

# LEGALFOXES LAW TIMES

## EXTRADITION LAWS IN INDIA: AN ANALYSIS

By

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### ABSTRACT

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Extradition means, the surrender by one State or Country to another of an individual accused or convicted of an offence outside its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender.<sup>1</sup> The extradition procedure is solely dependent on the relationship between the two jurisdictions. If the two countries have a good relationship and a treaty in place, the extradition process would be much easier to complete. In this paper, I will be discussing the basic policies and principles that prevail today in the field of extradition in International law. After that I will be referring to the statutory law of extradition in India prior to the introduction of the Bill in the Parliament and in the later part of the paper I will be analysing the procedures for extradition under the Extradition Act, 1962 with the help of relevant case laws.

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### CHAPTER 1: INTRODUCTION

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The Extradition Act, 1962, brought about a timely reform of Indian extradition law. When India became an independent dominion of the British Commonwealth in 1947, and later declared itself a sovereign democratic republic in 1950, it was confronted with so many extradition concerns.

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<sup>1</sup> Black 's Law Dictionary, Centennial Edition (1891-1991), Sixth Edition, p. 585

Extradition is the process by which one jurisdiction hands over a person accused or convicted of committing a crime in another jurisdiction to the law enforcement authorities of that jurisdiction. It is a cooperative law enforcement activity between the two jurisdictions that is dependent on the arrangements made between them. Extradition also involves the physical transfer of custody of the individual being extradited to the legal authority of the requesting jurisdiction, in addition to the legal aspects of the process. A request for extradition is generally initiated against a fugitive criminal.<sup>2</sup> It is a system of multiple procedures in which one sovereign surrenders a person sought as an accused, criminal, or fugitive offender to another sovereign. Individuals are delivered to the requesting sovereign based on treaties and/or bilateral arrangements, however, individuals are often delivered based on reciprocity and comity as a gesture of goodwill between the sovereigns. World public order is the recurring theme based on which extradition is practiced by the States.<sup>3</sup>

In the case of **State of West Bengal vs. Jugal Kishore**,<sup>4</sup> the Supreme Court of India defined extradition as the surrender by one state to another of an individual who wishes to be prosecuted for crimes of which he has been accused or convicted and which are justiciable in the other state's courts.

The Extradition Act, 1962,<sup>5</sup> and the Extradition Treaties in force between India and other countries regulate extradition law in India. The Extradition Act of 1962 has extraterritorial jurisdiction under Section 34, which means that an extradition offence committed by a person in a foreign state is considered to have been committed in India, and that person is liable to be prosecuted in India for that offence. A treaty, agreement, or arrangement with a foreign state relating to the extradition of fugitive criminals is referred to as an extradition treaty.<sup>6</sup> A Treaty State means a state with which an extradition treaty is in effect.<sup>7</sup>

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<sup>2</sup> A 'fugitive criminal' means a person who is accused of, or is convicted of, an extradition offence within the jurisdiction of a foreign State and includes a person who, while in India, conspires or attempts to commit or incites or participates as an accomplice in the commission of an extradition offence in a foreign State

<sup>3</sup> Abu Salem Abdul Qayyum Ansari v. CBI & Another, (2013) 7 SCR 1061

<sup>4</sup> AIR 1969 SC 1171

<sup>5</sup> The Preamble of the 1962 Act states it as an Act to consolidate and amend the law relating to the extradition of fugitive criminals and to provide for matters connected therewith or incidental thereto.

<sup>6</sup> See: Section 2(c) (i) & 2(d) of the Extradition Act, 1962

<sup>7</sup> See: Section 2(j) of the the Extradition Act, 1962

Only fugitive criminals can be extradited, according to Section 2(f) of the Extradition Act of 1962. A person who is accused (or convicted) of an extradition offence committed within the jurisdiction of a Foreign State, and a person who conspires, tries to commit, incites, or acts as an accomplice in the commission of an extradition offence in a Foreign State, are indeed considered fugitive criminals under Indian extradition law. An extradition offence, according to Section 2(c) of the Extradition Act, 1962, is described as "an offence provided in the extradition treaty with Foreign States; an offence punishable by imprisonment for a period not less than one year under the laws of India or a Foreign State."

Commenting on the value of extradition law in the case of **Daya Singh Lahoria vs. Union of India**,<sup>8</sup> the Supreme Court of India noted that, Extradition is a great step toward international cooperation in the suppression of crime. This is why, in 1932, the Hague Congress of Comparative Law decided that States should regard extradition as an obligation arising from international solidarity in the fight against crime.



### **1.1.Objectives of the study:**

The objective of this study is to:

- Analyze the concept of extradition
- Discuss basic policies and principles that prevail today in the field of extradition
- Analyze procedures for extradition under the Extradition Act, 1962

### **1.2.Significance of the study:**

The results of this study would be of interest to different scholars, researchers or any person working in the field of laws related to extradition. In addition, it will represent how the laws

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<sup>8</sup> 2001 (4) SCC 516

related to extradition evolved in India and what is the procedure for extradition under the Act of 1962.

### **1.3.Limitations of the study:**

This study is limited to the Indian perspective of laws related to extradition, basically it focusses on the Extradition Act, 1962. This study has been completed with the help of secondary sources which includes articles, judgements, etc.

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## **CHAPTER 2: EVOLUTION OF EXTRADITION LAWS IN INDIA**

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The Extradition Act, 1870 (enacted by the Parliament of the United Kingdom) as amended from time to time, was originally made applicable to India by virtue of its section 1.<sup>9</sup> Extradition of fugitive criminals from and to nations beyond the British dominions was the subject of this Act. India lost interest in these British statutes after passing its own Indian Extradition Act in 1903.<sup>10</sup> The Indian Extradition Act of 1903 outlined the method to be followed in India after receiving a valid requisition for extradition from some other state. However, a foreign government's ability to issue such a requisition was dependent on the existence of a treaty between the two countries.

When a foreign fugitive offender took shelter in an Indian state, that state was obligated to bring him up to the Government of British India without any express agreement on its part, because it was assumed that this was a responsibility arising from the junction of the royal prerogative and Acts of Parliament.

On August 15, 1947, a significant political shift occurred when India became an independent dominion of the British Commonwealth. The legitimacy of various extradition treaties between

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<sup>9</sup> Sec- 17: This Act, when applied by Order in Council, shall, unless it is otherwise provided by such Order, extend to every British possession in the same manner as if throughout this Act the British possession were substituted for the United Kingdom or England, as the case may require.

<sup>10</sup> Act No. XV of 19

the Indian Native States on the one hand and the British Government on the other emerged as a pressing issue. The Supreme Court assessed the impact of the new constitutional position on extradition arrangements between India and the State of Tonk in **Dr. Ram Babu Saksena vs. The State**.<sup>11</sup> The question was whether the merging of the State into India had any impact on the 1869 extradition treaty between the Government of India and Tonk State. It was decided that the treaty will have to be deemed ineffective.

The necessity for extradition arrangements with the Indian Native States disappeared when India declared itself a sovereign democratic republic on January 26, 1950. They were named Part B States because they became an integral part of the republic. The Indian Penal Code and the Criminal Procedure Code were extended to their area by an Adaptation Order in 1950.

Then there was the significant case of **The State of Madras vs. C. G. Menon**,<sup>12</sup> in which the Fugitive Offenders Act, 1881, a part of India's extradition law governing the extradition of fugitive offenders inter se the Common-wealth countries, was declared inapplicable in India.

As a result, it is clear that the Extradition Bill was necessary, first, since Menon's case caused a gap in the law of extradition from India to Commonwealth countries, and second, because the legal situation relating to the surrender of fugitive criminals to foreign countries and Commonwealth countries from the former Part B States was somewhat unstable.

The Extradition Act of 1962 now exclusively determines the entire extradition law in India. There are five chapters and two schedules in the Act. Preliminary issues are addressed in Chapter I, including the Act's short title, extent and applicability, and definitions of key terms. The extradition of fugitive criminals to other countries and Commonwealth countries in general is the basis of Chapter II & Chapter III deals with the return of fugitives only to those Commonwealth countries having extradition arrangements with India. The return of accused or convicted persons from foreign states or Commonwealth nations to India is dealt with in Chapter IV, while miscellaneous matters are dealt with in Chapter V.

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<sup>11</sup> AIR 1950 SC155

<sup>12</sup> AIR. 1954 SC 517

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### CHAPTER 3: GENERAL CONDITIONS & PRINCIPLES OF EXTRADITION

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In International law, the conditions & principles for extradition have emerged effectively. Those are as follows:

1) **The principle of double criminality**- The "double criminality" rule states that the offence alleged in the requisition must also constitute an offence in the requesting country for extradition purposes. In simple terms, the fugitive's act must constitute an offence according to the laws of both countries. It was observed in the case of **The King vs. Dix**,<sup>13</sup> that, "It might be that crime in American law would be called larceny by embezzlement. It would probably not be called either larceny or embezzlement under our law, but would be called an offence against section 81 of the Larceny Act. But the essential thing was to see whether what the evidence showed prima facie that the prisoner had done was a crime in both countries."

2) **Extradition shall not be granted for political offences**- Political offenders should not be extradited, according to principle of international law. This principle is enshrined in section 31 (a) of the present Extradition Act, which states that:

"A fugitive criminal shall not be surrendered or returned to a foreign State or Commonwealth country, if the offence in respect of which his surrender is sought is of a political character or if he proves to the satisfaction of the magistrate or court before whom he may be produced or of the Central Government that the requisition or warrant for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character."

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<sup>13</sup> (1902) 18 T.L.R. 231, 232.

3) **Lapse of time**- The Extradition Act, 1962, provides that: " A fugitive criminal shall not be surrendered or returned to a foreign State or Commonwealth country, if prosecution for the offence in respect of which his surrender is sought is according to the law of that State or country barred by time."<sup>14</sup> In simple terms, it means that when the offence has become time-barred under the law of either the requesting or the requested State, extradition may be refused.

4) **Principle of speciality**- The principle of speciality states that extradition is only granted if the extradited person will not be tried or convicted for any offence other than the one for which extradition is requested. This principle is stated under section 31(c) of the present Act which states that:

"A fugitive criminal shall not be surrendered or returned to a foreign State or Commonwealth country, unless provision is made by the law of the foreign State or Commonwealth country or in the extradition treaty with the foreign State or extradition arrangement with the Commonwealth country, that the fugitive criminal shall not, until he has been restored or has had an opportunity of returning to India, be detained or tried in that State or country for any offence committed prior to his surrender or return, other than the extradition offence proved by the facts on which his surrender or return is based."

5) **Non bis in idem**- This rule states that, If the offender has previously been tried and discharged or punished for the offence for which extradition is requested, or is still on trial in the requested State, extradition may be refused. Although the rule is not specifically mentioned in the current Extradition Act, but it is included in the Criminal Procedure Code.<sup>15</sup>

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<sup>14</sup>Section 31(b) of The Extradition Act, 1962

<sup>15</sup>Section 300 of the Code

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**CHAPTER 4: PROCEDURE REGARDING EXTRADITION**

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When a foreign State or a Commonwealth country makes a request to the Central Government under Chapter II of the Act for the surrender of a fugitive criminal, the Central Government may, if it deems fit, issue an order to any magistrate (who would have had jurisdiction to investigate the offence if it had occurred within the local limits of his jurisdiction) directing him to inquire into the case.<sup>16</sup> When the fugitive criminal appears before the magistrate, the magistrate shall, as specified under section 7 of the Act, inquire into the case in the same manner and have the same jurisdiction and powers, as nearly as possible, as if the case were one triable by a court of session or High Court. He shall take any evidence presented in support of the requisition by the foreign State or Commonwealth country, as well as on behalf of the offender, including any proof demonstrating that the offence of which the fugitive criminal is accused or convicted is not a political crime or an extradition offence.<sup>17</sup>

On taking the evidence, if the magistrate is of the opinion that a prima facie case is not made out in support of the requisition, he shall discharge the fugitive criminal.<sup>18</sup> On the other hand, If the Magistrate is of opinion that a prima facie case is made out in support of the requisition of the foreign State, he may commit the fugitive criminal to prison to await the orders of the Central Government and shall report the result of his inquiry to the Central Government, and shall forward together with such report, and written statement which the fugitive criminal may desire to submit for the consideration of the Central Government.<sup>19</sup> If, upon receipt of the report and the statement of the fugitive, the Central Government is of the opinion that the fugitive criminal ought to be surrendered to the foreign State or Commonwealth country, it will arrange the same.<sup>20</sup> Where it appears to any magistrate that a person within the local limits of his jurisdiction, is a fugitive criminal of a foreign State, he may, if he thinks fit, issue a warrant for the arrest of that person on such information and on such evidence as would, in his opinion,

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<sup>16</sup>Section 5 of the Extradition Act, 1962

<sup>17</sup>Section 7(2) of the Extradition Act, 1962

<sup>18</sup>Section 7(3) of the Extradition Act, 1962

<sup>19</sup>Section 7(4) of the Extradition Act, 1962

<sup>20</sup>Section 8 of the Extradition Act, 1962

justify the issue of a warrant if the offence of which the person is accused or has been convicted had been committed within the local limits of his jurisdiction.<sup>21</sup>

When the Government of India receives a warrant for the arrest of a fugitive criminal in a Commonwealth country to which Chapter III of the Act applies, it may indorse the warrant if it is satisfied that the warrant was issued by a person having lawful authority to do so. This warrant shall be sufficient authority to arrest and bring the individual mentioned in the warrant before any Indian magistrate.<sup>22</sup> If the magistrate, before whom a person apprehended under this Chapter is brought, is satisfied on inquiry that the endorsed warrant for the apprehension of the fugitive criminal is duly authenticated and that the offence of which the person is accused or has been convicted is an extradition offence, the magistrate shall commit the fugitive criminal to prison to await his return and shall forthwith send to the Central Government a certificate of the committal.<sup>23</sup>

On the other hand, if the magistrate is of the opinion that the endorsed warrant is not duly authenticated, he may detain the person in custody or release him on bail, pending the receipt of the orders of the Central Government.<sup>24</sup> In both the cases, the magistrate shall report the result of his inquiry to the Central Government and shall forward together with such report any written statement which the fugitive criminal may desire to submit for the consideration of that Government.<sup>25</sup> The matter will then rest with the Central Government.

The Central Government may request that a Magistrate (with competent jurisdiction) issue an immediate provisional warrant for the arrest of a fugitive criminal in response to an urgent request from a foreign state. It is important to note that the fugitive criminal will be released after 60 days if no request for his surrender or return is made within that time frame.<sup>26</sup>

On the request of the Central Government (India), a fugitive criminal who has committed an extradition offence punishable by death in India is surrendered or returned by the Foreign State; and the laws of the Foreign State do not provide for death penalty qua the offence for which the

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<sup>21</sup>Section 9(1) of the Extradition Act, 1962

<sup>22</sup>Section 15 of the Extradition Act, 1962

<sup>23</sup>Section 17(1) of the Extradition Act, 1962

<sup>24</sup>Section 17(2) of the Extradition Act, 1962

<sup>25</sup>Section 17(3) of the Extradition Act, 1962

<sup>26</sup>Section 34 B of the Extradition Act, 1962

fugitive criminal is convicted, then the fugitive criminal shall be liable for the punishment of life imprisonment qua the offence.<sup>27</sup>

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## CHAPTER 5: IMPORTANT CASE LAWS ON EXTRADITION

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- 1) **Dr. Ram Babu Saksena vs. The State**<sup>28</sup>- In the year 1869, the British Government and the State of Tonk entered into a treaty which provided for the extradition of offenders in respect of certain offences specified therein. The question was whether the merging of the State into India had any impact on the 1869 extradition treaty between the Government of India and Tonk State. It was held that, the Extradition Treaty, 1869 was not capable of being given effect to in view of the merger of the State of Tonk in the United State of Rajasthan, and, as no enforceable treaty right existed, Section 18 of the 1903 Act had no application.
- 2) **The State of Madras vs. C.G. Menon**<sup>29</sup>- In this case it was held that, the scheme of the Fugitive Offenders Act, 1881, classifies fugitive offenders in different categories and then prescribes a procedure for dealing with each class. Later in this case, The Fugitive Offenders Act, 1881, a part of India's extradition law governing the extradition of fugitive offenders inter se the Common-wealth countries, was declared inapplicable in India.
- 3) **In Re: K.R.P.L. Chockalingam Chettiar**<sup>30</sup>- After consulting numerous authorities, the Full Bench of the Madras High Court concluded that extradition is "the delivery by one state to another of people whom it is desired to deal with for crimes of which they have been accused or convicted and are justiciable in the courts of the other state." It was noted

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<sup>27</sup>Section 34 C of the Extradition Act, 1962

<sup>28</sup> AIR 1950 SC 155

<sup>29</sup> AIR. 1954 SC 517

<sup>30</sup> AIR 1960 Mad 548

out that extradition must be differentiated from transportation and deportation, both of which result in a person's departure from the nation.

4) **Rajender Kumar Jain &Ors. vs. State through Special Police Establishment &Ors.**<sup>31</sup>-

The Supreme Court held in this case that since politics is about government, a political offence is one committed with the intent of changing a state's government or influencing it to change its policy. Declaring an offence to be of a political nature does not absolve the offenders of the offence. It was also ruled that the Indian Penal Code and the Code of Criminal Procedure do not recognise political offences as a distinct category of crime, that doesn't mean that political offences are unknown of in the judicial process.

5) **Sarabjit Rick Singh vs. Union of India**<sup>32</sup>- Taking into consideration the particular facts

and circumstances of this case, the Supreme Court stated: "In an extradition proceeding, no witness is examined for the purpose of supporting an allegation contained in the foreign State's requisition." The meaning of the word "evidence" must be assessed in light of the Act's underlying message. There'd be no formal trial. The Act for the aforementioned 17 purposes only confers jurisdiction and powers on the Magistrate which he could have exercised for the purpose of making an order of commitment.

6) **Bhavesh Jayanti Lakhani vs. State of Maharashtra**<sup>33</sup>- In this case, the High Court held

that where a citizen's fundamental rights were infringed, the High Court, exercising its extraordinary jurisdiction under Article 226 of the Constitution and keeping in mind that access to justice is a human right, would not send the individual away simply because the Interpol had issued a red-corner-notice<sup>34</sup> against him. In criminal cases, superior courts have the authority to investigate whether the manner in which the red-corner-notice is sought to be implemented and/or whether the local police threatening an Indian citizen with arrest is doing so without being legally authorized to do so, as long as the 1962 Act is followed.

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<sup>31</sup> 1980 (3) SCC 435

<sup>32</sup> 2008 (2) SCC 417

<sup>33</sup> (2009) 9 SCC 551

<sup>34</sup> Red Corner Notice is issued by the Interpol to seek the provisional arrest of a wanted person. It is issued for persons, against whom a national or international court has issued a warrant of arrest.

- 7) **P. Pushpavathy vs. Ministry of External Affairs**<sup>35</sup>- It was held in this case that if a fugitive criminal accused of an extradition offence is arrested pursuant to a duly issued warrant of arrest by a Magistrate who was directed by the Government of India to conduct a requisite investigation, the detention that follows cannot be considered illegal or unlawful. When detention is neither illegal or unlawful, there is no basis for a writ of habeas corpus to be issued.

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## CHAPTER 6: CONCLUSION

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Extradition is a strong mechanism for ensuring law and justice in today's world. However, the inconsistency with which it is applied across nations puts the principles of justice in jeopardy. It is, therefore, critical to find the right balance between extradition law and individual rights. In a nutshell, we can say that the law of extradition is important for maintaining peace and order in society, as well as for punishing offenders who attempted to escape from their punishment. They can be called back through this process, but the offence they committed must also be an offence in the country from which they are being extradited. Therefore, it is fair to conclude that the current system definitely improves law enforcement efficiency. However, as a caution, it is critical to prioritise the safety of the individual over the interests of the other country in order to ensure that extradition is both respectable and practicable

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<sup>35</sup> 2013 Cri LJ 4420