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Tuesday, Aug 20, 2024

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Premium

Can Sheikh Hasina be extradited to Bangladesh? What are India's options?

India and Bangladesh have an extradition treaty. Bangladesh may seek the extradition of Sheikh Hasina. But this does not necessarily mean that she will be extradited to her home country, where she faces a number of criminal cases

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New Delhi | Updated: August 20, 2024 08:13 IST





Former Prime Minister of Bangladesh, Sheikh Hasina. (Express File Photo - Renuka Puri)

With former Bangladesh Prime Minister Sheikh Hasina facing multiple criminal cases back at home, it is likely that India's eastern neighbour may push for her extradition.

Bangladesh's de facto foreign minister Touhid Hossain said as much in an interview to *Reuters* on Thursday (August 15). He said that since Hasina's ouster, a number of cases had been filed against her, and that should the country's home and law ministries decide, Bangladesh may need her to "return to Bangladesh". He also said that such a situation could diplomatically embarrass India, and that he was sure India "would take care of it".

Do India and Bangladesh have an extradition treaty?

Yes. India and Bangladesh signed an extradition treaty in 1972, which was amended in 2016 to ease and hasten the exchange of fugitives between the two countries.

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of Bangladesh. At the same time, Bangladesh had been facing trouble from outfits such as Jamaat-ul-Mujahideen Bangladesh (JMB), whose operatives were found to be hiding in states like [West Bengal](#) and Assam in India.

The treaty allowed India to successfully extradite Anup Chetia, a top United Liberation Front of Assam (ULFA) leader, from Bangladesh to India in 2015. Since then, one more fugitive has been handed over to India by Bangladesh through the extradition route. According to sources, India too has handed over a couple of Bangladesh fugitives to its neighbour through this treaty.

What does the treaty say?

According to the treaty, India and Bangladesh are supposed to extradite individuals “who have been proceeded against... or have been charged with or have been found guilty of, or are wanted for... committing an extraditable offence” by a court of the requesting country.

An extraditable offence, the treaty says, is one which carries a minimum punishment of one year imprisonment. This includes financial offences. Crucially, for an offence to be extraditable, the principle of dual criminality must apply, meaning that the offence must be punishable in both countries.

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The treaty says that extradition shall also be granted if there is an “attempt to commit or aiding, abetting, inciting or participating as an accomplice in the commission of an extraditable offence”.

Are there exceptions to these rules?

Yes. The treaty says that extradition may be refused if the offence is of “political nature”. But this is limited by the nature of offence. And the list of offences which cannot be deemed as “political” is rather long. These include murder; manslaughter or culpable homicide; assault; causing of an explosion; the making or possession of an explosive substance or weapons by a person intending to endanger life; the use of a firearm with intent to resist or prevent arrest; damaging property with intent to endanger life; kidnapping or taking of a hostage; other offence related to terrorism.

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So, can Hasina be extradited by Bangladesh?

Hasina is a political player, and she can claim to seek political asylum in India. However, some of the offences for which she has been booked are excluded from the definition of political crimes in the treaty. This includes cases of murder, enforced disappearance, and torture.

On August 13, Hasina was booked for the murder of a grocery store owner who had died in police firing last month. The very next day, a case of enforced disappearance was filed against her on the charge of kidnapping a lawyer in 2015. On August 15, Hasina was slapped with charges of murder, torture and genocide in a third case.

Things are further complicated by the fact that a 2016 amendment to Article 10 (3) of the treaty did away with the requirement for the requesting country to provide evidence of the offence committed. Now, merely a court of the requesting country is needed to proceed.

Given a request, will India have to send Hasina back to Bangladesh?

Not necessarily. There are grounds spelt out for refusal of extradition requests in the treaty. Article 7 of the treaty says that “the request for extradition may be refused by the Requested State if the person whose extradition is sought may be

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That said, Article 8 lists out multiple grounds for refusal including cases in which an accusation has not been “made in good faith in the interests of justice” or in case of military offences which are not “an offence under the general criminal law”.

India has the option of refusing Hasina’s extradition on the ground that the accusations made against her are not “in good faith in the interests of justice”. But this has the potential to adversely impact New Delhi’s relations with Dhaka’s new ruling dispensation.

So, what should India do?

India has to look to build relations with whoever comes to power in Dhaka, and secure its long term strategic and economic interests in Bangladesh. At the same time, it must also be seen to be standing by [Sheikh Hasina](#), a long time friend and ally to New Delhi.

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“Do our critical interests lie in handing over Hasina to Bangladesh? They don’t. The legalese of the treaty does not matter. There are lawyers on both sides,” a former Research and Analysis Wing (RAW) officer, who has dealt closely with Bangladesh, told [The Indian Express](#).

The former spy argued that the matter did not even warrant a “balancing act”.

“There are enough interests in Bangladesh who w with India. The Awami League has not been finish again. There is an administration and a military t with India. So, we have a critical mass that favours good relations... Then there are geographic realities. Bangladesh is surrounded by India. There are enough structural linkages between the two countries. The last word has not yet been written on the direction of these relations,” he said.

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or without treaty, and eventually, whatever happens will be a political call.

A former diplomat who has served in the region said it was too early to be alarmed.

“First of all, this is an interim government. Its statements should not bother India much. It is a regular government that India will look to engage with in the long term and thus pay heed to. Also, as of now, only FIRs have been filed. The case will have to be investigated, chargesheeted, and then the court will take cognisance following which the extradition process will start. A lot of water would have flown down the Teesta by then,” the former diplomat told *The Indian Express*.

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“Beyond diplomacy, having a treaty means its legal... Then there are multiple examples of relations between... despite pending extradition requests,” he added.

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