

EXTRADITION OF FUGITIVES: ROLE OF SPECIAL COURTS

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Meaning of “Extradition”

◎ **“Extradition”** is the official process whereby one country transfers a suspected or convicted criminal to another country. The process is premised on the “solidarity of nations in the repression of criminality”.

NEED FOR EXTRADITION TREATY/ARRANGEMENT

- Territoriality of criminal law
- International battle against crime.
- No obligation to surrender an alleged criminal to a foreign state
- Desire for the right to demand such criminals from other countries
- Expulsion or return of an individual without treaty

SOME INITIATIVES BY INTERNATIONAL COMMUNITY

- ◎ United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substance.
- ◎ Financial Action Task Force (FATF) The FATF established in 1989 by the G7.
- ◎ Political Declaration and Global Programme of Action adopted by UN GENERAL ASSEMBLY on 23.02.1990

SOME INITIATIVES BY INDIA

- ◎ Bilateral Extradition Treaties with several countries
- ◎ Regional extradition treaties such as the London Scheme (Commonwealth Scheme for the Rendition of Fugitive Offenders 1966)
- ◎ 1997 International Convention for the Suppression of Terrorist Bombings

EVOLUTION OF EXTRADITION LAWS IN INDIA

- Pre-independence - Fugitive Offenders Act, 1881 for Commonwealth Countries and the Extradition Act, 1903, for other nations.
- In March 1904 order made declaring part II of 1903 Act to have effect in British India as part of 1870 Act. This position continued till independence.
- Post-independence - Extradition Act, 1962, repealed and replaced both the above.

SCOPE OF THE EXTRADITION ACT, 1962

Two obvious facets of extradition:

- A) From a foreign country to India,**
- B) To a foreign country from India.**

AGENCIES INVOLVED

The MEA is the Central Authority for all incoming and outgoing requests for Extradition.

Extradition requests are sent to the MEA for consideration by:

1. State Government,
2. Court of Law;
3. CBI, NIA etc. through Ministry of Home Affairs

SCHEME OF THE EXTRADITION ACT, 1962

- (A) General conditions of extradition.
- (B) Certain restrictions on surrender.
- (C) Procedure regarding extradition of fugitive criminals.
- (D) Miscellaneous provisions

Categorisation

- Chapter II - extradition without Treaty.
- Chapter III - extradition by Treaty.

Procedure under Chapter II (Non Treaty State)

- ⦿ Requisition is made to the Central Government by a foreign State
- ⦿ Central Government may issue an order to any magistrate having jurisdiction directing him to inquire into the case.

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Procedure under Chapter II (Non Treaty State)

contd...

- ◎ Section 5 - Central Government may direct Magisterial inquiry.
- ◎ Section 6 - On receipt of order u/S 5, Magistrate shall issue warrant for arrest of fugitive criminal.
- ◎ Section 7 - Whether prima facie case is made out.
- ◎ Section 10 - Receiving evidence.

Procedure under Chapter III

- ◎ Central Government may endorse a warrant received from a Foreign State.
- ◎ Endorsed warrant is sufficient authority to apprehend the person named in the warrant.

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Procedure under Chapter III contd...

Enquire –

- ⦿ If indorsed warrant is duly authenticated;
AND
- ⦿ If the offence is an extradition offence,

Then:

- ⦿ Commit the fugitive to prison, and
- ⦿ Send certificate of the committal to the Central Government.

Else:

- ⦿ May detain the person in custody or release him on bail

Difference between Chapter II and Chapter III

● Chapter II - whether a *prima facie* case is made in favour of the requisition by the foreign State u/S 7(2)).

● Chapter III - scope limited to being satisfied that the endorsed warrant is duly authenticated and that the offence alleged is an extradition offence u/S 17.

General Conditions of Extradition

Three general conditions for extradition that have emerged effectively:

(a) The Principle of Double Criminality

(b) The existence of an "extradition offence", and

(c) The existence of an Extradition Treaty

WHO MAY BE EXTRADITED?

- Only a fugitive criminal may be extradited.
- Section 2(f) of the Act defines Fugitive Criminal.
- By virtue of Section 34, the Extradition Act has extra-territorial jurisdiction and an extradition offence committed by any person in a Foreign State shall be deemed to have been committed in India and such person shall be liable to be prosecuted in India for such offence.

WHEN EXTRADITION MAY BE REFUSED

- ⦿ The offence is of a political character
- ⦿ The offence is a non-extraditable one ;
- ⦿ The offence is punishable with less than one year's imprisonment
- ⦿ The period of limitation for prosecution has expired
- ⦿ The rule of Speciality is violated
- ⦿ Non Bis In Idem

ENABLING PROVISIONS IN CrPC

- ◎ Chapter VII (A) CrPC - reciprocal arrangements, attachment and forfeiture of property.
- ◎ S. 105-B CrPC - assistance in securing transfer of persons.

ENABLING PROVISIONS IN PMLA, 2002

● Chapter IX, S.59, PMLA, 2002

● Schedule includes offences u/S.7,8,9,10 & 13 of the Prevention of Corruption Act,1988.

● Section 44 (1) (a) - an offence punishable u/S.4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court.

Prosecution on refusal to extradition

Where the Central Government is of the opinion that a fugitive criminal cannot be surrendered or returned, pursuant to request for extradition by the Foreign State, the Central Government, if it deems fit and proper, it can take steps to prosecute such fugitive criminal in India.

Guidelines for Extradition request for an accused/ fugitive

- After chargesheet has been filed,
- Court having taken cognizance,
- Issued orders/directions for committal,
- Non-bailable Warrant issued,
- All extradition requests should be supported by relevant documents and information.

SPECIAL CONDITION – S.34C

Where the extradition is to a country where the punishment for the relevant offence is not death but life imprisonment, the extradition shall be made conditional upon the punishment of the accused in the foreign country with life imprisonment even if the same offence attracts the death penalty in India (section 34C).

**Abu Salem Abdul Qayyum Ansari v Central
Bureau of Investigation 2013(10) SCALE 31**

When extradition and deportation collide

◎ Section 31(1)(d) states:

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

◎ Section 33 states:

“Nothing in this Act shall affect the provisions of the Foreigners Act, 1946 (31 of 1946) or any order made thereunder.”

JUDGMENT

Saifi v. The Governor of Brixton Prison & The Union of India [2000] EWHC QB 33 (21st December, 2000)

Case No: CO/4176/1999
IN THE SUPREME COURT OF JUDICATURE
QUEEN'S BENCH (DIVISIONAL COURT)
Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 21st December 2000



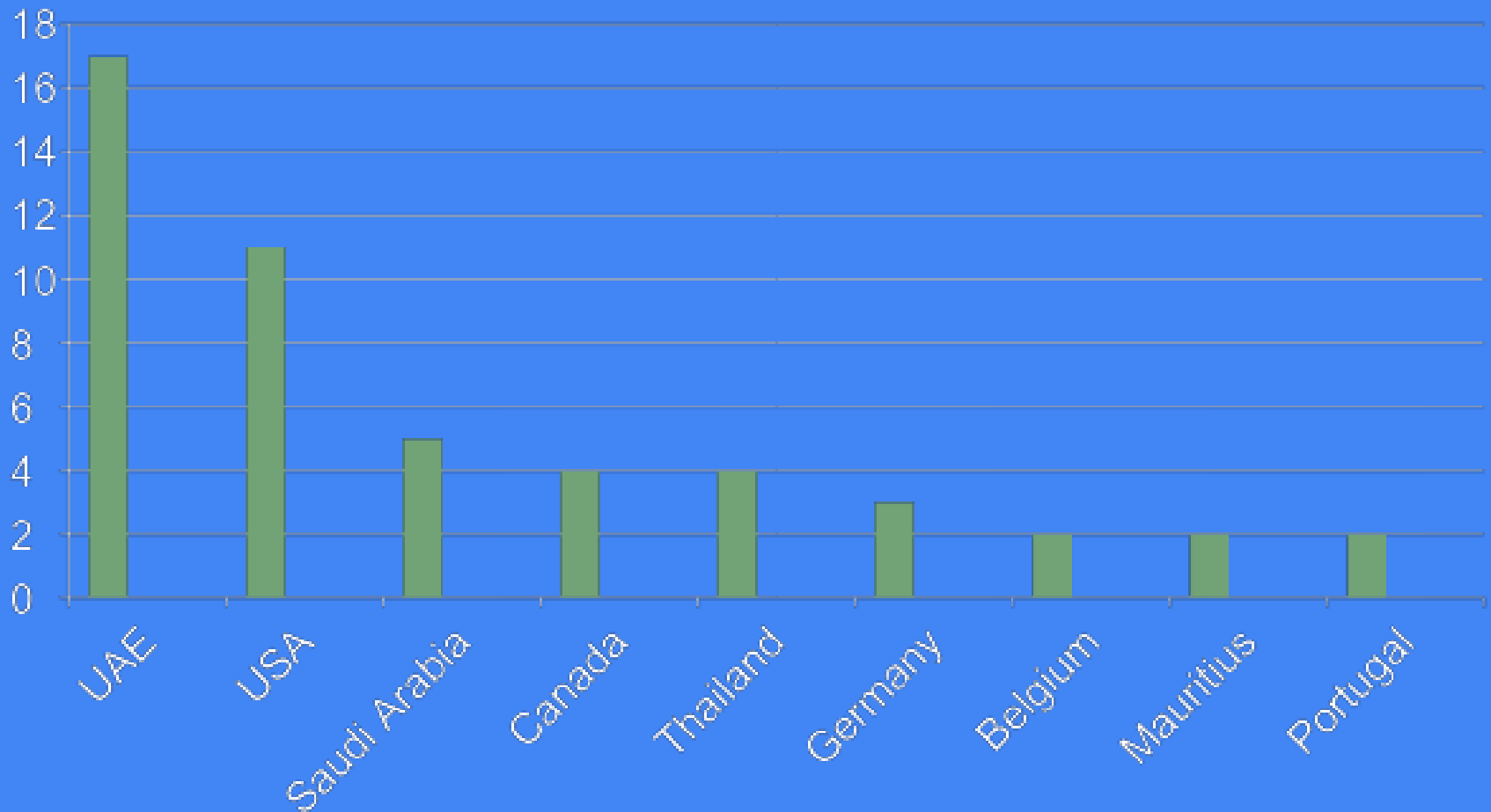
JUDGMENT

- ◎ Verhoeven, Marie-Emmanuelle V Union of India (Crl Appeal No. 417 of 2016) Decided on 28.04.2016
- ◎ Principle question:- whether there is a binding extradition treaty in terms of section 2(d).
- ◎ Subsidiary question:- In absence of treaty, whether requisition by Chile invoking principle of reciprocity and the general principles of International Law for extraditing the petitioner is maintainable.
- ◎ Court held: General principles of International Law do not debar the requisition.

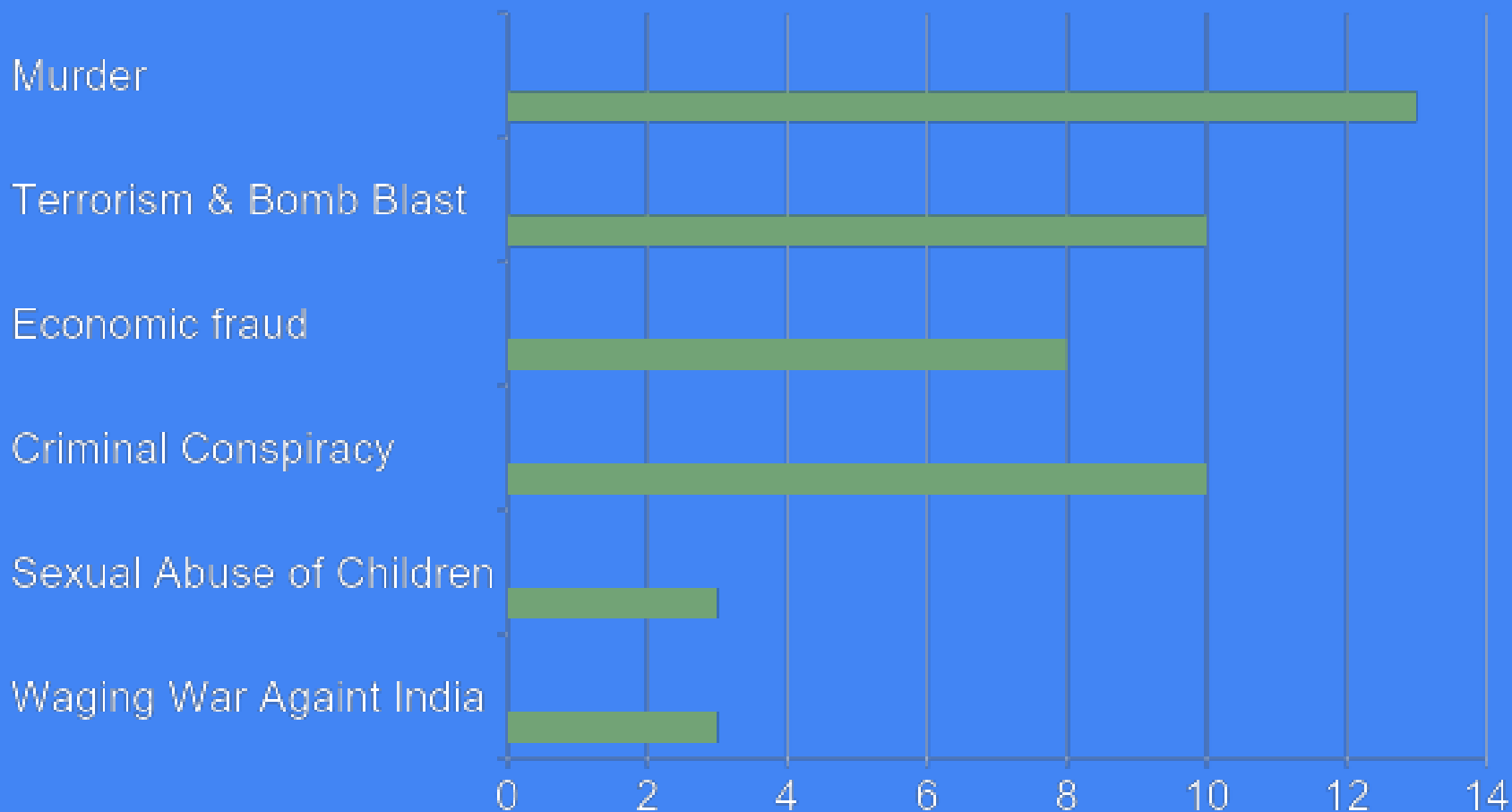
JUDGMENT

**Sarabjit Rick Singh v
Union of India 2007(14)
SCALE 263**

Number of people extradited since 2002 from various countries.



Extradition offences of those who were extradited



THANK YOU