ABSTRACT

Extradition is the surrender by one state or country to another of an individual accused or convicted of an offence outside its own territory and within the territorial jurisdiction of another country and former is competent to negotiate under mutually agreed extradition policy. The law of extradition is derived from a network of treaties, national laws and state diplomatic practices which differ in detail but form a common pattern of law and procedure. Extradition is not required by customary international law, and many states do not extradite except as bound to do so by a treaty. In the absence of an extradition treaty two states if they desire can extradite a criminal on reciprocal terms. But it will not be legally binding.

The origin of international co-operation in the suppression of crime goes back to the very beginning of formal diplomacy, every period of history has examples of rendition of fugitives. Famous extradition case dates back to pre-Christian era. The first known European treaty which dealt with the surrender of the political offenders was entered into the year 1174 BC between England and Scotland, it was followed by a treaty in 1303 between France and Savoy.

In seventeenth century Hugo Grotius gave a theoretical framework to the extradition process which constitutes the basis of modern extradition law. In those ancient days it was regarded as an unfettered discretion of the Monarch whether to allow or not extradition of the criminal from his country. In the latter event he may grant political asylum in his kingdom.

However, under agreement two Sovereigns can oblige each other by surrendering those persons who are most likely to affect the political order within the requesting state, until the middle of the Eighteenth century extradition primarily involved political refugees rather than common criminals. The escape of the latter was not seen as a danger requiring sustained concerted efforts on an international scale. But the French revolution changed the outlook and established the theories of rights, liberty and constitutional governments and the beginning was made in the direction of non-extradition of political criminals.

Extradition is practiced among nations mainly for two reasons firstly, to warn criminals that they cannot escape punishment by fleeing to a foreign territory and should treat extradition as an obligation to fight against crime. It is a great step towards international co-operation in the suppression of crime.
Secondly, it is in the best interest of the requested state to hand over a certain criminal to the requesting country where he has committed a crime and has sought refuge in its territory lest he may again commit a crime in the host country and flee to a third country.

Extradition simply means enforcement of law. Formerly in appreciation of the closely guarded right of asylee for asylum some countries gave shelter to the fugitives though it was tantamount to the spirit of law of extradition. In recent times there has been a wide recognition of the fact of extradition by nation states though few have established bilateral treaties in this behalf. In the second half of the current century there has been revolutionary change in the concept of the right to asylum. The right to asylum is no more considered a privilege of the asylee. It is now the state which has the discretionary power either to extradite or expel the fugitive from one's territory.

The question of right of asylum, although closely connected with the non-extradition of political offenders is considerably wider in scope. In the first instance it refers not only to the obligation not to extradite political offenders it implies a positive duty to receive them. Secondly, it not only covers political offenders, it embraces victims of persecution fleeing from the country of oppression. Thirdly, it has acquired prominence in connection with asylum in legation, warships, and military camp. Revolution in democratic states have not, as yet become a matter of the past and when in other states the nature of the political regime produces a climate favourable to rebellion and persecution alike, the object cannot be regarded as obsolete or as restricted to the principle of non-extradition of political offenders.

Modern developments like facilities of travel and the fast mobility of the population has made the flight of the fugitive easier and frequent from one country to another. The necessity to check it has become more apparent. As a consequence the former distrust among the nations with regard to the treatment of the fugitives gradually declined. A common interest in preventing flight from abroad from foiling the apprehension and punishment of a fugitive from justice has led states to co-operate with one another and has led to development of procedures by which fugitives could be returned to the state in which the alleged crime was committed. A modern approach was gradually evolved to include a formal request for surrender of the wanted criminals for which formal bilateral agreements were found necessary.
Beside this every single extradition is subject to the rules of the applicable treaty or statute. In the absence of universal Convention on the subject of a generally accepted convention there has come into being a series of customary rules which are common in all treaties. These may be summarised as follows:

1. **The principle of double criminality**: According to this principle the crime involved should be a crime in both states concerned. The rule ensures that no state is obliged to extradite a person for an act not recognized as criminal by its own standards, and also serves the principle of reciprocity in that a state is not required to extradite categories of offenders which it, in turn, would never have occasion to demand.

2. **The principle of speciality** is another condition when a person surrendered may be tried and punished only for the offence for which extradition had been sought. The speciality rule, though generally not conceived of as a rule conferring individual rights, nevertheless protects the fugitive from having to face charges of which he had no notice prior to his transfer; it also reinforces the double criminality rule and rules prohibiting extradition for certain categories of offences and it protects from abuse the legal processes of the requested state, which is called upon in extradition to renounce its jurisdiction over the fugitive.

3. **Evidence of guilt**: Courts in common law countries require broadly speaking, that a requesting state make out a prima facie case of guilt against an alleged fugitive offender justifying his committal for trial under their own legal system, before they will grant extradition for the purpose of prosecution. Civil law countries do, however, request additional evidence including evidence of guilt if, from the circumstances of the case, there is reasonable doubt as to whether the requested person has in fact committed the offence, or where there is reasonable suspicion that the returnable offence charged to the fugitive is not genuine.

4. **Extradition of citizens**: While common law countries, basing their criminal jurisdiction strictly on the territoriality principle and thus being unable to prosecute their own nationals for offences committed abroad are usually prepared to extradite their citizens, while civil law countries, as a rule, are prevented from doing so.
by constitutional or statutory law. Extradition treaties, therefore, if not excluding the extradition of citizens altogether, usually concede to requested states the right to deny extradition of nationals if their domestic law so provides. The other important general rules common to most of the treaties are capital punishment and military offenses.

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 offenders. It has been pointed out already that a virtually complete reversal in state policy took place during the nineteenth century, when political offenses 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 governments develop strong antipathy toward the idea of surrendering political offenders into the hands of despotic dictatorial governments.

Extradition is necessarily considered as 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. In the absence of treaty, a state is therefore free to surrender a person accused of a political offence without violating any principle of International law. Even if a treaty does exist, a state may choose to surrender a political offender if such is dictated by a national policy, this relatively new interpretation, found originally in a few court decisions, gained acceptance through provision of European convention on Extradition, signed on December 13, 1957.

**Meaning of political offence.** The question then arises: What is a political offence? In general terms, it is an act directed against the security of a state. Until recently, treaties as well as the decisions of the court tended to define such an offense in relatively narrow terms. In order to be political in nature, it was maintained, the action in the question had to satisfy the following conditions:

1. It had to be an overt or an open act.
2. It had to be done in support of a political rising.
3. The rising had to be connected with a dispute or struggle between two groups or parties in state as to which one has to control the government.
In other words, a political offence may be an act which, although it is in itself a common crime, acquires a predominantly political character because of the circumstances and motivations under and for which it was committed.

During the second half of the nineteenth century, a number of attempts were made on the persons of Heads of states. Such attacks did not constitute part of organized uprising or struggles for the control of governments, but had to be viewed as the acts of individuals or of small terrorist groups. Following an unsuccessful attempt to extradite Celestin Jacquin, who had tried to blow up a train carrying the French Emperor Napoleon III in Belgium, in 1856, adopted into its extradition law the so-called 'attentant clause'. This provision excluded from the category of political offenses the attempt, to kill the Head of another state or a member of his family. The United States, after the assassination of President Garfield, inserted the Attentat clause in its extradition treaty with Belgium in 1882, and in 1933 Montevideo Convention included a similar provision. Many modern extradition treaties have been equipped with the restrictive clause and either by direct provision or by interpretation it extends not only to crowned Heads of state but to any Head of a government as well as to the member of his family.

The second quarter of the twentieth century saw an expansion in the meaning of political offense as a result of the ideological divisions of mankind and of the rise of radical and conservation dictatorship. The Harvard Draft Convention of 1935, reflecting existing world conditions, included under political offence such acts as the commission of treason, sedition, and espionage, even if each of these was to be undertaken by only one person it also included any offenses connected with the activities of an organized group directed against the security or governmental system of the requesting state. Appearance of the cold war extended the meaning of political offence still further.

Extradition is at present the most effective means of cooperation between states in criminal matters, where as criminal prosecution for cases where extradition has failed remains of little practical importance, because of technical difficulty. Recent efforts to conclude specific agreements on the transfer of criminal proceeding and the execution of foreign criminal judgement might, however, shift the relative weight of the different components of mutual assistance in criminal matters. The elaboration of extradition relation in detail highly depends on the relations
between the respective state in general and on the mutual confidence in their legal and judicial systems in particular. Extradition relations between the states having comparable legal orders and sharing the same values should be closer and more flexible, and less exception should be needed, where greater differences exist between states, more safeguards are necessary.

However, the need of an Universal extradition convention can not be minimised. Prime Minister I.K. Gujral’s recent statement at the 66th Annual general meeting of the International Criminal Police Organisation (Interpol) and at commonwealth Heads of Government meet at Edinburgh, to curb the twin menace of transnational terrorism and drug trafficking is to be considered by International community. An Internationally accepted code of conduct for government should be evolved to check various crimes around the world. Such a universal extradition treaty could form part of the United Nations agenda. Some International Convention have to be built to save countries from agonising negotiations to get wanted criminals extradited. Entire International Community has to take the decision in this regard. An effective global strategy is to be evolved to deal with white collar crimes, corruption and terrorism which has threatened the international peace and stability. Until an universal extradition treaty is evolved with international co-operation, states would be best advised to refrain from entering into general extradition agreements and to grant extradition on an adhoc basis subject to the rules of the domestic extradition law of the requested state.