

Study the political offence in the extradition

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Abstract

This article explains the persons who have committed a crime of political nature. The aim of this paper is to put emphasis on the political offence exceptions. The extradition is one of the most used processes in two sovereign countries for international cooperation. It is an accepted rule that if offence is proved and that offence is political offence then extradition is not granted however, it is still not clear that what a political crime. In this article various definitions are considered which are used in different jurisdiction. Further, we suggest that political offence should be clearly defined in extradition so that the criminals will be easily fished out and it will help in reduction of such crimes.

Keywords: extradition, political offence, international cooperation

Introduction

Extradition is one of the main cornerstones for fugitives between two nations. Nowadays extradition is the best source of international cooperation used frequently [1].

Extradition is a process of the surrender of criminals by one sovereign authority to another. And in this process one sovereign country returns accused who alleged in territory of request country. After that, offender faces trial or punishment process [2].

In International Law extradition mostly depends on treaties among the states. Extradition treaties may provide to some restrictions on surrender of fugitive offenders/criminals on essential grounds on which a request of extradition may be refused.

“Political offence” exception is one of the longest – standing rules that political criminals should not be extradited. If extradition procedure depends on politics then it raises difficulties in the application that makes the process highly inefficient. States and individuals use this feature to abuse the law and rights. Thus, the main purpose of the article is to study the elimination of the political elements.

Methods

The research problem which is used in this study is how political offence has been defined? The answer of this question is given in explanatory methods. Political offence means that an offence which is influenced by the politics. Extradition plays important role in International law and in research whether it is possible to clearly distinguish between politics and law in the reference of extradition. Historical method is applied for understanding background content of the problem. The comparative case study method is also used considerably in order to understand about what the standards that are common in the various jurisdiction. The variety of different jurisdiction is used in this article to identify the political character of a crime.

Meaning and Historical Background

The word Extradition has been derived from the Latin word “Extradere” means, forceful return of a person to his sovereign and in this process one nation requests to another

Nation for surrender of the person who was found in that nation’s territory and who is criminal fugitive in the requesting state. In short the object of extradition is the final surrender of a criminal fugitive to the fulfilment of administering “Justice”. Final surrender plays the important role for the protection of national and international interests [3].

Legal Source for Granting Extradition

The unison in international law is that a state does not have any obligation to surrender an alleged criminal to a foreign state as one principle of sovereignty is that every state has legal authority over the people within its territory. In absence of international obligation and the desire of the right to demand, such criminals of other countries have caused a web of extradition treaties [4]. Most of the countries have signed bilateral extradition treaties with other countries. There is no general obligation to extradite in international law but the duty to extradite may arise from bilateral and multilateral extradition treaties. At present, extradition law can be identified as bi-lateral treaties.

Denial of Extradition-The Political Offence Exception

Extradition treaties include many exception and grounds on which extradition request may be refused. One of the widely accepted rules is the “Political offence” exception.

The model treaty on extradition states that extradition is not possible if the offence of a political nature. Generally when two countries enter into a bilateral treaty they are routinely include the political offence as an exception.

However “Political offence” is defined as of negative sense generally for example “the murder or other offence against the life, his physical integrity or liberty of a head of state or of Government, of a member of family, thus fall under scope of “political offence”.

There is no universally acceptable definition of political offence however there is only one aspect that political offender is not subject of international extradition. Not only political offence concept is ill – defined but also practical difficulties with context of evidence to establish this exception before of court.

This is the major problem to determine the meaning of an offence of a political nature. This problem has led various authors to reach the conclusion that the term is indefinable and do not attempt to define exhaustively. For using the concept political offence in extradition cases, includes two elements. Firstly, generally extradition laws and treaties never define the term political offence and consequently without any exception the definition is determined by judicial interpretation and administrative discretion. Secondly, the decision has been taken unilaterally by requested state that which crime is political offence. Consequently, unilaterally characterisation is that each state defines exception. Each country has separate own judicial and political criteria for defining the political crime. Thus which offence is political or non-political may be differently answered from one state to another ^[5].

Nature of Political Offences

One important question is generally comes up that who is the political criminal and what is political crime. In the international debate also, there is special emphasis on this question. Political crime definition has been considered as legal theory and jurisprudence. The origin of the term in the legal context is at the beginning of the 19th century ^[6].

There is no statute or treaty to define positively the term "Political offence" and offence of political character. There is elusive definition of "Political offence" in this jurisdiction. In the absence of any accepted definition, the court and legal writers categorise the political offence into two types -

1. Pure political offences
2. Relative political offences

Pure Political Offence

The 'Pure' political offence is directed against the government in this one authority as constituting subjective threat to a political ideology. This offence is exclusively aimed at the state or against political interest, without injuring any property and interest of private person and not inclusive by the commission of common crime. Some of the offences are aimed at the government and have none of the elements of common crime. These 'Pure' political crimes include treason, sedition, and espionage.

In these offences interest sought to be protected is sovereign. Through definition, a threat to existence, welfare and security of that entity and so, they are pure political offences. These political crimes are pure offences and will not subject the offender to extradition.

Relative Political Offence

The "Relative" political offense adds one or more common crimes which are related to offender are political goal. This type of political crime faces great difficulty to define the act as a political one. The proximity between the common crime and political objective is subject of interpretation of the court of each nation. The relative political offence is extended form of purely political offence. Thus, there is a not an accepted rule in all nations, but its hodgepodge collection of rules by political events and changing circumstances.

For determining whether the offence is political or not, there are three factors those are taken into consideration by the court. The first factor is – the offender's earlier participation with the political movement and the crime was justified by

his purported political objective in his personal belief. The second factor is – the existence between the crime and the political objective. The third factor is – the offences are generally termed "International" crime. Such as slavery, crimes, genocide, piracy upon the sea and in the air and offence against the peace and security of mankind.

These crimes are forbidden in international law because they are considered as the consignee of anti-civilised world order. Offenders committing crimes and genocide acts are excluded in plenty of treaties from consideration as political offenders.

Not Extraditing Political Offenders

The prohibition of political offenders is a recent development in International law. Extradition treaties signed before nineteenth century is to surrender the political offender of special purpose to their homeland. Political offender related exemption didn't exist during this period because the medieval states were busy with insulating political enemies. The requesting state to pursue extradition procedures and the prohibitive casts and problems involved in the return of fugitive.

The reversal of viewpoint, the French revolution and awareness of the international world order were the two main causes responsible for the introduction of the political offence exemption. The delivery of political enemies to a requesting state resulting in their trial being influenced by political considerations this is the exemption of traditional justification. This historical ideology was forced for unwillingness to become entangled in the requesting state's internal affairs, and the democratic view that a person should be entitled to resort in political activity in his quest for governmental change. The political differences between democratic, communistic and third-world nations have led to the situation where a nation becomes haven for the oppressed because of welcoming the political refugees on one side from other. And this situation sometimes becomes doubtful when courts are guided by a humanitarian concern of the offender undoubtedly; the importance of granting asylum to refugees from another country has been proved ^[7].

Statutory Law and Case Development

The United Nations model treaty or extradition (1990), determined one mandatory ground for refusal political offender by the requested state. Article 3(a) of the treaty states as under -"Extradition shall not be granted if the offence for which extradition is requested is regarded by he requested state as an offence of a political nature" ^[8].

Article 3(1) of European convention (1957) also provides - "Extradition shall not be granted if the offence is respect of which it is requested is regarded by the requested party as a political offence or as an offence with a political offence" ^[9].

Great Britain the Act of 1870 enact the section 3 of the act sets forth the procedure for dealing with suspected political offenders - Sec. 3 - Restrictions in surrender of criminals. The following restrictions shall be observed with respect to the surrender of fugitive criminals. Section 3(1) – A fugitive criminal shall not be surrendered if the offence in respect of which his surrender is demanded is one of a political character or if he prove to the satisfaction of the police magistrate or the court before whom he is brought on habeas corpus, or to the secretary of state that the requisition for his surrender has in fact been made with a view to try to punish

him for an offence of a political character ^[10].

The India extradition act (1962) also makes the law for such exclusion. Section 31(1) of the act states that a fugitive criminal shall not be surrendered or returned to a foreign state if the offence in respect of which his surrender is sought is of a political character ^[11].

The phrase "Offence of political Character" was not defined in the Act. The only two interpretations of the Phrase were given by John Stuart mill and Mr. Justice Stephen. According to mill political offence was committed with the concern of civil war, insurrection or riot. According to Stephen political offence was committed because of a political disturbance or it might be incidental to a situation. The initial judicial interpretation can be seen through the landmark case of -

In Re Cationic

Castioni, a revolutionist of Swiss accused of murdering member of a state council and ran away to England considered it's a political crime and decided not to extradite him.

In Re Meunier

An anarchist (non- believer of Govt.)

From France, Mr. Meunier caused explosions and destroyed public property and also killed political leader and fled to England. But England court decided that it was not a political crime and extradited him.

Summary

The research query is whether the political features of the extradition can be reduced or not. After the reading many cases – laws, it seems that politics will influence the law political offence definition which has been divided in two categories – Pure and Relative political offences.

Pure political offence is direct against the government and relative political offence adds one or more offence and these offence criteria is a difficult in comparison to pure offence. The International community and national jurisdictions reduce the influence.

Conclusion

The article sheds light on the pure political offence and relative political offence. The paper presents only one possible solution which is connected with the establishment of a clear political offence definition. As International extradition is a gesture of friendship and cooperation between two sovereign countries but the extradition of political offenders has always been remained controversial because of the difficulty in defining a political offence. Thus in the absence of universal definition of political offence – two categories are recognized (1) Pure political offence (2) Relative political offence. There is no difficulty in pure political offence but problem arises in the matter of relative political offences. It shall be noted that the research is limited to the legal point of view while the topic is of a complex and interdisciplinary nature. Still it is a basis for the improvement of the extradition political offence definition.

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