

## **EXTRADITION**

It is quite possible for a person to escape to another state after committing a crime in his own state.

A question arises as to whether Fugitive shall be tried in the country where he has fled away or in the state where the crime has been committed.

Normally, a state finds itself in a difficult situation to punish a person who has committed a crime elsewhere primarily because of the lack of Jurisdiction, and therefore, such persons are sometimes surrendered to the state where the crime has been committed.

***Surrender of an accused or of a Convict is referred to extradition.***

***The term extradition has derived from two Latin words ex and traditum .***

Originally, it may mean “delivery of criminals”, “surrender of fugitives” or “handover of fugitives”. Extradition may be defined as surrender of an accused or a convicted person by the state on whose territory he is found to the state on whose territory he is alleged to have committed or to have been convicted of a crime.

***According to oppenheim*** “extradition is the delivery of an accused or a convicted individual to the state where he is accused of, or has been convicted of, a crime, by the state on whose territory he happens for the time to be.

The above definition makes it clear that in extradition 2 states are involved. They are:

- Firstly, the territorial state, i.e., a state where an accused or convicte is found
- Secondly, the requesting state, i.e., a state where the crime has been committed.

### ***Purpose of extradition***

1. Extradition is a process towards the suppression of crime
2. extradition acts as a warning to the criminals that they cannot escape punishment by fleeing to another state.extradition therefore has deterrent effect.
3. Criminals are surrendered as it safeguards the interest of the territorial state. If a particular state adopts a policy of non extradition of criminals, they would like to flee to that state only. The state, therefore, would become a place for international criminals.
4. Extradition is based on reciprocity. a state which is requested to surrender the criminal today may have to request for extradition of a criminal on some future date.
5. Extradition is done because it is a step towards the achievement of international cooperation in solving International problems of a social character.
6. The state on whose territory the crime has been committed is in a better position to try the offender because the evidence is more freely available in that state only.

### ***Whether extradition a legal duty of a state***

The supreme court of the United States of America in ***factor versus labubenheimer*** clearly stated that “International Law recognises no right to extradition apart from a treaty. The legal

duty to demand his extradition and the correlative duty to surrender him to the demanding country exist only when created by treaty.

Only in exceptional cases, state may extradite a person on the basis of reciprocity. However, this is done not because of any legal duty on their part, but because of reciprocity or courtesy. For example, India does not have any extradition treaty with Portugal. However, when Abu Salem, an accused in 1993 Mumbai blast and an underworld don fled to Portugal along with his wife Monica Bedi, Portugal, in the absence of a Treaty, extradited Abu Salem to India after latter gave an assurance that he would not be given death sentence. Later, High Court of Portugal passed an order on July 14 2004 along with reason for his extradition to India. His wife has also been ordered to be extradited to India.

***Extradition and deportation*** : extradition and deportation both are the methods by which an alien is required to leave the territory.

Firstly, while extradition is primarily performed in the interest of the requesting state, deportation is performed in the Exclusive interest of the expelling state.

Secondly, extradition needs the consensual cooperation of at least two States whereas Deportation is a unilateral action apart from the duty of the receiving state to accept its own national.

Thirdly, extradition applies to criminal prosecution and therefore suppresses criminality, expulsion order may be issued to any foreign national on a number of grounds.

When an offender is returned to another state in the absence of an extradition Treaty, normally the act is called deportation. In practice, a person is deported to the state from which he has arrived in the deporting state.

### ***Extradition of political offenders***

It is a customary rule of international law that political offenders are not extradited. In other words, they are granted Asylum by the territorial state. For the first time, the French constitution of 1793 under article 120 made a provision for granting Asylum to those foreigners who exiled from their home country for the cause of Liberty. Later on, other states followed the principle of non extradition of the political offenders gradually.

Indian extradition act of 1962 also lays down a similar provision under section 31(a). At present, non extradition of the political offenders has become a general rule of international law and therefore it is one of the exceptions of extradition.

### ***Basis for the non extradition of the political offenders***

1. The rule is based on the elementary consideration of humanity. No state would like to extradite a person if he is not a criminal. If it does, it will not be in compliance with the law of natural justice.
2. If political offenders are extradited, it is feared that they would not be treated fairly.
3. The rule also protects the political offender from any measure of extralegal character which the requesting state might attempt to take against them
4. Political offenders are not dangerous for the territorial state as may be in the case of ordinary criminals.

***Attentat clause (Belgian close 1856)*** : No political leader be extradited, although, criminal law is not included here.

Extradition treaty between India and Canada concluded on February 6 1987 provided under article 5(1)(a) that extradition may be refused if the offence in respect of which it is requested is considered by the requested state to be a political offence or an offence of a political character.

Indian extradition act of 1962 had also laid down a comprehensive list of offences which shall not be regarded as political offence.

***Doctrine of double criminality:***

The doctrine of double criminality denotes that a crime must be an offence recognised in the territorial as well as in the requesting state. No person is extradited unless this condition is fulfilled. The Doctrine appears to be based on the consideration that it would offend the conscience of the territorial state if it has to extradite a person when his own law does not regard him a criminal.

***Crimes punishable by death in the requesting state:*** In those cases where a crime is recognised in both the states i.e., in the territorial as well as in the requesting state, but the crime for which the extradition is demanded is punishable by death in the requesting state and not in the territorial state, a further difficulty may arise in extraditing a person. Territorial state may hesitate to extradite such a person as it would offend its conscience if it has to extradite a person to whom death sentence would be provided while its own law does not provide for the death sentence for that offence. In order to overcome this difficulty extradition treaties generally provide that extradition shall be granted only when the requesting state gives an assurance that the death penalty shall if imposed, not be executed.

***Rule of speciality:***

According to this principle, a Fugitive may be tried by the requesting state only for that offence for which he has been extradited. In other words, the requesting state is under a duty not to try or punish The Fugitive criminal for any other offence than that for which he has been extradited. The rule has been made to provide safeguard to the fugitives against fraudulent extradition.

***Indian extradition act of 1962 has incorporated this principle under Section 21.***

***An important case on this rule is United States versus rauscher 1886***

The case of ***Daya Singh lahoria vs Union of India 2001*** is similar to that of rauscher case wherein justice Pattanaik held that a Fugitive brought in this country under an extradition decree can be tried only for the offences mentioned in the extradition degree and for no other offences and the criminal courts of this country will have no jurisdiction to try such fugitive for any other offence.

### ***Principle of relative seriousness***

Extradition treaty between India and US permits extradition of only offences which are punishable with more than one year of imprisonment

### ***Prima facie evidence***

There should be a prima facie evidence of the guilt of the accused. Before a person is extradited, the territorial state must satisfy itself that there is a prima facie evidence against the accused for which extradition is demanded.

The purpose for laying down the rule of Prima facie evidence is to check the fraudulent extradition. The territorial state has to see that the demand is not motivated by any political reasons.

***Indian extradition act provides this requirement under section 7(4).***

### ***Extradition laws in India***

***The expression extradition treaty has been defined under section 2 (d) of the Indian***

***extradition act of 1962***, to mean that a Treaty made by India with a foreign state relating to the extradition of Fugitive criminals and includes any Treaty relating to the extradition of Fugitive criminal made before the 15th day of August 1947, which extends to, and is binding on India. All those extradition treaties which were concluded by the British India before 1947 were also continued by India.

In 1956, India prepared a list of 45 pre Independence extradition treaties which was state to be in force. a question arises whether other contracting states have also considered themselves to remain bound by such treaties. On enquiry, it was revealed that only few countries considered themselves to be bound by pre-independent extradition treaties.

In accordance with the provision of section 3(1) of the act of 1962, the Government of India is required to make notification to all those States with which it had extradition treaties before independence. In the absence of such notification, continuance of the pre-independence treaties would not be of any practical utility.

### **ASYLUM**

The term is referred to those cases where the territorial state declines to surrender a person to the requesting state, and provides shelter and protection in its own territory. Therefore Asylum involves two elements.

- ✓ First, shelter, which is more than a temporary refuge and
- ✓ Secondly, a degree of active protection on the part of the authorities in control of the territory of asylum.

A person enjoying Asylum may be referred to as an ***Asylee***.

### ***Basis of asylum***

A state has a right to grant Asylum to a person on the principle that it has a sovereign right to control over the individuals found on its territory. Therefore, the right of territorial Asylum has been conferred to a state on the basis of its sovereignty over the territory.

***Self imposed limitations*** : States have complete freedom to put restrictions on their territorial

jurisdiction right by concluding treaties. Therefore, if a state concludes treaties for extradition of a Fugitive criminal, there arises a legal obligation on its part to surrender them. In such cases, the sovereign right to grant Asylum to such persons cannot be exercised.

Similarly, restrictions can also be imposed by the states on their sovereign right to grant Asylum in respect of other inhuman and heinous crimes.

Although states have a right to grant Asylum to a person found on its territory, the right presently is not absolute. ***The present trend is that states are under a duty not to grant Asylum to those who have planned, facilitated or committed terrorist acts.***

### ***Reasons for Asylum***

A state grants Asylum to a person because of many reasons:

- ✓ Firstly, it is granted to save a person from the jurisdiction of the local authorities. It is feared that he would not get fair trial, if extradited, because of the differences in views as to his political or religious activities.
- ✓ Secondly, a person may be granted Asylum on extra legal grounds or to say on humanitarian grounds. The ***International Court of Justice in Corfu channel case, 1949*** stated that Asylum may be granted on humanitarian Grounds in order to protect political offenders.
- ✓ Thirdly, Asylum is granted for preventing other human rights violations.

### ***Whether Asylum a right of a person ?***

Universal Declaration of Human Rights under article 14 lays down that, ***“everyone has a right to seek and enjoy in other countries Asylum from persecution”***.

But a person can seek and enjoy Asylum only when it is granted by a state. Right to enjoy Asylum therefore means no more than the right to enjoy it ***if it is granted***.

***States have no such duty to grant Asylum to a person***

### **FORMS OF ASYLUM**

***Territorial Asylum*** : when Asylum is granted by a state on its territory it is called territorial Asylum. The right to grant Asylum by a state to a person on its own territory flows from the fact that every state exercises territorial sovereignty over all persons, on its territory, whether they are its subjects or aliens. A state has a right to admit or expel any person found in its territory. The grant of territorial Asylum therefore depends upon the discretion of a state which is not under a legal obligation to grant Asylum to a Fugitive.

The general assembly adopted a resolution on December 14 1967, which is known as declaration on territorial Asylum. The declaration consists of a Preamble and four articles, dealing with the principles relating to the grant or refusal of asylum.

The right to seek and enjoy Asylum may not be invoked by any person with respect to whom there are serious reasons for considering that he has committed a crime against peace, a war crimes for crime against humanity.

***Extraterritorial Asylum***: when Asylum is granted by a state at places outside its own territory it is called extra territorial Asylum.

***1. Asylum in legation***- when Asylum is granted by a state within its Embassy premises

situated in foreign countries, it is known as *Asylum in legation or diplomatic Asylum*.

Diplomatic Asylum is based on the the consideration that Embassy premises are regarded to be outside the jurisdiction of the territorial state. However, Asylum may be granted to individuals in legation premises as a temporary measure, to individuals physically in danger from mob or from the fear of the government. It implies that Asylum is given to a person whose life has become unsecured.

2. *Asylum in warships* - as far as Asylum in warship is concerned, it may be granted on the ground of humanity, in cases of extreme danger to the individual seeking it. Therefore, right to grant Asylum on a warship may be granted in the same way as in the case of legation and also subject to the operation of the same conditions.
3. *Asylum in Merchant vessels*- merchant vessels are not exempted from the local jurisdiction, and therefore, Asylum cannot be granted to an offender.

#### *Asylum in the premises of international institutions*

in the premises of an international institution or organisation would be granted Asylum is a question which cannot be given with certainty in the absence of any rule in this regard and also because of the lack of practices.

***Asylum and India*** India in the year 1955 gave territorial Asylum to Dalai Lama and his followers who were oppressed from the repressive policies of China. Although their Asylum was criticized by China on the ground that India by granting Asylum has interfered in its internal affairs, India was competent enough to do so because of the principles of territorial Sovereignty.

India does not recognise the grant of extra territorial Asylum.