



**LAW CENTRE-1
FACULTY OF LAW
UNIVERSITY OF DELHI**



**XIV LC-1 ALL DELHI (NCR) MOOT COURT COMPETITION-2018
MOOT PROPOSITION**

1. Niceland is one of the largest democracies in the world. It is an agrarian based rapidly emerging market economy in the African continent with a population of over 500 million. The country is rich in natural resources but lacks sufficient basic amenities like schools, colleges, hospitals, courts and prison systems; and even the existing ones are very poorly maintained. Inadequacy of infrastructure like roads, transportation, electricity and water supply is another major issue. Despite all such lacunas, considering its market potential, the country is a favourite destination for large scale investments and varied business ventures in recent times.
2. Robert D'Souza is one of the notable business tycoons of Niceland, who has largely invested in IT sector and manufacture of electronics, holding nearly 8% of the total investments in the country. He was a chairman of more than thirty Sparrow Group of Companies. He leads a lavish lifestyle and being an honorary member of different hi-tech clubs around the world and is in the list of the richest persons in the world. He had his family settled in Indesh, a fairly developed economy in the world and a dream destination for most of the educated youth of Niceland. Every year thousands of youngsters from Niceland seek Indeshian visa for higher studies and highly paid job prospects. On that account, both the countries have entered into number of economic cooperation agreements and double taxation avoidance agreements in recent times. However, their closer relation dates back to 1993 when they have signed an Extradition Treaty which is still in force.
3. In March 2010 Niceland went for polls in the general election for the Lower-House of the Parliament. Robert D'Souza had openly supported the right-wing Niceland People Party (NPP), opposing the ideologies of left leaning Niceland Labour Party (NLP). He strongly condemned any linkage between national politics and labour movements as it destroys a favourable business environment and being an obstacle for economic growth of the country. He had generously funded the NPP's political campaign and the party successfully won the election with huge majority to form the government. Later, in January 2013 the NPP has recommended the name of Robert D'Souza and made him a Member of Parliament in the Upper-House with the overwhelming support of the ruling

government. Soon after, he introduced a bill in the parliament restraining labours and trade unions from holding political meetings or direct involvement of political parties in relation to trade or business. However, the bill was not passed in either house of the parliament.

4. Though the new government was striving hard for the continued economic growth of the country, Niceland had suffered an economic slowdown in July 2013 on account of various international and domestic factors. Most of the investors in the country had suffered huge loss. *Sparrow IT company* was one of the companies seriously hit by the economic slow-down. To cope with the situation, the government has carried out a corporate law reform and has adopted a new Niceland Companies Act in 2013 and has simplified the procedures for establishing, restructuring and closing down of business ventures.
5. In March 2014 *Sparrow Group of Companies*, under the chairmanship of Robert D'Souza, began negotiation for loan arrangements with different banks for their continued business operations. Existing same assets of the company was shown as security for different banks, however, considering the stalwart business image of D'Souza and his political and international links, many banks had happily lent huge sum of money as loans. Despite securing loans *Sparrow Group of Companies* could not do well in business as expected. By January 2015, the companies were not in a position to pay even salaries for its employees and has defaulted interest payments over loan arrangements on several occasions. To the contrary, his personal assets increased over time. Three cheques issued by D'Souza as chairman got dishonoured and cheque bounce cases are also pending against him.
6. In the middle of such controversies Niceland once again went for polls to its Lower-House of the Parliament in March 2015. Though D'Souza financially supported the political campaigns of NPP but not to the extent of 2010 general elections. As the saying goes 'change is the law of nature', NLP won the 2015 general elections with huge majority and formed the government in May 2015. On the other side, *Sparrow Group of Companies* have defaulted most of the loans borrowed from nine different banks to the tune of Nicelandian Rupees 7000 crores. In the meantime, Mr. D'Souza was named in the *Victoria Papers* and *Nile Papers* leak of confidential documents relating to offshore investments and more specifically in Indesh.
7. The new government, which has proclaimed 'war against black money, corporate frauds and poverty' in its election manifesto, introduced a series of financial and fiscal measures. The Income Tax Department and Central Bureau of Investigations were given more powers to investigate money laundering activities of top icons in the corporate and political sectors. Investigation against Mr. Robert D'Souza for financial fraud and money

laundering was initiated in August 2015. The Enforcement Directorate (ED) of Niceland has issued an arrest warrant against Mr. D'Souza and revoked his passport by the end of 2015. He resigned as a Member of Parliament in January 2016, but evaded arrest till July 2016 and finally managed to leave the country to settle along with his family in Indesh. All Nicelandian efforts to bring him back to the country to face charges of financial crime proved futile.

8. With no other alternative, Niceland got international arrest warrant from Interpol against D'Souza by October 2016 and he was finally arrested by Indeshian Police Extradition Unit in February 2017. In April 2017 Niceland formally requested Indesh to extradite Mr. D'Souza for his financial crimes in accordance with the Extradition Treaty of 1993(**Excerpts of the Treaty could be found in the Annexure**). The matter went for judicial scrutiny of Indeshian court to decide whether to extradite Mr. D'Souza to Niceland or not.
9. Niceland argued before the trial court that Mr. D'Souza has maliciously borrowed huge loans from banks more than the assets by showing the same property as security for loans in different banks. His conduct amounts to fraud and he also faces charges of money laundering and offshore investment for an amount of 7000 crores. To the contrary, Mr. D'Souza argued that: (i) the loans were borrowed by *Sparrow Group of Companies* as independent legal persons and he shall not be made liable for their business failures; (ii) maliciously involving his name in the case is purely a political vendetta for supporting a different political party; and (iii) considering the worst jail conditions in Niceland, his extradition would amount to deprivation of his right to life and other fundamental rights guaranteed under the Indeshian Constitution.
10. A recent Human Rights Watch Report of 2016 describes that “the jails of Niceland are in a filthy condition and being a shelter for snakes, rats and cockroaches; and it is certainly a miserable place on earth for human existence.” Scottish Expert Commission on Prison Condition in Niceland further reports that: “one meagre meal a day, refusal of medical treatment even to cancer patients, overcrowding of cells, inadequacy of medical attendant for inmates, and flagrant violation of extradition assurances in few instances are some of the prison facts in Niceland by the end of 2017”. Even the Human Rights of Commission of Niceland, in its Annual Report 2017, condemns that “jail conditions in Niceland is inadequate for an average human existence”.
11. In January 2018 the trial court came to a conclusion that since the matter involves international agreements and the issues of constitutional importance, the case may be transferred to the Supreme Court of Indesh, the highest court of judicature in the country, for a final decision. Accordingly, Supreme Court has seized the matter for discussion and

has fixed 31 March 2018 as the date of hearing for final arguments with regard to following issues:

- a. Whether D'Souza could be held accountable for the loans borrowed by Sparrow Group of Companies; and whether his conduct amounts to fraud in the whole episode?
- b. Whether the charges made against D'Souza are of a political character and whether extradition request be rejected on such grounds?
- c. Whether poor jail condition in the requesting state could be a ground for rejection of extradition request? And whether the courts of requested state has jurisdiction to decide such issues?

Note: All laws in force in the Republic of Indesh as well as in Niceland are in *pari material* with the Republic of India.

Disclaimer: It is a hypothetical proposition and all names and materials used herein are fictitious and it neither intends nor attempts to hurt the feelings of anyone.

ANNEXURE

EXTRADITION TREATY BETWEEN THE GOVERNMENT OF THE NICELAND AND THE GOVERNMENT OF THE REPUBLIC OF INDESH

The Government of the Niceland and the Government of the Republic of Indesh,

Desiring to make more effective the co-operation of the two countries in the suppression of crime by making further provision for the reciprocal extradition of offenders;

Recognising that concrete steps are necessary to combat terrorism;

Have agreed as follows:

ARTICLE I

Duty of Extradite

1. Each Contracting State undertakes to extradite to the other, in the circumstances and subject to the conditions specified in this Treaty, any person who, being accused' or convicted of an extradition offence as described in Article 2, committed within the territory of the one State, is found within the territory of the other State, whether such offence was committed before or after the entry into force of this Treaty.
2. Extradition shall also be available in respect of an extradition offence as described in Article 2 committed outside the territory of the Requesting State but in respect of which it

has jurisdiction if the Requested State would, in corresponding circumstances, have jurisdiction over such an offence. In such circumstances the Requested State shall have regard to all the circumstances of the case including the seriousness of the offence.

ARTICLE 2
Extradition Offences

1. An extradition offence for the purposes of this Treaty is constituted by conduct which under the laws of each Contracting State is punishable by a term of imprisonment for a period of at least one year.
2. An offence may be an extradition offence notwithstanding that it relates to taxation or revenue or is one of a purely fiscal character.

ARTICLE 3
Composite Offences

Extradition shall be available in accordance with this Treaty for an extradition offence, notwithstanding that the conduct of the person sought occurred wholly or in part in the Requested State, if under the law of that State his conduct and its effects, or its intended effects, taken as a whole, would be regarded as constituting the commission of an extradition offence in the territory of the Requesting State.

ARTICLE 4
The Political Offence Exception

1. Extradition may be refused if the offence of which it is requested is an offence of a political character.
2. For the purposes of this Treaty the following offences shall not be regarded as offences of a political character:
 - a. an offence within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, opened for signature at the Hague on 16 December 1970;
 - b. an offence within the scope of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, opened for signature at Montreal on 23 September 1971;
 - c. an offence within the scope of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, opened for signature at New York on 14 December 1973);
 - d. an offence within the scope of the International Convention against the Taking of Hostages, opened for signature at New York on 18 December 1979;
 - e. murder, manslaughter or culpable homicide;
 - f. assault occasioning actual bodily harm, or causing injury, maliciously wounding or inflicting grievous bodily harm whether by means of a weapon, a dangerous substance or otherwise;
 - g. the causing of an explosion likely to endanger life or cause serious damage to property;
 - h. the making or possession of an explosive substance by a person who intends either himself or through another person to endanger life or cause serious damage to property;
 - i. the possession of a firearm or ammunition by a person who intends either himself or through another person to endanger life;
 - j. the use of a firearm by a person with intent to resist or prevent the arrest or detention of himself or another person;

- k. damaging property whether used for public utilities or otherwise with intent to endanger life or with reckless disregard as to whether the life of another would thereby be endangered;
- l. kidnapping, abduction, false imprisonment or unlawful detention, including the taking of a hostage;
- m. any other offence related to terrorism which at the time of the request is, under the law of the Requested Party, not to be regarded as an offence of a political character;
- n. an attempt or conspiracy to commit any of the foregoing offences or participation as an accomplice of a person who commits or attempts to commit such an offence.

ARTICLE 5

Extradition and Prosecution

1. The request for extradition may be refused by the Requested State if the person whose extradition is sought may be tried for the extradition offence in the courts of that State.
2. Where the Requested State refuses a request for extradition for the reason set out in paragraph 1 of this Article, it shall submit the case to its competent authorities so that prosecution may be considered. Those authorities shall take their decision in the same manner as in the case of any offence of a serious nature under the law of that State.
3. If the competent authorities decide not to prosecute in such a case, the request for extradition shall be reconsidered in accordance with this Treaty.

ARTICLE 6

Grounds for Refusal of Extradition

1. A person may not be extradited if:
 - a. he satisfies the Requested State that the request for his extradition (though purporting to be made on account of an extradition offence) has in fact been made for the purpose of prosecuting or punishing him on account of his race, religion, nationality or political opinions; or
 - b. he satisfies the Requested State that he might, if extradited, be prejudiced at his trial or be punished, detained or restricted in his personal liberty, by reason of his race, religion, nationality or political opinions; or
 - c. he satisfies the Requested State that it would, having regard to all the circumstances be unjust or oppressive to extradite him by reason of: (i) the trivial nature of the offence of which he is accused or was convicted; or (ii) the passage of time since he is alleged to have committed it or have become (iii) the accusation against him not having been made in good faith in the interests; or
 - d. the offence of which he is accused or convicted is a military offence which is not also an offence under the general criminal law.
2. A person who has been convicted of an extradition offence may not be extradited therefore unless he was sentenced to imprisonment or other form of detention for a period of four months or more or, subject to Article 16, to the death penalty.
3. A person may not be extradited if he would, if proceeded against in the territory of the Requested State for the offence for which his extradition is requested, be entitled to be discharged under any rule of law of the Requested State relating to previous acquittal or conviction.

ARTICLE 7

Capital Punishment

If under the law of the Requesting State the person sought is liable to the death penalty for the offence for which his extradition is requested, but the law of the Requested State does not provide for the death penalty in a similar case, extradition may be refused, unless the Requesting State gives such assurance as the Requested State considers sufficient that the death penalty will not be carried out.

ARTICLE 8

Ratification and Termination

1. This Treaty shall be subject to ratification and the instruments of ratification shall be exchanged in Indesh as soon as possible. It shall enter into force on the date of the exchange of instruments of ratification.
2. Either of the Contracting States may terminate this Treaty at any time by giving notice to the other through the diplomatic channel; and if such notice is given the Treaty shall cease to have effect six months after the receipt of the notice.

In witness whereof the undersigned being duly authorised thereto by their respective Governments, have signed this Treaty;

Done in duplicate in Indesh this 22nd day of September 1993, in English language.

For the Government of the Republic of Indesh

For the Government of the Niceland

[Drafted by Dr. PR Thualsidhass, Assistant Professor of law, AGLC, Puducherry]