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# **“EXTRADITION LAW: A COMPARATIVE ANALYSIS OF INDIA, USA AND EUROPE”, 1<sup>ST</sup> EDITION 2023**

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## **Name of the Book:**

***“Extradition Law: A Comparative Analysis of India, USA and Europe”, 1<sup>st</sup>  
Edition 2023***

**By Author: Dr. Anil Kumar Dixit**

## **1. About The Book:**

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“In his book author offers a compelling exploration of extradition law, skillfully dissecting the nuances across India, the USA, and Europe. A must-read for anyone seeking a profound understanding of the legal intricacies surrounding cross-border criminal justice. The comparative analysis is thorough, shedding light on the unique challenges each jurisdiction faces.” “A valuable contribution to the discourse on international law and extradition. Explore the historical evolution, key principles, and contemporary challenges in extradition proceedings, offering a nuanced understanding of the divergent approaches taken by these jurisdictions. From treaty frameworks to case studies, this book provides a valuable resource for legal scholars, practitioners, and anyone intrigued by the complexities of international law and justice.”

## 2. **About The Author:**

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Dr. Anil Kumar Dixit is a highly respected figure in the spheres of law, academia, and social activism. Born in 1973 in Agra, he achieved his degrees in law and political science from Dr. Bhimrao Ambedkar University in Agra. With an extensive background in teaching and research, Dr. Dixit has been contributing to legal education as a professor and has served as Principal at Career College of Law in Bhopal, Madhya Pradesh. As, this is his fourth Book. Dr. Anil Kumar Dixit has actively participated in numerous workshops, both national and international seminars, where he not only presented but also published thought-provoking research papers. His journey began in the world of journalism with the Hindi daily 'Aaj' in Agra, eventually ascending to the role of editor in various national newspapers over a span of 12 years.

## 3. **The Context and Background of the key theme:**

The author deeply immersed in the field of international law, has crafted this book, "**Extradition Law: A Comparative Analysis of India, the USA, and Europe**" to serve as a comprehensive guide through the intricate legal frameworks of extradition. This text is borne of a desire to shed light on how sovereign nations collaborate in the complex pursuit of justice across borders. Through the authors detailed exploration, he has focused on three distinct jurisdictions—India, the United States, and Europe—each with its own legal customs and procedures. This comparative study offers a unique vantage point from which to understand the shared and distinct elements that govern extradition practices in these regions.

# Chapter 1

## **Introduction:**

International extradition represents a fundamental aspect of global law enforcement and justice, involving the formal process by which one sovereign nation requests and secures the transfer of a person from another sovereign state<sup>1</sup>. This person is typically wanted for trial, sentencing, or to serve a sentence for an offense committed within the jurisdiction of the requesting nation.(pg.13)

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<sup>1</sup> See: P. Ramanatha Aiyar's Concise Law Dictionary, Lexis Nexis, Fifth Edition, P.476

The historical case of "*U.S. v. Rauscher*"<sup>2</sup> illustrates this point by noting that, without treaties, nations are not inherently obliged to extradite fugitives, thereby emphasizing the importance of formal agreements in the practice of extradition across international boundaries. Furthermore, the process of extradition is complex and multifaceted, involving considerations of justice, human rights, and national sovereignty.

In Oppenheim's International Law, the expression extradition has been defined as follows: According to seminal legal references, According to Black's Law Dictionary<sup>3</sup>, 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.*" The author refers to the Book "**Introduction to International Law**" 10<sup>th</sup> edition by **J. G. Strake** where he defined the term Extradition, "*Though extradition is granted in implementation of the international commitments 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.*" Thus, extradition is founded on the broad Principle of Albeit. (Pg.14)

In India, the legal framework for extradition is established by the Extradition Act of 1962. The term "*treaty state*" refers to countries that share active extradition agreements with India. The authors say that Interestingly, in the absence of a specific extradition treaty, the Indian government has the authority to recognize any international convention that both India and another country have ratified, as the basis for extradition relative to the offences mentioned within that convention.

"According to Section 2(c)(i), an extradition treaty is an agreement between two or more countries for reciprocal extradition of individuals charged with certain offenses. Furthermore, Section 2(d) clarifies that an extradition arrangement includes any pre-independence treaties from before August 15, 1947, which remain in effect and binding on India." The Extradition Act of 1962, along with extradition treaties and conventions, serves as the legal framework for extradition in India (Subramanian, S., 2014).(Pg. 14-15)

"In case *Daya Singh Lohoria v. Union of India 2001*<sup>4</sup>, Supreme Court of India, expatiating over the importance of extradition law, in authoritative term" "*Extradition is a great step towards*

<sup>2</sup> See: Abu Salem Abdul Qayyum Ansari v. CBI & Another, (2013) 7 SCR 1061

<sup>3</sup> See: Black's Law Dictionary, Centennial Edition (1891-1991), Sixth Edition, p.585

<sup>4</sup> Daya Singh Lohoria v. Union of India, 2001(4) SCC 516

*international cooperation in the suppression of crime. It is for this reason that the Congress of Comparative Law at Hague in 1932, resolved that States should treat extradition as an obligation resulting from the international solidarity in the fight against crime.”*

**“PRINCIPLES ALBEIT THE LAW OF EXTRADITION:” (Pg. 16-17)**

**a. Principle of Double Criminality:**

The double criminality principle requires an act to be illegal in both the requesting and the requested countries for extradition to proceed. It ensures that states aren't obligated to extradite individuals for acts that aren't criminal under their own laws.

**b. Principle of Specialty:**

The specialty principle in extradition law restricts the prosecution of an extradited individual to only the offenses listed in the extradition request. This protects the person from facing charges not originally consented to by the extraditing state. However, with the individual's agreement or the extraditing country's permission, other charges can be pursued.

**c. Political Exception:**

The political offense exception denies extradition for politically motivated punishments, but definitions vary by country and exclude terrorism.

**PROCEDURE OF EXTRADITION: GENERAL (Pg. 17-18)**

The authors further specifies that the extradition operates under the principle "*no extradition without law*," akin to "*no crime or punishment without law*." A state requesting extradition must specify the person and crime, and submit necessary supporting documents, although evidence standards may differ by country.

“In the case of *Abu Salem Abdul Qayoom Ansari v State of Maharashtra*, the Indian Supreme Court recognized the principle of specialty as a universal aspect of international law, interlinking dual criminality and reciprocity”.<sup>5</sup>

Extradition procedures generally adhere to the principles outlined in international treaties

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<sup>5</sup> See: As per Section 21 of the Extradition Act, 1962, an extradited person can only be prosecuted for the offenses listed in the extradition request. The principle of specialty does not preclude prosecution for lesser offenses provided under Section 21(b) of the same Act

## INDIA

In India, extradition requests from foreign states are made to the Central Government, which can initiate a magisterial inquiry under Section 5 of the Extradition Act, 1962. A designated Magistrate conducts the inquiry as if the crime occurred domestically, considering evidence including authenticated legal documents. If the inquiry shows a prima facie case, the magistrate can detain the fugitive and submit its findings to the government, otherwise, the fugitive is released (Pg.18-19)

### **Bail for Fugitive Criminals:**

Section 25 of the Extradition Act, 1962 allows for the application of the Criminal Procedure Code's bail provisions to fugitive criminals arrested under the Act. This includes the magistrate has equivalent powers to that of a Court of Session when determining bail matters. Both anticipatory and regular bail options are available to the accused fugitive criminal. The Extradition Act of 1962 in India does not offer a statutory appeal for extradition decisions; grievances must be addressed by appealing to the High Court's writ jurisdiction. the Arms Act, 1959<sup>6</sup>; the Indian Penal Code of 1860<sup>7</sup>, the Maharashtra Control of Organized Crimes Act, 1999<sup>8</sup>, the Narcotic Drugs and Psychotropic Substances Act, 1985<sup>9</sup>, the Unlawful Activities "Prevention Act, 1967<sup>10</sup>, the Terrorist and Disruptive Activities (Prevention) Act, 1987<sup>11</sup>, and the Prevention of Terrorism Act, 2002"<sup>12</sup>.

### **Conditions Limiting Extradition:**

#### **"A fugitive criminal cannot be surrendered if":**

The offense for which extradition is sought is considered politically motivated<sup>13</sup>. The prosecution for the offense has expired under the statute of limitations in the requesting state<sup>14</sup>. The individual is charged with an offense in India <sup>15</sup>that is different from the extradition offense<sup>16</sup>.

**Exemptions to Political Offenses:** Under Section 31 of the Extradition Act, 1962, certain

<sup>6</sup> Section 27(3) of the Arms Act, 1959.

<sup>7</sup> Death Penalty under the Indian Penal Code of 1860 is provided for offences committed under the following Sections: 121, 132, 194, 195A, 302, 305, 307(2) 364A, 396, 376E and 376A

<sup>8</sup> Section 3(1)(i) of the Maharashtra Control of Organized Crimes Act, 1999

<sup>9</sup> Section 31A of the Narcotic Drugs and Psychotropic Substances Act, 1985

<sup>10</sup> Section 16(1) of the Unlawful Activities Prevention Act, 1967.

<sup>11</sup> Section 3(2)(i) of the Terrorist and Disruptive Activities (Prevention) Act, 1987.

<sup>12</sup> Section 3(2) (a) of the Prevention of Terrorism Act, 2002 .

<sup>13</sup> Dr. Babu Ram Saksena v. The State, AIR 1950 SC-155 the year 1869

<sup>14</sup> The state of Madras v. C.G. Menon, AIR 1954 SC 517

<sup>15</sup> Sarabjit Rick Singh v. Union Of India, 2008(2) SCC417

<sup>16</sup> Hans Muller of Nurenburg v. Superintendent, Presidency Jail, Calcutta and Ors., AIR 1955 SC 367

offenses are not deemed political. (Pg. 20-22)

### **Important Case Laws: (Pg. 22-30)**

- *“Re: K.R.P.L. Chockalingam Chettiar, AIR 1960 Mad 548”*
- *“Rajender Kumar Jain & Ors v. State through Special Police Establishment & Ors, 1980 (3) SCC 435”*
- *Kubic Darusz v. Union Of India, 1990(1) SCC 568*
- *Bhavesh Jayanti Lakhani v. State of Maharashtra, 2009 SCC 551*
- *Mohammed Zubair Fauzal Awam v. State of, 2011, Cri LJ 2975*
- *“P. Pushpavathy v. Ministry of External Affairs, 2013 Cri LJ 4420”*

## **Chapter 2**

### **CURRENT STATE OF EXTRADITION LAW AND PRACTICE**

Extradition is based on international comity, a discretionary cooperation between nations not mandated by global law. It occurs per national laws or treaties and is legally required when states commit to treaties outlining extradition for specific crimes.

#### **Legal Basis for Extraditing:**

- **Bilateral extradition agreements:**

Bilateral treaties form the basis for reciprocal extradition between states, and enduring treaties even from the 19th century are still key today. While such agreements are crucial in many places like the U.S. and in some civil law nations like Brazil, the Netherlands, and Slovenia. countries can extradite without a treaty, relying on national laws and mutual co-operation, reflecting modern updates to tackle cross-border crime.

#### **2. Multilateral extradition treaties and conventions:**

The international community has expanded multilateral extradition treaties to unify the extradition process. The UN's 1990 Model Treaty on Extradition serves as a collaborative guideline against organized crime and terrorism, although it's not legally binding. Regional groups, sharing closer legal ties, often form consensus more easily on extradition, with treaties often including flexible clauses to accommodate legal differences. Extradition have been established to establish a framework for cooperation between multiple countries in the extradition process.

## Chapter 3

### **“United States: International extradition: A guide to U.S. And International Practice”:** (Pg. 50-53)

The U.S.'s attempt to extradite Julian Assange from the UK has sparked widespread discussion about international extradition law and practices<sup>17</sup>, with a verdict on Assange's case due soon<sup>18</sup>. This event is among other high-profile cases, such as Iraq's controversial murder charge against refugee Omar Ameen in the U.S.<sup>19</sup>, Mullah Krekar's extradition from Norway to Italy for terrorism-related activities<sup>20</sup>, and the arrest of Emilio Lozoya in Spain for pending corruption extradition requests by Mexico<sup>21</sup>. This guide provides an overview of the U.S. role in international extradition, including standard treaty elements, the U.S. extradition process<sup>22</sup>, and common defenses, aiming to assist practitioners with extradition cases.

#### **Extraditable offenses are defined by treaties and include common criteria:**

Political offenses are usually exempt from extradition<sup>23</sup>. Nationality may affect whether a country will extradite its own citizens<sup>24</sup>. Non bis in idem means an individual cannot be tried again for the same offense after acquittal or conviction<sup>25</sup>. “The rule of specialty stipulates that an extradited person can only be tried for the crimes for which they were extradited”<sup>26</sup>. Statutes of limitations dictate that offenses must be eligible for prosecution within a certain time frame to qualify for extradition.

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<sup>17</sup> See Mia Swart, Julian Assange extradition verdict to be delivered on January 4, Al Jazeera (Oct. 2, 2020) .

<sup>18</sup> See William Booth, U-Md. professor testifies, amid glitches, at Assange extradition hearing in London, The Wash. Post (Sept. 7, 2020) . The U.S. extradition process involves collaboration between governmental and judicial figures. It's coordinated by the Department of State's legal division and the Department of Justice's Office of International Affairs, with aid from federal prosecutors nationwide. Extradition relies on the presence and stipulations of a relevant treaty and is a meticulous, often lengthy procedure that can span multiple years.

<sup>19</sup> See Ben Taub, The Fight to Save an Innocent Refugee from Almost Certain Death, The New Yorker (Jan. 20, 2020).

<sup>20</sup> See Norway extradites jihadist preacher Mullah Krekar to Italy, BBC News (Mar 26, 2020) .

<sup>21</sup> See Spain orders detention of ex-head of Mexico oil firm pending extradition request, Reuters (Feb. 13, 2020) .

<sup>22</sup> See U.S. Dept. of State, 7 Foreign Affairs Manual (FAM) 1613.1(c). The State Department compiles an annual publication titled Treaties in Force, which contains the most up-to-date list of countries with which the United States has extradition treaties. See U.S. Dept. of State, Treaties in Force (last accessed November 10, 2020)

<sup>23</sup> See, e.g., Extradition Treaty, U.S.-U.K., art. 4(2), Mar. 31, 2003, S. Treaty Doc. No. 108-23 (listing specific offenses that "shall not be considered political offenses," including "a murder or other violent crime against the person of a Head of State of one of the Parties, or of a member of the Head of State's family," and "an offense involving kidnaping, abduction, or any form of unlawful detention, including the taking of a hostage").

<sup>24</sup> See 7 FAM 1613.4(c)

<sup>25</sup> See 7 FAM 1613.4(a)

<sup>26</sup> See 7 FAM 1612

## Chapter 4

**United States:** (Pg 54-60)

**The steps for extradition from the United States are as follows:**

The Department of State reviews the extradition request. The Office of International Affairs evaluates the request's sufficiency. OIA sends the request to a U.S. Attorney's Office to obtain an arrest warrant. The case is presented before an extradition judge. The judge issues a certification, and the Secretary of State makes a final decision. The person is notified and either transferred or released depending on the outcome and extradition process for the United States.

**“International extradition a guide to the European Union and International Practice”:** (pg. 61-79)

At the heart of the EU's harmonized legal environment is the European Arrest Warrant, which has streamlined the extradition process by reducing administrative procedures and removing political barriers, thereby expediting judicial cooperation between member states. This guide offers insight into the complex nature of extradition practices at an EU and global level, highlighting the EU's advancements in facilitating swift and collaborative crime-fighting efforts<sup>27</sup>.

The EU has notably streamlined extradition protocol across its member states, paving the way for concerted efforts in tackling crime that transcends national boundaries<sup>28</sup>. However, contemporary treaties, especially within the EU context, abide by the principle of 'dual criminality', which mandates that the offence must be punishable under the laws of both the requesting and requested countries<sup>29</sup>.

## Chapter 5

**List Of the Fugitives Brought to India in The Last Five Years:** (Pg. 80-82)

**Rajiv Saxena and Deepak Talwar** were extradited from the UAE in January for involvement in the Agusta Westland chopper scandal. **Mohammed Yahya** was brought from Indonesia in October 2018 to face charges of cheating, forgery, and conspiracy. In a similar case, **Vinay Mittal** was also extradited from Indonesia in September 2018. **Mansoor/Farooq Takla**, accused of terrorism, was extradited from the UAE in March 2018. In September 2017, Abubakr Kadir Lonut Alexandru was returned from Singapore for a job scam case. Abdul Raut Merchant Mohammad

<sup>27</sup> BBC News. "Vijay Mallya: India tycoon to learn extradition fate." BBC.

<sup>28</sup> The Guardian. (2023). "Nirav Modi's extradition case: what we know so far." The Guardian.

<sup>29</sup> BBC News. "Christian Michel: The story so far." BBC.

Sultan was extradited from Bangladesh in November 2016 on murder charges. Chhota Rajan, involved in murder and kidnapping, was extradited from Indonesia in November 2015.

### **Comment on the BOOK:**

The dual purpose of the author's analysis is straightforward yet ambitious, to demystify the core principles of extradition law and provide an in-depth look at how these principles manifest in the specific contexts of the jurisdictions in question. The author will navigate us together through historical milestones, precedent-setting legal cases, and the nuanced legislative details that contribute to the overall mosaic of international extradition law.

The author in this case is employing a comparative approach, he aims to not only articulate the legal complexities but also to consider the practical effects of extradition decisions within different legal systems. It is the hope that this book will prove to be an insightful and indispensable resource for legal practitioners, scholars, and decision-makers engaged in the realm of transnational judicial processes.

The book demonstrates the author's aspiration that it enriches the readers to understanding and equip themselves to better navigate the intricacies of extradition law in our increasingly interconnected global community.

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