



Extradition and international law – protect the society from offenders

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Abstract

This article is devoted to the matter of extradition for suppression of criminal activities of the offenders is one of the main instruments of international cooperation which is used more frequently whereby one sovereign state surrenders the alleged criminals in its territory to the other sovereign state on demand. To make extradition effective, states should demonstrate genuine will power and down-play politics in such matters. Extradition has evolved among states because they keep interest in the suppression of crimes and punishment of criminals who violate the national laws and disturbing the peace. It is the process of surrendering fugitives who have fled to the territory of another state. Such process is also an aspect of the international campaign against crime carried out with an aim to maintain peace and order at international level. Author considers that extradition plays vital role in safeguarding and maintaining the peace of society because crime is committed not only against a person but also against the society as a whole. The aim of this paper is to emphasis on the importance of extradition as a potent weapon to protect the society from such offenders. Surrendering the criminal by one state to the state (where he committed crime) will be fruitful not only for that state but also for the society at international level.

Keywords: extradition, offenders, international cooperation, sovereign state, fugitive

Introduction

Meaning and scope of extradition – Generally each state exercises complete jurisdiction over all the persons within its territory but sometimes a person after committing crime and run away to another country. In this situation, the country finds helpless to punish the guilty person. In such cases situation emerge undoubtedly very detrimental for peace and order. To maintain peace and order among the states international co-operation is very much necessary. It is social need to punish such criminals and fulfil this social necessity; the extradition law has been recognised.

“Extradition is the delivery of an accused or a convicted individual to the state on whose territory he is alleged to have committed or to have been convicted of a crime, by the state on whose territory the alleged criminal happens to be for the time being”.

According to starke “The term ‘extradition’ denotes the process whereby under treaty or upon a basis of reciprocity one state surrenders to another state at its request a person accused or convicted of a criminal offense, committed against the laws of the requesting state, such requesting state being competent to try the alleged offender”.

In the view of eminent jurist Grotius, “It is the duty of each state either to punish the criminals or the return them to the states where they have committed crime”.

The term extradition has been defined differently in different times and it is most commonly understand as the process in which one state surrender to another state a person accused or convicted of a criminal offence against the laws of the requesting state.

According to the United Nations, ‘extradition’ means the surrender of any person who is sought by the requesting state for criminal prosecution for an extraditable offense or for the imposition or enforcement of a sentence in respect of such an offence.

Extradition is an act of International Corporation of suppressing criminal activities and handing over the person

who is accused or convicted of a criminal offense by one state to another state. This intends to prosecute or punish him according its laws.

Methods

The research problem which is used in this study is – How extradition is a potent weapon to protect the society from offenders? The answer of this question has been tried to give in explanatory methods. Extradition is one of the main instruments of International Corporation so this is possible to clearly define in article with definition given by many jurists. Historical method is applied for understanding background content of the problem. The comparative case study is also used considerably in order to understand about what the standards that are common in the various jurisdiction. In the present study to elaborate the extradition meaning and essential condition of extradition. This article is useful to identify the extradition law as protecting for society from offenders.

Study the problem and discussion

With the increase of globalization, there is increase in movement of people and goods across borders, has also originated a new dimension of crime. Criminal jurisprudence now faces the increased impact of trans-national crimes.

The present century has been characterized by a wonderful improvement in facilities of travel leading to rapid movements in population so as flight from justice has becomes easier and more frequently takes place.

The growth in science and technology fields, communication channels have opened between nations and this progress has made it easier for criminals to flee from states after committing an unlawful act. In short, the global impact of these results is the need for mutual assistance and corporation amongst states to maintain peace and secure justice. The concept of mutual assistance to meet the ends of

justice has received acknowledgement from the international community which has been instrumental in creating new institutions and expanding the network of bilateral and multilateral treaties designed to outlaw transnational crimes, promote extradition, and authorise mutual assistance.

Independence and sovereignty of states does not warrant the exercise of the slightest act of jurisdictional authority by one state within the territory of another state. But mutual interest of states for the maintenance of law and order and the administration of justice demands that nations should co-operate with one another in surrendering fugitive criminals to the state in which the crime was committed. Thus, there is the obvious advantage in prosecuting the offender in the country where he/she has committed the offence. Since the evidence is more freely available there and that state has the greatest interest in the punishment of the offender as facilities available for ascertaining the truth. The universal practice of nations, however, is to surrender fugitive offenders only in consequence of some special treaty with the country which demands them, and only few jurists now affirm any general duty or perfect obligation. The surrender in accordance with treaty and in compliance with a formal demand is known as extradition. The extradition treaties can be brought into force only after certain necessary formalities have been observed including their incorporation in the municipal law of the states wanting to enforce them. 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 being competent to try the alleged offender. In short extradition is granted in implementation of the international commitment 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. Extradition is founded on the broad principle that it is in the interest of civilised communities that criminals should not go unpunished and on that account it is recognised as a part of the community of nations that one state should ordinarily afford to another state assistance towards bringing offenders to justice.

Aut dedere Aut judicare

The extradition is based on the Latin term "aut dedere aut judicare". The fundamental principle behind the extradition of criminals across jurisdictions has been, in one way or the other, been a part of most judicial systems. International customary law recognizes it in the form of 'aut dedere aut judicare'. The principle denotes an alternative obligation to extradite or prosecute an offender. This phrase which was coined by Grotius has led to the development of extradition treaties in the modern world.

An offender is deemed to be punished for a crime he committed in another jurisdiction if he is not extradited to the jurisdiction wherein he committed the offence. The positive impact of the adoption of this principle is that it results in the offender facing prosecution for the offence he is alleged to have committed. The offender cannot avoid criminal responsibility by fleeing into the jurisdiction of another state. The question of alternate prosecution or extradition was addressed by the international court of justice in the case of Belgium vs. Senegal. The court held that a state

Which receives a request for extradition can relieve itself of its obligation to prosecute the offender by acceding to the demand of extradition.

Necessary conditions

The necessary conditions for extradition generally inserted in extradition treaties in compliance whereof the criminals are surrendered by one state to another through the diplomatic channels are the following –

1. Offences of political character – However be surrendered if the offence in respect of which his surrender is demanded is one of a political character. However the term "political offence" is not easy to define, which is a question of subtlety. Different criteria are adopted by different nations with regard to its meaning. Some take the motive of the crime and others look to specific offences.
2. Military offences – Military offences, e.g. desertion and religious offences are also generally not subject to extradition proceedings. The rule is that extradition is not allowed for trifling cases, and the states ensure that the serious crimes do not go unpunished.
3. Rule of speciality – The fugitive demanded shall not be liable to be tried for any offence committed prior to his surrender other than the specified offence mentioned in the request for his extradition until he has been liberated and has had an opportunity of leaving the country. This is known as the principle or rule of speciality.
4. Double criminality – The crime must be an offence in both the states. This is based on the principle of double criminality. No person is to be extradited whose deed is not a crime according to the criminal law of the state which is asked to extradite as well as of the state which demands extradition. The act complained of must be a crime under the laws of both the requesting and the requested state. Treaties generally embody a clause that acts punishable in both the countries with specified penalties shall only be extraditable.
5. Surrender after his trial for offence committed in his own state a fugitive criminal who has been accused of some offence not being the offence for which his surrender is asked shall not be surrendered until after he has been tried and has served his sentence for the offence committed in the state requested to surrender.
6. Reasonable prima facie evidence – There must be reasonable prima facie evidence of the guilt of the accused. The requested state shall satisfy itself that the evidence submitted justifies prima facie judicial proceedings against the accused but it is not within the province of the courts of such a state to try the case on merits.

Extradition and the universal principles of human rights while extraditing an alleged offender from one state to another, the states concerned are bound by the conditions in the treaties that impose such obligations. However, the states cannot evade the right of the offender. The offender or suspected offender's to be protected against any breach of human rights. Human rights violations have acquired an increasingly important space in international law. Thus, while extraditing criminals the states cannot violate the human rights of the person so apprehended. Thus extradition policies need to be certain and must ensure fair trial

proceedings that do not unnecessarily encroach upon human rights from discrimination in order to ensure that they meet their obligations under international human right law. Human rights form an intrinsic part of the existence of any person. To keep a check on the states' encroaching upon the human rights cannot be undermined even though the UDHR (universal declaration of human rights) is not binding in nature, it forms a rule of customary international law and the state parties are persuaded to abide by the principles enshrined in the declaration. It is considered being implicit in the UN membership and thus, the principles of the UDHR enable one to understand the global opinion on extradition and its scope in reference to the breach of the principles that govern human right. Arbitrary arrest, detention or exile of individuals by nations is not permitted under the UDHR.

This, by necessary implication refers to both the extraditing state and the demanding state. The grounds for detention by the extraditing state must adhere to principles of nature justice and customary principles of international law. The must also be communicated effectively to the alleged criminal. By virtue of the UDHR individuals may also seek asylum from persecution.

This is slightly more complex. It forms ground for the interplay between international refugee protection and laws relating to extradition and effective balance of both under a sustainable framework. The right to seek asylum has evolved to enable an individual to flee his own country in pursuit of asylum. There appears to be a dichotomy in the scope of the right to seek asylum and the right to extradite. However, the language used in Art 14 of the UDHR is a clear indication of the intention of the drafters of the code and suggests that the provision entitles a person to seek asylum and not a right to receive it.

The human rights law does not treat the extradition as human right violation even though in the process of extradition there is a probability of human right violation while detaining, prosecuting and imposing punishments. In the extradition process there should be a proper balance between the sovereignty of a state and protections of individual's human and civil rights, generally extradition treaties contain the human rights safeguard mechanism such as refrain from imposing capital punishment for extradited offender. Political offences exceptions, double criminality, principle of specialty also counted as human right safeguards of extradited fugitives. But after the extradited offender is surrendered to the requesting state the trial and imposing punishments are under the power of the requesting state therefore territory state can do nothing to safeguard the extradition offender's right. Hence every state has responsibility to protect and safeguard the human rights and dignity of extradited fugitives.

Extradition principles in India

Extradition principles in India are by and large regulated by the extradition Act of 1962. The act underwent major amendments in 1993 and has been in consonance with all international practices that have assumed the nature of customary international law. The statute restricts extradition to those offences that have been mentioned in the extracting treaty between India and another state or those offences that have been mentioned in the extradition treaty between India and another state or those which are punishable beyond a period of one year in India or the other country concerned. Section 2 of the Act, 1962 gives meaning to various terms

used in its following chapters. A "composite offence" is defined to mean an act or conduct of a person occurred, wholly or in part, in a foreign state or in India but its effects or intended effects, taken as a whole, constitutes an extradition offence in India or in a foreign state, as the case may be.

A composite offence thus includes those acts and omissions that though have not have taken place entirely in India have effects which constitute an offence in India or foreign state. The term only finds reference in section 2(c) that deals with the definition of "extradition offence". An "extradition offence" has been defined in two prongs -

1. Offences that find specific mention in the extradition treaties, and
2. In relation to non-treaties states, offences that are punishable for not less than one year of punishment under Indian law or laws of the foreign state. As stated before, the law of extradition is chiefly governed by the terms of the extradition treaty with a foreign state on the principles of equality and reciprocity. To this end, the Act, 1962 defines an extradition treaty to include any treaty, agreement or arrangement of India with a foreign state relating to extradition of fugitive criminals. Further, by virtue of sec.3, the central government may, by notified order, direct application of the provisions of the Act to any foreign state. The Act, 1962 defines a "fugitive criminal" in elaborate terms too. The definition encompasses not only those persons who are convicted of extradition offences in foreign states but also those who are accused of such offences. Those who conspire, attempt or act as accomplices are also included. At the core of the law of extradition lies the importance of due extradition of fugitive criminals. A fugitive criminal may not necessarily be present in India as an accomplice at the time of commission. It has now long been established that his presence is not a sine qua non for the court's jurisdiction.

Obligation to extradite under International law

There is no general obligation to extradite in international law but the duty to extradite may arise from bilateral and multilateral extradition treaties which also enshrine exception to this duty. The constitutions of many states, including some European states, prohibit the extradition of their own nationals, but their laws enable them to prosecute their nationals for serious crimes committed abroad other states, including United Kingdom, can extradite their own nationals and therefore their laws enable prosecution of their nationals only for a few categories of serious crimes committed abroad.

States generally lack the capacity or will to prosecute or punish individuals for crimes that have occurred beyond their borders. Consequently when a suspected or convicted criminal flees from one state to another, same form generally favoured on the international stage is extradition, a "procedure of request and consent" which generally reflects the willingness of states to engage in co-operative efforts aimed at the suppression of crime. International law, however, does not oblige a state to afford such assistance and it imposes no legally binding duty on a state to extradite at the mere request of another state. States may, nonetheless, assume a binding obligation to extradite under international law by entering into a treaty, or other consent based arrangements. The European convention on extradition

prescribes the obligation to extradite to extradite “the contracting parties undertake to surrender to each other, subject to the provisions and conditions laid down in this convention. All persons against whom the competent authorities of the requesting party are proceeding for an offence or who are wanted by the said authorities for the carrying out of sentence or detention order”.

Obligation to extradite cannot be easily exercised especially if it is about extradition to states not party to the ECHR. Regarding this issue the committee of ministers recommends to member states –

1. Not to grant extradition where a request for extradition emanates from a state not party to the European convention on human rights and where there are substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing the person concerned on account of his race, religion, nationality or political opinion, or that his position may be prejudiced for any of these reasons.
2. To comply with any interim measure which the European convention on human rights indicate under rule 36 of its rules of procedure, as for instance, a request to stay extradition proceedings pending a decision on the matter (Recommendation no. R (80) 9 concerning extradition to states not party to the European convention on human rights).

The Vienna convention on the law of treaties is silent on this subject, but however, articles 53 and 64 relating to the issue of Jus cogens could perhaps offer a possible and acceptable solution. The text of Article 53 is about treaties conflicting with the peremptory norm of general international law (Jus cogens) as it follows – A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purpose of the present convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character”.

Similar meaning has been provision from Article 64 stating that “If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates”.

These two provisions from the Vienna convention on the law of treaties can be used only in limited number of cases, especially in the cases where possible violations of human right may be invoked, but not to all human rights – just those which are considered as inviolable human rights and can be put in the group of so called jus cogens.

The international obligation is to extradite a person pursuant to the applicable extradition treaty.

In India chapter 2 and chapter 3 of the extradition act, 1962 comprise the procedure for extradition of fugitive criminals. Chapter 3 deals with extradition to foreign states with which India has an extradition treaty while chapter 2 deals with foreign states with which India does not have an arrangement. The procedure aims at ensuring speedy delivery of justice and seeks to ensure that no country provides a safe have to fugitives.

The absence of a treaty?

In the absence of such a treaty, there is no obligation to surrender criminals to another country. A request for the

arrest and surrender of a fugitive criminal could not be made in the absence of an extradition treaty. But taking into consideration the gravity and seriousness of the crime and its detrimental effect upon a society, a state, in conformity with the public law of nations or in accordance with the general principles of international law, in the absence of an extradition treaty invoking the principles of comity or morality between the state concerned, can extend an extradition request for the fugitive offender who has crossed its borders for escaping from trial or punishment awaiting him in the forum delicticimmissi. This is because all states are interested in the preservation of peace, order and tranquillity within their domains and in promotion of justice in cooperation with other state.

Accordingly, the only obligation existing in the absence of a treaty is “imperfect”, creating a moral, but not legal duty to extradite. The only method to create an absolute duty to extradite is through the signing of a treaty. The dominance of this latter view has provided the impetus for the increase in the formation of modern-day mutual extradition treaties. Extradition in the absence of a treaty always hinges on the principles of “courtesy, good will, and mutual convenience”. Since the prevailing views fails to recognize an absolute duty or obligation in the absence of formal treaty relations, comity and common courtesy must serve as the sole basis for surrender where no treaty exists.

As a closure to this issue about possible extradition in the absence of a treaty, there are several reasons for choosing to extradite in absence of a treaty. First, some states simply prefer a matter of principle or convince to enter into treaties only with those countries that require such agreements before extradition can take place. Second, it seems unnecessary to enter into treaties with countries where extradition is a rarity. Third, states do not want to become a resting place for criminals and will often enact legislation permitting extradition in the absence of a treaty as a combatant to understand entry.

Conclusion

Extradition laws and principles governing the extradition have become relevant in present time. The practice of extradition has been a useful instrument for effectuating to final surrender of fugitive criminal for the purpose of justice. The principle of non-extradition of criminal is a right of a state to refuse extradition and this issue leaves a space for a very dangerous opportunity where fugitive are using this principle. It is also the fact that some states are not willing to grant extradition in absence of a treaty. A majority of problems with reference to extradition revolve around the fact that there is no uniform treaty based law. Though, states cannot be obliged to surrender alleged criminals when they are not consensually bound by a treaty. In short, states should take giant strides towards enacting the laws which have been written in different extradition act. The principle of Autdedreautjudicare (extradite or prosecute) should be implemented to bring fugitive offenders to justice. This obligation must be graduated to the status of Jus-cogens and if there should be no safe haven for criminal anywhere in the world. When criminals are sure of being caught and or surrendered (extradited), the tendency to raise the crime will decrease and the world would be a better place.

The extradition law could be identified as treaties, regional conventions and national laws. Bi-lateral treaties used for

the extradition in past and multi-lateral and regional conventions used the purpose of extradition in presently. In the absence of treaty or statute, the grant of extradition depends purely on reciprocity, courtesy, good will and mutual convenience. When there is no formal treaty relations, comity and common courtesy must serve as the sole basis for surrender. For protecting society from offenders, it is important that extradition treaty should be necessary because this treaty create obligation among the state and it is emphasis on the international corporation. The problem arises when extradition treaty is not available among the states when states mostly used courtesy, comity and good will which are reciprocity of good relation. An Act of international legal cooperation is useful for suppressing criminal activities. When countries keep mutual support and assistance among themselves, it will help in the absence of an extradition treaty. Extradition treaties and legislation have been creating the obligation to surrender fugitive criminals. In short, a state enters into an extradition treaty relationship with another state, which is totally based on reciprocity. This type of aspect keeps the mutual confidence and respect. In absence of such treaty, an agreement creates the obligation to surrender the fugitive criminals. Most civil laws of states add support to this situation and recognize final surrender in absence of treaty in a extradition law. When states are no bound by any treaty or arrangement so, states imposing such right and duty to surrender of a claimed person, it is on the principle of comity and it is based only on one condition that criminal should be punished and they fished out by cooperation between nations. This is helpful for out as well as international community with the increasing crimes in the international field in recent years, the importance of the extradition has increased and international cooperation is very much essential in cases of extradition for maintaining global peace, the sole aim should follow international cooperation and when these relations are good, the offenders will be caught easily and this types of relations help to our society in present era.

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