

EXTRADITION OF CRIMINAL OFFENDERS: A STUDY OF INDIA'S BILATERAL TREATIES AND INTERNATIONAL OBLIGATIONS

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ABSTRACT

Extradition plays a critical role in combating transnational crime by enabling nations to cooperate in bringing fugitives to justice beyond their territorial limits. India's extradition framework is shaped by a combination of domestic legislation, bilateral treaties, and international obligations under conventions such as the UN Convention Against Corruption and the UN Convention Against Transnational Organized Crime. This paper explores the legal and diplomatic dimensions of India's extradition practices, focusing on the Extradition Act, 1962, bilateral treaty provisions, and procedural safeguards. It examines key legal principles—such as dual criminality, the political offense exception, and the rule of specialty—within the context of India's engagements with countries like the United Kingdom, United States, and the UAE. Through an analysis of case law and treaty practice, the study highlights the operational challenges India faces, including delays, diplomatic tensions, human rights concerns, and non-reciprocity. The paper argues for a more harmonized, transparent, and rights-oriented extradition process that balances sovereign interests with global legal cooperation.

KEYWORDS – Extradition, Bilateral treaties, International obligations, Political offense exception, Dual criminality, Extradition Act, 1962, Human rights in extradition

INTRODUCTION

Extradition is a vital tool in modern international law, serving as a mechanism through which sovereign states cooperate to ensure that fugitives from justice are not allowed to evade accountability by crossing borders. It embodies the principle of mutual legal assistance, reinforcing the idea that no nation should serve as a safe haven for individuals accused or convicted of serious crimes elsewhere. In an era marked by the rise of transnational criminal activities—including terrorism, cybercrime, organized financial frauds, and drug trafficking—the importance of an effective and fair extradition system cannot be overstated.

India, with its expanding global presence and increasing involvement in cross-border legal cooperation, has developed an intricate framework to deal with extradition. This

framework rests on the Extradition Act of 1962, which provides the legal basis for surrendering accused or convicted individuals to foreign jurisdictions, provided certain conditions are met. Supplementing this legislation are numerous bilateral treaties and extradition arrangements with countries around the world, including major partners like the United Kingdom, United States, United Arab Emirates, and Canada. These treaties establish reciprocal obligations and outline procedural safeguards, but also often reflect strategic, political, and diplomatic considerations.

At the international level, India is a signatory to various multilateral conventions such as the United Nations Convention Against Transnational Organized Crime (UNTOC) and the United Nations Convention Against Corruption (UNCAC), which further reinforce its

commitment to international cooperation in criminal matters. However, despite a well-established legal foundation, India's extradition practice faces significant hurdles. The process is often marked by prolonged delays, legal contestations, and challenges relating to human rights protections and dual criminality. High-profile cases involving fugitives like Vijay Mallya and Nirav Modi have brought these challenges to the forefront, highlighting the friction between legal principles and diplomatic exigencies.

This paper seeks to critically examine the extradition framework in India by analyzing the interplay between domestic law, bilateral treaties, and international commitments. It explores key doctrinal principles such as dual criminality, the rule of specialty, and the political offense exception, and evaluates how these are implemented in India's treaty practices. Further, the paper investigates the procedural mechanisms for extradition, the role of executive discretion, and the impact of international human rights standards on extradition decisions. By tracing both the strengths and shortcomings of India's extradition system, the study aims to offer recommendations for reform that would enhance efficiency, legal certainty, and conformity with global norms.

EVOLUTION AND LEGAL FRAMEWORK OF EXTRADITION LAW IN INDIA

The legal foundation of extradition in India has evolved through a combination of colonial legacy, post-independence legislative reforms, and growing international cooperation. The earliest framework regulating extradition in India can be traced to the British Extradition Acts of the 19th century, under which British India entered into arrangements with other British colonies and foreign powers. Following independence, India's need to establish a sovereign legal structure for extradition led to the enactment of the Extradition Act, 1962, which remains the principal legislation governing extradition processes today.

The Act categorizes extradition arrangements into two broad types: extradition treaties and extradition arrangements. While treaties are formal agreements ratified between sovereign states, arrangements are less formal understandings, allowing for some degree of flexibility in specific cases. The Act empowers the Indian government to declare certain countries as "notified countries" under Section 3, thereby enabling extradition on the basis of reciprocity even in the absence of a treaty.

Key provisions of the Act establish procedures for requesting extradition, conducting judicial inquiry by magistrates, and executing final extradition orders by the Central Government. The law lays down essential safeguards, such as the principle of dual criminality, which mandates that the offence in question must be a crime in both jurisdictions, and the rule of specialty, which ensures that an extradited individual cannot be prosecuted for offences other than those for which extradition was granted. These provisions are intended to protect individual rights and ensure fair legal process.

Over time, India has entered into over 40 bilateral extradition treaties with countries including the United States, United Kingdom, United Arab Emirates, France, and Russia. It also has extradition arrangements with several other nations like Canada and Italy. The scope of these treaties varies depending on diplomatic relations, mutual legal trust, and specific geopolitical considerations. While some treaties include a wide range of extraditable offences, others are more restrictive due to political, ideological, or human rights concerns.

Judicial interpretation has also played a significant role in shaping India's extradition law. In *Abu Salem v. Union of India* (2012), the Supreme Court emphasized the sanctity of the specialty rule and held that India must honor the terms of its extradition agreement with Portugal by not charging the accused with offences not covered under the extradition order. This case reflects the broader principle

that extradition law is not merely procedural, but also a matter of diplomatic credibility and international trust.

The legal framework is further influenced by India's obligations under international conventions such as the UN Convention Against Transnational Organized Crime and the UN Convention Against Corruption, which encourage member states to cooperate in extradition matters and promote mutual legal assistance in criminal cases. Although these conventions are not self-executing, they influence India's bilateral treaty negotiations and judicial reasoning.

Despite its relatively comprehensive legal foundation, India's extradition law has often faced criticism for being slow, inconsistent, and heavily reliant on diplomatic goodwill. These systemic challenges underscore the need to critically examine how exceptions, procedural delays, and human rights considerations intersect with India's global legal commitments.

INDIA'S BILATERAL EXTRADITION TREATIES – PRACTICE AND CHALLENGES

India's bilateral extradition treaties form the core of its practical extradition mechanisms. These treaties provide a mutually agreed legal framework between India and another country, stipulating conditions, procedures, and safeguards for extraditing individuals accused or convicted of crimes. While these treaties are intended to facilitate cross-border justice, their implementation often reveals numerous diplomatic, legal, and logistical challenges.

Most of India's bilateral treaties contain common provisions regarding dual criminality, non-extradition for political offences, and assurances of fair trial and humane treatment. For example, the India-U.K. Extradition Treaty (1992) includes explicit clauses preventing extradition for political offenses and requires prima facie evidence of guilt. The India-U.S. Treaty (1997) similarly emphasizes evidentiary standards and human rights guarantees. However, extradition from these countries has

proven difficult in high-profile cases, particularly where the accused claims potential violations of human rights in the requesting country.

One notable challenge India faces is the interpretation and application of the political offence exception. Accused individuals often invoke this clause to resist extradition, arguing that the prosecution is motivated by political vendetta. In the case of Ravi Shankaran, accused in the Naval War Room Leak case, the U.K. courts refused extradition citing insufficient evidence and concerns about fair trial in India. Similarly, Jagat Singh Chhokar, accused in a passport fraud case, successfully resisted extradition from the U.K. due to delays and the risk of human rights violations.

Another critical concern is the lack of reciprocity and delays in judicial cooperation. While India has extradited several foreign nationals, it has struggled to secure the return of Indian fugitives. The case of Vijay Mallya, wanted for financial fraud and money laundering, highlights how extradition can become entangled in prolonged legal proceedings in the requested country. The U.K. courts initially ordered his extradition in 2018, but as of 2024, he remains in the U.K. due to unresolved legal and asylum issues. This case underlines the fragility of bilateral enforcement, especially where domestic laws of the requested state grant multiple layers of appeal and asylum protection.

Bilateral treaties also often lack uniformity. Different countries have different evidentiary requirements, interpretations of "extraditable offence," and procedures for dealing with requests. This lack of standardization leads to delays and legal uncertainty. Moreover, the absence of extradition treaties with key jurisdictions like China or Pakistan presents serious obstacles in fugitive tracking and law enforcement, especially in cases involving terrorism or organized crime.

India's Central Bureau of Investigation (CBI) and the Ministry of External Affairs (MEA) coordinate to prepare and transmit extradition requests.

However, the bureaucratic and time-consuming nature of this process often results in incomplete documentation or technical deficiencies in requests, which are then rejected by foreign courts. Streamlining this inter-agency coordination and adopting digital documentation tools could significantly enhance procedural efficiency.

Overall, India's bilateral treaty practice reflects both the potential and the limitations of extradition as a legal tool. While treaty provisions exist on paper, their enforcement is often hampered by diplomatic sensitivities, legal complexities, and systemic inefficiencies. Addressing these issues requires not only legal reforms but also greater consistency in India's diplomatic strategies and legal drafting.

HUMAN RIGHTS CONCERNS AND THE NEED FOR REFORM IN EXTRADITION LAW

One of the most pressing emerging challenges in India's extradition regime is the growing tension between state interests in law enforcement and international human rights obligations. In recent years, courts in countries like the U.K., Canada, and Australia have increasingly scrutinized extradition requests based on concerns about prison conditions, delay in trials, and the possibility of abuse or politically motivated prosecution in the requesting state. This global trend has placed pressure on India to demonstrate that it upholds the rights of extradited individuals under international human rights law.

A primary concern raised in such contexts is India's prison system. Overcrowding, inadequate medical care, and prolonged pre-trial detention have all been cited by foreign courts as reasons for denying or delaying extradition. In the Nirav Modi case, the U.K. courts required extensive evidence about the conditions in Arthur Road Jail, Mumbai, before approving his extradition. The Indian government had to assure that he would be kept in a secure barrack with access to healthcare and legal counsel. This growing scrutiny suggests that India must prioritize

reforming custodial conditions and ensuring transparency in its criminal justice processes.

Delay in trials and judicial backlog also pose a serious barrier. Extradited individuals often argue that their right to a speedy trial will be violated in India, citing instances where trials have stretched for decades. This concern not only affects the success of extradition requests but also reflects broader inefficiencies in the Indian judiciary that need systemic redressal.

The issue of capital punishment is another barrier to extradition from countries that have abolished the death penalty. Many European nations and Canada refuse extradition where there is a risk of the death sentence being imposed, unless the requesting state provides written assurances that the sentence will not be carried out. India has given such assurances in multiple cases, but this conditionality reflects a growing expectation that extradition must be consistent with international human rights jurisprudence, particularly under instruments like the International Covenant on Civil and Political Rights (ICCPR).

There is also increasing advocacy within India for a uniform extradition code or a consolidated legal reform that would simplify and modernize the existing framework. The Law Commission of India, in its 213th Report (2008), recommended several changes to the Extradition Act, including clearer definitions of extraditable offences, a fast-track mechanism for high-priority cases, and a more transparent review process for rejected requests. These reforms, however, remain largely unimplemented.

Further, India could benefit from adopting model extradition laws developed by the UNODC or aligning its treaties with regional best practices, such as those in the European Convention on Extradition. Multilateral approaches may not fully replace bilateral treaties, but they can enhance procedural consistency and judicial cooperation across borders.

Lastly, there is a need to sensitize the Indian judiciary, law enforcement, and diplomatic personnel on the global standards of extradition. Capacity building, cross-border legal training, and technological upgrades in documentation and case tracking can significantly improve India's image as a credible partner in global criminal justice cooperation.

CONCLUSION

The extradition of criminal offenders stands at the intersection of international cooperation, domestic law, and fundamental human rights. For India, the journey from a post-colonial legal system to a modern extradition regime has been marked by significant legislative development, diplomatic engagements, and a growing commitment to global legal obligations. The Extradition Act of 1962, supported by numerous bilateral treaties and influenced by international conventions, offers a robust legal foundation. However, the implementation of extradition law reveals systemic challenges that need urgent attention.

As this study demonstrates, India's extradition practice is constrained by legal complexities, diplomatic sensitivities, procedural delays, and human rights concerns. While high-profile cases like those of Vijay Mallya and Nirav Modi have drawn public and judicial scrutiny, they also underscore broader issues such as the need for institutional reform, improved prison conditions, faster judicial processes, and better inter-agency coordination. Moreover, the increasing insistence of foreign courts on India's adherence to human rights norms indicates that extradition today is no longer a purely diplomatic or administrative function—it is a legal process that must meet international standards of fairness and justice.

Moving forward, India must undertake reforms that harmonize its extradition laws with international expectations. This includes adopting clearer statutory language, streamlining extradition procedures, incorporating digital tools for efficient case

management, and ensuring compliance with human rights commitments under international law. Strengthening its diplomatic channels and entering into more comprehensive and reciprocal treaties will also help address enforcement asymmetries.

Ultimately, a balanced and rights-conscious extradition regime will not only serve India's interests in curbing transnational crime but also enhance its credibility as a responsible global legal actor. In a world where crime knows no borders, India's ability to cooperate effectively and lawfully with the international community will remain essential to the pursuit of justice.

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