operation in the administration of justice".<sup>40</sup> The Extradition law does not speak the inherent legal and geographical variance allied to the existing process of extraditing fugitives which is of significant concern and results in sluggish, cumbersome, politically susceptible, and doctrinally technical.

The foremost principles of Extradition based on the practice:

1. The consolidated responsibility to combat the criminal activities
- 2.
3. Ensuring the safe and secure prosecution of the fugitive with the basic fundamental rights.
4. Due regard to the sovereignty and integrity of the nations
5. Fulfillment of the criteria set out by the countries
6. To keep check on the evaders from the prosecution

### **INTERNATIONAL UNIFIED EXTRADITION LAW-NEED OF THE HOUR**

The extradition law faces too many loopholes and lacuna in prosecuting the fugitives, the domestic laws paves a way for delaying the extradition. One such example is UK, wherein the

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in 1999. The government's action comes in the midst of acute discomfort for Pakistan which has been tying itself in knots over the charge of sheltering Al Qaeda chief Osama bin Laden, who was killed in a unilateral US Special Forces action in Abbottabad on May 2. The list includes names of Al Qaeda operative Ilyas Kashmiri, who is accused of transnational crime and conspiracy to commit various terrorist acts in India, close associates of Dawood Ibrahim, Memon Ibrahim alias Tiger Memon, Shaikh Shakeel alias Chhota Shakeel, Memon Ayub Abdul Razak, Anis Ibrahim Kaskar Shaikh, Anwar Ahmed Haji Jamal and Mohammed Ahmed Dosa, all involved in the 1993 serial bombings in Mumbai. The Pakistan has become a haven for the criminals for hideout.

<sup>38</sup> State of Madras v. C.G. Menon, AIR 1954 SC 517.

<sup>39</sup> Robert Herbert Woods, Jr., "Extradition: Evaluating The development, Uses And Overall effectiveness Of The System", Regent University Law Review, Vol. 3:43, p.45.

<sup>40</sup> Edward Collins, "International Law in a changing world," 1969, p. 216.

fugitive can exhaust all the remedies available<sup>41</sup> <sup>42</sup>thus delaying the process<sup>43</sup>. The rivalry and non-treaty amongst nation's results in failure in carrying out justice to the victims, at times it turns out to be a threat to security, peace and order of the nations. The traditional treaty used to list out the extraditable offences which was changed to double criminality for efficient extradition process but still it endured problems. The jurisdictional problems over arresting the fugitive on alien country's soil is the foremost complicated issues in extradition as it would amount to encroachment of powers and violate the principles of nationality, territorial integrity and sovereignty of the nations. The principle of Reciprocity is one of the evil practiced by nations in extradition as it would render the agreement meaningless as many fugitives would surpass the prosecution. The biased act towards certain fugitives and nation's protecting their interests also amounts to failure of justice system. The law of extradition, a law to prevent or embolden the fugitives?. It is high time that nations have to be awakened in strengthening the extradition process. Crime is a crime irrespective of the nation offender is, he must be prosecuted and punished.

Formulation of international unified extradition law without the ratification shall apply to nations directly. This international unified agreement will have police personnel, International Penal Code and International Extradition court to try the offence with the set of impartial judges thus bringing down the extradition complications which would result in failure of justice. In this regard the crime will be treated as crime because often crimes are related to nation's interest, political aspects and other terms and conditions of the countries which are too complicated to prosecute and punish an alleged person. When a crime is looked at its purest form and punished according to the punishments prescribed in the International Penal Code, the justice will be served and crime can be abated.

## **CONCLUSION**

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<sup>41</sup> The new Indian Express, <https://www.newindianexpress.com/nation/2020/oct/09/uk-tells-india-mallya-cant-be-extradited-till-resolution-of-secret-legal-matter-220775> (last visited Oct. 29, 2020, 11: 12 PM.)

<sup>42</sup> The Times of India, <https://timesofindia.indiatimes.com/topic/dawood-ibrahim>, (In 2003, the Indian and United States governments declared Ibrahim a "Global Terrorist.")

<sup>43</sup> Hindustan Times, <https://www.hindustantimes.com/india-news/uk-refuses-to-extradite-dawood-ibrahim-aide-and-gujarat-blasts-accused-tiger-hanif-to-india/story-bgUtEeEtehmBfE6uVI5GQK.html> (last visited Oct. 29, 2020, 11: 30 PM.)

The bilateral treaties are subjected to various loopholes which has adverse effects on the criminal justice system as there many criminals who have surpassed the prosecution which results in denied justice to the victims. The significant purpose of extradition is to keep a check on the persons evading the prosecution and bring back those who flee but in reality the purpose is not served. This is due to the inherent legal and political complications in extradition and these are been used by the fugitives to evade prosecutions. To combat these situations, there must be international extradition law to prosecute criminals impartially irrespective of the country they belong to. They must be convicted solely based on the crime committed; this would disregard the jurisdictional aspects amongst countries and surrendering. The police personnel under the Unified International Extradition law shall have the powers to arrest and produce the alleged persons before the court under the same international law. The sovereignty has grave impact on the criminal justice system domestically and internationally. Therefore, having an Unified Extradition law with police personnel, courts and enforcement powers will decrease the number of criminals hiding out.