EXTRADITION IN INDIA: PROCEDURAL CONTEXT

Generally, States vary on their procedure of extradition. However, the procedure set out in various treaties may be summarized. 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. Most of the States confer the final decision to the judiciary, which declares that the requested State is authorized to extradite the person claimed. If it is not authorized then the person claimed is set at liberty. When extradition is authorized by the judiciary, the extradition itself is effected by executive action. 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 analyze critically its shortcomings and propose any necessary improvements in the same.

When the request is met, the requesting State is informed of the appointed place and date of the surrender and the period of time for which the person claimed has been detained. Expenses incurred in the territory of the requested State by reason of extradition are reimbursed by the requesting State, unless agreed otherwise. Transit of an extradited person through the territory of another State, is often permitted on request, provided that the offence of a non-extraditable character. Transit of nationals is also refused by the State.\(^1\) International Law concedes that the grant of and procedure as to extradition may be left to the Municipal Law and does not, for
instance preclude States from legislating so as to preclude the surrender by them of fugitive criminals, if it seems that the request had not been in good faith.\textsuperscript{2} The extradition procedure in India is regulated by the Extradition Act, 1962. The basis of extradition could be a treaty or an arrangement between India and the foreign State.

**Mode of Requisition:**

The main factors taken into consideration while deciding an extradition case are:

1. Whether extradition documents are in order,
2. Whether the petitioner is a fugitive,
3. Whether the petitioner is charged with a crime in the demanding State,
4. Whether the petitioner is the person named in the extradition request.

The Extradition Act, 1962 under its Section 4, mentions two modes of requisition for the surrender of a fugitive criminal. The requisition for the surrender of a fugitive criminal of a foreign State may be made to the Central Government by the diplomatic representative of the foreign State at Delhi or by the Government of that foreign State through its diplomatic representative in that State. If neither of these modes is convenient, the requisition shall be made in such other mode as is settled by arrangement made by the Government of the foreign State with the GoI.

“Extradition request for an accused/fugitive can be initiated after the charge sheet has been filed before an appropriate court and the said court having taken cognizance of the case has issued orders/directions justifying accused/ fugitive’s committal for trial on the basis of evidence made available in the charge sheet and has sought presence of the accused/fugitive to face trial in the case. All extradition requests should be supported by documents and information enumerated below.

1. It should be in spiral bound and contain an index with page numbers.
2. The request should be supported by a self-contained affidavit executed by the court by whom the fugitive is wanted or by a senior officer in charge of the case (not below the rank of Superintendent of Police of the concerned investigating agency) sworn before a judicial magistrate (of the court by which the fugitive is wanted for prosecution). The affidavit should contain brief facts and history of the case, referring at the appropriate places the statements of witnesses and other documentary evidences. Criminal’s description establishing his identity, provision of the law invoked etc. so that a \textit{prima facie} case is made out against the fugitive criminal.

3. Paragraph 1 of the affidavit should indicate the basis/capacity in which the affidavit is executed.

4. The affidavit should indicate that the offences for which the accused is charged in India.

5. The affidavit should also indicate that the law in question was in force at the time of commission of offences and it is still in force, including the penalty provisions.

6. The evidence made available should be admissible under Indian laws. Accordingly, the affidavit should indicate whether the statements of witness are admissible as evidence in India in a criminal trial/prosecution. Statements of witnesses should be sworn before the court.

7. The affidavit should also indicate that if the accused were extradited to India, he would be tried in India only for those offences for which his/her extradition is sought.
8. Copy of First Information Report (FIR), duly countersigned by the competent judicial authority, should be enclosed with the request.

9. Competent authority should countersign copy of charge sheet, which is enclosed with the documents.

10. A letter/order from the concerned court justifying accused person’s committal for trial on the basis of evidence made available in the charge sheet, with a direction seeking accused person’s presence in court to stand trial in said court from the country of present stay.

11. Warrant of arrest should be in original and open dated indicating clearly only those offences for which the accused is charged and Court has taken cognizance with relevant Sections thereof.

12. Nationality, identity and address of the accused including his photograph should be made available with the request.

13. Copy of the relevant provisions under which the accused is charged along with the provisions of the relevant laws indicating that the maximum sentence prescribed for the offence for which the accused is charged or convicted.

14. The extradition request is to be made in quadruplet (four copies). All original copies should be attested /authenticated by the concerned court.

15. All the documents should be very clear, legible and in presentable form as they are to be presented to the sovereign Governments of foreign countries.

16. Original documents in national languages should be sent along with certified English translation of each such document from authorized translators.
17. Extradition requests/documents to the country where English is not first language should be submitted along with duly translated copy in host country’s local language. The Court issuing warrant should certify such translated copy.

After completion of necessary formalities, the request for extradition should contain a letter/note from a senior official (not below the rank of Joint Secretary) or the concerned State Government indicating the correctness of the case/material with a request to the Central Executive to forward it to the Government of the concerned foreign country.

N.B: If the concerned court is requesting for extradition of a person, the request in tile form of affidavit should be in first person, i.e. by the Honorable magistrate/judge himself/herself. (Such requests are usually received from court masters or other court officials writing in third person on behalf of the court requested States object to it).

NOTE: The request for extradition and the documents thereof should be prepared as per the requirements of the extradition treaty between India and the country concerned from which the fugitive is to be extradited to India.  

The application for extradition is made through the diplomatic channel; two conditions need to be satisfied.

1. There must be an extraditable crime;

2. There must be an extraditable person.

International Law permits extradition for any crime it thinks fit. Extradition is however, granted for serious offences and accordingly the internal extradition law of most State limit the number of extraditable offence either to certain specified crimes or to crimes subject to a specific level of punishment. “The Central Government of
India has discretion in this regard, whether to extradite a fugitive criminal or not. Even if there is a requisition and a good case for extradition, Government is not bound to accede to the request.”5

Simultaneous Requests: The Extradition Act, 1962 makes provisions for the situation where the request comes from more than one State for the surrender of a fugitive criminal. The discretion in this regard is given to the Central Government as provided under Section 30 of the Act which stipulates that, “if requisition for the surrender of a fugitive criminal are received from more than one foreign State the Central Government may, having regard to the circumstances of the case surrender the fugitive criminal to such State or country as the Government thinks fit.” Generally, there is no agreed rule covering the case where extradition is requested concurrently by more than one State, either for the same offence or for different offences. If a requested State receives more than one request for the same offence, preference will be given to the State in whose territory the act was committed. But, if the act was committed in more than one requesting States, the requested State may extradite the person claimed to the State whose request is first received. When a requested State receives from two or more States requests for the same person in respect of different offences, the requested State may, in extraditing the person claimed, decide to which State it will extradite, having regard to all circumstances, especially the relative seriousness of the offences, the nationality of the person claimed, the times when the requests were received and the possibility of subsequent extradition to another State.

However to avoid any contradiction, the situation is described in treaties between India and the foreign States. The treaty between United Kingdom of Great Britain, India and Netherlands6 and the treaty between United Kingdom of Great
Britain and Ireland and Swiss Federal Council\textsuperscript{7} give preference to those States whose requests were received first. Few treaties give preference to the requests priority wise like the first priority shall be given to the party whose security or interest or its nationals or their interests are affected by the offence, second priority shall be given to the party on whose territory offence is committed and the last priority shall be given to the party of which the person to be extradited is a national. But if the circumstances are identical then the contracting party which made the first request shall have preference. If the request for extradition is for several offences, then preponderance is accorded to the circumstances of the offence and its gravity. The treaty between India and Kingdom of Bahrain\textsuperscript{8}, the treaty with Kuwait\textsuperscript{9}, treaty with Sultanate of Oman\textsuperscript{10}, treaty with UAE\textsuperscript{11} and treaty with Uzbekistan\textsuperscript{12} consider requests priority wise. Other treaties also make provision in this matter. However the treaty with Bhutan\textsuperscript{13} and treaty with Nepal\textsuperscript{14} are silent in this matter. In case, where there is no provision made in treaties on the subject, the discretion goes with the Central Government whether to extradite the fugitive criminal or not.

Section 5 of the Extradition Act, 1962 provides that after receiving the request, the Central Government may issue an order to any magistrate who would have had jurisdiction to inquire into the offence if it had been committed within local limits of his jurisdiction. Before ordering a magistrate to inquire into the case the Central Government has to look that the request does not hit Section 31 of the Act. Section 31 of the Act provides that –

“1. A fugitive criminal shall not be surrendered or returned to a foreign State –

(a) If the offence in respect of which his surrender is sought is of a political character or if he proves to the satisfaction of the magistrate or court before
whom he may be produced or of the Central Government that the requisition or warrant for his surrender has, in fact been made with a view to try or punish him for an offence of political character.

(b) If prosecution for the offence in respect of which his surrender is sought is according to the law of that State or country barred by time;

(c) Unless provision is made by that law of the foreign State or in the extradition treaty with the foreign State that the fugitive criminal shall be determined or tried in that State for an offence other than –

(i) the extradition offence in relation to which he is to be surrendered or returned;

(ii) any lesser offence disclosed by the facts proved for the purposes of security his surrender or return other than an offence in relation to which an order for his surrender or return could not be lawfully made; or

(iii) the offence in respect of which the Central Government has given its consent.

(d) If he has been accused of some offence in India, not being the offence for which his surrender or return is sought, or is undergoing sentence under any conviction in India until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise.

(e) Until after the expiration of fifteen days from the date of his being committed to prison by the magistrate.

(2) For the purposes of sub-Section (1), the offence specified in the schedule shall not be regarded as offences of a political character.
The Central Government having regard to the extradition treaty made by India with any foreign State may, by notified order, add or omit any offence from the list given in the Schedule.”

This matter was invoked in **Pragnesh Desai v. Union of India.** The High Court held that, “as regards the plea of the petitioner that the impugned order suffers from the vice of non-application of mind to the relevant material touching upon the question whether the petitioner was a fugitive criminal, we are of the view that having regard to the scheme of the Act, particularly the procedure prescribed for dealing with a request for extradition, there is hardly any scope for the Central Government to enter upon a detailed inquiry in this behalf, before making an order for magisterial inquiry under Section 5 of the Act. What is required to be examined is whether there is *prima facie* evidence of the commission of the offence, which is extraditable, the offences is not a political offence or that the requisition is not a subterfuge to secure custody for trial for a political offence. When, on the basis of the material received, the Central Government has formed the view that the request for surrender does not fall within the ambit of Section 31 of the Act, enumerating restrictions on the surrender and orders of magisterial enquiry, it would neither be prudent nor proper for this court to interfere in exercise of powers under Article 226 and 227 of the Constitution.”

**Issue of the Warrant for Arrest:**

Under Section 6 of the Extradition Act, 1962 the magistrate shall issue a warrant for arrest of the fugitive criminal, on the order of the Central Government in accordance with Section 5.
**Warrant:** The Extradition Act, 1962 envisages different types of warrants for the arrest of fugitives. In case of a fugitive from a non-treaty State, a warrant issued *suo moto* (hereinafter referred to as warrant under Section 9 of the Act under Chapter II) or warrant issued on receipt of an order of the Central Government to inquire into an extradition offence [under Section 6 of the Act (hereinafter referred to as warrant on Central Government Order)] or a provisional warrant issued on the request of the Central Government on an urgent request from a foreign State for the immediate arrest of a fugitive [Section 34 B of the Act (hereinafter referred to as provisional warrant on urgent request)]. In case the fugitive is from a treaty State, the apprehension may be made on the authority of an endorsed warrant, issued in a foreign State (hereinafter referred to as foreign warrant). The endorsement is made by the Central Government to make it enforceable in India as provided under Section 15 of the Act. Such a fugitive can also be apprehended on a provisional warrant issued in India *suo motu* [See Section 16 of the Act (hereinafter referred to as provisional warrant issued *suo motu*). A magistrate may also issue a provisional warrant to apprehend such a fugitive when requested by the Central Government on receipt of an urgent request from a treaty State.\(^{16}\)

**Arrest of the Fugitive:**

A fugitive from justice can be arrested under the (Indian) Extradition Act, 1962 through different warrants provided in the Act. A fugitive can be apprehended under an endorsed warrant and that need not have a formal request for the surrender of the fugitive to initiate the extradition proceedings. The apprehension can be done on the basis of the warrant issued by the foreign State. The Central Government may if satisfied that the warrant was issued by a person having lawful authority to issue the same, endorse such warrant in the manner prescribed, if the fugitive criminal is or
suspected to be in India. However in urgent cases, where a foreign State wants the arrest of a fugitive criminal in India any magistrate may issue a provisional warrant for the apprehension of the fugitive from any foreign State who is inspected to be in or on his way to India, on such information and under such circumstances as would, in his opinion, justify the apprehension of the fugitive. These warrants are called provisional because the magistrate shall forthwith send a report of the issue of warrant together with the information or a certified copy thereof to the Central Government and the Central Government may if it thinks fit discharge the person so apprehended under such warrant. The provision of provisional warrant of a fugitive is governed under Section 16 of the Extradition Act, 1962.

The provisional arrest may be ordered on the basis of some telex message from foreign police where the fugitive is demanded or from Interpol, if the fugitive is or suspected to be in or on his way to India. In *M. Bhaskaran v. The State* a telex message was received from Kuala Lampur (Malaysia). On that basis the arrest was made in New Delhi police station Indraprastha Estate on December 14, 1988 under Section 41(1)(g) of CrPC that authorizes a police officer to arrest an individual under s 409 of Malaysian Penal Code. High Court of Delhi held that, “on the report of the information from a foreign State or Commonwealth country for the surrender of fugitive criminal the magistrate can directly be approached under Section 9. The Section 9 clearly provides in such a case that the magistrate may issue a warrant of arrest of a person on such information and on such evidence as would in his opinion justify the issue of warrant if the offence of which the person is accused or has been convicted had been committed within the local limits of his jurisdiction. The Section further provides that the magistrate shall forthwith report the issue of warrants to the Central Government and forward information and evidence or certified copies thereof
to the Government. Therefore, the arrest of the petitioner under Section 41(1)(g) of CrPC is wholly misconceived and without authority of law. Even otherwise in normal course to allow a person to be arrested by the police when no extradition warrant has been issued nor any requisition made and no assistance is sought from the magistrate within the local limits of whose jurisdiction the offender is at the time, would be to subvert the whole law as to arrest of fugitive offender as contained in Extradition Act which undoubtedly is the law.  

Further Section 9(3) of the Act provides that, “a person arrested on a warrant issued under sub-Section (1) shall not be detained for more than three months unless within that period the magistrate receives from the Central Government an order made with reference to such person under Section 5.”

After the completion of three months from the date of the arrest of the person, if no release has been ordered he can move the High Court or Supreme Court under Articles 21, 226 and 32 of the Indian Constitution or under Section 491 of the Criminal Procedure Code. It is possible that the fugitive arrested under Section 6 or Section 9(1) or Section 23 of the Act may move the judiciary for his any so called committed crime within India. The Act has, therefore, provided under Section 22 that the fugitive shall be “liable to be arrested’ surrendered or returned…” This would prevent the fugitive from challenging his arrest in India.  

**Procedure of Inquiry before the Magistrate:**

Section 7(1) of the Act provides that, “when the fugitive criminal appears or is brought before the magistrate, the magistrate shall inquire into the case in the same manner and shall have the same jurisdiction and powers, as nearly as may be, as if the case was one triable by a Court of Session or High Court.” However Section 7(2) of the Act further provides that the magistrate shall take such evidence as provided by
requesting State and by the fugitive criminal in support of their case, which reads as, “without prejudice to the generality of the foregoing provisions, the magistrate shall, in particular, take such evidence as may be produced in support of the requisition of the foreign State, as on behalf of the fugitive criminal, including any evidence to show that the offence on which the fugitive criminal accused or have been convicted is an offence of political character or is not an extradition offence.” Section 7(2) of the Act gives discretion to the magistrate inquiring the case to inquire that the offence of which fugitive criminal is accused or has been convicted is a political offence or is not an extradition offence.

Hence, this Section would be incomplete without referring to the Section 10 of the Act which provides that what evidence may be received by the court, it reads as:

“(1) In any proceedings against a fugitive criminal of a foreign State under this chapter, exhibits and depositions (whether received or taken in the presence of the person against when they are used or not) and copies thereof and official certificates of facts and judicial documents stating facts may, if duly authenticated, be received as evidence.

(2) Warrants depositions or statements on oath, which purport to have been issued or taken by any court of justice outside India or copies thereof, certificates of, or judicial documents stating the facts of, conviction before any such court shall be deemed to be duly authenticated if -

(a) the warrant purports to be signed by a judge, magistrate or officer of the State or country where the same was issued or acting or in for such State or country;

(b) the depositions or statements or copies thereof purport to be certified under the hand of judge, magistrate or officer of the State or country where the same were
taken, or acting in or for such State or country, to be the original depositions or statements or to be true copies thereof as the case may require;

(c) the certificate of, or judicial document stating the fact of, a conviction purport to be certified by a judge, magistrate or officer of the State or country where the conviction took place or acting in or for such State;

(d) the warrants, depositions, statements, copies, certificate judicial documents, as the case may be, are authenticated by the oath of some witness or by the official seal of a minister of the State or country where the same were issued, taken or given.”

Section 7(3) of the Act further provides, “if the magistrate is of opinion that a prime facie case is not made out in support of the requisition of the foreign State, he shall discharge the fugitive criminal.” Further, Section 7(4) of the Act says that, “if the magistrate is of opinion that a prime facie case is not made out in support of requisition of the foreign State, he may commit the fugitive criminal to prison to await the orders of the Central Government and shall report the result of his inquiry to the Central Government and shall forward together with such report, any written statement which the fugitive criminal may desire to submit for the consideration of Central Government.” The above two Sections of the Act are for the magistrate to find out if the prima facie case is made out or not based on the evidences produced before him.

In the case of C.G. Menon v. State of Madras, the court observed that it is a well recognized principle that prima facie case should be established to show that the offender is guilty of the crime with which he has been charged by the country asking for his extradition. Though it may not be an integral part of the law of extradition of
every State in relation with other State, it is certainly a normal feature and we can say, almost a universal feature of the law of extradition.\(^{19}\) So, it is the responsibility of the requesting State to *prima facie* show that the crime of which the fugitive is accused is an extraditable offence. Section 2(c) of the Extradition Act, 1962 defines ‘Extradition Offence’ as:

“(i) In relation to a foreign State, being a treaty State an offence provided for in the extradition treaty with that State;

(ii) In relation to a foreign State other than a treaty State an offence punishable with imprisonment for a term which shall not be less than one year under the laws of India or of a foreign State and includes a composite offence.” The treaty between India and Hong Kong provides a list of offences in its Article 2(1) as follows –

“(1) Surrender of fugitive offenders shall be granted for an offence coming within any of the following descriptions of offences in so far as it is according to the laws of both parties punishable by imprisonment or other form of detention for at least one year, or by a more severe penalty:

(i) Murder, manslaughter or culpable homicide;

(ii) Aiding, abetting, counseling or procuring suicide;

(iii) Maliciously wounding; inflicting grievous bodily harm, assault occasioning actual bodily harm or causing injury whether by means of a weapon, a dangerous substance or otherwise;

(iv) Bigamy;

(v) Rape;
(vi) An offence relating to women and girls;

(vii) Indecent assault;

(viii) Stealing, abandoning, exposing or unlawfully detaining a child;

(ix) Gross indecency with a child;

(x) Kidnapping: abduction; false imprisonment or unlawful detention, including the taking of a hostage; dealing in slaves;

(xi) Offences against the law relating to drugs, including narcotics and psychotropic substances and precursors and essential chemicals used in the illegal manufacture of narcotic drugs and psychotropic substances;

(xii) Obtaining properly or pecuniary advantage by deception; cheating; criminal breach of trust: embezzlement or criminal misappropriation; theft: robbery: burglar, blackmail: handing or receiving stolen goods; false accounting or any other offence in respect of properly involved fraud;

(xiii) Offences relating to fiscal matters, taxes or duties, notwithstanding, that the law of the requested party does not impose the same kind of tax or duty or does not contain a tax, duly or customs regulation of the same kind as the law of the requesting party;

(xiv) Smuggling; offences against laws relating to the import and export of prohibited items, including historical and archaeological and other items;

(xv) Conspiracy to commit fraud or to defraud;

(xvi) Offences against bankruptcy law;

(xvii) False Statements by company directors and other officers;
(xviii) Any offence against the law relating to false or misleading trade descriptions; counterfeiting of coins; or forgery or uttering what is forged;

(xix) An offence against the laws relating to corruption, including bribery, secret commissions, and breach of trust;

(xx) Perjury and subornation of perjury, attempting to pervert the course of justice;

(xxi) Criminal damage, including arson, damaging property whether used for public utilities or otherwise with intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered;

(xxii) Offences involving the unlawful use of computers;

(xxiii) An offence against the law relating to firearms, including but not limited to the possession of a firearm or ammunition by a person who intends either himself or through another person to endanger life or to use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person;

(xxiv) An offence against the law relating to explosives, including but not limited to the causing of an explosion likely to endanger life or cause serious damage to property or the making or possession of an explosive substance by a person who intends either himself or through another person to endanger life or cause serious damage in property;

(xxv) Sinking or destroying a vessel at sea, assaults an board a ship on the high seas with intent to destroy life or to do grievous bodily harm, revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master;
(xxvi) Piracy involving ships or aircraft, according to international law;

(xxvii) Genocide or conspiracy or direct, and public incitement to commit genocide;

(xxviii) Unlawful use, possession, control, seizure or hijacking of aircraft, vessels or other means of transportation;

(xxix) Impeding the arrest or prosecution of a person who has or is believed to have commuted an offence for which surrender may be granted under this agreement and which is punishable according to the laws of both parties by imprisonment or other form of detention of a period of five years or more;

(xxx) Offences against the laws relating to the protection of public health, and the environment;

( xxxi) Offences relating to the possession or laundering of proceeds obtained from the commission of any offence for which surrender may be granted under this Agreement;

( xxxii) Offences for which fugitive offenders may be surrendered under International Conventions, currently applied;

( xxxiii) Aiding, Abetting counseling or procuring the commission of inciting. Being an accessory before or after the fact to or attempting or conspiring to commit any offence for which surrender may be granted under this agreement;

( xxxiv) Any earlier offences not referred to in the previous items of this paragraph, which are punishable by imprisonment or other form of detention for at least one year or by a more severe penalty and which are also offences for which surrender may be granted in accordance with the laws of both parties.
(2) Where surrender of a fugitive offender is requested for the purpose of carrying out a sentence, a further requirement shall be that in the case of a period of imprisonment or detention at least six month remain to be served.

(3) For the purposes of this Article, in determining whether an offence is an offence punishable under the laws of both parties the totality of the acts or omissions alleged against the person whose surrender is sought shall be taken into account without reference to the elements of the offence prescribed by the law of the requesting party.

(4) Where surrender of a fugitive offender is requested for the purpose of carrying out a sentence the requested party may refuse to surrender him if it appears that the conviction was obtained in his absence, unless he has the 'opportunity to have' his case reined in his presence, in which case he shall be considered as an accused person under this agreement.”

Extradition offences are essential for extradition as they fulfill the condition of double criminality. Extradition can be granted for those offences only. However, to extradite a fugitive criminal is a political decision. It largely depends upon the relations of foreign State with India. Section 5 of the Act clearly says that, “the Central Government may, if it thinks fit” comply with the request. “Even if there is a requisition and a good case for extradition, Government is not bound to accede to the request. It is given an unfettered right to refuse under Section 3(1) of the Extradition Act.” Section 2(c) of the Act says that if foreign State is other than a treaty State an offence would be an extraditable offence if it is punishable with imprisonment for a term of one year, according to the law of that foreign State and which includes a composite offence. A composite offence means an act or conduct of a person occurred wholly or in part in a foreign State or in India but its effect or intended effect, taken as
whole, would constitute an extradition offence in India, or in a foreign State, as the case may be. 22 A composite offence thus refers to an offence whole of which does not take place in the requesting State but part of which take place in some other State. The crime partly committed in the requesting State may be an extradition offence but its intended effects taken as a whole constitutes an extradition offence. If such an offence has been established as an extradition offence. Section 26 of the Act further provides that, “a fugitive criminal who is accused or convicted of abetting, conspiring, attempting to commit, inciting or participating as an accomplice in the commission of any extradition offence shall be deemed for the purposes of this Act to be accused or convicted of having committed such offence such be liable to be arrested and surrendered accordingly.” Section 7(2) of the Act opines that during inquiry, the magistrate has to take the evidence as may be produced by the foreign State in support of the request as well as the evidence produced by the fugitive criminal, including any evidence to show that the offence of which the fugitive criminal is accused or has been convicted is an offence of political character.

It can be said that the most interesting aspect of extradition from a general point of view and the one receiving the greatest amount of publicity in the press has to do with political offences. It has already been pointed out in previous chapter that a complete reversal in State policy took place during the 19th century, when political offences were removed from the list of crimes for which individuals might be extradited. Modern extradition treaties specifically exempt political offences, most likely because liberal and democratic Government develop strong antipathy toward the idea of surrendering political offenders into the hands of despotic or dictatorial Governments. Extradition being asserted to be a matter of domestic jurisdiction, the non-extradition of political offenders is also a domestic practice and each State is free
to determine the extent to which it will adhere to the practice. Whereas, it was decided in a case that the Central Government do not need to go in details before making an order to the magistrate to enter into inquiry under Section 5. The only thing which is required to be examined is whether there is *prima facie* evidence of the commission of the offence, which should be extraditable and should not be an offence of a political character or that the requisition is not a subterfuge to secure custody for trial for a political offence. On the basis of the material, received, the Central Government has formed the view that the request for surrender does not fall within the ambit of Section 31 of the Act.

Whereas, Section 31(a) of the Extradition Act, 1962 provides that, “if the offence in respect of which his surrender is sought is of a political character or if he proves to the satisfaction of the magistrate or court before whom he may be produced or of the Central Government that the requisition or warrant for his surrender has, in fact, been made with a view to try or punish him for an offence of political character.” However, it would be noted that Indian Supreme Court has not yet defined the political offences. Article 6(1) of the treaty between India and Kuwait provides as what shall not be regarded as political offence, “if the offence for which the extradition is requested offence or connected with a political offence. In the application of this treaty, the following shall not be regarded as political offences:

(a) assault against the President, Vice President or Prime Minister of either contracting party;

(b) murder, culpable homicide not amounting to murder or robbery;

(c) offences relating to terrorism, including murder, culpable homicide not amounting to murder, assault causing bodily harm; kidnapping, hostage taking
offences involving serious damage to property or disruption of public facilities, and offences relating to firearms or other weapons, or explosives, or dangerous substances;

(d) any offence within the scope of international conventions to which both contracting parties are parties and which obligate the parties to grant extradition or prosecute; or

(e) an attempt or conspiracy to commit or incite or participate in the commission of any of the above offences.” Other treaties also provide a list of offences which shall not be regarded as political offence. But no treaty between India and a foreign State or the Extradition Act, 1962 itself provide as to what shall be regarded as political offence.

With regard to Section 10 of the Act which provides that what evidence when duly authenticated may be received as evidence, Article 9 of the Extradition treaty between India and Canada\textsuperscript{27} says that,

“1. The evidence submitted in support of a request for extradition shall be admitted in extradition proceedings in the requested State if it purports to be under the stamp or seal of a department, ministry or minister of the requesting State, without proof of the official character of the stamp or seal,

2. The evidence referred to in Para I may include originals or copies of statements, depositions or other evidence purporting to have been taken on oath or affirmation whether taken for the purpose of supporting the request for extradition or for some other purpose.

3. The evidence described in paragraph 2 shall be admissible in extradition proceedings in the requested State, whether sworn or affirmed to in the
requesting State or in some third State.” Another treaty between India and USA provides that, “the documents which accompany an extradition request shall be received and admitted as evidence in extradition proceeding if:

(a) in the case of a request from the United States, they are certified by the principal diplomatic or principal consular officer of the Republic of India resident in the United States.

(b) in the case of a request from the Republic of India, they are certified by;

(c) the principal diplomatic or principal consular officer of the United States resident in the Republic of India, as provided by the extradition laws of the United States; or

(d) they are certified or authenticated in any other manner accepted by the laws in the requested State.”

However, the treaty between India and Switzerland, in its Article 7 stipulates that, in the examinations which they have to make in accordance with the foregoing stipulations, the authorities of the State applied to shall admit as entirely valid evidence or true copies of the depositions or statements of witnesses, taken in the other State, or copies thereof, and likewise the warrants and sentences issued therein, or copies thereof, provided that it should be signed or certified by a judge, magistrate, or officer of such State, and are authenticated by the official seal of a British Secretary of State, or of the chancellor of the Swiss Confederation being affixed thereto. The personal attendance of witnesses can be required only to establish the identity of the person who is being proceeded against with that of the person arrested.

Different treaties entered into with India provide for, as to what should be taken as evidence differently. Section 7(2)(f) the Act says that, “the magistrate shall in
particular take such evidence as may be produced in support of the request of the foreign State and on behalf of the fugitive criminal including any evidence…” Some of the treaties provide for additional evidences to be received. Article 10 of the treaty between India and French Republic\(^{30}\) stipulates that, if the information provided by the requesting State is insufficient to enable the requested State to make a decision in pursuance of the present agreement the latter State shall request the necessary supplementary information and may fix a time limit for the receipt thereof. However, this time limit may be extended by the requested State upon a duly reasoned request being made by the requesting State. In addition, Article 13 of the Extradition treaty between India and Republic of Tunisia\(^{31}\) makes provision that if the requested State is of the opinion that the evidence or information provided in the request of extradition is insufficient to enable it to take decision on the request, additional evidence or information shall be submitted within a reasonable time as specified by the requested State.

A recent case came before the Delhi High Court in which it was held that, “Section 7 of the Act makes it amply clear that the extradition magistrate shall take all such evidence as may be produced in support of the requisition of the foreign State and on behalf of the fugitive criminal. Further Article 11(6) of the extradition treaty with United Kingdom can also not be lost sight of which provides for additional evidence to be submitted within such time as requested State shall require in case requested State considers that evidence produced or information supplied for the purpose of extradition is not sufficient in order to take a decision on the request.”\(^{32}\) However, it ultimately leads us to the conclusion that the magistrate has to take all the evidences produced before him as well as the evidences can be produced in addition if found insufficient within a limited time specified by the requested State. In a case it
was held by the court that at the time of enquiry, the magistrate has only to find out, on the basis of evidence and material produced in support of the requisition of foreign State and that produced in defense by the fugitive criminal, whether a *prima facie* case is made out in support of the requisition or not.\textsuperscript{33}

With the advancement of new technologies it has become easier for a criminal to commit a crime even faster which has grown to be a threat. For that purpose the evidences relating to technology are also permissible and considered reliable. In *State v Navjot Sandhu*\textsuperscript{34} the Supreme Court opined that the call records relating to cellular phones are admissible and reliable and rightly made use of by the prosecution. It was an appeal against conviction following the Parliament attack on December 13, 2001. In the gun battle that lasted for thirty minutes or so, these five terrorists who tried to gain entry into the Parliament when it was in session, were killed. Nine persons including eight security personnel and one gardener succumbed to the bullets of the terrorists and sixteen persons including thirteen security men received injuries. This case dealt with the proof and admissibility of mobile telephone call records. While considering the appeal against the accused for attacking Parliament, a submission was made on behalf of the accused that no reliance could be placed on the mobile telephone call records, because the prosecution had failed to produce the relevant certificate under Section 65B(4) of the Evidence Act. The Supreme Court notified that a cross-examination of the competent witness acquainted with the functioning of the computer during the relevant time and the manner in which the printouts of the call records were taken was sufficient to prove the call records. The above case provides that the technology based data can also be taken as evidence. It refers to the Section 65 B of the Indian Evidence Act, 1872 which permits admissibility of electronic records.
However, the time period in which the request for extradition and the evidentiary documents should be produced is given in various treaties. The treaty between India and Canada\textsuperscript{35} stipulates that the person sought shall be discharged and set at liberty within thirty days, if the requested State has not received a request for extradition and the supporting documents and evidence within ninety days from the date of his arrest. The treaty with United States of America\textsuperscript{36} provides that a person arrested provisionally may be discharged from custody after the expiration of sixty days from the date of provisional arrest pursuant to this treaty if the executive authority of the requested State has not received the formal request for extradition and the supporting documents as given in Article 9 of the treaty.

The treaty with Spain\textsuperscript{37} says that the provisional arrest may be subject to termination if the requested State has not received the request for extradition and the documents as mentioned in Article 12, within a period of sixty days after the arrest. However this time limit may be extended to ninety days from the date of such arrest in exceptional circumstances. Extradition Act, 1962 itself makes provision in this regard. Section 9(3) of the Act provides that, “a person arrested on a warrant issued under Section 9(1) shall not be detained for more than three months unless within that period the magistrate receives from the Central Government an order made with reference to such person under Section 5.”\textsuperscript{38} Whereas Section 34 B (2) of the Act says that a fugitive criminal who is arrested under sub-Section (1) shall be discharged after the expiration of sixty days from the date of his arrest if no request for his surrender or return is received within said period.\textsuperscript{39} In accordance with the above Sections of the Extradition Act, 1962 and the treaties mentioned the fugitive criminal will be discharged if no request is received within the given period. However, this does not mean that he cannot be rearrested. The treaty with Tunisia provides that, “this
provision shall not prevent re-arrest and institution of the extradition proceedings if
the request is subsequently received.”

In case if a treaty has no provision regarding
the issue, the matter would be dealt in accordance with the Extradition Act, 1962.

Section 31(b) of the Act provides that a fugitive criminal shall not be
surrendered or returned to a foreign State if prosecution for the offence in respect of
which his surrender is sought is according to the law of that State or country barred by
time. It is a safeguard for the fugitive who cannot be prosecuted, if within a period of
time no action is taken against him. Treaties make provision in this regard. Whereas,
Section 31(c) of the Act reads as, “unless provision is made by that law of the foreign
State or in the extradition treaty with the foreign State that the fugitive criminal shall
determined or tried in that State for an offence other than-

(i) the extradition offence in relation to which he is to be surrendered or returned;

(ii) any lesser offence disclosed by the facts proved for the purposes of security his
    surrender or return other than an offence in relation to which an order of his
    surrender or return could not be lawfully made; or

(iii) The offence in respect of which the Central Government has given its consent.”

This Section also works as a safeguard for the fugitive criminal who cannot be
prosecuted in the State to which he is surrendered an offence other than that for which
he was extradited. It finds place in treaties entered into with foreign States. Article 10
of treaty with Poland provides that:

“1. A person extradited under this Treaty may not be detained, prosecuted,
sentenced or punished in the requesting State for offences except for:
(a) an offence for which extradition has been granted or a differently denominated offence based on the same facts on which extradition was granted, provided such as offence is extraditable or is a lesser form of such offence;

(b) an offence committed after the extradition of the person; or

(c) an offence for which the competent authority of the Requested State has consented to the person’s detention, prosecution, sentencing or punishment.

For the purpose of this subparagraph:

(i) the requested State may require the submission of the documents specified in Article 8; and

(ii) unless the requested State objects in writing, the person extradited may be detained by the requesting State for ninety days, or for such longer period of time as the requested State may authorize, while the request is being processed.

2. A person extradited under this treaty may not be extradited to a third State for an offence committed prior to the surrender unless the surrounding State consents.

3. Paragraph 1 and 2 of this Article shall not prevent the detention, prosecution, sentencing or punishment of an extradited person or the extradition of that person to a third State if:

(a) that person leaves the territory of the requesting State after extradition and voluntarily returns to it; or

(b) that person does not leave the territory of the requesting State within thirty days of the day on which that person is free to leave.”
This rule of specialty was invoked in the Tarasov case where a Russian sailor after deserting the Russian ship sought asylum in India. While the Russian requisition was made to try him for the alleged theft committed on the high seas, the communication from investigators, Prosecuting Magistracy Odessa, charged the accused with four offences, including “plunder” of the State money, desertion of a Soviet ship, and escaping trial. In an application moved on behalf of the accused, it was requested that the Soviet Union be asked to show the substantive law of that country which provides that the accused, if surrendered, would not be tried for any act other than that for which his extradition would be granted. The Soviet Embassy did not produce any law pertaining to the request, so the Delhi Court denied the extradition for not fulfilling this condition, even though a *prima facie* case against the accused was established.42

After the inquiry magistrate shall discharge the fugitive criminal if he is of the opinion that no *prima facie* case is made out in support of the extradition request. But, if he is satisfied with the evidences produced before him that a *prima facie* case is made out to support the extradition request and crimes with which he is charged are extraditable crimes. The motive behind the request is not to punish him for political offences or any other offence for which his extradition is not demanded he shall commit the fugitive criminal to prison to await the orders of the Central Government. The magistrate has to give the report of his inquiry to the Central Government and along with any written statement of the fugitive criminal if he wishes for consideration of his case. For the purpose of this provision Section 36(f) of the Extradition Act, 1962 provides that the Central Government has, “the form and manner in which or the channel through which a magistrate may be required to make his report to the Central Government under this Act.” After the submission of his
report, the magistrate has no further responsibility. Then the Central Government can
take any decision, after going through the report submitted by the extradition
magistrate. The criminal will be surrendered. However there is special provision
under chapter III of the extradition Act for those States with which India has an
extradition arrangement. Section 12 of the Extradition Act, 1962 provides that:

“(1) This chapter shall apply only to any such foreign State to which by reason of
an extradition arrangement entered into with that State, it may seem expedient to the
Central Government to apply the same.

(2) Every such application shall be by notified order, and the Central Government
may, by the same or any subsequent notified order, direct that this chapter and chapter
I, IV and V shall in relation to any such foreign State, apply subject to such
notification, exception, conditions and qualifications as it may think fit to specify in
the order for the purpose of implementing the arrangement.” According to the above
Section the power to make any notification, exception, conditions and qualification
rests with the Central Government as it thinks fit to specify in the order for the
purpose of implementing the arrangement.

**Apprehension of the fugitive criminal:**

A fugitive can be apprehended in India under Chapter III of the Act and
delivered to a foreign State with which India has an extradition arrangement. Sections
13 to 16 of this Chapter deal with this provision. Section 13 of the Act says that, a
fugitive criminal of any foreign State to which this chapter applies is found in India,
he shall be liable to be apprehended and returned in the manner provided by this
chapter to that foreign State. However the fugitive criminal can be apprehended on the
basis of the endorsed warrant or the provisional warrant which is mentioned in the
Section 14 of the Act. As per Section 15, endorsed warrant is a warrant which has been issued for the apprehension of a fugitive criminal in any foreign State to which this chapter applies and such fugitive criminal is, or suspected to be in India, the Central Government may if satisfied that the warrant was issued by a person having lawful authority to issue the same, endorse such warrant in the manner prescribed, and the warrant so endorsed shall be sufficient authority to apprehend the person named in the warrant and to bring him before the magistrate in India. However a provisional warrant is a warrant which can be issued by a magistrate on such information and under such circumstances as would in his opinion justify the issue of warrant. This warrant under Section 16 can be issued by the magistrate only for apprehension of the fugitive criminal of a foreign State to which chapter III applies if the fugitive criminal is suspected to be or in his way to India. The magistrate issuing such a warrant shall forthwith send a report of the issue of the warrant along with the information received or the certified copy of the information to the Central Government. The Central Government, if it thinks fit, after considering the facts and circumstances may discharge the person so apprehended. A fugitive criminal apprehended under this warrant may be remanded from time to time but not exceeding seven days at any one time as under the circumstances seems requisite for the production of an endorsed warrant.

As far as the applicability of this chapter of the Act is concerned, both endorsed as well as provisional warrants can be issued for the apprehension of a fugitive criminal. An endorsed warrant must be issued by the foreign State to which chapter III applies for the apprehension of a fugitive who is or suspected to be in India. Endorsement must be made by the Central Government provided that the Central Government is satisfied that the warrant is issued by a person having lawful
authority to issue it. Such an endorsed warrant is sufficient authority to apprehend the fugitive named in the warrant and to bring him before any magistrate in India. However, it is noteworthy here that ‘any magistrate’ here does not mean a magistrate specially appointed but it refers to a magistrate in whose local jurisdiction that fugitive is found. Further a provisional warrant must be issued by a magistrate to which chapter III applies for the apprehension of a fugitive criminal if he is satisfied that there is justiciable ground to issue the same, if the fugitive criminal is in India or is suspected to be in India. After issuing such a warrant the magistrate shall forthwith send a report (to the Central Government) with the information or a certified copy thereof to the Central Government. The Central Government after consideration of the information received may discharge the fugitive criminal if it thinks fit. Remand can be granted from time to time to a fugitive criminal apprehended on the basis of a provisional warrant which should not exceed more than seven days at one time as under such circumstances which seems requisite for the production of an endorsed warrant.

**Production of Fugitive Criminal before the Magistrate:**

Section 17 of the Extradition Act, 1962 deals with this provision which reads as,

“Dealing with fugitive criminal when apprehended –

(1) If the magistrate, before whom a person apprehended under this chapter is brought is satisfied on inquiry that the endorsed warrant for the apprehension of the fugitive criminal is duly authenticated and that the offence of which the person is accused or has been convicted is an extradition offence, the magistrate shall commit the fugitive criminal to prison to await his return and shall forthwith send to the Central Government a certificate of the committal.
(2) If on such inquiry the magistrate is of opinion that the endorsed warrant is not duly authenticated or that the offence of which such person is accused or has been convicted is not an extradition offence, the magistrate may, pending the receipt of the orders of the Central Government detain such person in custody or release him on bail.

(3) The magistrate shall report the result of his inquiry to the Central Government and shall forward together with such report any written Statement which the fugitive criminal may desire to submit for the consideration of the Government.”

The above Section provides that if the magistrate before whom the fugitive apprehended is brought is satisfied that the endorsed warrant for his apprehension is duly authenticated and he is charged with an extradition offence, magistrate shall commit that fugitive to prison to await his return and after that send a certificate of his committal to the Central Government. Further, if an inquiry magistrate opines that the endorsed warrant is not duly authenticated or the offence of which that fugitive is accused or convicted is not an extraditable crime, the magistrate may pending the receipt of the orders of the Central Government detain that fugitive criminal in custody or release him on bail. Further, the magistrate has to make a report of his inquiry and submit it to the Central Government along with any written Statement of the fugitive criminal if he wishes to give it for the consideration. With regard to the applicability of Chapter III of the Act, India does not require proof of \textit{prima facie} evidence as it is necessary under Section 7(3) of the Act.

\textbf{Procedure to seek Extradition from Abroad:}

Requests for extradition from various State Governments in India are received by the Ministry of External Affairs through the Ministry of Home Affairs. The
documents normally required in connection with extradition requests are to be translated in English, wherever necessary. The following documents are normally required –

a) FIR

b) Charge-sheet

c) Warrant for the arrest of the accused in original

d) Proclamation of court, if any

e) Evidence to establish a *prima facie* case against the accused. This includes Statement of witnesses, etc. and all other documents connected with the case.

f) Nationality, identity and address of the accused including his photograph.

g) Authenticated copies of various Sections of IPC / relevant legal provisions with which the accused is charged.

h) All the documents should be authenticated by the competent officer. The evidence of the witnesses should be given on oath before a magistrate and duly authenticated/certified by him.

i) An undertaking may also be given to the effect that the accused will be tried for those offences only for which extradition is being sought.

j) A certificate to the effect that all the documents are complete in every aspect.

k) All the documents should be in quadruplicate and duly attested by an officer authorized in this behalf by the Government. Each set should be stitched and sealed properly. The seal should be on stitching and not on envelop only.
1) The expenses incurred in extradition the accused like fees for the engagement of the lawyers in the country concerned, payment to local authorities travel of accused along with escort from the country concerned and any other miscellaneous expenses are to be borne by the requesting State. Any State Government in India making a request for extradition has to indicate the Head of Account under which these expenses are to be debited.  

The procedure of extradition of a fugitive criminal from a foreign State to India is given in Chapter IV (from Section 19 to 21) of the Extradition Act, 1962. It can be preceded by a formal request for the surrender or return of a fugitive criminal. The request for the surrender of an accused or convict may be made to the diplomatic representative of that country or State at Delhi or to the Government of that State or country through the diplomatic representative of India in that State. However, the requisition can be made in any other mode as may be agreed between the Central Government of India and the Government of that foreign State, if neither of the above two modes are convenient. With regard to those foreign States which have an extradition arrangement with India to which Chapter III applies, the Central Government may prescribe the form in which a warrant for the apprehension of any person may be made.

If the request for extradition is met, any person accused or convicted of an extradition offence is surrendered or returned to India by the foreign State and delivered to the proper authority to be dealt with according to the law. Whereas there is a provision that a fugitive criminal who has been brought back to India from a foreign State cannot be tried for an offence other than the one for which he was extradited, as it was held in a case, “whenever a person accused or convicted of an offence which is committed in India is extradited, he shall not be tried for any offence
committed earlier to his extradition other than in relation to which he was surrendered or returned. This clearly indicates that any subsequent offence committed in India prior to the person being surrendered or returned, for which extradition has been granted as per treaty/convention/law. The treaties entered into which India and other foreign States make provision in this regard. Section 21 of the Act works as a safeguard to the fugitive criminal who cannot be subjected to prosecution or punishment for any other offence for which he was not extradited.

**Waiver of Formal Proceedings:**

Formal extradition proceedings can be waived by a fugitive. He can directly appear before a demanding State without submitting himself/herself to an extradition proceeding. In this case, the requested State does not go into the detailed enquiry of the extradition request. However, this provision is given in extradition treaties between India and other foreign States to avoid delay in those cases where the fugitive is himself willing to be tried before the requesting State. Before executing the consent, a fugitive must be informed by the extradition magistrate about his/her rights in an extradition proceeding. This provision is given in treaties with India and other foreign States.

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 favor of the former. However, the procedures must be fair to both sides and it should always be considerate point 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 it continues to conclude new extradition treaties clearly underlines its necessity.
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7. Extradition treaty between United Kingdom of Great Britain and Ireland and Swiss Federal Council, 1996, Article XV
8. Extradition treaty between India and Kingdom of Bahrain, 2005, Article 12
10. Extradition treaty between India and Sultanate of Oman, 2006, Article 14
11. Extradition treaty between India and UAE, 2000, Article 12
12. Extradition treaty between India and Uzbekistan, 2002, Article 12
13. Extradition treaty between India and Bhutan, 1997
14. Extradition treaty between India and Nepal, 1963
20. Extradition treaty between India and Hong Kong, 1999
22. Section 2(a) of the Extradition Act, 1962
25. With regard to this Section, the offences which shall not be regarded as political offences are given in the Schedule of the Act.
27. Extradition treaty between India and Canada, 1987
28. Extradition treaty between India and USA, 1999, Article 10
29. Extradition treaty between India and Switzerland, 1996
30. Extradition treaty between India and French Republic, 2007
31. Extradition treaty between India and Republic of Tunisia, 2004
34. *State v Navjot Sandhu* AIR 2005 SC 3820
35. Extradition treaty between India and Canada, 1987, Article 11(5)
36. Extradition treaty between India and United States of America, 1999, Article 12(4)
37. Extradition treaty between India and Spain, 2003, Article 17(5)
38. Where it appears to any magistrate that a person within the local limits of his jurisdiction is a fugitive criminal of a foreign state he may, if he thinks fit, issue a warrant for the arrest of that person on such information and on such evidence as would, in his opinion, justify the issue of a warrant if the offence of which the person is accused or has been convicted had been committed within the local limits of his jurisdiction
39. On receipt of an urgent request from a foreign state immediate arrest of a fugitive criminal, the Central Government may request the Magistrate having competent jurisdiction to issue a provisional warrant for the arrest of such fugitive criminal

40. Extradition treaty between India and Tunisia, 2004, Article 19(6)

41. Extradition treaty between India and Poland, 2008


44. *Daya Singh Lahoria etc v Union of India and Ors*(2001) JT SC 31

45. (i) Extradition treaty between India and Canada, 1987, Article 16

(ii) Extradition treaty between India and USA, 1999, Article 18

(iii) Extradition treaty between India and Tunisia, 2004, Article 14

(iv) Extradition treaty between India and South Africa, 2007, Article 11

(v) Extradition treaty between India and Republic of Korea, 2005, Article 10