
EXTRADITION: AN OUTLINE TO BASIC PRINCIPLE OF IT AND ITS CHALLENGES

Anshika Srivastav, Bennett University

ABSTRACT

Extradition is a procedure sanctioned by law where an accused person found in their jurisdiction is surrendered due to commitment of an offence in the jurisdiction of another nation. In simpler terms the word extradition means to bring back an offender, who ran away from that country after committing the crime. There is a Latin term "*aut dedere aut judicare*" which means either extradite or prosecute.

The term defines the act sending back an accused or an individual to the state in whose territory he is alleged to have committed a crime. This is a legal procedure to which India is also a part. This allows one nation to give the custody of the accused to another country where the accused had committed the crime in order to conduct trial and give punishment for the act committed by them.

This research paper dwells deep into the meaning of the term, the fundamental principles, the legislative structure and its application, challenges faced with it during the following of the procedure. The topic of extradition is always on priority list in any international law being formed or any relation being made between two or more countries. This paper focuses on examination of some cases of extradition in order to study the hindrances that come while the procedure is being followed. It also focuses on the conflicts between nations which were the result of extradition.

The act of extradition is more like a mutual agreement and the compatibility between two nations rather than being a legal obligation. Generally, most of such situations are dealt by bilateral treaties which is signed between the nations. The legal application the act comes into being only when the human rights, political rights, legal rights of every concerned person are considered in a proper and complete manner.

Introduction:

In the developing world, the concept of extradition acts as an efficient mechanism to operate the laws beyond the borders of one nation to other. This exercise times back to ancient Greece, where extradition treaties were signed between city-states. As a notion, it initiated with the Ancient Egyptian and Chinese civilizations². The practice of extradition was first instigated in 1833 by Belgium (Andreopoulos). With time the act of extradition has developed into an effective and important part of any international law and further is regulated by the guidelines of international treaties.

J.G. Starke defined the term ‘extradition’ as follows: “The term ‘extradition’ denotes the process whereby under a concluded treaty one State surrenders to any other State at its request, a person accused or convicted of a criminal offence committed against the laws of the requesting State, such requesting State is competent to try the alleged offender. Though extradition is granted in implementation of the international commitments of the State, the procedure to be followed by the courts in deciding, whether extradition should be granted and on what terms, is determined by the municipal law of the land.”¹

Territorial State is the place where the accused or the convicted individual is found after they eloped from the state where the accused or the convicted person committed the crime. On the other hand, the state where the crime was committed is referred to as the Requesting State”. In order to fulfil the act of extradition there must be transfer of custody of the accused or the convicted person physically to the requesting state. The procedure, which is to be followed, while transferring the custody of the accused or the convicted person, will be according to the municipal law of the state requesting for the transfer of such person. Not all crimes and offenses are extraditable. Extradition is sought for serious offenses for instance murder, rape, anti-national acts, illegal trafficking. Some common offenses that may not be extraditable are political offenses, military offenses, religious offenses, and if the crime is not an offense in the requested country.

Some Basic Principles of Extradition Are:**Principle of Double Criminality:**

¹ <https://journalijcar.org/sites/default/files/issue-files/14174.pdf>

The principle of Double criminality is a part of international extradition law. This principle comes into being when a situation arises where the requesting state is requesting for the transfer of custody of such person who is accused or is convicted for committing a crime and the crime committed by such person is also an offence as per the domestic laws of the territorial state. The main motive behind the application of this principle is that it ensures that the individuals who are accused or convicted for committing an offence are not punished or convicted for doing an act which is not punishable in the jurisdiction of the requesting state. Those acts do not fulfil the threshold of seriousness required for extradition. For instance, Carlos Ghosn, a prominent businessman was arrested by the officials of Japan on charges of committing the offence of financial misconduct. Later he eloped from Japan to Lebanon, whose citizenship he held, in order to save him from the charges. Then the officials of Japan issued an international arrest warrant and requested for extradition from Lebanon. The charges against Ghosn were related to financial practices that were not considered illegal in Lebanon so the extradition request from Japan was rejected. The case underscores the importance of the Principle of Dual Criminality in ensuring that the rights of the individual being extradited are protected.

Principle of Reciprocity:

The principle of Reciprocity which also well known as norm of reciprocity is referred as a social condition which has its essence from the idea of fairness and cooperation. In the sphere of international law this principle is considered as an important tool in order to promote equality, cooperation and mutual respect between the countries. The principle assists to promote fairness and balance in international relations.²

In extradition, this principle operates for the mutual extradition of accused or convicted persons of the relevant states. It aims to ensure that a country will only extradite an accused person to another nation if that country would reciprocate when a similar request is made in any context. Countries mostly establish bilateral or multilateral extradition treaties to describe the rules and regulations according to which extradition will take place.

Principle of Specialty:

The principle of Specialty is the one which provides protection to the person who is being extradited in order to see that such person is not being prosecuted for any other offence other

² https://www.oas.org/ext/Portals/33/Files/MLA/Ven_multla_otros_eng.pdf

than the one the state is claiming. The requesting state must seek consent and permission prior to the extradition of the requested country before initiating trial for any other case.³

For instance, in this case Ricardo Martinelli, a former president of Panama, was charged for illegal wiretapping and misuse of public funds. He was extradited from the USA on the basis of a bilateral treaty. Additional charges not related to the original offenses were brought against him in court. In this case the court upheld the principle of speciality and said to remove the new charges which were applied to him. This example shows that how important it is to follow the guidelines and laws in order to perform extradition and also protect the rights of the individuals.

Principle of Proportionality:

The principle of Proportionality acts as a fundamental concept which is present in the laws governing and protecting the human rights. The principle says that there must be proportionality in the individuals right and the legal allegations held by the state on that person. It acts as a safeguarding principle in order to protect the individual from any kind of abuse of power by the state. The principle also ensures that all the rights of that individual are respected and protected. It also ensures that the limitations which are put on the rights of the individual are reasonable and fall under the need of the hour and is proportionate.

For instance, in the case of Julian Assange v. Sweden and the United Kingdom acts as an important case law in order to show the importance of conducting a proper and in-depth analysis in relation to see that proportionality is being followed in such cases.

Applications of Extradition:

The concept of extradition is a very significant tool which is used in order to reduce the crime and injustice happening with the public at large. It ensures that the individuals who are accused or convicted for committing the crime do not escape from the punishments they deserve just by moving to another jurisdiction. In the recent time the act of extradition has gained a lot of importance and relevance because of the increasing number of crimes in the international circle. Extradition has been included in many international treaties in recent years. Since human rights have become universally recognized, the importance and prevalence of extradition have

³ <https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1538&context=jil>

increased. Extraditions require international cooperation since there are very few countries that have extradition treaties with all other nations.

The scope of Extradition was very limited until Second World War. In the era of transnationalism, a rapid increase in drug trafficking, terrorism, transnational crimes, cybercrimes, and white-collar crimes take place. The development of globalization, mass communication, and transportation play a negative role in growing these crimes. So, new and developed extradition legal frameworks were legislated to overcome the advanced and increased offenses. The extradition laws make the cooperation of international organisations smooth in the process of prosecution of criminals and ensuring that the individual accused or convicted for the crime are held accountable as per the laws of the state where the act was committed.

Challenges in Extradition Law:

It's a well-known fact every coin has two sides and so is with the concept of extradition it also comes with many hurdles and challenges which are faced during the completion of the whole procedure. The hurdles which cause such challenges can be better understood by conducting a fair legal analysis.⁴ There are many hurdles which fall in midway of completion of the procedure some of them are discussed in this paper which are: human rights considerations, political offences, granting asylum the list is long. When these hurdles come up, they led to make the mountain of challenges in front of the completion of the procedure of the act of extradition. And hence due to them the extradition of the accused or the convicted individual becomes very difficult thus this further leads to undermining of efforts by authorities in order to reduce the criminality.⁵

Following are some common hurdles which come in the way of extradition:

• Human Rights Concerns:

There are many countries which deny the request of the requesting state for extradition of the accused or the convicted person if they think that the punishment or the procedure followed in that state for the crime is cruel or against the human rights declaration. As per such states the

⁴ <https://www.jstor.org/stable/1172072>

⁵ <https://www.unodc.org/e4j/zh/organized-crime/module-11/key-issues/extradition.html>

requesting states will torture the extraditing individual, and such person will suffer from the inhuman and cruel behaviour and punishment by the state. Such states come with the view that no one has the right to violate the human rights of any individual as per the human rights declaration. Such states become a hurdle and hence the process of extradition becomes difficult to be followed.⁶

• **Political offences:**

The term political offences are generally exempted from the extradition treaties, and such excluding principles are mandatory part of extradition treaties between the states. As per the international laws offences falling in the nature of political offences such as offences of political nature or character are exempted from being extradited. This becomes a hurdle in between procedure of completion of the extradition as the term is not clearly defined and every state has their own meaning to it. This creates differences as to how one states view regarding a crime is different from the other one.⁷

• **Granting Asylum:**

Generally, the asylum is granted by the territorial states when any individual has committed any political, religious or military offence. Asylum acts as a layer of protection to such individuals from the punishment of the crime they have performed. The act of granting asylum is not only a hurdle rather one of the major barriers which is coming in between the fulfilment of the procedure of extradition. The rules and regulation under which the asylum is granted are in dire need to be examined and evaluated by the courts and law makers.

Case-Studies:

1. **Extradition of Drug Kingpin:** In this case there was an Indian citizen Krishan Singh who was an active participating member in an international drug syndicate where they supplied narcotic drugs to many countries. Krishan Singh was also famously known as the Drug Kingpin by the people. In 2015, he received the citizenship of United Kingdom. He was keenly examined by the special cell of Delhi police. They were keeping a track of all his activities and transactions. As a result, he was arrested in

⁶ <https://www.orfonline.org/research/india-s-challenges-in-extraditing-fugitives-from-foreign-countries>

⁷ <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2179525>

London and further his non-bailment orders were shared with Indian officials on request. Later it was requested by Indian officials to the United Kingdom for extradition of Krishan Singh. The order of extradition was granted by the Westminster Magistrate's court. After this Krishan raised an appeal before the London high court and the European Court of Human rights, but both the appeals were rejected and hence his extradition to India was completed.⁸

2. **Extradition of son of former Pakistani PM:** In this case of extradition of Hussain Nawaz who was son of former prime minister of Pakistan, Mian M. Nawaz Sharif. This extradition acts as a landmark case in the legal framework of Pakistan. The case lays its emphasis on the intricacies involved in the procedure of extradition of an individual from other state and the extradition treaties between two states which are formed in order to facilitate the whole process of extradition. In 2000, Hussain Nawaz was accused by the Pakistani Government for committing money laundering and he was also accused of corruption charges. Since he was in Saudi Arabia so in order to bring him back an extradition was requested for the same to Saudi Arabia. This case faced many challenges and obstacles. As per the defence statements of Hussain Nawaz he argued that charges against him were politically influenced. More complications arose as there was no treaty of extradition between the two nations. This whole scenario created more difficulty in order to complete the extradition of Hussain Nawaz.⁹
3. **Extradition case of 'EL CHAPO' Guzman:** in this case El Chapo was a slanderous Mexican Drug lord and a former leader to a very powerful drug trafficking organization named Sinaloa Cartel. He was accused of committing the act of drug trafficking, money laundering and many other acts which were of criminal character. He committed such acts in Mexico and in United States. Later in 2012, he was arrested by the Mexican officials, but he eloped from their prison in 2015. Further after this act there was pressure from the US officials to extradite him to the US officials. The same request by the US officials was approved by the Mexican government and hence he was transferred to the custody of US officials in 2017. He was then charged with all the criminal acts committed by him such as Drug trafficking, conspiring against the authorities in the

⁸ <https://www.indiatoday.in/india/story/kishan-singh-extradited-uk-know-facts-international-drug-syndicate-mastermind-london-1782495-2021-03-23>

⁹ <https://www.arabnews.com/node/1479586/amp>

US. This landmark case showcases that how international cooperation between nations can result into intimidation of crimes and provide justice to all.¹⁰

Rendition and Extradition:

The act of extraordinary rendition is a procedure where in individuals which are suspected as criminals by one country are transferred to another country by an extrajudicial manner. This act generally covers those criminals who are listed as terrorists or supporters or parts of such organizations who promote terrorism. The term rendition is different from that of extradition as it is majorly used as a way to gain information from the suspected criminals, on the other hand extradition is for transferring the custody of an accused to the country where the crime was committed in order to further punish them. It is simply a legal substitute to the forceful transfer of an individual from one state to another. This whole procedure came into being after the war on terror which was a program led by the US.

Conclusion:

The law on extradition acts a very important legal tool which helps in the promotion of cooperation by the states at an international level to curb the crimes being committed by the individuals. The act of extradition is an essential part to the international law which has been a part to many amendments and modifications. The act has evolved with time and situations occurring. Hence due to such well evolution of the act has made it one of the most controversial issues occurring between the states. The act of extradition stands still and is a milestone achievement of all at international level in order to make everyone come together and fight against the crimes. The act is an essential process for the maintenance of peace and friendly relations between the states. However, we have seen how the act comes with its challenges caused by the legal, political, and practical hurdles.

The act also having its expectations of reservoir. Extradition act faces many hurdles causing multiple challenge in its path to punish the individuals who are accused or have committed the crime and such challenges then become a problem in order to curb the crime. In order to overcome those challenges all, the states need to come together and work in partnership to develop a stronger legal framework for the process of extradition. If there is development of

¹⁰ <https://www.justice.gov/archives/opa/pr/joaquin-el-chapo-guzman-loera-extradited-united-states>

the act then the extradition procedures will be fair, transparent and go in hand with the international law and hence fulfil their role to curb the crimes.