

INTERPOL: LETTER OF REQUEST & EXTRADITION

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{This article is in sequel to the article on Interpol in the first issue of the journal – Editor}

In the previous issue we discussed about the concept of Interpol, its line of communication and the tools with which Interpol acts in co-ordinating the control of trans-national criminal activity. There is a general perception that Interpol's role shall be activated only when terrorist offences occur or when underworld activities are concerned. It is a misunderstanding of the role and functioning of Interpol. Interpol helps us in tracking offenders of any crime, when the offender/criminal has left one country after committing offence and has taken shelter in another country. The offences which are proscribed under the law codes of every country and offenders under it are subject matter of Interpol action, if the member country requests. Interpol helps even non-member countries also, if requested for. However, Interpol does not entertain any request of intervention or activities of political, military, religious or racial character. If any person is indulging in such activities but if he has not committed any specific crime-such persons cannot be requested for search, locating or surveillance etc. by Interpol. Therefore, preventive intelligence gathering is not at all the subject entertained by Interpol. No agency should even request for it. Also, when an issue of Notice is requested for tracking any person involved in a crime, only crime shall be discussed in Col 2.1 of RCN & BCN.

For a complete understanding of Interpol Subject, this article is composed in 3 parts – (a) Letter Rogatory or Letter of Request, (b) Sending a team of Investigators abroad (c) Process of Extradition.

First, we will discuss the procedures of initiating an investigation abroad, to fulfil the obligations of Criminal Justice System – if the person has either committed an offence and absconded abroad and also he has done part of the offence there which necessitates the investigation in that country.

Foreign Investigation: -Foreign investigation is requested in following situations: -

- (1) A person has committed an offence in India but the evidence for motive or preparation and other circumstantial evidence lies in some other country. It has been seen in NRI marriages cases, where the bridegroom is NRI but marriage is performed in India, harassment of bride takes place on foreign soil. But the trial jurisdiction as per Indian law is in India. Number of cases registered under Sec.498 (A) fall into this category.
- (2) In drug trafficking cases, where a person or group of persons bring the drugs or narcotics from a different country, sell it in India and again flee to another country to take shelter.
- (3) Underworld offences – specially – extortions – where the main offender sits abroad, uses extensive telephone and other communications network to threaten the subject and collects the moolah either through an agent here in India, or through hawala or through overseas bank transactions. A number of such cases have come to notice during last 4-5 years.
- (4) Terrorist Operations – where terrorists are recruited from different countries by masters of different countries, trained in another country, then they are sent to operate in India and after committing offences they flee to different countries for shelter. Al-Quida operations all over the world, Jaisha-Muhammad, LET operations, LTTE operations fall into this category.

- (5) No less important are hawala and money laundering offences and its perpetrators who sabotage the economy directly and indirectly supplying money to criminal activities. Such offenders will have expert legal advisers to counsel them on how to avoid the legal dragnet of the country where they are operating. The prevalent modus operandi is to live away from the territorial jurisdiction of the country of operation.

One common aspect in all these categories is found in the utilization of vast communication network, which is again controlled by the principle of territorial jurisdiction, which facilitates the crime. In such circumstances, the investigation done within one territorial area may not be sufficient – as only partial evidence will be available. There will be missing links. Only fringe offenders will be tried whereas kingpins will remain free and they will recruit fresh and new hands to carry out their business of crime.

To meet the challenge of collecting evidence in other countries 2 steps are taken: -

- a) Sending letter of Request/letter Rogatory to other countries to cause further investigation
- b) Send our team of investigators (Foreign Missions)

Caution: - The above-mentioned 2 steps are matter of international conduct and scrutiny; hence every step taken with regard to action shall be thoroughly legally scrutinized. Nothing should be done in a hurry leaving any lacuna. These precautions are discussed below. Police Officers should be very careful and thorough in preparing documents in this regard.

Letter Rogatory/Letter of Request (LRs)

In A.P, we find some major problems where an investigation abroad is required. During last couple of years the ISI related activities, dowry harassment cases, fraud and cheatings, circulation of fake currency notes, hawala and money laundering and other underworld related cases have come to light, which necessitate that the interlinked acts of Omission and Commission of an accused in a foreign land are probed, as a part of case registered here in India. We have seen in past the Bofors Scam Case, the Abu Salem case etc. (But as it was informed in previous part of the article that Interpol does not make enquiry into political, racial...matters, hence action with an intention to probe the above aspects shall not be initiated under this provision. Extreme caution needs to be exercised).

The Code of Criminal Procedure (Cr.P.C) has provisions in Sec.166-A and 166-B to make this request on any foreign country to help and assist in our investigation. But this is bound by very technical and legal procedure.

Sec.166-A – makes provisions for Indian investigator through our Court to make a request on foreign investigating agency through their count to cause investigation-by-examine persons orally or record statements who acquainted with the facts & circumstances of the case-and-also require such person to produce documents which may be in his/their possession-and-forward all the evidence so taken or collected or the authenticated copies thereof or the thing so collected to the court issuing such letter.

(The police officers should understand here clearly that it is a court-to-court correspondence and in no circumstances under this clause, an I.O can do direct communication. If he does, it will amount to either breach of diplomatic code or the material evidence so adduced will have no legal value.)

Sec.166-B – casts similar responsibility on Indian courts, if a proper request is made by foreign courts.

Preparation of Letter of Request (LR)

Next comes the preparation of a LR. While preparing LRs, the agencies concerned have to ensure the maximum details about the offence, accused, the witnesses, the documents and the legal ramifications are well considered and gone through. I.Os and Supervisory officers while sending LRs can refer to the following checklist.

- (1) A minimum of 4 copies of LRs has to be prepared to facilitate quick processing in different concerned offices.
- (2) The corresponding law of the foreign country concerned regarding mutual assistance in criminal investigation (like our provisions under Sec.166-A & Sec.166-B of Cr.P.C, Sec.41 (1)(g), The Indian Extradition Act and the ramifications of provisions of Indian Penal Code under which the investigation is being carried out.) must be studied and its compliance may be mentioned in LR.
- (3) The L.R should be prefaced with a concise and self-explanatory request consisting the details of the case. With request to competent judicial authority of the requested country (foreign country), supported by speaking order of execution of the jurisdictional court (of India).
- (4) The copy of the FIR providing complete details like Case no., the facts of the case, the legal provisions violated, the details regarding the suspects and conspirators, shall be given.
- (5) The details regarding the current status of the case should also be incorporated – like – whether the case has been charge sheeted or still under investigation
-the likely sentence to be awarded in case of conviction must be highlighted.
-wherever possible the documents should be supplemented with photos, graphics – depicting the prominent features of crime, modus operandi to bring out the severity of crime. This is normally done in heinous offences like murders, blasts and terrorist operations cases.
- (6) The copy of the letter (with reference of point.3) for seeking the court permission – delineating – the complete details of the points on which investigation is to be carried out by foreign police
-the nature of evidence and the manner in which it needs to be recorded to suit our Evidence Act & court procedures
-how the material evidence or exhibits have to be collected or tabulated in conformity with our evidentiary requirements
-any other relevant legal points and other features must be attached with LR. This means that the I.O should file the copy of letter, which he has filed before Indian Court, for issuing LR.
- (7) The principle of dual criminality is relevant in most of the countries and this must be attended to while doing legal scrutiny of LR.
- (8) While preparing the LR special care should be taken while writing numerals. They shall be mentioned in International Standard – i.e., millions and billions – for example – in Indian numeral system – a sum – may be 2,38,52,48,327 – which in International numerals will be – 2,385,248,327. Another example – in Bofors case the total sum of purchase was Rs.1437.72 crores, but in Swedish Kroner, it was mentioned SEK 8,410,660,984. Therefore, in case where conversion of currency is required, it shall be done in international terms of numerals.
- (9) Similarly the local indigenous terms like panchanama, benami, hawala shall be avoided and their equivalent international terminology may be used. Wherever, the police

authorities feel that the international terms are not qualifying fully to explain the meaning – a description of it shall be given in LR along with such specific terms.

(10) The complete personal details of the witnesses and the suspects required to be examined abroad should be clearly mentioned in LR. Their foreign contract address, their Passport nos. (Indian or foreign), telephone numbers, e-mail addresses shall be mentioned, if they are available with us. The role of each of the accused and relevance of each witness requested to be examined should be well described in the LR.

(11) In case we have a treaty/agreement/MOU/any other arrangement with the requested country relating to mutual legal assistance the LR shall be prepared in accordance with it. An assurance of reciprocity also may be given as a good gesture.

(12) It should specifically be mentioned that evidence collected would be used only in that case and not in any other case. But it can be used for our database.

(13) In case LR is to be sent for its execution to the non-English Speaking Country authentic and certified translation in the relevant national language may be provided. This saves time and confusion.

(14) It would be advisable to divide and arrange the compilation of LRs in sub-parts-like – (a) Introduction (b) Brief facts (c) Brief of investigation conducted so far (d) Nature of Assistance sought for (e) Time-limits if any (g) Annexures (h) Index etc. It is also advisable to clearly mark various documents, photographs and objects (if any) in LR to avoid mushiness & confusion and enable the Requested Judicial authority abroad to know clearly what is requested to be done.

(15) The formal approval of the Central Government for sending LR is a must. An affidavit from competent authority from Govt. should invariably be appended with LR.

(16) After LR is approved by legal authority in the state, it will be sent to CBI, which is National Liaison Authority on Interpol matters, for scrutiny and forwarding.

LR is a diplomatic Communication.

As it has been mentioned earlier that LR is a means of communication between the judicial authorities of one nation to judicial authority of another nation – but it is routed through Home Department, External Affairs Dep't. in our country, whereas Legal and Justice dep't. State Department, or Interior Deptts in other countries. Therefore, it necessarily acquires the status of a Diplomatic Communication.

In our country, after a LR is cleared by CBI (Interpol), it is forwarded to the Department of Personnel and Training (Home) and then Ministry of Law & Justice. Once, it gets cleared through these two agencies, it is forwarded to Ministry of External Affairs (Legal and Treaty Division) for its scrutiny and forwarding to the competent court for its formal issuance and permission for execution in a foreign country.

What happens abroad?

The local Jurisdiction Court, once it gets the LR transmitted through its Govt., issues direction(s) to concerned police authorities to carry out the business in toto or with its own directions conforming to the laws of the nation, as requested in LR, by fixing a time limit, if requested in LR.

On receipt of reports from the investigating agencies, the court will scrutinize such documents and ensure that they are in conformity with the request made and finally decide – what to send.

The International Scenario: - All the above-mentioned procedures are good and in consonance with the fairness of Criminal Justice System. But at times, overriding factors like the existing bilateral relations between the countries, the indirect hands of superpower politics, overstretched interpretation of dual criminality, the law of Secrecy governing various transactions, take precedence over Principles of Justice. It was blatantly seen in Bofors investigation, where it took very long time for CBI to get the documents from Sweden under lot of dramatic twists & turns. Finally CBI could lay its first charge sheet only after 9 years – thanks to action on Letter of Request.

Indian Investigation abroad: -

Sometimes it may be felt that investigation done by other country police through court may not be sufficient in the given offence, the authorities herein India after careful consideration may think to send an Indian team of investigators abroad. Indian Police Officers will have no powers under the law of any foreign country. Therefore, they need to be authorized. The due process followed is: -

- (a) The best thing would be to send a proper LR by mentioning in it that at the time of execution of LR, Indian team of investigators need to be associated. The LR should accompany a formal request for such visit and investigation details. Besides other details mentioned below also must be mentioned for facilitating the process.
- (b) The detailed particulars of investigators with their official ranks and the nature of their association with ongoing investigation in our country must be described.
- (c) The exact date and duration of mission should be clearly mentioned. The date of visit shall be fixed by taking due consideration that the other country will take time to process the request.
- (d) The language used by investigators & known to them must be mentioned.
- (e) Whether Investigators wish to carry firearms during the course of investigation. It must be elucidated clearly because most of the countries are sceptical in allowing investigators with firearms.
- (f) The investigators wish to bring any suspect with them under arrest for fulfilling the criteria u/s 27 Indian Evidence Act. It should be thoroughly checked, whether such arrested person may have to be released under the law of requested country. This aspect should be thoroughly checked before making proposal.

Also such person or any other witness so taken, may be a subject of arrest warrant in the requested country-this may create complications during investigation. This aspect must be verified.

- (g) The investigator wishes to bring with him items of evidence which may be custom banned in the requested country, or needed by that country as evidence for some ongoing proceedings there-must be verified and cross-checked.
- (h) The details of legal definition of offence, identity, residence particulars of the alleged person, his nationality, family status, F.Ps (if available), must be furnished to enable the requested country to decide in conformity with their prevalent laws.
- (i) Similarly the identities and addresses of the persons to be questioned, taking their statements, the nature of properties to be seized and also which places they are likely to be found, must be mentioned to enable the requested country to locate and keep them available for investigating team to complete the mission quickly within time.
- (j) No team should start unless prior permission is obtained, otherwise it can cause lot of trouble to investigators in person as well as it will cause a lot of diplomatic hassle.

All such requests have to be routed through NCB-CBI (Interpol), processed by DP&T (MHA), MEA. After approval, NCB-CBI informs the concerned State with details to dispatch the Investigation Missions abroad.

EXTRADITION

Once the investigation (in India and Abroad if required) is completed and sufficient evidence against an accused is collected and it is found that such accused has left Indian shores and reportedly taken refuge in some foreign land-the necessity of the Criminal Justice System is that the person (whether he is Indian national or foreign national) be brought to India to stand trial before our court of law. Therefore, in short – a person who has committed an offence in India and either he has to stand trial or if he has been already convicted by Court and he has to undergo sentence – and he has absconded to a foreign law – bringing him back legally to fulfil the obligation under the law of this country is achieved through the – method of Extradition. Extradition means – transferring an accused/suspect from one country to another country under legal obligation.

Extradition is governed by the Law of the Land as well as the principles of International Law, and also by the principles of bilateral, multilateral extradition treaty, Consular Agreements.

(A List of Countries under different arrangements is appended)

Actually International Law recognizes four bases of exercises of Criminal Jurisdiction by a sovereign State.

- (a) Territoriality: - i.e., the State in whose territory the offence has been committed.
- (b) Nationality: - i.e., the nationality of the accused.
- (c) Protective Principle: - the national security interest of the State which has been affected by the act of offence.
- (d) Universality: -i.e, if the offence is recognized as universal crime-e.g. Terrorism, Terrorist funding, Drug Peddling.

But these principles are accepted by nations only out of understanding. They are not enforceable by law – means – no State can go to ICJ etc, if one country dilly-dallies in extraditing an accused to another country.

Therefore, it shall clearly be understood that Extradition is mainly governed by bilateral treaties, Law of the land that makes corresponding provisions, various judicial pronouncements in the requested countries and diplomatic relations at the given point of time.

On close scrutiny following 5 legal criteria emerge (and police officers shall be primarily concerned with that and political considerations must be left with Government of India) for an ideal Extradition proposal: -

- (a) Extradition applies only with respect to offences clearly stipulated as such in the treaty. (This does not mean that we should not make effort to extradite offenders staying in non-treaty countries. Proposals can be routed through diplomatic channel on Govt – to Govt basis.)

But the following criterion must be fulfilled and checked before making proposal, because every country's judiciary or law department will judge the proposal of extradition if they stand scrutiny on these points.

- (b) There should be dual criminality – means – the offence for which the person is requested to be extradited – must be an offence in the country to which extradition is requested.
- (c) The requested country must be satisfied that there is a prima-facie case made out against the accused or offender.
- (d) The clear and guaranteed assurance, that such person will be proceeded against only those offence(s) for which he is extradited. More offences will not be mounted on this account.
- (e) He must be accorded a fair trial – the principle of Natural Justice and Human Right requirement demand it.

While preparing the proposal of Extradition is being prepared the proposal shall consist all the details mentioned in Preparation of LR. The clarity shall be of the same order, only barring the names of the witnesses and proposal for investigation. Instead of it its preamble shall specifically mention about the extradition of an offender by adding the copy of warrant issued by competent court of law with time-limit in it, copy of charge sheet along with discussion of evidence in support of charge(s).

The procedure is same as approving an LR – means – it will go to NCB-CBI, then to MHA, Law Department and finally to MEA to be sent to the Govt. of Requested Country for processing. Whether a team of Indian Officers shall go or not shall be decided and procedure followed as mentioned earlier.

So far in our country we have achieved mixed kind of successes in extraditing our offenders – we succeeded in extraditing Rajan Pillai, Babloo Srivastava like offenders – whereas – we had dithering experience in getting Anees Ibrahim Kaskar and we have to face failure in getting Ottario Quatrochchi extradited from Malaysia. So far extradition has been governed more by politico-diplomatic considerations rather than considerations of tightening of World Criminal Justice System. Situations are changing for better, thanks to the rise in global terrorism and resolve to fight it globally. In theory, it is appearing nice, but it is still far away from practical and procedural realization.

Still, as police officers we must discharge corresponding responsibilities for extradition, when it is caste upon us. In discharge this responsibility we must know the following things: -

- (a) When an LOC is received in the district, we must pay attention in locating such person and on location, inform the State CID, which in turn will inform to the NCB-CBI and in turn to NCB of the requesting country, which will request for further legal action.
- (b) In case a person is wanted as per Red Corner Notice (RCN) –which amounts to International warrant – an Indian Police Officer shall initiate following actions: -

- (1) Arrest the person u/s 41(1)(g) of Cr.P.C and remand him to Judicial Custody and inform to CID for further action.

- (2) Wanted person can be arrested under Indian Extradition Act if extradition proposal is pending and can be extradited under certain conditions specified in this Act.

In these two issues, the effort has been made to provide basic input about Interpol, foreign investigation, and letter of request to cause investigation in foreign land and Extraditing offenders from one country to another country to fulfil the obligations under Criminal Justice System. The Police officers are requested to be as faultless, while preparing documents related to this subject, as required, because, a small flaw or inconsistency will benefit the accused and can lead to frustrating all our efforts towards bringing an accused to book.

Note: -

(A) The Government of India has signed MUTUAL EXTRADITION TREATY with following countries – Belgium, Bhutan, Canada, Hongkong, Nepal, Netherlands, Russia, Switzerland, UAE, UK, USA, Uzbekistan.

However, the signing and negotiations are in process and progress with other 44 countries.

(B) The Government of India has done consular agreements with following countries- France, Canada, Kazakhastan, Kyrghyzstan, Mangolia, Norway, Russian Federation, Switzerland, Turkey, UAE, UK, Uzbekistan, USA.

The negotiation for consular agreements is under process with 25 other countries.