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Can Bangladesh Extradite Sheikh Hasina?: Case Analysis

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ABSTRACT

This case analysis examines Bangladesh's request for the extradition of former Prime Minister Sheikh Hasina and the legal challenges it raises for India's bilateral relations. Following her resignation during a student-led uprising in August 2024, Hasina was tried in absentia and sentenced to death on 17 November 2025 by the International Crimes Tribunal of Bangladesh on charges of murder and crimes against humanity. Bangladesh argues that the 2013 India - Bangladesh Extradition Treaty obliges India to surrender her, while India has responded cautiously, acknowledging the verdict but avoiding any firm commitment and instead emphasising its interest in peace, stability, and democratic processes in Bangladesh. This case analysis evaluates whether Bangladesh can legally compel India to extradite Hasina under the treaty, and whether India is required to comply. It also considers whether the trial against Hasina meets international fair-trial standards, and whether concerns about due process could provide India with valid legal grounds to refuse extradition.

Keywords: *Sheikh Hasina, Extradition, double criminality, ICCPR, Bangladesh Constitution*

I. INTRODUCTION

The controversy over the request of extradition of ex-PM Sheikh Hasina, raises the complex question - whether India is bound to follow that mandate given its long-standing bilateral relations with Bangladesh. Hasina after stepping down from her office amidst a student-led uprising in August 2024 was convicted in absentia and handed down a death penalty on 17th November, 2025 by the domestic International Crimes Tribunal (also known as International Crimes Tribunal of Bangladesh) on charges of murder and crimes against humanity.² Bangladesh argues that the 2013 India-Bangladesh Extradition Treaty obliges India to surrender her.³ India, however, has responded cautiously, noting the verdict but avoiding any commitment

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² Bangladesh: Hasina Found Guilty of Crimes against Humanity (*Human Rights Watch*, 17 November, 2025) <<https://www.hrw.org/news/2025/11/17/bangladesh-hasina-found-guilty-of-crimes-against-humanity>> accessed 05 December, 2025

³ Sanstuti Nath, 'Can India Deny Dhaka's Request to Extradite Sheikh Hasina? What rule says' (*NDTV*, 18 November, 2025) <<https://www.ndtv.com/world-news/can-india-deny-dhakas-request-to-extradite-sheikh-hasina->

to extradition, emphasising instead its interest in peace, stability, and democratic processes in Bangladesh.⁴ Drawing on the following events, this case analysis examines whether Bangladesh can legally compel India to extradite Hasina, and whether India is likely or required to comply. Additionally, it also enquires whether the trial of Hasina meet International Fair Standards and whether India can ground that to deny the extradition.

II. FACTS OF THE CASE

On 5 August 2024, Sheikh Hasina resigned from the position of Prime Minister of Bangladesh and sought refuge in India amidst nation-wide protests against a special job quota bill that provided reservations in government jobs to relatives of veterans who fought in Bangladesh's war of independence in 1971.⁵ Soon thereafter, she and her former home minister Asaduzzaman Khan Kamal (who also left along with her) were declared fugitives⁶ and after months' long trial - on 17 November 2025, they were convicted for crimes against humanity by the three member tribunal headed by Justice Mohd Golam Mortuza Majumder. While another aide of Hasina, the former Police Chief Chowdhury Abdullah Al-Mamun, although charged and convicted but was pardoned subsequent to turning an approver in the case.⁷ The tribunal found Hasina guilty on three counts of crimes against humanity: incitement, order to kill, and inaction to prevent the atrocities.⁸ Subsequent to the decision, the Bangladesh Foreign Ministry formally requested India to extradite her, calling the transfer a "compulsory responsibility" under the 2013 treaty while India responded that it has noted the verdict but did not comment substantively on the extradition request.⁹

III. CAN BANGLADESH SEEK AND OBTAIN EXTRADITION?

The Extradition treaty that operates between the India and the Bangladesh is known as "The Treaty between the Republic of India and People's Republic of Bangladesh Relating to extradition (In short 'India-Bangladesh Extradition Treaty, 2013' hereinafter the 'Extradition

what-rules-say-9656265> 05 December, 2025

⁴ Statement regarding the recent verdict in Bangladesh (*Ministry of External Affairs*, 17 November, 2025) <<https://www.mea.gov.in/Speeches-Statements.htm?dtl/40299>> accessed 05 December, 2025

⁵ Akriti Anand, 'Sheikh Hasina resigns: your guide to Indo-Bangladesh ties, timeline of deadly protests that led to PM's ouster' (*Livemint*, 06 August, 2024) <<https://www.livemint.com/news/world/bangladesh-protest-india-loses-partner-sheikh-hasina-your-guide-to-dhaka-unrest-timeline-and-impact-on-new-delhi>> accessed 05 December, 2025

⁶ *ibid*

⁷ (n 3)

⁸ Bangladesh Tribunal sentence fugitive ex-PM Sheikh Hasina to death (*Al Jazeera*, 17 November 2025) <<https://www.aljazeera.com/news/2025/11/17/tension-high-as-bangladesh-tribunal-convicts-ex-pm-hasina>> accessed 05 December, 2025

⁹ (n 3)

Treaty’)' signed in 2013 by the two neighbouring countries.¹⁰ Further through a mutual agreement in 28 July 2016, India and Bangladesh amended Article 10(3) of the treaty to facilitate expeditious extradition of fugitive criminals between the two countries.¹¹ However, the treaty does not impose an absolute obligation, instead, it grants significant discretion to the requested state. One of the main requirements of the discretion is the principle of dual criminality¹² i.e., the offence under which the person is charged shall be punishable in both the jurisdictions. While it may be stated that offences against Hasina is extraditable in nature, India may still question their legal reasoning or procedural integrity under the exceptions provided in the treaty and its domestic legal procedure, especially given that she was tried in absentia. The exceptions and circumstances under which the extradition may be denied by the requested state are as follows:

1. The Political Offence exception

Article 6 of the Extradition Treaty bars extradition for “offences of a political character”, although it excludes serious crimes such as murder or terrorism from this exception under sub-clause (2). Since the main charges against Hasina involve murder and crimes against humanity, India may refuse the request on the grounds of the accusation made not in good faith in the interest of justice while heavily relying on clause (iii) of Article 8 of the Extradition Treaty.

2. Grounds for Refusal of Extradition

Article 8 of the treaty provides the grounds to India to refuse extradition if the request is “unjust or oppressive”¹³, including cases where the prosecution is of political character and not in good faith. Given the circumstances of Hasina’s trial and conviction *in absentia* underlying political motivations, India has strong grounds to invoke this clause.

3. India’s Right to Prosecute

Another likely condition for India to deny the request – if it opts to prosecute the person whose extradition is sought in its domestic courts¹⁴. This procedure is based on the International

¹⁰ Shanthie Mariet D’souza, ‘High stakes in India’s refusal to send former Bangladesh PM to trial’ (*theinterpreter*, 03 December 2025) <<https://www.lowyinstitute.org/the-interpreter/high-stakes-india-s-refusal-send-former-bangladesh-pm-trial>> accessed 05 December, 2025

¹¹ Question No. 2803 Extradition Treaty with Bangladesh (*Ministry of External Affairs*, 11 August 2016) <<https://www.mea.gov.in/rajya-sabha.htm?dtl/27291/QUESTION+NO2803+EXTRADITION+TREATY+WITH+BANGLADESH>> accessed 05 December, 2025

¹² The Treaty between the Republic of India and People’s Republic of Bangladesh Relating to extradition, 2013, art. 2

¹³ The Treaty between the Republic of India and People’s Republic of Bangladesh Relating to extradition, 2013, art. 8 sub-clause (a)

¹⁴ The Treaty between the Republic of India and People’s Republic of Bangladesh Relating to extradition, 2013, art. 7

Principle *aut dedere aut judicare* i.e., either prosecute or extradite. Given the current circumstances of the outcome of the conviction, this is very much improbable to be invoked in Hasina's case which nevertheless strengthens India's discretion.

4. What India's Domestic Law says?

India's Extradition Act 1962 provides the government significant authority to deny extradition requests. Section 29 allows refusal to surrender or return if the request appears politically motivated, lacks good faith, or is inconsistent with the "interests of justice". The Act also empowers the government to stay proceedings or discharge the accused entirely. Hence, even if treaty provisions lean in Bangladesh's favour, Indian domestic law provides a clear legal basis for refusal.

IV. WHY SHEIKH HASINA'S TRIAL FAILS TO MEET INTERNATIONAL FAIR TRIAL STANDARDS?

Sheikh Hasina's trial does not meet international fair trial standards for several key reasons. First, she is being tried in absentia, which directly contradicts the established customary principles of Article 14 of the International Covenant on Civil and Political Rights (ICCPR) that entitles a person to a fair and public hearing. This article further ensures that an accused person must be given the chance to be physically present in court¹⁵, hear the evidence¹⁶, question witnesses¹⁷, and present their own defence¹⁸. The UN Human Rights Committee has repeatedly stressed that these guarantees are essential for a fair trial.¹⁹ Since Hasina was not in court and did not have the opportunity to fully participate in the proceedings, the basic foundation of a fair trial was explicitly compromised.

Second, the International Crimes Tribunal (ICT), the court conducting the trial, has a documented history of political misuse and unfair procedures. Although the tribunal was originally set up by Hasina's government to address crimes from the 1971 independence war, it was widely criticized for repeated failing to meet International Fair Standards, additionally, holding politically motivated trials and imposition of the death penalty. This troubling record has continued under the interim government led by Muhammad Yunus who amended the International Crimes (Tribunal) Act in November 2024 brought provisions on command

¹⁵ International Covenant on Civil and Political Rights [1996] General Assembly Resolution 2200A (XXI), art. 14, Sub clause (d) of Clause 3

¹⁶ The Treaty between the Republic of India and People's Republic of Bangladesh Relating to extradition, 2013, art. 14 Sub clause (e) of Clause 3

¹⁷ *ibid*

¹⁸ *ibid*

¹⁹ (n 2)

responsibility and crimes against humanity on the lines of Rome Statute, concretizing the death penalty.²⁰ Thus, prosecution by a tribunal with such a track record raises serious doubts about impartial fair trial in Hasina's case.

Third, Bangladesh's constitutional provisions themselves weaken the rights of the accused in such trials. Articles 47(3)²¹ and 47A²² strip the fundamental rights of those persons of international crimes (like prisoner of war, genocide, crimes against humanity or war crimes) of important protections²³, such as the right to a fair trial, the right to legal remedies, and the right to constitutional safeguards available to all other citizens. This means Hasina, like other accused under these provisions, do not have equal access to justice even to appeal before the Supreme Court of Bangladesh, which goes against international human rights standards.

Thus, Sheikh Hasina's trial does not meet international fair trial standards because she was tried in absentia, the tribunal lacks independence due to a record of politically motivated prosecutions, weak constitutional protections, and the legal system's continuing to permit practices like the death penalty that require the highest level of due process which in turn raises serious doubts to the impartiality of trial proceedings.

V. CONCLUSION

Beyond law, India must consider regional stability. Hasina has long been one of India's closest allies in Bangladesh, supporting counterterrorism cooperation and connectivity initiatives. Extraditing her to an unstable interim regime could destabilize bilateral ties and undermine India's strategic interests. It is therefore advised that India should exercise its discretion according to its broader geopolitical ramifications.

Additionally, Bangladesh can legitimately request extradition under the 2013 treaty but India is under no binding obligation to comply. The treaty's discretionary provisions especially Article 6 and Article 8 combined with India's domestic safeguards under the Extradition Act 1962 give the sovereign authority the substantial legal grounds to reject the request. Given the allegations of political motivation, Hasina's trial in absentia, and India's longstanding strategic partnership with her government, extradition is legally questionable and politically unlikely. Therefore, while Bangladesh may assert treaty-based claims, Hasina's surrender remains improbable in both legal and diplomatic terms.

²⁰ (n 2)

²¹ The Constitution of the People's Republic of Bangladesh, art. 47 Saving for Certain Laws

²² The Constitution of the People's Republic of Bangladesh, art. 47A Inapplicability of Certain Articles

²³ The Constitution of the People's Republic of Bangladesh, art. 31 right to protection of law; art. 35 Protection in respect of trial and punishment; art. 44 enforcement of fundamental rights