ABSTRACT

The preparation of a crime and its effects are often not only limited to the territory of a State. Many criminals operate in international networks and they can choose the place of preparation almost freely. Extradition is viewed as a form of international cooperation. It is argued that States cooperate to enhance their perceived security interests. Extradition is a tool which States can use to enhance their interests. Extradition is a mechanism which ensures that there is no international impunity, as a country or State appropriate to request or demand has another, a person who is in the same or a national of the same, so it is tried or serving a sentence in which it asks for the commission of a crime. Extradition has always been regulated by treaties between various States, which undertake to surrender each other’s offenders, by meeting certain requirements and formalities established between them. These treaties and conventions ordinarily impose an obligation on the requested country to surrender a person to a requesting country charged with or convicted of an offence of a certain specified gravity in that country, subject to conditions and exceptions. Extradition is based on the principle that it is in the interest of all civilised communities that offenders should not be allowed to escape justice by crossing national borders and that States should facilitate the punishment of criminal conduct. It is a form of international cooperation in criminal matters, based on comity (rather than any overarching obligation under international law), intended to promote justice.

The extradition process is designed to provide assistance to criminal proceedings which have taken place or are yet to take place in the territorial jurisdiction of another State. The extradition process does not apply to persons merely under investigation for having committed an offence but against whom no charge has been laid. Nor does it apply to a person whose presence is desired as a witness in civil or criminal proceedings or for obtaining or enforcing a civil judgment. These are matters which are dealt with by other
forms of international co-operation. It is in the public interest that extradition should work promptly and efficiently, particularly among neighbouring States. This is because modern transport and the increasing freedom of movement of persons and communication facilities have contributed to the growth of international crime and made the criminal law more difficult to enforce. Without effective extradition arrangements, criminals would commit crimes without fear of prosecution and the movement abroad by criminals in search of safe havens would be indirectly encouraged. It is also recognised that the law should contain appropriate safeguards for individuals where they would in the event of extradition suffer manifest injustice or oppression. Achieving a balance between these competing considerations is by no means an easy task.

The law of extradition in India is governed by the Extradition Act, 1962. The Act of 1962 was entered into force on January 5, 1963. The Act specifies that any conduct of a person in India or in a foreign State, which is mentioned in the list of extradition offence and is punishable with minimum one year of imprisonment, qualifies for extradition request. Today almost every State has its extradition law, to ensure that crime and criminals should not go unpunished. Despite such laws, extradition is being denied on several grounds.

The objective of this research is to undertake a systematic exploration of procedure and practice of the Indian extradition law in accordance with the Extradition Act, 1962. It also aims to analyse the treaties between India and other foreign States. Further it refers briefly to the Indian judgments on extradition which would illustrate the practical application of the law and trend of extradition. Despite the various laws and conventions entered into between States, extradition is not taking place. The desired results of combating crimes have not been achieved fully. This thesis has been divided into five chapters to examine and analyse the extradition law prevailing in India. Besides this, an analysis has been made as to why extradition request are being denied. The study of extradition is essential not only
because of the aforementioned pragmatic and policy concerns, but also because it fits into a larger research program, geared towards understanding international cooperation. It is therefore suggested that in order to make this research program to be successful, it must acknowledge the symbiotic relationship between the politics of international relations and the study of extradition. In other words, the politics of international relations can help us in better understanding of extradition and simultaneously, the knowledge of extradition can improve our study of international relations.

Chapter one is an introduction to the concept of extradition in general. It briefly addresses the concept, various conditions and restrictions, methods other than extradition to get a fugitive back, domestic and international legal framework, trying to influence further analysis of the conflicts that exist with extradition. It is to be noted that the extradition has evolved over a period of time, characterised by a shift in emphasis on the various types of crimes to which this process is applicable. Historically, the practice of extradition was dependent upon the good relations between the sovereigns of the requested State and the requesting State. Presently extradition has taken on, a more formal nature with prescribed procedures necessary to affect it. The ultimate purpose of extradition is made up of the surrender of the accused fled to a country, the Government made it to the authorities of another country who claim to judge and where appropriate, punished. Extradition is only granted in pursuance of a treaty or law, respecting the principle of reciprocity and therefore the State who receives such a person acquires the right to judge or to execute the penalty or security measure. The great expansion on the subject of extradition is an evidence of the gradual recognition by nations in their intercourse with one another. Lately, there was a trend of providing refuge for offenders against the laws of other States. Domestic criminals were prosecuted and punished but foreign criminals were regarded as objects of peculiar favour and were not given up except in the presence of superior force. With the changing time, there
has been a revolution in the opinion on the subject of extradition. In place of the idea of asylum as a right belonging to the fugitive, there has been established the right of the State either to extradite or to expel any offender who comes within its jurisdiction. This right is recognized by almost all the States. It will also be compared with its alternatives. The change in opinion on the subject of extradition, though been rapid, has been the result of modern development. This brief summary provides just a glance at the many facets of extradition law over the centuries. It does, however, highlight the ever-changing nature of extradition. The practice of extradition has evolved from a relatively informal process that largely concerned sovereign, to a heavily legalized process that deals with thousands of criminals a year. Certain concerns have been constant, such as the punishment of wrongdoers wherever they may be found, the importance of maintaining friendly relations between countries, and the relative importance of individual rights. Regardless, international extradition law is a deeply complicated phenomenon that defies easy explanation.

Chapter two explains the historical retrospect of extradition at international as well as national level. Extradition has a long, indeed ancient history and many of its levels evolved over time to meet the needs of nations as they developed their external relations. The process of extradition has been regarded as one of the best-known and oldest forms of co-operation between foreign States. Extradition treaties that were entered into up, until the 18th century, dealt mainly with political or religious offences. Extradition proceedings during this period, used by Heads of State were regarded as a means to protect the political order of a State. From the 18th century to the mid-19th century, military offences became the focus of extradition affecting the stability of a State. In fact, the 20th century saw a trend to exclude political offences in extradition agreements. This has however recently changed due to the increase in international terrorism. But as intercourse between States has expanded and compounded and lately transformed their interest in protecting human rights, the rules that
control international extradition appear increasingly antiquated. In India, extradition is regulated by the Extradition Act, 1962. Prior to this legislation, the extradition related aspects were dealt since the beginning, by the United Kingdom Extradition Act, 1870; which was a law for the whole of the British Empire. Further, the surrender of fugitive criminals amongst the countries of British Empire was regulated by the Fugitive Offenders Act, 1881. The Extradition Act, 1903 remained in force after India became Independent. It was enacted to supplement the Extradition Act, 1870 and the Fugitive Offenders Act, 1881 to provide for more convenient administration in British India. The legacy of the previous statutes has a bearing on the scheme of the Extradition Act, 1962. Before India’s independence, ‘extraditions’ within the British Empire were governed by the Fugitive Offenders Act, 1881 and those with other ‘foreign countries’ by the Extradition Act, 1903. The reason for this distinction was that extraditions within the empire were pursued through a special procedure for the apprehending of fugitives and the committal of their cases for trial– treating the issue on the basis that the return of such fugitives was internal to the empire. However, in cases of ‘extraditions’ with other countries, there was a more stringent procedure of examining issues relating to the terms of the treaty, prima facie case, double criminality and the political exception and public interest considerations. Extradition mostly takes place in accordance with the treaty obligations. It is the policy of the Government of India to conclude extradition treaties with as many countries as possible to ensure availability of fugitive criminals for trial. Negotiations are held through diplomatic channels on the basis of drafts proposed by either side.

Chapter three aims to examine the procedure by which an extradition request is processed through the system in order to critically analyse its shortcomings and propose any necessary improvements and to establish the framework in which the transnational fugitive offender’s protections are put into effect. The extradition procedures have evolved in
response to changing social conditions, particularly changes in relation to improved communications and easier movement of individuals between States. The extradition of a fugitive from India to a foreign country or the vice-versa is governed by the provisions of Indian Extradition Act, 1962. The basis of extradition could be a treaty or an arrangement between India and a foreign country. The treaty varies from country to country and the negotiation is a two-way process where countries can put forward their conditions. Extradition requests for the fugitive offenders are made through diplomatic channels to the competent authority of the requested State. After receiving the request, the requested State tries to apprehend and detain the person claimed, unless it clearly appears that person whose extradition is sought may not be extradited. Moreover, the extradition procedure is a complex and little understood and it is in that context that the fugitive’s substantive rights operate. It is very difficult to understand the scope of the protection without regard to its procedural context. This chapter aims to examine the procedure by which an extradition request is processed through the system in order to critically analyse its shortcomings and propose any necessary improvements in the same. The extradition procedure is overly burdensome. To make it easier mutual legal assistance treaties have now been notified by States, age-old procedures are being reviewed and sometimes replaced. The balance between administrative convenience and fugitive’s right is coming down firmly in favour of the former. However, the procedures must be fair to both sides and it should always be a point of consideration that the fugitive’s whole way of life will be affected by surrender to a foreign State. The procedure of extradition in India is dealt mostly with bilateral treaties and because it continues to conclude new extradition treaties, clearly underlines its necessity.

Chapter four of the thesis deals with the surrender and miscellaneous provisions of extradition. The Government of India has discretionary power to surrender or not to surrender. Whether a requested State will surrender often depends on whether it will respect
the asserted claim of jurisdiction. Accordingly, it is argued that countries are more likely to enter into extradition treaties when they have similar understandings of jurisdiction without which surrender of fugitives may be difficult to achieve. It may be stressed here that the discretion, which the Central Government may exercise in the matter of surrender or non-surrender of the fugitive, is compact with many difficulties. On one hand the liberty of the individual is involved; on the other, the friendly relations with the requesting State are involved and this is at stake, if the executive authority commits any indiscretion in the matter. Therefore, it has been rightly said that, “extradition is an aspect of our foreign relations” and there is more “at stake than the liberty of the accused.”

Chapter five of the thesis discusses the conditions on which the extradition can be refused in India. Extradition law is permeated with special defences peculiar to its processes. Even if the requesting State satisfies the procedural requirements necessary for surrender to be authorised, the transnational fugitive offender can still plead that his extradition would violate provisions which tend to be included in all treaties. Further, there are some generally available defences to criminal charges which can also be utilised in an extradition hearing. The object of this chapter is to consider and criticise these restrictions on return. This provision is dealt with Section 31 of the Extradition Act, 1962. The grounds on which the extradition can be refused, as provided under the Section, are political offence, the offence of which trial or prosecution is barred by limitation under the law of either State; if the fugitive is already undergoing prosecution in India or is undergoing any sentence, then only after expiration of fifteen days from the date of his committal to the prison by the magistrate. Since extradition is based on the principle of reciprocities and is a treaty based law, the treaties have also to be taken into consideration while determining the extradition of a fugitive in a given case.
Historical evolution shows that extradition began for the purpose of punishing political offenders, but now days these crimes are considered as an exception. The discretion to extradite is to be exercised judiciously by the requested State. The State shall consider the seriousness and gravity of these offences, dangers to the life, liberty and physical integrity of a person and also the brutality of the offence for evaluating the character of the offence. The treaty between India and Bhutan does not impose restriction on the requested State for extradition of a fugitive criminal for a political offence. It can also be refused for the military offences, lapse of time, *non bis in idem*, Nationality, death penalty, discrimination, insanity and health of the fugitive, extraterritoriality and lack of good faith or trivial nature of the case. The denial of a country to extradite suspects or criminals to another State may lead to international relations being strained. Often, the country to which extradition is denied will accuse the other country of refusing extradition for political reasons regardless of the fact whether or not, it is justified.

Lastly, the entire work has been concluded and many plausible and pragmatic suggestions have been put forward for the improvement of the Indian law of extradition. In the ultimate analysis, it is submitted that India must show the way and lead the world in its valiant and courageous battle against international crime and international terrorism. The Extradition Act, 1962, India’s bilateral treaties and arrangements with various countries concerning extradition, India’s commitment to the rule of law and due process of law and its position as a global and influential power in the free world, place it in a unique position to take centre stage in its commitment to world peace; India’s Constitution and its belief in and commitment to impregnable democratic traditions, undoubtedly demonstrate our quest for peace and harmony in the world, bereft of international crime.