

# Extradition under International Law: Overview of basic principles, applications and challenges in Extradition Law

Aruni H Wijayath

LL.B, LL.M, Attorney- at-Law

arunihemanthi85@gmail.com

## Abstract

At present the laws relating to Extradition is acquired a great attention in the globe due to rapid escalate of International Crimes and Trans National Organized Crimes. The Extradition is based on the Latin term "*aut punier aut dedere*" (either punish or surrender). Extradition law is acting an important role to surrender and convict the fugitive criminal who are trying to escape from the law. The law of Extradition mainly based on multi-lateral or bi- lateral treaties and municipal laws consolidated by particular countries. This work mainly focused on basic principles and applications of Extradition law and the position of Extradition law under the International Law. Through this work the contemporary developments of Extradition law, its application and challenges under criminal justice system of Sri Lanka will be analyzed in a critical manner.

Key words- Extradition, International Law, Fugitive criminals, Treaties, Sri Lanka

## Introduction

Extradition is the process that the accused or convicted of committing an offence are surrendered from one state to another. According to the Oxford Dictionary of Law the Extradition is "the surrender by one state to another of a person accused or convicted of committing an offence in the territorial jurisdiction of the latter ,which being competent to try and punish him demand his surrender". The state where the accused was found is called "territorial state" and state where the crime is committed called "requesting state". The Extradition is not solely derived from International Law as the Extradition is mainly based on bi-lateral and multi-lateral treaties and national legislations.

The Extradition Law could be treated as a dual law as it is enriched from both national and international law separately .The decision of extradite a fugitive is determined by the national court of the territorial state at the same time it could be treated as a part of International Law because the decision made by the territorial state is directly influence the relationship between two or more states.

## Treaties and national laws

The sources of Extradition law could be identified as treaties<sup>1</sup>, regional conventions<sup>2</sup> and national laws. In the past, bi-lateral treaties used for the extradition and at present multi-lateral and regional conventions also widely used for

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<sup>1</sup> Formal contract between states or international organizations. The state parties to the treaties are binding from international law. The state parties are legally bind by the treaty through ratification,

<sup>2</sup> A treaty of multi-lateral nature. But less formal than a treaty that covers particular matters.

the purpose of Extradition. Bi-lateral treaty is a treaty that take place between only two parties. The parties should be two states, two international organizations or one party is state and other is an international organization. For example Sri Lanka and India has bilateral agreement<sup>3</sup> from year 1978 .Multi-lateral treaties are the treaties those comprised of three or more sovereign states and all the parties are owing similar obligations. The European Convention on Extradition 1957, Inter-American Convention are example for Extradition Convention. Further many states have national legislation regarding Extradition. Sri Lanka has Extradition Act No 8 of 1977 to extradite from and to common wealth countries or foreign states.

According to the extraditable offences the treaties are categorized. One type is “list treaties” and these are contained the list of offences which the suspects will be extradited. This type is the common and traditional one. The second type is “dual criminality treaties” and these were introduced from 1980. If the punishment is more than one year in both countries the offenders could be extradited under these treaties.

### **Principles of Extradition**

Law of Extradition based on major three principles -:

Principle of double criminality (dual criminality) – The alleged act should be an offence under both jurisdiction of territorial state and requesting state. The rationale behind this

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<sup>3</sup> A mutual understanding between two or more parties and through the agreement parties are legally binding. Through Agreement any legal personal such as people, cooperation, organizations, are binding.

<sup>4</sup> *Collins V Loisel* 259 US 309 (1922)

<sup>5</sup> Article 2 -Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion,

principle is, if the alleged act is not an offence under territorial state they may refuse to extradite the fugitive criminal .The alleged offence need not to have same name or same element to constitute the criminal even though, it should be an offence in both states.<sup>4</sup>

The principle of Specialty- The extradited individual should be tried only for the alleged offence or mentioned in the extradition request. In other words, the requesting system should specifically mention the alleged offence /offences committed by the fugitive from the territorial state for a successful extradition.

Political Offences should not be a ground of Extradition-Any person who committed any offence for a political purpose, inspired or motivated by politics cannot be an extraditable offence .Most of extradition treaties and municipal laws treated political offences as non – extraditable offences.

The Article 3 (1) of European Convention on Extradition 1957 states that,

*“Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested party as a political offence or as an offence connected with a political offence.”*

The extradition is prohibited in the ground of political offences due to the Human Rights issues. The cardinal Human Rights Conventions such as Universal Declaration on Human Rights (UDHR)<sup>5</sup>, International Covenant on Civil and Political Rights <sup>6</sup> expressly declare that the political opinion shall not be a ground of

political or other opinion, national or social origin, property, birth or other status.

<sup>6</sup> Article 26-All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all

persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

discrimination. Further article 14 of UDHR states that, the fugitives of political crimes are having the right of seek asylum from territorial countries.<sup>7</sup>

### **Extradition Procedure**

The Extradition governed by the bi-lateral, multi-lateral treaties and municipal laws. Each state member should comply with the extradition request sent by the court or prosecutor from another state. The requesting state should tender a formal extradition request to the territorial state and the request should contain the name of the fugitive and his alleged offence or offences. The penal term of the offence committed by the fugitive should be not less than 12 months of imprisonment. The requesting state should submit evidence to prove the *prima facie* case against the fugitive offender. The arrest warrant should be sent along with the extradition request and it should only contain the description of circumstances of the alleged offence or offences. The judiciary is the authorized institution which has the power to take the decision upon extradition. The arrest warrants are issued by courts and these documents are corresponded through diplomatic channels.

### **Extradition Law in Sri Lanka**

The Extradition Law in Sri Lanka basically governed by the Extradition Act No 8 of 1977, Mutual Assistance in Criminal Matters Act No 25

of 2002 and Mutual Assistance in Civil and Commercial Matters Act No 30 of 2000. Further number of bi-lateral and multi-lateral treaties and regional conventions give adequate support to Sri Lanka to extradite fugitive offenders. Under the Extradition Act the extradition could be constitute under a gazette order with common wealth countries without any treaties. For other countries apart common wealth there should be a treaty to extradite fugitive criminals.

Further Sri Lanka is a signatory to four extradition bi-lateral treaties with Hong-Kong, China, Italy and United States. The Extradition treaty with US signed on September 1999 by the heads of the states. Under article 1 of the treaty each contracting parties agree to extradite fugitive offenders from one state to another.<sup>8</sup> Article 2(1) states that, the punishment should be more than twelve months under the laws in both contracting parties for the alleged offence committed by the fugitive offender. Article 4 (1) prescribes that, the political offences are exception for extradition under this treaty and article 4 (2)<sup>9</sup> explains that, the murder or any other violence against the head of the state or to his family, aircraft hijacking, aviation sabotage, airport offences and another three offences are extraditable offences under this treaty, even though military offences which are not categorized under ordinary criminal law are not extraditable offences under article 4 (4) of the treaty. Further article 7 of the treaty explains about the imposing capital punishment.

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<sup>7</sup> Article 14 (1). Everyone has the right to seek and to enjoy in other countries asylum from persecution.

14 (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

<sup>8</sup> Bi-Lateral Extradition Treaty US and Sri Lanka Article 1- obligates each Contracting State to extradite to the other, pursuant to the provisions of the Treaty, any person sought by the Requesting State for trial or punishment for an extraditable offense.

<sup>9</sup> 4(2) expressly excludes from the reach of the political offense exception seven categories of offenses: (a) a

murder or other violent crime against the person of a Head of State or Head of Government of one of the Contracting States, or of a member of the Head of State's or Head of Government's [\*6] family; (b) aircraft hijacking offenses; (c) acts of aviation sabotage; (d) crimes against internationally protected persons, including diplomats; (e) acts of violence at airports; (f) any other offense for which both Contracting States are obliged pursuant to a multilateral international agreement to extradite the person sought or to submit the case to their competent authorities for decision as to prosecution; and (g) a conspiracy or attempt to commit any of the offenses described above, or aiding or abetting a person who commits or attempts to commit such offenses.

According to the treaty none of the contracting parties refrain from imposed death penalty for the extradited offender. If any contracting party to the treaty imposed capital punishment it should not be carried out.<sup>10</sup> Through this article both contracting parties indirectly admit the second optional protocol to the International Covenant on Civil and Political Rights aiming at the abolishing the death penalty<sup>11</sup> even though both parties are not signatories to the optional protocol. From article 8 to 10 it describes the procedure of extradition. In article 8 it states that, the all requesting and supporting documents should be submitted through diplomatic channel, the name of the fugitive offender should mentioned in the arrest warrant and the evidence should be submitted with the request to constitute a *prima facie* case against the fugitive offender.<sup>12</sup>

Sri Lanka has extradition relations with eight common wealth countries under the London Scheme of extradition within the commonwealth<sup>13</sup> also.

### Challenges in Extradition Law

The extradition law remained unchanged until Second World War. Rapid increasing of drug trafficking, transnational crimes, terrorism, cyber-crimes, white collar crimes, development of mass communication and transportation create serious consequences among the globe. Therefore a well-developed extradition law should be there to minimize the international crimes and to punish the offenders. The law of

extradition is developed and widely accepted through bi-lateral, multi-lateral treaties, regional conventions and municipal laws. At present the extradition process has various challenges due to recent developments in International law and human rights arena. These challenges could be categorized as follows;

#### (A) Political offences

Generally the extradition treaties use mandate principles and one of the long-lasting mandate principle is “political offences” exception. Offences of political nature, political characteristic offences are not extraditable offences under extradition law. But unfortunately these treaties are not clearly define the political offences or political nature offences. Therefore the terrorists’ activities are difficult to differentiate from political offences and judiciary face difficulties while exclude political terrorism from political offences.

#### (B) Granting Asylum

For the political offenders, military offenders and religious offenders, asylum is granted by the territorial state and they are protected. It can be argued that the asylum is one of the roadblock for extradition in indirect way. Granting asylum could be treated as a method of protecting criminals against the justice. One of the accepted principle under international public law is, persons who are citizens of asylum country excluded from extradition.

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<sup>10</sup> Article 7(1), when an offense is punishable by death in the Requesting State, but not in the Requested State, the latter may refuse extradition unless the offense constitutes murder under the laws in the Requested State or the Requesting State provides assurances that the death penalty will not be imposed or, if imposed, will not be carried out. In cases where the Requesting State has provided such assurances,

Article 7(2) states that the death penalty, if imposed by the courts of the Requested State, will not be carried out.

<sup>11</sup>[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-12&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en)

<sup>12</sup> Article 8(3)(c) provides that a request for the extradition of a person sought for prosecution or punishment be supported by, among other things, such information as would provide a reasonable basis to believe that the person to be extradited committed the offense for which extradition is requested and is the person named in the arrest warrant.

<sup>13</sup> Through this document the fugitive criminal could be extradited within common wealth countries

(C) Irregular Rendition (Extra Ordinary Rendition or Forced Rendition)

This process is carried out by United State government with the acceptance of other countries. The US government abduct and extra judiciary transfer the fugitive or any suspect from one state to another with the consent of other countries and US government is acting the main role by abducting the particular persons. Rendition is defined as follows “transfer of persons from one jurisdiction to another, and the act of handing over, both after legal proceedings and according to law.” But irregular rendition is a process that carried out as extra judiciary activity. The US used this method to surrender fugitives without following the normal legal process of extradition under international law. At present US government surrender the fugitives and they are not kept in the territory of US and transferred to another state. For example US government and United Kingdom surrendered hundreds of Libyan foreign ministry officers and rendered them to Libyan authorities knowing that they would tortured the captured by officials.

(D) Human Rights issues

The Human Rights law does not treat the extradition as human right violation even though in the process of extradition there is a probability of human right violation while detaining, prosecute and imposing punishments. In the extradition process there should be a proper balance between the sovereignty of a state and protection of individual’s human and civil rights. Generally extradition treaties contain the human rights safeguard mechanism such as refrain from imposing capital punishment for extradited offender. Political offences exceptions, double criminality, principle of specialty also counted as human right safe guards of extradited fugitives. But after the extradited offender is surrender to

the requesting state the trial and imposing punishments are under the power of the requesting state therefore territory state can do nothing to safe guard the extradited offender’s right. Hence every state have responsibility to protect and safe guard the human rights and dignity of extradited fugitives.

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## References

Extradition Act of Sri Lanka No 8 of 1977

Bi-Lateral Extradition Treaty Sri Lanka and United State of America on September 30<sup>th</sup> 1999

European Convention of Extradition 1957

United Nations Declaration of Human Rights

Second Optional Protocol to the International Covenant on Civil and Political Rights aiming of abolishing of Death Penalty

Abegunde Babalola , Extradition under International Law: Tool for Apprehension of Fugitives, Journal of Law, Policy and Globalization , Vol.22, 2014 < <http://www.iiste.org/Journals/index.php/JLPG/article/download/11045/11346>> accessed 16<sup>th</sup> June 2018

GAVAN GRIFFITH QC AND CLAIRE HARRIS,RECENT DEVELOPMENTS IN THE LAW OF EXTRADITION, Melbourne Journal of International Law Vol 6, 2005 <[https://law.unimelb.edu.au/data/assets/pdf\\_file/0007/1681144/Griffith-and-Harris.pdf](https://law.unimelb.edu.au/data/assets/pdf_file/0007/1681144/Griffith-and-Harris.pdf)> accessed 17<sup>th</sup> June 2018

General Principles of Extradition, [http://shodhganga.inflibnet.ac.in/bitstream/10603/28180/13/13\\_chapter%203.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/28180/13/13_chapter%203.pdf) accessed 15<sup>th</sup> June 2018

Irregular Rendition, 19th June 2018, 9.45 UTC, In Wikipedia: The Free Encyclopedia, Wikimedia Foundation Inc., Encyclopedia online [https://en.wikipedia.org/wiki/Extraordinary\\_rendition](https://en.wikipedia.org/wiki/Extraordinary_rendition) accessed 19th June 2018

Isha Agrawal, EXTRADITION UNDER INTERNATIONAL LAW–AID FOR THE ANGST OF FUGITIVES, International Journal of Law and Legal Jurisprudence Studies ,Volume 3 Issue 3,< [http://ijlljs.in/wp-content/uploads/2016/07/ISHA\\_AGRAWAL- EXTRADITION UNDER INTER](http://ijlljs.in/wp-content/uploads/2016/07/ISHA_AGRAWAL- EXTRADITION UNDER INTER)>accessed 15<sup>th</sup> June 2018

Kai I. Rebane, Extradition and Individual Rights: The Need for an International Criminal Court to Safeguard Individual Rights, Fordham International Law Journal, Volume 19, Issue 4 Article 11,1995, <<https://pdfs.semanticscholar.org/19ce/2b6d0ef381fcf0b4bc5e66f8e1cf7ba6650b.pdf>> accessed 16th June 2018

Michael Plachta, CONTEMPORARY PROBLEMS OF EXTRADITION: HUMAN RIGHTS, GROUNDS FOR REFUSAL AND THE PRINCIPLE AUT DEDERE AUT JUDICARE,< [http://www.unafei.or.jp/english/pdf/PDF\\_rms/no57/57-07.pdf](http://www.unafei.or.jp/english/pdf/PDF_rms/no57/57-07.pdf)> accessed 18<sup>th</sup> June 2018

Model Law on Extradition, United Nations Office on Drugs and Crime,2004, < [https://www.unodc.org/pdf/model\\_law\\_extradition.pdf](https://www.unodc.org/pdf/model_law_extradition.pdf)> accessed 17<sup>th</sup> June 2018

