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Examining the Extradition Process in Pakistan: Insights from the Extradition Act of 1972

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ABSTRACT

The Extradition Act of 1972 in Pakistan stands as a crucial piece of legislation governing the extradition process within the country. This research article delves into the legal intricacies and procedural frameworks outlined in the Act, highlighting its significance in the context of international extradition requests. The study examines key definitions such as fugitive offenders, distinctions between foreign and treaty states, and the principles of cooperation under the Act. Furthermore, it analyses the process of extradition both to and from Pakistan, detailing the rules, procedures, and challenges faced by Pakistani authorities in handling extradition requests. The article also explores principles like double criminality, political victimisation, and the right to a fair trial, shedding light on the complexities involved in extradition cases. Through a comprehensive analysis, this research aims to provide a nuanced understanding of the Extradition Act of 1972 in Pakistan and its implications for the extradition landscape.



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1. Introduction

The significance of having rules and principles regarding extradition that are unwaveringly adhered to compelled Pakistan to enact new laws on the topic and revise the ones already in place. At the beginning of the Industrial Revolution, it became abundantly clear that the international trade of goods and services would require the presence of laws that were anything but vague regarding the organisation and management of those (Shahidullah, 2017). This requirement was not met until much later in the revolution. It is generally accepted that Pakistan makes the greatest contributions to the international market in terms of the number of service providers it employs. In addition to the significance of the underlying causes, the fact that Pakistan is still a developing country means it has a continuing challenge in the fight against fugitives (Jaishankar, 2019). Failure to apprehend such criminals results in the loss of a significant amount of money. It provides those responsible with additional cover for activities detrimental to the national economy. The interplay of these components was ultimately responsible for formulating the extradition principles. This proves to be the first step towards eradicating the dangers that follow due to inadequate legislation, and it's a step that's well worth taking. The law not only outlines the infractions and people who are subject to its jurisdiction, but it also outlines the procedures to be implemented to combat such criminal tendencies and bring them under the jurisdiction of the law.

1.1 Definition of Fugitive

According to the Extradition Act of 1972, a fugitive offender is defined as a person who has been charged with or found guilty of an extradition offence and who is now believed to be in Pakistan. This definition applies to anyone charged with or found guilty of an extradition offence. Even though Pakistani courts do not have the authority to try extradition crimes, fugitives can still be apprehended and handed over in accordance with the Extradition Act of 1972 (Liu et al., 2017). A fugitive is a person to whom the entire body of extradition legislation comes into effect. To put it another way, a person who has committed an offence for which they should be extradited but who is now hiding out in Pakistan committed the offence on the territory of another state. On the other hand, a person can be considered a fugitive if they are hiding outside of Pakistan after committing an offence for which extradition is a possibility, and they have committed the offence. It is a principle that is enshrined in natural law that any accused, even a fugitive from justice, is not an out-law and that they, therefore, possess the right to have due process. However, it is necessary to follow the steps outlined in Pakistan's extradition statutes because of this natural law principle. Even when issued against such a person, a court order needs to have some basis in the law (Liu & Miyazawa, 2018).

1.2 The Distinction between a Foreign State and a Treaty State

The Extradition Act of 1972 differentiates between states that are not treaty partners and those that are. According to the law, a state can be considered a treaty state if there is an agreement between such a state and Pakistan that any person who commits an offence in one state is at large in the other state. Pakistan and the state in question share this agreement. A treaty of this kind gives the first state the right to demand that the second state take custody of the offender in question. In today's world, there is a growing trend toward the formation of such treaties, which helps to ensure that members of the international community can coexist peacefully. In addition to that, it serves a purpose that includes acting as a combined countermeasure against the tendencies toward criminal activity. For instance, the countries that are part of the European Union have agreed to extradite criminals who are living among them. In more recent times, Pakistan has signed similar treaties with a number of countries, one of which is the United Kingdom. As a result, the nations are treaty states to one another. As such, they are legally obligated to carry out the responsibilities above (extraditing the offenders) (Biad et al., n.d.).

1.3 Cooperation under the Extradition Act of 1972

In the context of the Extradition Act 1972, a foreign state is a state that has not signed an extradition agreement with Pakistan, in contrast to a treaty state, which is a state that has signed such an agreement with Pakistan. On the other hand, the law gives the Federal Government of Pakistan the authority to carry out the responsibility of extraditing criminals who have committed offences for which they can be sent to prison. Even though a particular nation outside the United States does not have an extradition treaty with the United States, it is the nature of the law to be all-encompassing, ensuring that unnecessary roadblocks do not impede the administration of justice. Even though the idea of rendition is mentioned in the fourth section of EA 1972, the term is not defined anywhere in the statute. The act of handing over an accused or convicted individual to another state without first having an extradition agreement or going through the proper legal channels is known as "rendition." If a state does not have a treaty with the federal government, Section 4 makes it abundantly clear that a fugitive offender may be handed over to another state upon notification from the federal government. It is essential to distinguish between extradition and rendition in this context. Despite this, many studies and authors believe that rendition is illegal because it violates the human rights guaranteed by the constitutions of the various countries in which it is carried out.

1.4 Extradition to the Pakistani authorities

Extradition goes in both directions because a wanted individual could be in Pakistan or any other country. The law distinguishes between the two and lays out rules and regulations that must be followed while carrying out the activity. When a person who is wanted by the law is hiding in another state, Pakistan's law enforcement agencies will report them to the federal government so that they can begin the process of extraditing them to Pakistan. Extradition is a legal term for this process. It is ultimately up to the other country to decide whether or not such a request falls within its legal and ethical bounds. This means that their jurisdiction will continue to play a significant role. The other state will continue to deliberate on some issues, including the nature of the alleged offence, the facts surrounding the case, and the standing of Pakistan (as a foreign state or a treaty state). A person will be handed over to the authorities in Pakistan once all of the requirements above have been satisfied. The federal government of Pakistan can request extradition to Pakistan against a person who has been accused of or found guilty of an extradition offence and who resides in or is believed to be in a treaty state. In this scenario, the person would be subject to extradition to Pakistan. This request may be made through Pakistan's diplomatic embassy in the treaty state, the Pakistani embassy located in that state, or through any other mechanism that Pakistan and the treaty state have mutually agreed upon. A person who has been extradited cannot be tried for any crime other than the one that led to their extradition in the first place. Suppose the authorities in Pakistan are unable to bring charges against the offender within the allotted time frame of six months. In that case, the individual must be extradited to their home country (Liu et al., 2012).

1.5 Extradition from the Territory of Pakistan

In a manner analogous to what was covered earlier, foreign nations may also begin the process of extraditing any person from Pakistan by submitting a formal request to the Federal Government of Pakistan. This action would follow the same pattern as that which was covered earlier. The Extradition Act of 1972 outlines the comprehensive procedure that must be followed for such an application to be submitted to the relevant authorities in Pakistan. In addition, it provides specifics regarding how the authorities in Pakistan are required to approach the application. The Extradition Act of 1972 serves as a law that formalises the rules and procedures that must be followed to extradite criminals from or to the territory of Pakistan. In this way, it serves as a law that describes the details regarding the extradition of offenders from or to the territory of Pakistan.

1.5.1 Individuals Eligible for Extradition Due to Criminal Offenses

The list of offences for which an individual may be extradited in this process can be found in the Extradition Act of 1972. The list contains infractions of many different kinds, focusing on more serious offences. The offences mentioned above, in addition to having repercussions for the state that is the target of such offences, also have consequences for society as a whole. The offences include crimes, including those committed against the life and body of a human being, such as homicide and grievous bodily harm, as well as other offences of a similar nature. Offences against the property of a person, offences against women, offences against the dignity of human beings, and treasonous offences are all examples of the types of offences that fall under the category of those for which the laws require extradition to take place in general (Bose & Jalal, 2022). Any person who has committed such offences in Pakistan or anywhere else in the world, subject to the international obligations for the time being in force, shall be liable to apply the Extradition Act provided that the offender of the crimes above is at large in another foreign or treaty state. In the case of such offences in Pakistan, the offender is hiding outside of Pakistan's territory. The Extradition Act provides that any person who has committed such offences in Pakistan or anywhere else in the world is subject to international obligations (Ferrell, 2013).

1.6 Instances Permitting Extradition Refusal

If a treaty state has made a valid request for extradition, then extradition must be carried out per the law. However, the process stops if there is evidence of certain inconsistencies, as specified in the Extradition Act of 1972. The following are the circumstances:

1.6.1.1 Political Victimization:

Suppose it has been determined through investigation that the person asked by a foreign or treaty state has demanded a person merely to inflict some harm as vengeance. In that case, that person may be held accountable for the act of vengeance. In this scenario, Pakistan's authorities have been given the authority by a relevant act to exercise their discretion and refuse to hand custody over to the applying state. As a result, it is Pakistan's responsibility to shield these individuals from any harm that might be inflicted on them for purely political reasons (Morrison, 2014).

1.6.1.2 Double Jeopardy:

One of the most important considerations in deciding whether a person should be given custody is whether or not they have been punished. An alleged criminal cannot be extradited to a state that has applied to have them sent there if the crime they are accused of committing does not carry the death penalty or a sentence of life imprisonment (Barlow & Kauzlarich, 1984). In addition, extradition may be refused if the committed crime carries a sentence of imprisonment for a person under twelve years. It is possible to conclude the seriousness of a crime based on the length of time a person spends incarcerated, which is why some jurisdictions restrict extradition based on the length of time that a person spends serving their sentence. If a person is sentenced to a lengthy term of imprisonment for their crime, this almost certainly indicates that the crime was serious (Carrabine et al., 2020).

2 Rules and Procedures of Extradition in Pakistan

2.1 Request of Extradition to Pakistan

After verifying the presence of a wanted person in Pakistan, a foreign nation or a treaty may formally apply to the Federal Government of Pakistan for permission to pursue extradition proceedings. The process can be said to begin in this fashion. Following receipt of a written requisition from a state, the Federal Government of Pakistan may, if it deems it appropriate to do so, request that a First-Class Magistrate investigate the matter in question. The Federal Government possesses the discretionary authority to select any magistrate of first class for the position. As a direct consequence of this, any procedures carried out by a Magistrate who is not a *persona designata* lack legal standing and have no bearing whatsoever on the law. During the course of an investigation into an extradition crime, the Karachi High Court concluded that "the Magistrate was exercising jurisdiction and power as the Court of Session." Because evidence is presented both in favour of and against extradition during these inquiry processes, it is appropriate to refer to them as trials for section 4(m) of the Criminal Procedure Code. This interpretation is appropriate because of the nature of the proceedings (Bukhari & Abbas, n.d.).

2.2 Initial Process of Extradition:

The investigation being conducted by the First-Class Magistrate is designed to collect witness statements in favour of the fugitive offender and support of the request that they turn themselves in. The inquiry magistrate has the discretion to admit as evidence things like depositions, official certificates of facts, official exhibits with the appropriate authentication, and court papers declaring facts. Warrants, depositions, or oaths, on the other hand, only need to be authenticated if a foreign court issues them and meets specific standards outlined in EA '72. It is optional for the witnesses who are being deposed to appear in person before the inquiry magistrate. The standard method of receiving evidence that is outlined in Pakistan's criminal procedure code and evidence law is not followed in the course of an investigation like the one that is being described here.

As a consequence of this, "The Magistrate conducts an investigation and not a trial," and an inquiry, in accordance with the Criminal Procedure Code, is also different from a trial. This authority extends to the Magistrate First Class's capability of investigating an offence regardless of whether or not he has the authority to try the case himself. This authority was granted to the Magistrate First Class. That is a firmly established legal principle, according to which "Respondents in such forums do not have the inherent right to demand a specific mode in which the inquiry should be conducted. The proceedings in a court can be conducted in accordance with virtually any reasonable method." In addition, the Lahore High Court decided in the case of *Nargis Shaheen v. Federation of Pakistan and Others* that it is up to the inquiry magistrate to decide whether or not to summon witnesses while the fugitive offender is still at large. This decision was made in the context of the case *Nargis Shaheen v. Federation of Pakistan and Others*. This decision was supported by the Supreme Court, which stated that the motion was denied because it was determined that the purpose of the motion was to delay the proceeding of the legal case (AneesIqbal; Shah, 2017).

2.3 Handing over a Fugitive

After completing the preceding steps of the investigation, the Magistrate submits his findings to the Government of Pakistan in the form of an official report, along with any written statements that the fugitive offender may have provided. This opinion needs to address whether or not a *prima facie* case in favour of the request for the fugitive's surrender has been established (Nickel, 2003). The High Court is currently reviewing the conclusion reached by the Enquiry Magistrate during the Extradition Inquiry in accordance with the provisions of section 439 of the Criminal Procedure Code. According to the Lahore

High Court, the phrase "prima facie case" is not a legal term of art; rather, it is a phrase that means sufficient to establish a fact or raise a presumption of fact unless it is refuted.

After receiving the Magistrate's report and the statement mentioned above, the Federal Government of Pakistan may decide to issue a warrant for the fugitive offender's delivery to the requisitioning treaty state or foreign state if it concludes that the offender should be handed over. However, suppose the Federal Government of Pakistan is of the opinion that extraditing the fugitive offender would be unjust or inconvenient. In that case, the case that is being investigated is minor, or the request for surrender has not been made in good faith or in the interest of justice. It has the authority under EA '72 to release the fugitive offender and terminate the extradition process (Rezaei & Zareei, 2020).

According to the Lahore High Court, the federal government is not required to hand over the offender to a treaty state even when the necessary conditions for extradition are met. Because of this, the sole purpose of the inquiry is to assist the federal government in determining whether or not the offender should be extradited (Kapoor, 2018). "Such opinion is not to be formed necessarily after affording personal hearing to the detenu or by obtaining his participation at that stage before the Federal Government," the Supreme Court adds. "Such opinion is not to be formed necessarily after affording personal hearing to the detenu." "Also, it is not required that such order of expressing the opinion be a reasoned order like the report of the Enquiry Magistrate or the adjudication at the trial." This is done so that the "written statement" of the fugitive offender, which is referred to in the Act and "may reasonably be accepted as a proper and valid alternative for a right of hearing claimed by the offender," can be used instead of the offender's right to a hearing (EXTRADITION, n.d.).

2.4 Right to the Fair Trial

1947 marked the year that the Pakistani government gave its approval to the Extradition Act 1903. After Pakistan had been independent for 25 years, in 1972, a separate law called the Extradition Act was enacted to govern the process of extraditing individuals from Pakistan. The Extradition Act of 1972 in Pakistan, on the other hand, can only partially be considered an all-encompassing piece of legislation. The Extradition Act of 1972 has a few loopholes that need to be addressed before continuing with this conversation. It does not support all of the human rights that are currently in place. For instance, the exceptions that are listed in Section 5 do not protect the wanted felon from being subjected to torture or any other severe, inhumane, or humiliating treatment in the state in which they are being requested to appear. In addition, it does not provide the fleeing offender with a fair trial in the state that requested it because the state that requested it is not required to establish the case there or meet the legal standards to do so. This prevents the state from providing the fleeing offender with a fair trial. The right to appeal is one of the most crucial steps in the legal process because it allows superior courts to rectify errors and violations of the law that were discovered during lower court proceedings (Rafiq et al., 2022).

On the other hand, this Act does not include any provisions that pertain to the right to appeal. The nature of the law needs to change to be more inclusive, and provisions need to be put in place to prevent the inhumane treatment of those who have broken the law. Efforts must be focused in a manner that will allow for certain enhancements to be made to the extradition law. There must be a process for challenging an individual's extradition in the event that they have been found guilty of the same crime on two separate occasions. In addition to that, in the event that punishment was administered to an individual while that individual was not present. This extradition request needs to be understood in the context of Audi Alteram Partem (Niazi & Khan, 2015).

3. Challenges Faced by Pakistan

It should come as no surprise that extradition is essential to the successful suppression of criminal activity and the upkeep of a state's sovereign status (Rafiq et al., 2022). The rest of society may become more inclined to engage in criminal behaviour if even one of the perpetrators is able to evade capture and the legal system altogether. In addition, it is a flagrant breach of international law for a sovereign nation to fail, for any reason, whether legal, procedural, or social, to bring those responsible for breaking its laws to justice (Daudpota, 2010). The discussion raises the question of why the states are unable to carry out the task in an efficient manner if the procedure is of such vital importance and if it is so crucially important. The reason for this is that the task at hand is more challenging than it may appear to be to the eye when it is first looked at. In order for there to be mutual extradition, there must first be two states that are willing to sign an extradition treaty and then adhere to all of the terms and conditions of that treaty. This is a necessary prerequisite for mutual extradition. In addition, the international community has a responsibility to ensure that the procedure is carried out without any bias; otherwise, everyone will experience unintended consequences! In a similar vein, Pakistan has been engaged in a never-ending battle since the country's inception in order to draft effective extradition laws and procedures and to ensure that these are carried out thoroughly. The problems that the nation must contend with in order to complete the task have been compounded as a result of the accumulation of a multitude of distinct issues. These include the social and legal constraints that will be discussed further down in this article.

3.1 Legal and Administrative obstacles to overcome

When it comes to the process of extraditing fugitives, the state institutions of Pakistan face a number of obstacles, the first of which are those of a legal and procedural nature. Repeatedly, it has been stated that for the process to be effectively implemented, it must comply with both national and international laws. At the global level, certain prerequisites need to be fulfilled. These prerequisites include complying with international norms, customs, the opinion of jurists, and, most importantly, treaties and conventions (Daudpota, 2010). In addition, the terms are applicable to the laws of the national jurisdiction where the dispute is being resolved. Before beginning the process, it is necessary to ensure that all of the prerequisites, which together make up a set of circumstances, are satisfied. This creates a network of conditions that must be satisfied. After successfully meeting all of the requirements, the procedural difficulties will become immediately apparent and will need to be effectively addressed (Bukhari & Abbas, n.d.). This will need to be done as soon as possible. The factors above impose an enormous burden on underdeveloped nations, which are already struggling with the challenges that their economies present. The impending cases begin placing an unnecessary burden, on a broad scale, not only on their economies but also on society as a whole (AneesIqbal; Shah, 2017). The following is a list of the most significant challenges that are looming on the horizon, as revealed by a closer examination of the situation.

3.2 Effects of Double Criminality

According to the principle, any act or omission that was committed by the fugitive must have the status of a crime in the state from which such extradition is sought in order for the request for extradition to be considered a legitimate request. This is essential for any request to be taken seriously as a legitimate request. The fact that the norms and customs of various nations are very different from one another presents a challenge for those who wish to adhere to that principle. There are particular behaviours that, in some regions of the world, are merely regarded as moral incongruity; however, these behaviours have significant repercussions on the social fabric of our society. In our culture, these behaviours have substantial repercussions on the social fabric. These behaviours consist of things like acts that create impassable roadblocks in the extradition process, which cannot be adequately described due to the lack of information available. One example that can be effectively cited in order to get a better understanding

of the barrier is that of the blasphemy laws that are currently in place in Pakistan (Anwar, 2022).

In Pakistan, blasphemy is punishable by death. When it comes to the religious beliefs held by Pakistan's majority Muslim population, the laws play an extremely important role in the situation. In Pakistan, any violation of such laws is considered to be a serious crime; on the other hand, people in Western countries mistakenly believe that such behaviour falls within the bounds of their right to freedom of speech. In Pakistan, any violation of such laws is regarded as a serious crime.

Additionally, laws that have their roots in religion have a requirement that, in the event of a violation, the machinery of the state must be activated (Ahmad, 2018). On the other hand, laws regarding extradition do not accommodate any requests, which indicates that the acts in question satisfy the requirements of the double criminality principle (Broadhurst et al., 2011). Because of this, a number of requests are denied any legal effect, and the fugitives are allowed to get away, which leaves many people in the state who requested the extradition feeling as though they were betrayed and like they were dealt unfairly. Recent trends and developments in extradition law have centred on relaxing the strict application of certain grounds for refusing extradition requests. This has been the primary focus of these developments and tendencies. There have been efforts made to alleviate certain difficulties, such as those associated with double criminality, by focusing attention on the fundamental behaviour that constitutes the offence at issue rather than the designation of the offence or its "legal label" in both the state that is requesting the extradition and the state that is receiving it (Morrison, 2014). One such effort has been to centre attention on the fundamental behaviour that constitutes the offence at issue in both the state that is requesting the extradition and the state that is receiving it.

3.4 Multiple Offenses and Legal Challenges

An additional principle of international law states that an individual can only be prosecuted for one offence for which the extradition has taken place. This creates another challenge for Pakistan while it is attempting to request the extradition of fugitives from justice. One of the difficulties that Pakistan is trying to overcome is presented here. The justification for the clause is based on the idea that an individual ought to be shielded from any form of unfair treatment in the environment in which they live, despite the fact that this may appear to be self-evident. However, when there are multiple cases booked against an individual, the extradition process is put on hold out of concern that the individual may be prosecuted for a crime that is not related to the crime for which they are being extradited (Liu & Miyazawa, 2018). This is because the individual may be deported for a crime that is not associated with the crime for which they are being extradited. A person whose extradition is being sought for the purpose of prosecuting corruption in addition to an allegation of murder in order to carry out the murder investigation. An extradition request of this nature will be fought in court to have its effectiveness challenged on the grounds that there is a possibility that another criminal offence will be prosecuted.

There has been a situation that has been witnessed taking place in an international setting in which a request has been declared "cancelled" because the fugitive has been accused of an offence that does not have the status of an extradition offence in addition to the one that does have the status of an extradition offence. This has caused the request to be deemed invalid. This occurrence has been spotted taking place in the world. When these factors are taken into consideration, the request for extradition for that offence becomes cloudy as well! As a consequence, the process will experience a great deal of difficulty as it continues along its path.

3.5 Political Victimisation and discrimination in Third World Countries

Other guiding principles include the non-discrimination clause, which states that requested states are not under any obligation to extradite a person if there is reasonable cause to believe that the person would be persecuted in the state that asked for their extradition due to their gender, race, religion, nationality, ethnic origin, or political opinion (Jobes, 2006). Another guiding principle is the rule of law, which states that

states are not under any obligation to extradite a person if there is reasonable cause to believe that the person would be. The non-discrimination clause is based, in part, on this principle, which is one of several that support it.

It is also important to note that the political crime exemption for not being extradited is one of the aspects of the extradition procedure that has sparked the most controversy in recent years. Due to the lack of a universally accepted definition of the term "political crime," the obligation of this principle in practice is far from settled. However, in practice, this principle does not provide the requested state with the right to refuse extradition for political crimes. While in theory, this principle does give this right, in practice, it does not. Recent occurrences also appear to provide evidence that efforts are being made to restrict the applicability of the political offence exemption or to do away with it entirely. For example, the rise of international terrorism has resulted in an increased willingness among states to restrict the scope of the political offence exemption, which is typically no longer applicable to offences against international law. The rise of international terrorism has brought about this readiness (Anwar, 2022).

4. Conclusion

In conclusion, the Extradition Act of 1972 in Pakistan plays a pivotal role in regulating extradition proceedings, ensuring adherence to legal principles and international norms. Despite its significance, the Act faces various challenges, including legal, procedural, and political obstacles that impact the extradition process. The principles of double criminality, fair trial rights, and non-discrimination are crucial factors influencing extradition decisions. Pakistan, like many other countries, grapples with balancing its legal obligations with considerations of justice, human rights, and political sensitivities in extradition cases. Efforts to enhance the Act's provisions, address legal ambiguities, and navigate complex extradition scenarios are ongoing, reflecting the evolving nature of extradition law and practice. This research underscores the need for continued scrutiny, analysis, and potential reforms to ensure a fair, transparent, and effective extradition system in Pakistan.

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