

7. Define the concept 'Extradition'. Discuss different conditions for Extradition under Public International Law.

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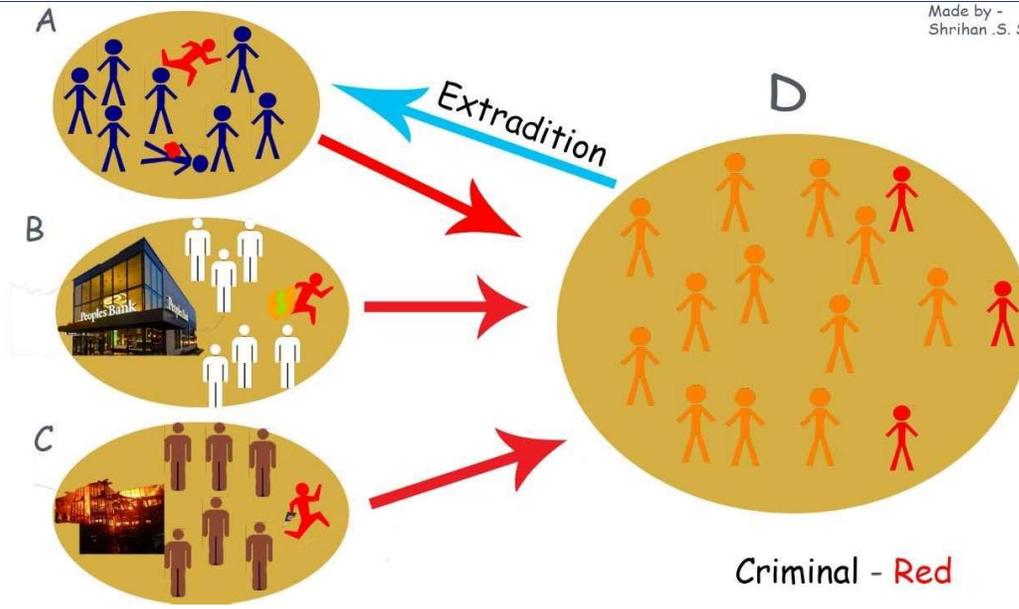
1. Introduction

- Ordinarily each state exercises complete jurisdiction over all the persons within its territory.
- But sometimes there may be cases when a person after committing crime runs away to another country.
- In such a situation the country the country affected finds itself helpless to exercise jurisdiction to punish the guilty person.
- In such a situation peace and order can be maintained only when there is international Co-operation among the states. There is a social need to

punish such criminals and in order to fulfil this social necessity the principle of extradition has been recognised.

2. MEANING AND DEFINITION OF THE TERM EXTRADITION.

- The term extradition has derived from two Latin words EX and TRADITUM. MEANING- ‘delivery of criminals’,
- A person after committing a crime may cross over to another state. A state has territorial sovereignty and it may permit an alien to stay in its territory.
- Such a criminal cannot be arrested or prosecuted by the state where he happens to be because he has not committed any crime there. The first state where he has committed the crime cannot arrest and prosecute him because of territorial supremacy of the other state. But the object of law is to punish a criminal.
- Therefore, the state of the criminal may request the state where the criminal is physically present to deliver him back for his trial and prosecution. Such process of demanding the criminal from the other state by the former is called extradition.
- Under International law, extradition is mostly a matter of bilateral treaty. Thus there is no universal rule of customary international law in existence imposing the duty of extradition.
- Some countries grant extradition without a treaty. The extradition Act, 1962 which governs the law relating to extradition in India.
- The Act deals with the return of fugitive criminals from commonwealth countries with extradition arrangements. After a magisterial inquiry if the prima facie case is made, the criminal may be returned after following prescribed procedures.



3. PURPOSE OF EXTRADITION:

1. Is to prevent criminals who flee from a jurisdiction to escape from punishment for a criminal offence they have been accused or convicted of.
2. The objective of extradition is to prevent crimes and punish the persons accused or convicted of crimes.
3. Extradition acts as a warning to the criminals that they cannot escape punishment by fleeing to another state. Extradition therefore has a deterrent effect.
4. Extradition is done because it is a step towards the achievement of international co-operation in solving international problems of a social character.

4. IS EXTRADITION A LEGAL DUTY OF A STATE

- In modern times, a fugitive criminal is not surrendered in the absence of extradition treaties and thus a state does not have a legal duty to surrender the fugitive criminal in the absence of a treaty.

6. EXTRADITION TREATIES

- THE first and the foremost important condition of extradition is the existence of an extradition treaty between the territorial state and the requesting state.
- Modern civilization demanded extradition of criminals as a rule and, as such, various treaties between states were concluded. In the beginning there were bilateral treaties which gradually have extended as multilateral.
- American states entered into bilateral treaties in 1889 and 1902 and ultimately in 1981 the Inter-American Convention on Extradition was adopted.
- Since extradition treaties are politically sensitive and require careful and lengthy negotiations, states have few extradition treaties and criminals can find a safe heaven.
- A person may be extradited in exceptional cases in the absence of a treaty on the basis of reciprocity.
- 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 India gave an assurance that he would not be given death sentence.

7. Extraditable Person

- Generally, a state may obtain the surrender of its own nationals or nationals of a third state. Some states, such as France and Germany,

never surrender their own nationals to a foreign state. They themselves may prosecute and punish them for serious offences committed by them abroad.

8. ESSENTIAL CONDITIONS FOR EXTRADITION

I. Non extradition of political criminal

II. Extradition is not allowed for military criminals

III religious crimes

III. The rule of specialty

IV. Double criminality

I. Non extradition of political criminal:

- It is a very important principle of international law that extradition for political crimes is not allowed.
- The practice of non extradition for political crimes began with the French Revolution of 1789. Later on other states also subscribed to this view.
- The most difficult problem is of the definition of the term political terms.
- 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 also protects the political offender from any measure of extra legal character which the requesting state might attempt to take against them.

- 2) The object of the political offenders to take shelter in another country is not the same as those of the ordinary criminals.
- 3) Political offenders are not dangerous for the territorial state as may be in the case of ordinary criminals.

Exceptions to the political offence exceptions:

At present, the political exception is no longer accepted in a number of serious crimes which are as follows:

1. It is expressly excluded by some multilateral treaties notably the Genocide convention of 1948 and the convention on Apartheid of 1973. The genocide convention provides that genocide, conspiracy to commit genocide, public incitement to commit genocide, attempt to commit genocide and complicity in genocide SHALL NOT BE CONSIDERED AS POLITICAL CRIMES.
2. Political offence is not recognized as an exception to extradition in the case of customary International law crimes such as war crimes and crimes against humanity.

1. Re Meunier

In this case, the prisoner, an anarchist, had caused two bomb explosions in France in which two individuals were killed. The court refused to hold his crimes as political by excluding category of political crimes excluding anarchist and terrorist acts from the category of political crime.

2. Govt. of India v. Mubarak Ali Ahmed

In this case the prisoner had committed forgery and escaped to Pakistan. India could not get him extradited from there. Then the prisoner went to England. India requested for his extradition. He

pleaded that he may not get a fair trial in India for political reasons. The court, however, refused to treat in as a political criminal.

Similarly, the fact that the prisoner has been a subject of acute political controversy in the requesting state, does not make him a political offender.

International law leaves it to the states to determine whether a particular act is of political nature or not. But, it seems reasonable that the discretion of the states in this regard would be restricted by the general rules of international law.

Therefore, states will be under pressure to extradite persons who have committed acts of genocide, war crimes, crimes against humanity and terrorist acts. Such offenders cannot be protected under the canopy of political offences.

II. EXTRADITION IS NOT ALLOWED FOR MILITARY CRIMINALS

- Extradition treaties generally exclude military offences. Broadly, military offences fall into two categories
 - 1) Those which constitute offences under ordinary criminal law and those
 - 2) Which relate specifically to military matters.
- Only the second category qualify as military offences in respect of which extradition will not apply. Desertion is an example of the second category. For Religious crimes also persons are not extradited

II. RELIGIOUS CRIMES

For Religious crimes also persons are not extradited

III. THE RULE OF SPECIALITY:

- An accused is extradited for a particular crime and the country which gets back the criminal is entitled to prosecute that person only for the crime for which he was extradited. This is known as the rule of specialty.
- This rule also finds place in the extradition treaties and national laws. Under this rule, the requesting state can punish the extradited person for the offence for which he was extradited and for no other offence. If a person is extradited for murder, he cannot be tried for causing grievous hurt.
- The European Union and many countries have abolished the death penalty as punishment. In extradition proceedings, Portugal recently took an undertaking from India in the extradition proceedings relating to Monica Bedi.

IV. DOUBLE CRIMINALITY:

- The crime for which extradition is claimed should be crime in both the countries. This is called the rule of double criminality.
- There should be sufficient evidence for crimes relating extradition. In other words the crime should be such that it should appear to be a crime prima facie.
- For extradition it is also necessary that certain other prescribed formalities should be fulfilled.
- The conditions and the terms mentioned in the extradition Treaty should be generally fulfilled. (Savarkar's case 1911)
- There should be a formal treaty and not mere agreement or notification.

