



PUBLIC INTERNATIONAL LAW

BY –

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WHAT IS EXTRADITION?


- Extradition is the conventional process in which a person is surrendered by one state to another on the basis of a treaty, or comity, or some bilateral arrangement between the two sovereign states.


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- This request of extradition made by a sovereign state is usually initiated at first place because the individual demanded by the state is charged with a crime but not tried, or tried and convicted yet the accused escaped and reached the territory of the other sovereign state.


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- This process is also known as Rendition, which is handing over or surrendering of a convicted person or accused from one state jurisdiction to another where the accused is alleged to have committed a crime.

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- According to the norms of the International Law, there is a lack of a binding obligation on a state to surrender the accused demanded by another foreign state because the law upholds the principle of sovereignty which is about the right and full authority of the state over itself and its subjects without any intervention from foreign bodies.


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- In **Black's Law Dictionary**, extradition has been defined as **“The surrender by one state or Country to another of an individual accused or convicted of an offense outside its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender.”**

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- Hence it can be summarised that Extradition is the act of sending a person from one jurisdiction to another where he/she is accused of committing a crime and is being demanded to get them tried as per the legal procedure in the sovereign demanding such person.


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- The purpose of extradition is to make sure that criminals are surrendered from one country to another which leads to mutual cooperation between states in control, prevention, and suppression of international and domestic criminality.


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- At present in this era of globalization, where certain groups and individuals are conducting trade and business by various means and channels at an unprecedented manner, most of the crimes have become cross-border in nature & thus the obligation on part of the states to extradite has gained enough significance and value over the years.


- In the Supreme Court case of ***Abu Salem Abdul Qayoom Ansari vs. State of Maharashtra [(2011) 11 SCC 214]***, Justice Sathasivam was of the view that with the tremendous increase in the international transport and communication, extradition has taken prominence since the emergence of the 21st century.





LEGAL STATUS OF
EXTRADITION: FROM
INDIAN & INTERNATIONAL
LAW PERSPECTIVE


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- As per the Indian Law, the extradition of an escapee or fugitive from India to another nation or vice versa is dealt by the rules laid down in the Extradition Act, 1962.
 - This law forms the legislative basis for extradition in India.
 - The Extradition act deals with two schedules and five chapters.


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- The Government of India till date has entered into Bilateral Extradition treaties with 42 countries to make the extradition process efficient and hassle-free.
 - The term Extradition Treaty is defined as per Section 2(d) of the Extradition Act which explains it as, “a treaty, agreement or arrangement with a foreign state in the relation of extradition of fugitive criminals”.

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- Apart from this, our country has entered into extradition arrangement with 9 countries as well.
 - Extradition request can be made by India to any country.
 - The countries with which India has a treaty have the obligation to consider the request due to the treaty between the two countries.

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- In other cases where there is non-existence of a treaty, the foreign country may or may not accept the request and may subject it as per their domestic procedure and law.
 - Hence the obligation for extraditing is due to the treaties and arrangement entered into by India with other nations.

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- It needs to be understood that an Extradition is a sovereign act and in cases where there is no treaty and absence of international duty between the two sovereign states, any sort of extradition activity is dependent upon the ideas of reciprocity and comity which are an essential part of the International principles of amicable cooperation between states or nations.

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- As per Section 3 of the Extradition Act, the government can issue a notification to extend the notifications of the act to the notified countries.
 - The act further defines the ambit of what Extradition offenses are and who can be extradited as per Section 2(c) and Section 2(f) respectively.


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- As per the International Law conventions, a state is not under a binding obligation to surrender a fugitive to another sovereign state.
 - There is no duty as such imposed by the International law on the states to extradite.
 - Although there are certain basic principles governing the extradition process which are accepted and followed by several nations.

The principle of Dual Criminality:

- Also known as the Principle of Dual Criminality, it is one of the most significant principles governing the law of extradition. It states that extradition process can only happen when the criminal act under scrutiny is an offense in both the jurisdiction of the sovereign states.


Rule of Speciality:

- The idea behind this rule is to prevent blanket extradition demand made by the requesting state.
- The rule says that the fugitive who is extradited for a certain crime should be tried for that very crime and not some other.

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- In the judgment given by the Apex court in the case of *Daya Singh Lahoria vs. Union of India* [(2001) 4 SCC 516], it was stated that a fugitive criminal brought in India under extradition treaty can only be tried for the offense provided in the extradition decree and not for any other offense. The Criminal courts in India cannot try such fugitive under any offense other than the one allowed for trial.


The principle of Proportional Punishment:

- Extradition may be refused in cases where there is a possibility for the extradited individual to receive a punishment out of proportion or severe in form when compared to the degree of offense.
- This principle is specifically invoked in order to avoid violation of Human right norm accepted globally.

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- Where there is a possibility of the death of the fugitive in the requesting state, such request is denied as per this principle to protect and avoid violation of Human rights norms internationally.

Opportunity for Fair trial:

- Before the Extradition process is initiated by the requested state it is ensured that the fugitive will be given a chance to represent himself under a procedure of fair trial in the requesting state.
- This principle is read with the principle of non-inquiry, where the requesting state is under no obligation to subject its judicial procedures as per the punctilious evaluation criteria of the requested state.

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- This principle isn't absolute and rigid in nature but the requested state can question the judicial procedure in the requesting state if the same is on the face of it is against the principle of law and justice.

Thank You!