Extradition and Asylum

Introduction

Extradition is needed when an individual charged with a crime in one state flees to another. In this case, the requesting state requests its citizen to be sent back so that he/she can stand trial for their crimes.

Asylum is when a person, who is afraid of being prosecuted in his home state, runs away to another state for protection.

In the case of Colombia vs Peru (1950), it was held by the court that they are exclusive. There is either extradition or asylum.

What is Extradition?

Extradition is the process of bringing back a criminal to the state where he has committed the crime when he has absconded for such a country.

Many may ask the question of why it is important to bring him back to the country where he has committed the crime. Why can’t he just be tried in the country he has been caught in? The reason, it is important to bring him back is because there are different legal proceedings in different countries.

The country in which he has committed the crime may try him differently. It may also be the case that he had absconded or run away in the middle of legal proceedings. Thus it is essential to bring him back in order to finish the trial. The evidence and the witnesses are also present in that country.

This is also to prevent the trend of international criminals. Some criminals hop from country to country committing crimes. Through extraditions, justice can be brought by bringing them back to the countries they have committed the crime and punishing them.

It is also imperative for that country to get rid of that certain individual for security.
### Difference between Expulsion and Extradition

<table>
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<th><strong>Extradition</strong></th>
<th><strong>Expulsion or Deportation</strong></th>
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<tr>
<td>Happens when a country requests for a fugitive to be returned.</td>
<td>Happens when an individual violates immigration laws.</td>
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<td>Government is subject to certain rules such as treaties, rule of speciality and double criminality. They also have the right to reject a request of extradition.</td>
<td>The Government has the unrestricted right to expel. They don’t need to serve a show-cause notice to the foreigner.</td>
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<td>In India, extradition is governed by the Extradition Act of 1962.</td>
<td>In India, expulsion is governed by the Foreigners Act of 1946.</td>
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It was the case of *Hans Muller of Nuremberg vs. Superintendent Presidency jail Calcutta and others (1955)* that stated extradition and expulsion are two different processes. The courts also held that the government has the right to reject a request for extradition. If also have the right to choose the less cumbrous process of expulsion to remove a foreigner from the country.

**No extradition of a Political Criminal**

The trend of no extradition of political criminals started during the French revolution. After that, other countries followed suit.

No commission or organization has defined what a political crime is. This word is also not defined under international law. But in our own words, we can say that if a person commits a crime with political motives, then that crime can be said to be a political crime.

In the case of *Re Castioni case (1891)*, a prisoner was charged with the murder of Luigi Rossi. The murderer escaped from Switzerland to England. The government of England rejected Switzerland’s request for extradition. The court held that the accused murdered in order to cause political disturbance and is thus a crime of political nature. Due to the fact, he was a political criminal and England was not obliged to extradite him.
But on the contrary, In Re Meunier 1894, a fugitive who blasted a bomb in a public place in Paris, fled to England. Paris wanted him back but England refuses their request to extradition. The court ruled his intentions were not purely political and he had thus, not committed a political crime.

D’attentat clause

The d’attentat or the clause Belge states that murders of heads of governments or states will not be considered as a political crime and they can be extradited for such a crime.

Rule of Speciality

The doctrine of speciality is a doctrine under international law. It states that a person who is extradited to a country to stand trial for certain criminal offences may be tried only for those offences and not for any other pre-extradition offences.

This principle was restated in the case of U.S. vs Rauscher (1886), which stated that he can only be tried for offences which have been criminalised by the treaty and/or the offence for which extradition has been requested for.

Double criminality

Double criminality is a principle that states that a criminal can only be extradited to another country if the offence he has committed is criminalized by the laws of both the countries involved. For example, if a murderer has run away from Bangladesh and is hiding in India, he can be extradited as the laws of both the countries criminalize murder.

Position of the State in International Law

It must be noted that the state has no duty to extradite an individual. But, there can be a treaty between that states that they will extradite any criminals that run away to their country and vice versa. They can also voluntarily extradite a person without any treaty. States should keep in mind that during extradition, they should not violate their own municipal laws i.e- the laws of their own countries and international conventions.

However, countries do not have to give the fugitive back if proper extradition procedure was not followed. In the case of Sarvarkar (1911), Mr Vinayak Donador Savarkar was under french navy custody. He was then extradited to England, but England obtained him through incorrect extradition procedures. Due to the violation of procedures, the French wanted him
back. The court held that there is no provision under international law that states if extradition procedures are not followed then the country must return him back.

The state can also not extradite citizens of their own state. So, if a citizen of England comes to India and commits a crime and then runs off to England then it is very difficult to get the citizen back. They usually ensure that they will punish the criminal according to their own laws.

In *Regina vs Wilson (1878)*, a treaty can happen between the two states, states will not extradite people and the fugitive that will be punished according to their own laws.

India

Usually, each country has its own laws regarding the process of extradition. In India, The Extradition Act of 1962 governs the process of extradition. It was amended in 1993 by Act 66.

Section 2(d) of the Act talks about treaties fo extradition and allows foreign states to make such arrangements with India. These treaties are usually bilateral in nature i.e- they are between two countries, not more. These treaties embody five principles-

- Extradition of a fugitive will happen for offences set down by the treaty.
- The offence must be criminalized under the laws of both countries, not just one.
- There must be a prima facie case made.
- The country should try the criminal for only the offence he was extradited for.
- He must be tried under a fair trial.

Usually, requests for extradition on behalf of India can only be made by the Ministry of External Affairs and not anyone in the public.

Countries who have a treaty with India can request for extradition of someone from India. A non-treaty country must follow the procedures set down by Section 3(4) of the Extradition Act of 1962.

According to the page of The Ministry of External Affairs, below are the following bars or restrictions to extradition-
- India is not ‘obliged’ to extradite someone unless there is a treaty.

- India is not ‘obliged’ to extradite someone unless that offence constitutes a crime under the treaty.

- Extradition may be denied for purely political and military offences.

- The offence must constitute a crime in both India and the country requesting extradition.

- Extradition may be denied when the procedure set down by Section 3(4) of the Extradition Act of 1962 is not followed.

**Asylum**

What is asylum?

Asylum is when a country gives protection to individuals who are being prosecuted by another sovereign authority. Most of the times, it is their own government. While everyone has the right to seek asylum, asylum seekers do not have the right to receive it.

It must be noted that asylum deals with refugees (individuals who are being prosecuted by their own government).

**Article 14 of the Universal Declaration of Human Rights**

Article 14 of the Universal Declaration of Human Rights recognises the right of individuals to seek protection from prosecutions of the sovereign authorities. Everyone can go to another country and seek asylum. This right is also available for fugitives who have committed political crimes. But this is subjected to the condition that if your crime is against the principles of the UN, then you do not have the right to asylum. It also must be noted that one has the right to seek asylum but you do not have the right to receive asylum.

**Types of asylum**

**Territorial Asylum**

Territorial asylum is granted within the territorial boundaries of the country offering asylum. This is most commonly used for people accused of offences of political nature such as treason and sedition. It must be noted that murderers of heads of states, criminals accused of
certain terrorist activities and people accused of war crimes are some examples where one can not be offered asylum.

Extra-Territorial or Diplomatic Asylum

Extraterritorial asylum refers to asylum granted in embassies, legations, consulates, warships, and merchant vessels in foreign territory and is thus granted within the territory of the state from which protection is sought.

International law has not recognised diplomatic asylum as a right as it can be areas for dispute. For example, the asylum was granted to József Cardinal Mindszenty during the uprising against the communist government in 1956. He refused to Roman Catholic schools to be secularized which prompted him to be arrested but he got protection from the government of the United States for 15 years. This caused great controversy.

Neutral Asylum

This type of asylum is shown by neutral states during times of war. These countries may be considered asylum places for prisoners of war. It provides asylum to troops of countries who are a part of the war. This is under the condition that they are subject to internment during the time. It is important to note that while troops may be allowed, airforces of such countries cannot land in these areas and will be subjected to interrogation.

Asylum in India

Different countries have different laws about asylum-seeking. India has laws regarding immigration and asylum-seeking. The most recent law with asylum seeking that has caused the most controversy is the Citizen Amendment Act with regards to refugees.

Organisations like the UNHCR, help individuals register for asylum. People who wish to apply must come for registration with all of your family members who are present in India. According to them, the following documents are needed-

- Case numbers of immediate family members who have been registered with UNHCR (in India or elsewhere),
- Passport/nationality document/identity document,
- Birth certificates/vaccination cards for children,
• Marriage/divorce/death certificates,

• Any other documents you may have.

The candidate will be asked to explain why you left your country and why you cannot go back on a form. They will be interviewed by a Registration Officer.

Conclusion

Thus, in this article, we have discussed the difference between extradition and asylum, their processes, the various rules they are subjected to, and how they are executed in India. These processes play a great part in international relationships. The topics discussed above are also very essential to understand international law.