

“Definition and Purpose of Extradition”

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ABSTRACT

What happens to the people who commit crime in one state and escape in another state? What about individuals who commits crime in India and escape in America?

Do these criminals free from the crime because they left the jurisdiction where he has committed the crime? So the answer is “NO”. It is just because the concept of Extradition.

Extradition is an act where criminal commit crimes in one state and flee or escape in another state then the state where the crime committed demands the criminal from the state where he was found and the state must return him. In this process, one sovereign jurisdiction makes formal request to another sovereign jurisdiction. Extradition is regulated by treaties between countries and it is compelled by laws but no person is a subject of extradition in case of the involvement of political offence.

The State should compile this process of Extradition to all individuals who is living in both the state where the criminals had committed the crime or the state where he had escape after committing the crime that when the individual see the criminals it is his obligation to inform the states about that criminals. So that no state shall suffer again in future.

The government of many countries does not consider crime if it is not of political nature. and did not punish the criminal if he commit the crime in that country and crime is not of political nature .

According to me, State shall follow the United Nation Model Law for avoiding the ambiguity and confusions. Most of the time authority use arbitrary power, so to prevent it ,it need to establish act of cruel, inhumane that is offence under legislation. And the most important Extradition is itself an international concern so we can say that the ultimate national and international object is certainly achieved.

Keywords- Extradition, fugitive, offender, international, state

INTRODUCTION

Extradition is the delivery of an accused to the state where he has committed the crime by the state where he has escape presently. In case of *FACTOR v. LAUBENHEIMER* ,the international law does not consider it a necessary duty of a state in respect of Extradition. The international law recognize the right of extradition in the ambit of treaty while a government may exercise the power to surrender a fugitive offender from justice to the country from

which he file the legal right to demand his extradition and the duty to surrender him to the demanding state exists only when created by the treaty.¹

A State is generally under the confusion as to what punishment is given to the offenders who committed the crime because of the lack of jurisdiction, So they surrendered the criminal to the state where he has actually committed the crime.

European convention on extradition adopted on 13th December 1957 which lays down extraditable offences, the principle of non-extradition for political offences, principle of non-extradition for military offences, etc.²

Currently as there is no multilateral treaty or convention so extradition is carried on by bilateral treaties or municipal laws. Extradition is itself an element in the international protection of human right. Contradicting when returning an accused to face legitimate prosecution for the misdeeds, it is a part of law of human responsibility.

LITERATURE REVIEW

Extradition has derived from the two Latin word Ex and Traditum which means delivery of criminals or surrenders of criminals.³ Extradition is a process in which criminal commits crime in one state and escape in other state beyond the jurisdiction where the crime has been committed. So the state where the crime committed demands the criminal where he was found and the state must return him. So it clearly shows that Extradition involve two State Firstly the territorial state where accused is found and Secondly the requesting state where crime has been committed. Request is made through the diplomatic channel. Extradition comes to an end when Asylum starts.

SUCHA SINGH CASE

Sucha Singh was the accused who has murdered a chief minister of Punjab in 1956 and fled to Nepal for avoiding the prosecution of India. On a request of Government of India , the government of Nepal extradited Sucha Singh after started proceeding against him in accordance with the law of Nepal. According to the government of Nepal the crime of Sucha Singh is not of political in nature so they can't punish him and extradited him to India.⁴

DEFINITION

According to Prof. Oppenheim, 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.”

¹ Himanshi Mittal, Public International law, 83, Universal Law Publishing, Delhi, 1st ed, 2013

² Dr S.K Kapoor, International law and Human Rights, 343, Central Law Agency, Allahabad, 16th ed, 2007

³ Dr H.O Agrawal, International Law and Human Rights , Central law Publications, Allahabad, 20th ed , 2014

⁴ S.P Gupta, International Law and Human Rights, 273, Allahabad law Agency, Allahabad, 2008

According to Prof. Lawrence Extradition as the surrender by one state to another of an individual who is found in the territory of the former, and is accused of having committed a crime within territory of the later, or who, having committed a crime outside the territory of the latter, is one of its subjects and, as such, by its law amenable to its jurisdiction.”⁵

In a FONG YUE case the united states supreme court defined this term that “Extradition is the process in which accused is surrender to another country of an offence against its law and if found guilty, punished.”

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 of a criminal offence committed against the law of requesting state, such requesting state being competent to try the alleged offender.

According to Grotious, It is the duty of each state either to punish the criminals or to return them to the states where they have committed crime.⁶

IMPORTANCE OF EXTRADITION

It is the desire of all the states that crimes should be punished. Most of the times criminals do not get punished where he has taken shelter due to lack of jurisdiction or of technical rules. So to stop these crimes International law applies the maxim “aut punier aut didere” which means offenders must be punished by the territorial states or surrender to the state which will either punish him or extradite. So Extradition is necessary due to desire of the states that no crime should go unpunished and it would be better if criminals is punished where he has committed the crime.⁷

LAW GOVERNING EXTRADITION IN INDIA

A) The Extradition Act, 1962

B) Extradition treaty between India And Other Countries

PURPOSE OF EXTRADITION

Normally the criminals think that a person cannot be punished in a state where he escape after committing the crime due to lack of jurisdiction or due to some technical rules of criminal law but it is not true as criminals are extradited so that their crimes may not go unpunished.

It is as like warning to the criminals that they cannot escape punishment by run away to another state. It has a disincentive effects.

⁵ ibid

⁶ Supra note 2,p342

⁷ Supra note3

It is based on reciprocity. As the state which is requesting today for criminals may have request for extradition of criminals in future by the other state. So both are depend on each other.

The state where crime has been committed is in better position because the evidences are very easily available in that state. So no one can interfere during their trail.

5) Evidences are easily available so it is very easy for state to punish the offender within his jurisdiction.

It is mutually beneficial for all the states in eliminating the crimes if it's works effectively in Cooperation.

Extradition protects the interest of the territorial state by surrendering the criminals to the state where they come from. If the states remove the process of Extradition then the criminals like to escape in other states to save themselves from the punishment.

Extradition plays a very important role for achieving the international cooperation between the states and for solving the international problems which arises among the states.⁸

CASE LAWS VIJAYA MALLAYA

Vijaya Vittal Mallaya is an Indian businessman and politician who is the subject of Extradition. Indian Government try to force his return from the United Kingdom to India to face the charges of financial crimes. As a treaty was signed between U.K and India in 1992 so India has made a several extradition request and only one has succeeded.⁹

SUGGESTION

The various suggestions for extradition are as follows:

The first and foremost suggestion is that for avoiding confusions and ambiguity in law state shall follow model law of the United Nation.

In order to prevent arbitrary use of power, it is compulsory need to establish that any act of cruel, inhumane and degrading treatment is clearly an offence under the legislation.

There must be a connection among requirements to control the serious crimes such as terrorism and concerns regarding human rights.

Lastly, Extradition is in itself an international concern and has a scope of improvement, So we can say that the ultimate national and international object is certainly achieved.

⁸ Supra note 1 ,p83

⁹ www.wikipedia.com, (5/10/19)

CONCLUSION

As we all know extradition is a mechanism in which a individual after committing the crime in one state move away to another state in order to escape from the crime and then the state in which he has committed the crime request the another state to send him back .

It can be concluded that the fight against crime is bound to be difficult one but not impossible. The law of Extradition plays an important role in maintaining peace and order in the country. It is also beneficial for state in punishing the offenders who were trying to escape their punishment. In this process punishment is given to the offender where he had committed the crime but also to those country from where he has extradited. It is an effective tool to be used to bring the justice. So these treaties promotes harmony and cooperation among states at international level. Many offenders go unpunished due to lack of common law, jurisdictions and cooperation ,so state must provides treaties and convention for them.