

One country two systems fallout-Hongkong protests

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Manifest pedagogy:

Colonization and Decolonization form an important aspect of the syllabus of World History. The colonization of China is a unique aspect of world history. The process of decolonisation of Hongkong and Macau and their integration into Mainland China is a Historical event in the making. This could be a good issue for UPSC to pick in world history or they could ask an associated question in International relations

In news:

Recently Government of Hong Kong proposed **Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill, 2019.**

Placing it in syllabus:

World history events

Static dimensions:

- The colonisation of China by imperial powers
- Hongkong and Macau position and the lease agreements
- One country two systems policy

Current dimensions:

- Greater Bay Area plan
- Extradition bill
- Arguments in favour of the bill
- Criticism against the bill

Content:

Recently the Hongkong government proposed extradition law, which seeks to update existing laws that govern extradition processes and legal assistance between Hong Kong and other jurisdictions. Specifically, it amends the **Fugitive Offenders Ordinance and the Mutual Legal Assistance in Criminal Matters Ordinance**. The controversial extradition bill would allow suspected criminals in Hongkong to be sent to mainland China for trial.

History:

Colonisation of China by imperial powers:

In the 13th and 14th centuries, a number of Europeans had sought to penetrate into China following the silk route. But these journeys had little permanent effect on East-West trade because the Ming dynasty overthrew Yuan dynasty in China, which had been receptive to European missionaries and merchants.



Slowly various powers occupied the designated territories in the later half of the 19th century. This process is called cutting of Chinese melon. But no colonial power directly occupied these territories they maintained them as semi-colonies through imposing unequal treaties and snatching away strategic islands. Macau and Hongkong are two such islands.

Case of Macau

By 1513-1516, the first Portuguese ships had reached Canton on the southern coasts of China. In 1521, Ming dynasty China defeated the Portuguese at the Battle of Tunmen and then again at the Battle of Xicaowan. The Portuguese tried to establish trade with China by illegally smuggling with the pirates on the offshore islands off the coast of Zhejiang and Fujian, but they were driven away by the Ming navy in the 1530s-1540s.

In 1557, China gave Macau for lease to Portuguese. Though Portuguese maritime supremacy was lost to the Dutch in the 17th century, they still clung to Macau and settled a new colony on the island of Timor.

After the founding of the People's Republic of China (PRC) in 1949 and the transfer of China's seat to the PRC at the United Nations in 1971, UN General Assembly passed the resolution on removing Hong Kong and Macau from the official list of colonies. After the Carnation Revolution in 1974, within a year, the government of Portugal withdrew troops from Macau and began negotiations for the return of Macau. After signing the **Sino-Portuguese Joint Declaration in April 1987** the transfer of sovereignty took place in December 1999.

Case of Hongkong

In the early 19th century, the opium trade of British with China grew successfully. The United Kingdom obtained control over portions of Hong Kong's territory through some treaties with Qing China:

1842: **Treaty of Nanking**: Hong Kong Island ceded in perpetuity

1898: **Convention for the Extension of Hong Kong Territory**: the New Territories and outlying islands leased for 99 years until 1997

The **Sino-British Joint Declaration** was signed by the Prime Ministers of the PRC and UK governments in December 1984 in Beijing which entered into force in May 1985 stated that PRC would resume the exercise of sovereignty over Hong Kong (including Hong Kong Island, Kowloon, and the New Territories) and the UK Government declared that it would restore Hong Kong to the PRC with effect from 1 July 1997.

In accordance with the "**One country, two systems**" principle agreed between the UK and PRC, the socialist system of the PRC would not be practised in the **Hong Kong Special Administrative**

Region (HKSAR) and Hong Kong's previous capitalist system and its way of life would remain unchanged for a period of 50 years (until 2047). The Joint Declaration provided that these basic policies should be stipulated in the Hong Kong Basic Law.

The Basic Law which was said to be a "mini-constitution" was drafted by a Drafting Committee composed of members from both Hong Kong and Mainland China and was formally promulgated in April 1990 by the NPC, together with the designs for the flag and emblem of the HKSAR.

One country two systems policy:

"One country, two systems" is a **constitutional principle** formulated by Deng Xiaoping, the Paramount Leader of the PRC for the reunification of China during the early 1980s. He suggested that there would be only one China, but distinct Chinese regions such as Hong Kong and Macau which could retain their own economic and administrative systems, while the rest of the PRC uses the socialism with Chinese characteristics system.

The establishment of these regions, called **special administrative regions (SARs)**, is authorised by Article 31 of the Constitution of the PRC, which states that the State may establish SARs when necessary and that the systems to be instituted in them shall be prescribed by law enacted by the National People's Congress in light of the specific conditions.

The SARs of Hong Kong and Macau were formally established on 1 July 1997 and 20 December 1999 respectively. The SARs have a high degree of autonomy and enjoy executive, legislative and independent judicial power, including that of final adjudication. They are responsible for their domestic affairs including the judiciary and courts of last resort, immigration and customs, public finance, currencies and extradition.

The diplomatic relations and regional defence of the two SARs is the responsibility of the Central People's Government in Beijing. However, representatives of the Government of the SARs may participate, as members of delegations of the PRC, in diplomatic negotiations that directly affect the regions, and in other international conferences limited to states and affecting the region. The Hong Kong Basic Law also provides constitutional protection on various fundamental human rights and freedoms.

Attempts at the integration of Hongkong and Macau in Mainland China:

Recently Chinese authorities have unveiled the timeline to further integrate Hong Kong and Macau into the mainland under the ambitious **Greater Bay Area plan which** has been considered as a further step in taking forward the implementation of 'one country, two systems'. The 11-chapter document states that the 11 cities of Southern China in the plan would boost collaboration by 2022 in areas including the science and technology, intellectual property rights and even ecological conservation.



The plan involves linking **11 cities in the Pearl River delta area** within a two-hour radius of Hong Kong. The road map calls for Hong Kong to build on its status as an international financial, transportation and trade hub. Beijing also outlined its support for Hong Kong becoming the hub for international legal and dispute resolution services in the Asia-Pacific region which has been welcomed by the Hongkong government.

Macau would focus on being the "world centre for tourism and leisure" and act as a bridge to Portuguese-speaking countries. China already has the world's longest sea crossing, linking Hong Kong with Macau and the mainland city of Zhuhai. The Bay Area plan reflects China's innovation and technology ambitions

and is aligned with its Made in China 2025 masterplan, a 10-year road map for the future of the manufacturing sector.

Extradition bill:

The current Fugitive Offenders Ordinance and the Mutual Legal Assistance in Criminal Matters Ordinance passed just ahead of the 1997 handover of Hong Kong to Chinese sovereignty, explicitly states it does not apply for extradition and legal assistance to “the Central People’s Government or the government of any other part of the PRC”.

The proposed changes would allow for criminal extradition requests from authorities in mainland China, Taiwan and Macau decided on a case-by-case basis by Hong Kong courts.

It comes after a high-profile case where a Hong Kong man was accused of murdering his girlfriend on holiday in Taiwan but could not be extradited. Taiwan is against the changes as it doesn’t want to see its requests for legal assistance mired in politicised process and has rejected entering into any extradition arrangements with Hong Kong under any ordinance that implies Taiwan is part of China which the proposed bill may be interpreted as doing.

Hong Kong has entered into extradition agreements with 20 countries, including the UK and the US, but no such agreements have been reached with mainland China despite ongoing negotiations in the past two decades.

Concerns and Criticism:

Ø Several civil society organisations, business and legal groups, and international bodies have raised serious concerns about the extradition law.

Ø Many quarters of the international community, including the European Union and the UK, have spoken against the law. The US has warned that the extradition law, if passed, could

jeopardise the long-established special status that Washington affords Hong Kong.

Ø Hongkong would be exposed to China's deeply flawed justice system, and would lead to further erosion of the city's judicial independence.

Ø China has poor human rights record and opaque legal system, with no guarantee of a fair trial; arbitrary detentions; forced confessions and political prosecutions..

Ø Hong Kong's well-respected courts are not empowered to examine whether the suspect would receive basic human rights protection upon removal and can only look at whether there is sufficient prima facie evidence to convict the suspect.

Ø The chief executive, who makes the final decision on any extradition request, might be partial as he is effectively Beijing-appointed.

Ø The law could be used to target political opponents of the Chinese state.

Favour of the bill:

Ø Supporters say safeguards are in place to prevent anyone facing religious or political persecution from being extradited to mainland China.

Ø The proposal will plug loopholes so that the city would not be a safe haven for criminals.

Ø Only fugitives for offences carrying maximum sentences of at least seven years will be handed over.

Ø Additional safeguards such as a time limit to request an extradition after an offence and approval from highest authorities would be legally binding.

Ø The law is only meant to deal with the gravest of crimes

and “will not impinge on freedom of speech of the press and of publication.”

After a week of mass protests by lakhs of people and organisations,

Hong Kong’s leader, Carrie Lam, promised to indefinitely suspend efforts to pass a controversial new extradition law. This move is seen as an important democratic moment for a city where people are free to demonstrate but not able to choose their leaders. However, the leader has insisted that only errors were of communication and has promised to relaunch an improved version of the law after further consultation.