

# How to Start Extradition Process in India?

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## INTRODUCTION-

Well extradition is the only tool which remains in the hands of India to bring the fugitive criminals to justice and remedy the harm done by them to the societal or economic situation of the country. Earlier, there used to be cases for extradition of fugitive criminal (accused or convicts) who were charged for offences under the Indian Penal Code but the changing trends coupled with a weakened scrutinizing and investigating process has enabled some tycoons and barons to flee from the hands of justice and now we have numerous cases of extradition against them.

## EXTRADITION- MEANING & LEGAL ISSUES

Extradition is the process of delivery from that of one State to another of those criminals whom the country which asks for extradition (hereinafter referred as requesting state) desires to deal with because of the crimes they committed in the requesting state and those crimes are justifiable in the Courts of the other State.

While a '*Fugitive Criminal*' means a person who is accused or convicted of an extradition offence within the jurisdiction of a foreign State and includes a person who, while in India, conspires, attempts to commit or incites or participates as an accomplice in the commission of an extradition offence in a foreign State.<sup>1</sup>

**Extradition Offence<sup>2</sup>:** Extradition offence means in relation to a foreign State, (where its a Treaty State), an offence provided in the extradition treaty with that State;

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.

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<sup>1</sup> § 2(f) The Extradition Act, 1962.

<sup>2</sup> § 2(c) of Extradition Act, 1962.

Though extradition is a concept of International law but it is also concerned with the domestic laws of the other requested state whereby the criminal could be extradited and punished only for those offences which are punishable in the requested state. It is vital to comprehend the cause behind the concept of extradition before we decide the issue at hand. Extradition, as an age old concept has evolved either through the bilateral or multilateral treaties or through the concept of Comity of Nations as a matter of goodwill and courtesy. Therefore, 'world public order' is the recurring theme based on which the extradition is practiced by the States.<sup>3</sup> The process of Extradition could be initiated under The Extradition Act, 1962. The act provides for the extradition of a fugitive criminal found within the territory of India to a foreign state which requests for his extradition.

In a recent promulgation of the Fugitive Economic Offenders Ordinance, 2018 on April 21, 2018, allows initiation of multiple actions against a "fugitive economic offender", who flees the country after defaulting on multi-crore bank loans and similar instances of fraud. While it also states the procedure in Chapter IV of the Act for extradition of a fugitive criminal who committed crime in India or abetted the crime and is outside India in a foreign state. Therefore, extradition could be to India or from India. While persons charged for political offences are not extradited usually *governing law for extradition is The Extradition Act, 1962* while the *Ministry of External Affairs* is the concerned ministry for all outgoing or incoming requests for Extradition. The Consular, Passport & Visa Division handles extradition matters in the Ministry of External Affairs. Also, the act applies to the whole of India including the State of Jammu & Kashmir. Extradition requests should be sent to the Ministry of External Affairs for furthering consideration by:

- The State Government, if the alleged offence took place in its territorial jurisdiction;
- Ministry of Home Affairs with respect to cases put together by investigating agencies (e.g. CBI, NIA etc.)

There are two different aspects for Extradition, *one is for a country with which India has a Treaty or an Extradition arrangement* and the other is for the country with which there's *no extradition treaty*. It is stated in the act that any act of a person in India or elsewhere which is listed as

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<sup>3</sup> Abu Salem Abdul Qayyum Ansari v. Respondent: Central Bureau of Investigation and Ors., (2013) 12 SCC 1.

punishable with a minimum one year of imprisonment in a list of extradition offences would qualify upon a request and after compliance with the provisions of the Act.

The central government is empowered to issue the process of extradition, at present, 42 countries has extradition treaties with.<sup>4</sup> There could be a situation where extradition request comes from more than one state simultaneously then the Ministry of External Affairs has the power to decide which country has more merit in its request. The Hon'ble Supreme Court in the case of **Bhavesh Jayanti Lakhani v. State of Maharashtra**<sup>5</sup>, has held that "the municipal laws of a country reign supreme in matters of extradition. It is thus for the State concerned to take a decision in regard to such Notices, keeping in view the Municipal Laws of the country."

Going by the above principle, if for any reason, any other law of the requested State would prohibit extradition of any specific person to India, such extradition can be refused by the said State and/or its courts. Since 2002, India has extradited 44 fugitive criminals to various countries. On the contrary, India has got 61 criminals extradited to itself from different countries since 2002.<sup>6</sup>

### **EXTRADITION TO A FOREIGN STATE NOT HAVING A TREATY WITH INDIA**

Since, there is a request made by a state which has no extradition treaty with India there has to be a balance of respect for International relations along with protection of individual interest and liberty by duly ensuring Natural justice is complied with. *Section 4- Section 11* of the act deals with the procedure, the request for the requisition of the fugitive criminal of a foreign state could be made in two ways-

- By a diplomatic representative of the foreign State, at Delhi; or
- By the concerned Government of that foreign State to the Central Government through the diplomatic agent of the Central Government of India in that State.

It is noteworthy that such request shall consist the offences with which the accused is charged in the foreign state, information about the physical appearance of the accused, his nationality, etc.

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<sup>4</sup> <http://www.mea.gov.in/leta.htm>, accessed on 21<sup>st</sup> August, 2018.

<sup>5</sup> Bhavesh Jayanti Lakhani v. State of Maharashtra, 2009 (9) SCC 551.

<sup>6</sup> <https://www.indiatimes.com/news/india/everything-you-need-to-know-about-extradition-and-india-s-most-wanted-criminals-261818.html> accessed on 21<sup>st</sup> August, 2018.

**PROCEDURE-**

Now, the Code of Criminal Procedure become very important as the Magistrate of the First class who would have the jurisdiction to conduct an inquiry of try an offence would inquire into the offence if it had been committed within his local limits and he has all the powers of Session Court has to try (i.e. he would call the witnesses and the accused and record their statements etc.). But this inquiry has to be made upon the direction of the Central Government.

In the inquiry the magistrate would take evidence to ensure whether there's a *prima facie* case established against the fugitive or not?<sup>7</sup> For the purposes of securing the presence of the fugitive offender the Magistrate shall make an warrant for arrest also under Sec- 5 and the provisions of bail will applicable (Section 25) as if the offence had been committed in India (applicable law- Code of Criminal Procedure, 1973). Now again there could be two situations (Sec-7)-

- If he's satisfied that a no *prima facie* case exists against the accused then he shall discharge him.
- If in the opinion of the Magistrate there's exists a *prima facie* case as its alleged by the Foreign State then he'll commit the accused to the prison and wait for the further orders of the Central Government, meanwhile the Magistrate shall also send the report of the inquiry to the government. But such detention shall not be more than 3 months (Sec- 9). Also, under Sec- 34B for non-treaty States, there's 60 days as period if a request for extradition is not received within that time, the person can apply to a magistrate to be released from custody. However, the fact of release of person from custody shall not entail a right upon him as a subsequent arrest is not barred.

Also, there could be a request by the Foreign State for the arrest of the fugitive criminal then such request is called a provisional arrest request from a foreign State. Upon receiving such a request the Central Government may request the competent magistrate to issue a warrant of arrest under Section 34B of the Extradition Act.

However, the magistrate should be satisfied that an arrest warrant under the relevant law of the foreign country exists for the arrest of the person, the offence is listed as an "extradited offence", the dual criminality principle is followed, i.e. the offence is punishable both in India as well as in

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<sup>7</sup> *Prima facie* case- it is a case made out by a proper and sufficient testimony; source P. Ramanatha Aiyar's Concise Law Dictionary, ed. 5<sup>th</sup>, p. 993, Lexis Nexis.

the foreign state. The execution of the warrant of issued by the magistrate is done by the respective Police.

Since, there's no treaty with the foreign state every statement or disposition, copies of judicial documents and warrants of conviction which are presented before the Magistrate by the Foreign State to establish a *prima facie* case should be 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, this is mandated by Sec- 10 of the Act.

Now, if the Central Government decides that the fugitive criminal should be surrendered to the foreign state it will issue a warrant which will state that the custody of that person be given to which person and at what time. Whilst, the requisition of a fugitive criminal under Chapter III (where there's a corresponding treaty or arrangement) the procedure is extremely informal and swift and its quite different from the procedure stated above.

#### **RETURN OF FUGITIVE CRIMINALS TO FOREIGN STATES HAVING EXTRADITION ARRANGEMENTS WITH INDIA**

Whenever there's treaty between India and a foreign state or there's an extradition arrangement then the procedure under Chapter 4 will be applicable and its noteworthy that the process is simpler and swifter than that of a state where there's no treaty at all. When a warrant has been issued for to apprehend a person the authorized authority should make an endorsement on it and it shall be sufficient authority to apprehend the fugitive.

If there's a request for provisional arrest then the magistrate may authorize the arrest of the fugitive criminal if he is satisfied that the offence alleged is justified by the circumstance of the case, its notable that here the process s not as tardy as the one of a state with no treaty at all. Now, the report of this will be sent to the Central Government, in the meantime fugitive may be remanded for such reasonable time, not exceeding seven days at any one time.

Therefore, the procedure now will revolve around the warrant of arrest, if it's been duly authenticated (procedure of authentication is generally laid down in the treaty) then the convict shall be committed to prison and further orders will be awaited for his return; in case the warrant

is not authenticated then the person would be detained for further orders of the Central Government.

### **PROCEDURE OF EXTRADITION REQUEST BY INDIA**

The Ministry of External Affairs provides a list of documents which should be sent to a foreign country in case of a provisional arrest; there should be a statement stating why the request is urgent along with the information about the physical appearance of the person such as his fingerprint, nationality, list of offences against him, location of the person to be arrested and a description of *prima facie* evidence available against him along with then legal provisions under which he's charged and the penalty for it, then a statement of warrant of arrest against that person and within how much time India will seek the person's extradition after his arrest.

There's Chapter IV of the Act which specifies the procedure to be followed when a request for Extradition is made by India to a foreign state. If it's a Non- treaty state then a request has to be made by the Central Government for extradition either to the diplomatic office of that country at New Delhi; or to the Government of that State or country by a diplomatic representative of India in that State or requisition by the Central Government.

Sec- 20 of the Extradition Act, 1962 provides that with the return of the fugitive criminal he will be delivered to the proper authority (for instance, the Enforcement Directorate if the offence is under the Prevention of the Money Laundering Act, 2002) but the principle of double criminality will still be followed and the arrested fugitive would be tried & punished only for those offences which are punishable in the foreign country.

While the criminal could only be punished for the offence which is mentioned in the treaty or is agreed upon by the foreign state at the time of extradition or is an offence punishable by a lesser imprisonment, i.e. of a less serious nature than the one mentioned in the application for extradition.

**Provisional Arrest Request** In some urgent cases, where there's a suspicion that a fugitive criminal residing in a particular jurisdiction may flee, a country may request provisional arrest of that fugitive, *pendent lite* the formal extradition litigation. An additional facility of the International Criminal Police Organization (INTERPOL)<sup>8</sup> may also be availed to transmit a request, through the investigation agencies like the Central Bureau of India. For every extradition request there are some pre requisite conditions. Every extradition treaty specifies the documents required for a provisional arrest request and also specifies the means by which a provisional arrest request must be made. The request is prepared by the investigation agency (police for that matter). Mostly, the following documents are required to be attached in a provisional arrest request when its sent to a foreign country:

1. A cover statement which justifies the urgency of the request;
2. A physical description of the fugitive, his/her nationality, a photograph, fingerprints (subject to availability), a list of the offences for which the arrest is sought;
3. Brief statement of the facts of the case/ the offences committed by the fugitive and the available prima facie evidence for his incrimination;

The request should be in a form befitting presentation to a foreign Government on behalf of the Government of India. The request is presented through a dossier before, the request there has to be a cover letter on an A4 size white paper While the documents inside it should be printed on one side of the paper only (not front and back), a dossier should begin with proper index page mentioning about the details of the documents, documents should be clearly typed and free from any errors of spelling or printing mistakes and it shall carry the signatures of the concerned official should be affixed with a stamp without any smudging. Avoid over-writing and corrections if it happens then it should be signed and stamped by the deponent upon the place where such correction is made.

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<sup>8</sup> INTERPOL cannot compel any member country to arrest an individual who is the subject of a Red Notice. Each member country decides for itself what legal value to give a Red Notice within their borders. Interpol, the world's largest international police organisation, has 188 member nations. It facilitates cross-border police cooperation. Interpol statistics put India in the big league of crime-exporting nations. Red Notices are issued for individuals sought for prosecution or to serve a sentence. When the individual is sought for prosecution it means they are suspected of committing a crime but have not yet been prosecuted and so should be considered innocent until proven guilty; source- <https://www.indiatoday.in/magazine/nation/story/20110124-interpols-most-wanted-indians-745550-2011-01-14>, accessed on 24<sup>th</sup> August, 2018.

If any document is in a regional language or in Hindi language then accompany it by a certified English translation, it will be certified by a senior officer (not below the rank of Joint Secretary to the Government of India or Secretary to the State Govt. or equivalent) as correct, the Dossier should be paginated and countersigned and stamped by the deponent. To ensure the proper upkeep of the dossier, the contents of the dossier should be properly bound, with a separate synthetic cover so that the contents remain protected even during transit and for storing purposes. After the dossier is completed three identical photocopies of the original dossier are required to be enclosed with the covering letter.

The copies should be prepared after completion of the dossier and need not be signed or stamped again. Contain a note indicating correctness of the request and contents of the dossier. After the completion the dossier shall be addressed to Joint Secretary (CPV Division), Ministry of External Affairs, New Delhi, accompanied by one original and 3 (three) identical photocopies of the dossier. Also a soft copy of the same may be forwarded to Joint Secretary of the Consular, Passports and Visa Division (CPV), Joint Secretary (Internal Security-II) Ministry of Home Affairs, and Narcotics Control Bureau.

### **EXTRADITION & INTERPOL**

International Criminal Police Organization (Interpol) is an international organization to facilitate international police cooperation, presently fugitives pose a grave threat to public safety worldwide. They are mobile (often changing countries on fraudulent travel documents), and opportunistic. Fugitives are a challenge to the world's criminal justice systems. It is an irony that they may be charged with an offence but could not be arrested. Even though, they have been released on bail they abscond in order to avoid prosecution.

When fugitives flee, cases are not adjudicated, convicted criminals fail to meet their obligations, and crime victims are denied justice. INTERPOL provides a diverse systematic assistance to the member countries for locating and arresting fugitives who cross international boundaries to flee justice.

The Red Notice of the organization is very instrumental in detecting the fugitive criminal and ensuring his return to the foreign country.



The process of Notice is like an international request for seeking cooperation or alerts allowing the police of the member countries to share critical crime-related information; the principles of the INTERPOL investigative assistance is under **RESOLUTION No. AGN/65/RES/12**.

**PROCEDURE FOR EXTRADITION OF A FUGITIVE CRIMINAL  
(FROM A FOREIGN COUNTRY TO INDIA)**

A Dossier should be prepared for sending to the Court of the foreign country there are certain documents which are required to be attached with a Formal Extradition Request. It is quite clear from the above mentioned provisions that a *prima facie* case should always be established before a court even in the foreign jurisdiction, the should be a self-contained affidavit on oath or solemnly affirmed declaration by a Senior Officer who is in-charge of the case (note: he/she should not be below the rank of Superintendent of Police or a similar post of that investigating agency) ad such declaration should be before that Judicial Magistrate's Court by which the accused is wanted for prosecution. This affidavit should also include a detailed narration so as to suffice an overview of the case and the allegations, with special references to the incriminating evidence. Further, such requests for extradition should be prepared by the Court of the concerned Magistrate and that too in first person.

(A template of such an affidavit is provided by IS-II Division,<sup>9</sup> Ministry of Home Affairs while the changes could be made to the template of the affidavit according to suitability). The affidavit should begin with the basis/capacity under which it's been executed.

The affidavit should include an express mention of the brief facts, circumstances and history of the case, a reference should also be made at the appropriate places with the statements of witnesses

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<sup>9</sup> INTERNAL SECURITY-II DIVISION, this division of the Ministry of Home Affairs deals with all matters concerning the Arms Act 1959, Arms Rules 1962, Explosive Substances Act 1908 and other related matters; letters of request for mutual legal assistance in criminal matters; National Security Act, 1980 and representations thereunder; administration of Narcotics Control Bureau; providing central assistance to victims of terrorist, communal and naxal violence; matters relating to breach of privilege of MPs, matter of personal security of vital installations/metro/Airports etc.

and other documentary evidence. Details about the Nationality, identity and address of the accused fugitive be specified, under what law he's charged with so that a clear prima facie case is made out; a reference to the corresponding law of the foreign country to establish dual criminality. Since, there's could be or couldn't be a treaty an undertaking has to be given that death penalty will not be sought or imposed treaty with foreign country does not allow death penalty.

The Government also needs to conform that the accused would be tried only for the offence for which extradition was sought and the proceedings for the offence were not barred by the period of limitation period i.e. the prosecution began within the period specified by law. In the end there's an assurance that there won't be any re extradition to a third state.

**NOTE:** A situation may arise whereby the foreign country does not have English as its official language then the entire dossier should be translated and this translation should be certified by the translating authority. This translated copy will make a part of the dossier itself and should not be separately enclosed.

### **ENCLOSURES IN THE DOSSIER:**

The whole dossier is the most important part of the extradition process as it's the only device which can ensure proper justice is done in the matter, it has a specific form and has the following enclosures:

Certificate of all the evidences available.
An order of the Court which is trying the case of the accused in India justifying that the accused should be committed for trial.
A certified copy of First Information Report (FIR), charge sheet.
Arrest warrant issued in the name of the accused and specifications as to the offences he's charged with.
Documents providing for the nationality, identity and address of the accused.

Separate affidavits shall be filed for Photograph or fingerprints of the accused, CD or any other electronic evidence or a telephonic conversation, the weapons involved in the crime (specifically describe the indigenous weapons such Kirpan / gandas),

Copy of the offences he's charge with and mentioning the maximum punishment that can be imposed, copy of the fact and law that limitation period has not elapsed.

### **REPATRIATION OF FUGITIVE CRIMINAL FOR APPROVED EXTRADITION**

Usually the method followed for extradition of a fugitive criminal from India is similar to the standard of procedure followed by most of the other countries. Once the foreign country approves the request of extradition of the fugitive, he would be required to be brought to India so the investigating agency nominates a skilled escorting team. The following guidelines should be followed for a smooth process:

<b>Requirements</b>
Adequately strong escort team
Necessary clearances/Sanction of the Ministries of the Centre or State as the case may be
Political Clearance from Ministry of External Affairs
Passport and Visa of the Officers/Officials of the Escort Team
Careful regard to the details in Circular No.42/2005 issued by the Bureau of Civil Aviation Security, Ministry of Civil Aviation, regarding carriage of prisoners
According to the treaty provisions or any other arrangements and general practice, the Law Enforcement Agency of the concerned requesting country will bear the cost of travel. Also, this visit is for the repatriation of the criminal fugitive it could be a sudden one so the Indian Embassy in that foreign state.
The itinerary of the escort team, composition of members of the team everything is submitted in detail to the Indian High Commission or Embassy in the foreign state.

## **CONCLUSION**

Even there are countries having a treaty with India which have declined extradition requests for fugitive criminals for some offences such as offences charged under Sec- 498A IPC which involves meting out cruelty to a women with a view to coerce her or a person related to her to meet any unlawful demand for any property or valuable, the only way out in such circumstances is that the request should not seek extradition primarily on the basis of violation of Section 498-A. It will also describe complete evidence which shows the commission of certain activities by the offender that led offence under the Indian Penal Code.

There are some simultaneous restrictions on surrender of a fugitive criminal at one hand if there are some enabling provisions at the other. Generally, a fugitive criminal is not returned in case the offence is political in nature; the principle of double criminality, prosecution of extradite offence is barred by time in the Foreign State; if the person is accused of any other offence in India, over and above the offence for which extradition is sought.