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# Analysis of the India-US Extradition Treaty

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## ABSTRACT

*Extradition involves the delivery of a person accused or convicted of an offence from the State within whose jurisdiction the person is found to the State where the said offence has taken place or where the person was convicted, upon the request made by the latter. It is an act of international cooperation involving two States. The process of extradition between two States can be followed either by Extradition Treaty or by Extradition Arrangements. India has extradition treaties with 48 States and extradition arrangements with 12 States. This paper aims at analysing the Extradition Treaty between India and USA and also studies the circumstances in which the Requested States can deny the request of extradition.*

**Keywords:** *Extradition Treaty, Rule of Speciality, Double Criminality, Waiver, Political Offenders.*

## I. INTRODUCTION

Generally the States exercises jurisdiction over its territory and the Courts has the right to try and punish the offenders within their jurisdiction. But what will happen if the offender or convict flees to another State, will the State within whose jurisdiction the offence has taken place can try and punish him when he is outside its territorial jurisdiction and if yes, then how ? The answer lies in the process of Extradition. When a request of extradition is made by a State to another State and is accepted by the latter, the State making such request can try and punish the extradited person for the offence for which such request was made. It serves as a mechanism to promote rule of law as well as maintaining the sovereignty of the States, additionally it upholds the principle of justice and human rights globally.

“The expression Extradition means surrender by one State to another of a person desired to be dealt with for the crime of which he has been accused and which are justiciable in the Courts of the other States.”<sup>3</sup> In other words, Extradition refers to an act where an accused or convicted person is delivered from the Requested State to the Requesting State. The Requesting State is the State which asks for the delivery of the person whereas the Requested State refers to the State to whom the request for the extradition of the accused or convict is made. It is based on

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<sup>3</sup> Daya Singh Lahoria and Ors. v. Union of India and Ors. (2001) 4 SCC 516

the principle of reciprocity and cooperation between sovereign States so that justice can be delivered and an offender cannot escape from the law just because he had sought refuge in another State. The extradition between countries is either governed by treaty or arrangements. Its nature is rooted in these treaties and arrangements which outlines the procedure and requirements of extradition. “Extradition is founded on the broad principle that it is in the interest of civilised communities that criminals should not go unpunished and on that account it is recognised as a part of the comity of nations that one State should ordinarily afford to another State assistance towards bringing offenders to justice”<sup>4</sup>.

India and USA had signed their bilateral treaty on extradition on June 25, 1997 at Washington, DC. This treaty recalled the Treaty for the Mutual Extradition of Criminals between USA and Great Britain, signed on December 22, 1931, which was imposed upon India on March 9, 1942. The Treaty operates retrospectively. It means that the contracting States will be obligated to extradite the person even the offence was committed before the treaty was signed.

#### (A) Features of the Treaty

“The importance of treaty for extradition can be understood by the fact that, the established principle of extradition requires that without formal authority either by treaty or by statute, fugitive criminals would not be surrendered nor would their surrender be requested.”<sup>5</sup>

The Treaty was signed on 25 June 1997 at Washington, DC between India and USA in duplicate in two languages, i.e., English and Hindi. It contains 24 Articles which lays down the procedure of extradition and the rules to be followed therein, the exceptions, description of documents to be submitted etc.

- i. **Double Criminality**- a person can only be extradited if the circumstances fulfil the demand of double criminality. It implies that the offence committed shall be punishable under the laws of both the countries. Article 2 clause (1) of the Treaty<sup>6</sup> says that the extraditable offences will consist of those offences which comes under double criminality and has a minimum punishment of imprisonment of more than 1 year.
- ii. **Seizure and Surrender of the property related to offence**<sup>7</sup>- Upon the assurance of the Requesting State that it will return the same as soon as possible, the Requested State may seize and surrender articles, documents and evidence related to the extraditable offence for which extradition is requested, to the Requesting State. Even if the person

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<sup>4</sup> Rosiline George v. Union of India (1994) 2 SCC 80

<sup>5</sup> *supra* note 4

<sup>6</sup> Extradition Treaty Between Government of USA and Republic of India, 1997, art. 2

<sup>7</sup> *Id.*, art. 16

sought is disappears, dies or escapes, the mentioned properties may be delivered to the Requesting State. But it must be kept in mind that any right of a third party over that property will be respected and shall not be denied.

iii. **Rule of Speciality-** Article 17 of the Treaty provides for the Rule of Speciality<sup>8</sup>. It implies that the extradited person shall be tried and convicted for the offence for which he is extradited only. The extradited person may only be detained, tried or punished for:

- Any denominated offence based on the same facts for which the extradition was sought and granted, unless that offence is an extraditable or a lesser included one;
- the offence which the extradited person has committed after extradition;
- for the detention, trial or punishment of the extradited person for an offence for which the Requested State's executive authority consents.

The Article also provides that the extradited person can be extradited to a third State only on the basis of 2 conditions. either the person voluntary returns to the territory of the Requesting State after leaving it after extradition or the person has not left the territory of the Requesting State within the period of 15 days from the day on which he was free to leave.

iv. **Waiver of extradition-** Waiver of extradition includes the relinquishment of the right to extradition hearing by the person sought. Article 18 of the Treaty<sup>9</sup> provides that if the person sought gives consent, the Requested State may surrender him without any further proceedings.

v. **When Extradition Request is made by more than one State**<sup>10</sup>- If a request of extradition is made by more than one State regarding the same person, the executive authority of the Requested State will have the right to decide as to which state it should surrender the person. While making its decision the requested state shell keeps in mind certain factors including the following:

- Whether or not the request follows the treaty;
- The underlying interest of the requesting States;
- Gravity and the place of commission of the offences;
- Victim's nationality;

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<sup>8</sup> Id., art 17

<sup>9</sup> Id., art 18

<sup>10</sup> Id., art. 15

- Potential of further extradition between the Requesting States;
- Chronology of the requests received.

### **(B) Exceptions**

The treaty also provides certain exceptions for which the extradition cannot be granted. These exceptions are:

- a. **Political Offenders-** The Article 4 of the treaty provides an exception to extradition. It says that extradition shall not be granted on the basis of political offence. The treaty further provides a list of 8 offences which will not be considered as political offence. It includes offences as:
  - i. aircraft hijack, as described in The Hague Convention,1970;
  - ii. aviation sabotage, as described in The Montreal Convention 1971;
  - iii. crimes against internationally protected persons;
  - iv. murder or wilful crime against the Head of the State or Government of either of the Contracting States or against their family member;
  - v. taking people as hostage, as described in The International Convention against the Taking of Hostages, 1979;
  - vi. related to illegal drugs;
  - vii. for which the Contracting States are obliged to extradite in pursuance of a multilateral agreement;
  - viii. Conspiracy, attempt, aid or abetment of any foregoing offence.<sup>11</sup>
- b. **Military Offences-** Article 5 provides that if an offence under the military law is not an offence under the ordinary criminal law, then the Requested State may deny the extradition of the person.
- c. **Politically Motivated Request-** The treaty<sup>12</sup> mentions that the Requested State may deny the extradition if it was of the opinion that the request of extradition made by the Requesting State was politically motivated.
- d. **Prior Prosecution-** Article 6 provides that if the person, whose extradition has been requested, has already been convicted or acquitted for the offence for which the extradition has been sought in the Requested State, the Extradition shall not

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<sup>11</sup> Id., art 4

<sup>12</sup> *ibid.*

be granted to the Requesting State. The fact that the Requested State has decided to discontinue the criminal proceedings or to not to prosecute the person for the offence for which the extradition is sought shall not preclude extradition.

- e. **Lapse of Time-** The treaty<sup>13</sup> mentions that once the prosecution becomes time barred as per the laws of the Requesting State the extradition of the person cannot be sought.
- f. **Capital Punishment-** If the offence for which extradition is sought is punishable by death sentence within the Requesting State but not under the laws of the Requested State, the latter can refuse extradition except when;
  - i. the laws of Requested State constitutes the offence as murder; or
  - ii. the Requested State assures that the death penalty will not be carried out.<sup>14</sup>

**(C) Procedure:**

Article 9 of the treaty of 1997 lays down the procedure regarding the extradition and the documents required for the same.

**a. Initiation of process and submission of documents:**

As per the provision, the request for the extradition shall be made through a diplomatic channel and such request shall be supported by

- the document identifying the person whose extradition is requested and his probable location;
- detail facts of the offense committed and the provisions of the law describing the essential elements and the punishment of the offense;

Additional documents or statements may be required as per the specific circumstances. these circumstances means that whether the request of the extradition is made for the prosecution of the person sought or whether he has been convicted of an offense.

If the person is sought for prosecution then the request shall be supported by a copy of warrant or order in addition with a copy of the charging document, if available, and, if the offense has been committed within the territory of the Requested State, the information to justify the committal for the trial of the person.

If the person sought is convicted of an offense then the request shall be accompanied by a copy

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<sup>13</sup> Id., art 7

<sup>14</sup> Id., art. 8

of judgement of conviction of the person and if it is not available a statement that should be made by a judicial authority that the person has been convicted accompanied by information establishing the identity of the person sought as the same as the on convicted, copy of sentence imposed, if he has been sentenced, along with a statement specifying the extent to which the sentence has been carried out and if the person was convicted in absentia, then the documents that were required to be accompanied in case of request for the prosecution of the person must be provided herein as well.

**b. Analysis of the Documents:**

The documents submitted must comply with the requirements of the treaty. Article 10 provides the parameter for the admissibility of the documents. The documents should be certified by the principal diplomatic or consular officer of the other contracting state resident in the Requesting State or are certified in the manner which the Requested State accepts by law.

**c. Provisional Arrest<sup>15</sup>:**

In urgent cases, the contracting state may request for the provisional arrest of the person pending the formal request and documents for extradition. Upon receiving such request, the Requested State shall notify whether the application was accepted or denied, if denied it should be accompanied with the reasons for doing so.

The arrested person may be released after 60 days of provisional arrest if the Requesting State does not submit any formal request for extradition along with the required documents.

**d. Decision on Extradition:**

After considering all the documents submitted and evidences given, the executive authority of the requested State will take the decision as to whether the extradition will be granted or not. If the requested state denies the extradition of the person sought, it shall notify the same to the Requesting State along with the reason for the same and if requested, the Requested State shall provide the copies of the decision to the Requesting State.

If the request was accepted, the Contracting States then decide the time and place for the delivery of the person. If the person is not extradited within the prescribed time, he can be discharged from the custody and can be refused to be extradited for the same offence.

**(D) Termination of the Treaty**

The treaty of extradition between India and US also provides for the termination of the treaty.

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<sup>15</sup> Id., art. 12

By giving a written notice to the other Contracting State, either of the States can terminate the Treaty at any point of time. Such termination will take place after the 6 months of such notice.

**(E) Changing Dynamics:**

The relationships between two States are ever-changing with the change of circumstances and factors affecting it. With the passage of time both the States have seen tremendous change in their relations. Regular ministerial meetings, diplomatic visits, conferences, arrangements etc., shape the relations of both. As a result of such strong bond it has not only resulted in a strong foothold of India at global level but it had also played a role in the extradition of fugitive criminals like Tahawwur Rana, accused of Mumbai Terror Attack 26/11, whose case of extradition is pending before the US Court, as extradition involves legal and diplomatic cooperation between the two States it also affects their relationship. Certain factors which can have an impact over the relationship of the two States are:

- a. **11<sup>th</sup> India-US Consular Dialogue-** The 11<sup>th</sup> India-US Consular Dialogue was held in Delhi on 23<sup>rd</sup> February 2024. The Dialogue included discussions for enhancing mutual cooperation on various issues including extradition.<sup>16</sup>
- b. **Extradition Treaty-** The treaty of extradition between both the States provides the legal framework to be followed in the process of extradition between the two. For a person to be extradited, the requirements laid down by the Treaty must be fulfilled, failing to which the extradition can be denied.
- c. **Cooperation reflecting commitment-** During the past few years the mutual cooperation and commitment of both the States towards each other in combating offences and securing justice strengthens the relationship between the two States.
- d. **Hurdles-** the process of extradition requires time for the long procedure and other technicalities. This may sometimes take years to complete.

Successful extradition cases can demonstrate effective bilateral cooperation between two States in the matters of enforcement of law and criminal justice, strengthening the bond between India and US. But it should be kept in mind that extradition proceedings are complex and sensitive as it involves political factors, legal challenges and consideration of human rights.

Diplomatic channels also play important role in facilitating extradition requests including the

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<sup>16</sup> Press Release, Ministry of External Affairs of Government of India, *11<sup>th</sup> India-US Consular Dialogue* (February 23, 2024) at: <https://www.mea.gov.in/press-releases.htm?dtl/37654/11th+IndiaUS+Consular+Dialogue> (last visited April 22, 2024)

communication between the Contracting States' diplomatic representatives, law enforcement authorities and legal authorities. Negotiations and consultations may also be conducted in relation to any legal requirement or any other concern related to such request of extradition.

These extradition cases can also affect the perception of rule of law, judicial independence and rule of law in both States, that's why the process of extradition must be carried out fairly and in a transparent way so that the international legal norms can be upheld and the bilateral relations between the two States can also be maintained.

## **II. CONCLUSION**

Extradition is a significant aspect of diplomatic and legal cooperation between both the States. The process of extradition between both the States is governed by the Extradition Treaty signed between the two on June 1997 at Washington, D.C. It ensures the commitment of both the States in combating crimes and upholding justice.

The treaty between both the States covers a wide range of offences like terrorism, murder, drug trafficking etc. It provides clarity on the variety of offences subject to extradition, by way of delineating the offences, which helps in streamlining the extradition process and facilitates extradition between the States.

The outline of the legal procedure of extradition between two States is one of the key components of any extradition treaty. The Treaty between both the States specifies the requirements and criteria of the documents to be accompanied with the extradition request and the rest of the procedure. It ensures that the process of extradition meets the required legal standard and safeguards against any politically motivated extradition.

In addition to it, the treaty also mentions the exceptions to extradition. These include grounds like political offences, military offences, consideration of whether the person sought will have the opportunity of fair trial or not, double jeopardy etc. It ensures that the extradition must adhere to the principles of justice and human rights.

The extradition treaty between India and US reflects the commitment of both the States in upholding the rule of law and to fight against the transnational crime. It ensures that the accused or convicted person cannot evade his accountability merely by seeking refuge in another State. As both the States are facing the evolving security challenges, the extradition treaty acts as an important weapon to address the cross-border criminal activities.

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