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COMPREHENDING THE DOMAIN OF EXTRADITION LAWS

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ABSTRACT

Extradition is the process by which one jurisdiction transfers a person suspected or convicted of committing a crime in another jurisdiction to the law enforcement authorities in that jurisdiction. It is a collaborative law enforcement process between the two jurisdictions and is contingent upon the parties' agreement. Apart from the legal parts of the procedure, extradition also include the actual transfer of custody of the extraditee to the requesting jurisdiction's legal authority. Through this paper the authors have made a humble attempt to comprehend the arena of Extradition Laws.

INTRODUCTION

The term "extradition" derives from the Latin terms *ex* and *traditum*. This term refers to the 'delivery of criminals', the 'surrender of fugitives', or the 'handover of fugitives'. Extradition is the official procedure by which one state demands the surrender of a person or fugitive offender for the purpose of trial or prosecution for a crime. Extradition, as defined by the Hon'ble Supreme Court, is the surrender by one State to another of persons who are sought to be dealt with for crimes of which they have been charged or convicted and are justifiable in the other State's Courts. Extraditable individuals may include those who have been accused with a crime but have not yet been tried, those who have been tried and convicted but have evaded arrest, and those sentenced in absentia. These offences must be criminal under domestic law in the seeking state and committed outside the refugee state. Both nations must have signed the Extradition Treaty. While governments may extradite without a treaty, such instances are uncommon.

Belgium approved the first legislation authorising extradition in 1833, along with the first law establishing the right to refuge. Extradition statutes define extraditable offences, establish extradition processes and protections, and define the act's link to international treaties. National laws vary significantly in their treatment of the link between extradition statutes and treaties. Extradition is permitted in the United States only according to treaties and only if Congress has not enacted legislation to the contrary, a scenario that also applies in the United Kingdom, Belgium, and the Netherlands. Germany and Switzerland extradite individuals without the need for a formal convention in circumstances when their governments and the seeking state have exchanged reciprocity statements. Although there has long been a trend toward declining extradition petitions in the absence of a binding international commitment, nations may return fugitives under local law or as a gesture of goodwill.

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Indian Extradition Laws

The Indian Extradition Act, 1962 governs the extradition of a fugitive criminal in India. This applies to both extraditing individuals to India and extraditing individuals from India to foreign countries. Extradition might be based on a treaty between India and another nation. The term "extradition crime" as defined in section 2 (c) of The Indian Extradition Act, 1962, denotes

- (i) In respect to a treaty State, an offence specified in the treaty's extradition treaty with that State;
- (ii) with regard to a foreign State that is not a treaty State, an offence punishable by imprisonment for a term of not less than one year under the laws of India or a foreign State, which includes a composite offense;. This implies that the offence must be specified in the extradition treaty and must carry a maximum sentence of less than one year in jail. The term "foreign state" is defined in section 2 (e) of the 1962 Indian Extradition Act. It defines "foreign state" as any state located outside of India, including any component portion, colony, or dependent of such state;[5]. A fugitive criminal is someone who has been charged or convicted of a crime and is evading law enforcement. Section 2 (f) of the act defines "fugitive criminal" as a person who is charged with or convicted of an extradition offence committed within the jurisdiction of a foreign State, as well as a person who, while in India, conspires, attempts to commit, incites, or participates as an accomplice in the commission of an extradition offence committed in a foreign State; It can be applied to anyone who conspires, attempts to commit, incites or participate in such extradition offence in foreign state. Extradition can be initiated in the case of under-investigation, under-trial and convicted criminals. In cases under investigation, abundant precautions have to be exercised by the law enforcement agency to ensure that it is in possession of prima facie evidence to sustain the allegation before the Courts of Law in the Foreign State. Consular, Passport and Visa Division of the Ministry of External Affairs, administers the Extradition Act and it processes incoming and outgoing Extradition Requests.

The Proem Of Extradition Treaties

According to Section 2(d) of The Indian Extradition Act, 1962, an extradition treaty" means a treaty (agreement or arrangement) concluded by India with a foreign State relating to the extradition of fugitive criminals, and includes any treaty [agreement or arrangement] relating to the extradition of fugitive criminals concluded prior to the 15th day of August, 1947, that extends to and is binding on India;" Extradition is applicable exclusively to those offences specified in the treaty. It is based on the premise of dual criminality, which indicates that the offence sought is punishable under both the seeking and requested country's national laws. The requested country must be satisfied that an offender has a prima facie case. Extradition should be limited to the offence for which extradition was sought. A defendant must be afforded a fair trial. The legal basis for Extradition with States with which India does not have an Extradition Treaty (non-Treaty States) is provided by Section 3(4) of the Indian Extradition Act, 1962, which provides that the Central Government may treat any convention to which India and a foreign state are parties as an Extradition Treaty made by India with that foreign state providing for extradition in respect of the offences specified in that Convention by notified order. India is also a signatory to the 1997 International Convention against Terrorist Bombings. This also establishes a legal foundation for extradition in cases involving terrorism. India now has extradition treaties with over 40 nations.

The India-Uk Extradition Treaty

According to Article 1 of the Extradition Treaty between India and the United Kingdom, India and the United Kingdom are obligated to extradite anybody charged or convicted of an extradition offence committed within the territory of one State prior to or after the Treaty's entrance into force. Each contracting state shall provide reciprocal aid to one another in criminal situations. Extradition offences are defined as those that are punished by imprisonment for at least one year by the laws of both contracting States, excluding political offences but including those that are entirely fiscal in nature or heinous offences such as murder, creating explosion, or terrorism. Extradition may be denied if the individual is being prosecuted in the requested State's courts for the extradition offence or if the accused establishes that the prosecution in the requested State is unfair, repressive, biased, or discriminating.

If the request is for a person who has already been convicted, a certificate of conviction is required. In urgent instances, the person may be held provisionally by the requesting State pending the processing of his extradition request. He may, however, be released after 60 days from the date of arrest if his extradition request is not received. After an individual is extradited to the asking State, he or she may be tried for the sought offence, any lesser offence, or any offence consented to by the requesting State within a 45-day period. Extradition may be rejected for an offence that carries the death penalty in the requesting State but does not carry the death penalty in the sought State for the identical offence. After extradition is authorised, the requested State must either deliver the accused at a designated location or remove the individual from its territory within one month or as stipulated.

The Procedure Of Extradition

- ***The Receipt Of Information*** - Extradition is initiated when a request for information or a requisition on fugitive offenders sought in foreign countries is received. This information may be obtained in the following ways: directly from the concerned country's diplomatic channels (along with the necessary information about the offence and the fugitive); or through the General Secretariat of ICPO-Interpol in the form of red notices; or through other established modes of communication.
- ***The Magisterial Inquiry*** – When a requisition is received, the Central government may direct a magistrate to conduct an investigation. The initial investigation conducted by the Central government prior to establishing a magisterial inquiry does not have to be exhaustive. There is no requirement that the fugitive be granted a pre-decision hearing prior to establishing a magisterial inquiry. The magistrate's function under this clause is quasi-judicial in character. The magistrate charged with conducting the investigation does not have to have territorial authority. The Magistrate shall issue an arrest warrant for the fleeing offender upon receipt of orders. Once the fleeing criminal comes before the magistrate or is hauled before him according to the warrants, the magistrate conducts an investigation into the matter.

THE INFAMOUS CASES

- ***The Nirav Modi Case-***

NiravModi is a jeweller and designer specialising in luxury diamonds. He was placed 57th on Forbes' 2017 list of billionaires. Additionally, he is the creator of the NiravModi chain of retail diamond jewellery stores. Modi is the Chairman of Firestar International, the parent company of the NiravModi retail chain, which operates in important global markets. He operates 16 outlets in cities throughout the globe, including Delhi, Mumbai, New York, Hong Kong, London, and Macau. The Punjab National Bank case involves a bank-issued bogus letter of undertaking for Rs 10,000 crore. NiravModi, a jeweller and designer, his maternal uncle MehulChoksi, as well as other relatives and certain PNB workers, were the primary defendants in the case. NiravModi and his family fled India in early 2018, only days before news of the scandal broke. The PNB scandal has been labelled the largest financial fraud in India's history. PNB staff abused the SWIFT network to send fund-requirement signals to Allahabad Bank and Axis Bank. While all of this was accomplished through the use of SWIFT passwords, the transactions were never logged in the bank's main system, leaving PNB management in the dark for years. On 29 January 2018, PNB filed a complaint with the CBI alleging that fake Letters of Understanding worth Rs 2.8 billion (Rs 280.7 crore) were issued for the first time on 16 January. PNB listed three diamond enterprises in its complaint: Diamonds R Us, Solar Exports, and Stellar Diamonds. As of 18 May 2018, the scandal has amassed a total value of more than Rs 14,000 crore. Priti Patel, the United Kingdom's Home Secretary, authorised the extradition of fugitive NiravModi in April. In 1992, India and the United Kingdom signed an extradition deal. NiravModi, a diamond dealer in India, has been charged with being the primary beneficiary of the forged articles of undertaking used to defraud the Punjab National Bank (PNB) of Rs 13,570 crore. The famous jeweller has been detained at Wandsworth Prison since March 19, 2019 at a London metro station on an extradition warrant obtained by Scotland Yard, and his numerous attempts to obtain bail have been denied. NiravModi has appealed to the UK's High Court against his extradition to India. The UK's High Court has rejected his application. Nirav is currently facing two separate criminal investigations, one by the CBI for PNB fraud involving the fraudulent procuring of letters of undertaking and another by the ED for the laundering of the profits of that scam.

- ***Vijay Mallya Case-***

Vijay Mallya is an Indian businessman who is now battling extradition to the United Kingdom. Mallya, who owes an estimated Rs 9,000 crore to 17 Indian banks, is facing charges of fraud and money laundering in the nation. Additionally, Mallya is a former RajyaSabha member and the former chairman of United Spirits. He is still chairman of United Breweries Group. He formerly served as chairman of many firms, including Sanofi India and Bayer CropScience. Vijay Mallya's name is most strongly connected with the now-defunct Kingfisher Airlines, of all his enterprises. The aviation firm, founded in 2005, proved to be his undoing, as its business model imploded in 2008 due to a worldwide recession and increasing fuel prices. Mallya moved to the United Kingdom in 2016 after under pressure from lenders following the airline's demise. Mallya has made a public promise to repay his debts and stated that he has been doing so since 2016. Mallya has been stationed in the United Kingdom since March 2016 and is on bail pending the outcome of a

three-year-old extradition warrant issued by Scotland Yard. Mallya has refuted all claims and openly pledged to repay the loans in full. Mallya issued an open letter defending himself just before departing the country in 2016. "All investigations undertaken to far have shown no indication of monies being misappropriated by Kingfisher Airlines or myself," Mallya stated. "Despite guaranteeing blue-chip securities and making hefty court deposits, a sophisticated misinformation effort has elevated me to the status of the poster boy for all bank non-performing assets." Mallya acquired UB Spirits from his father and transformed it into India's largest spirits manufacturer. At the age of 28, he was appointed chairman of UB Group. However, the group's other businesses were not as successful, with Kingfisher Airlines being the most egregious failure. Kingfisher Airlines began operations in 2005 but was forced to cease operations in 2012 due to a mounting financial burden. Additionally, the airline is being examined for possible money laundering and financial irregularities. Mallya departed the country on March 2, 2016, the day a slew of public-sector banks filed a complaint against him with the Debt Recovery Tribunal. He was labelled a fugitive economic offender in January 2019 under the Fugitive Economic Offenders Act. India is making every attempt to extradite Mallya from the United Kingdom. The UK Home Secretary authorised the extradition in February 2019. Mallya has launched an appeal against the ruling at the London High Court.



CONCLUSION

Despite the extensive statutory framework and operational machinery in place to extradite foreign nationals to India, only 65 fugitives have been extradited to India since 2002 demonstrating that the surrender process is quite lengthy and tedious, frequently taking years to complete and, in some cases, remaining unsuccessful. Without a doubt, it helps fugitive criminals charged with crimes in India to elude capture and punishment for years on end. The Ordinance is a positive move, but its long-term advantages and capacity to convince other states to cooperate with India to accelerate the extradition process remain to be seen. International crime is rising daily. Extradition legislation assists in preventing a person who committed a crime outside of a refugee state from evading prosecution. Each country has its own extraction laws, which are referenced in international legislation as well. These rules are important to provide deterrence and to preserve international law and order.

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