INDIAN JOURNAL OF LEGAL REVIEW

VOLUME 6 AND ISSUE 9 OF 2026

INSTITUTE OF LEGAL EDUCATION

INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN - 2583-2344

(Open Access Journal)

Journal's Home Page – https://ijlr.iledu.in/

Journal's Editorial Page - https://ijlr.iledu.in/editorial-board/

Volume 6 and Issue 9 of 2026 (Access Full Issue on - https://ijlr.iledu.in/volume-6-and-issue-9-of-2026/)

Publisher

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 73059 14348 - info@iledu.in / Chairman@iledu.in

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 9 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

FROM COLONIAL LEGACY TO CONSTITUTIONAL IMPERATIVE: CHARTING THE EVOLUTIONARY ARCHITECTURE OF INDIA'S EXTRADITION ACT, 1962

AUTHOR – KM. PRIYANSHI* & ASHOK DOBHAL**

* LAW COLLEGE DEHRADUN, UTTARANCHAL UNIVERSITY, DEHRADUN, UTTARAKHAND, INDIA

** ASSISTANT PROFESSOR, LAW COLLEGE DEHRADUN, UTTARANCHAL UNIVERSITY, DEHRADUN, UTTARAKHAND, INDIA

BEST CITATION – KM. PRIYANSHI & ASHOK DOBHAL, FROM COLONIAL LEGACY TO CONSTITUTIONAL IMPERATIVE: CHARTING THE EVOLUTIONARY ARCHITECTURE OF INDIA'S EXTRADITION ACT, 1962, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 6 (9) OF 2026, PG. 570-579, APIS – 3920 – 0001 & ISSN - 2583-2344. DOI - https://doi.org/10.65393/IJLRV6I961

ABSTRACT

The Extradition Act, 1962 is an early law in the Indian system of international criminal cooperation, adopted in the post-independence period to supersede the disjointed colonial system that was used to regulate the handing over of fugitives across international boundaries. This chapter systematically examines the history of the legislative change, judicial interpretation, and structural changes that have influenced the Act throughout the six decades of legal practice. The main aims of this investigation are three-fold, to follow the historical and normative roots of extradition law in India in its colonial roots to its contemporary legislative manifestation; to examine the significant legislative reforms that refocused the scope of the Act, especially the reforms of 1993 and the additional legislative evolution since then; .in providing substantive meaning to the principle of dual criminality and the political offense exception. The methodology of the chapter is a doctrinal approach, which relies on primary materials such as statutory texts, judicial decisions, treaty instruments, and parliamentary debates, with the comparative analysis of the common law jurisdictions such as the United Kingdom and Canada. The results show that the Act is structurally paradoxical as it has been heavily modernised in terms of legislation, yet still contains certain vestiges of colonial-era procedural rigidity, lack of coherent non-refoulement obligation, and systematic delays in the processing of extradition requests. The chapter ends with policy suggestions aimed at revising the procedural structure of the Act and aligning it with the modern international human rights requirements and treaty commitments, to better prepare the Indian extradition law to meet the needs of an ever more globalized and criminally complex world.

Keywords: Extradition Act 1962; Fugitive Criminals; Double Criminality; Political Offence Exception; Rule of Speciality; International Criminal Cooperation

INTRODUCTION

The issue of whether a state has the duty of extradtion a fugitive criminal who has sought sanctuary in its territorial jurisdiction has been a subject of debate to international jurists, treaty negotiators and domestic courts over centuries.

As an international law institution, extradition is on the border between state sovereignty and the necessity of transnational justice a dilemma that is not completely addressed by any contemporary legal system. This tension was first put into statutory form in the Indian Extradition Act of 1903 of the colonial era, but this was itself but an instrument of the imperial administrative mechanism, which was intended to help ease the transfer of suspected offenders between British India and British-influenced territories, rather than because the political premises of such a statute had been superseded by the independence of the Indian state in 1947

The Extradition Act, 1962 [hereinafter "the Act"] was thus passed by Parliament to unify and renew the law on extradition of fugitive criminals and to offer a comprehensive procedural framework on the implementation of extradition requests. The fact that the Act has been able to survive as the major statutory tool in this field is evidence of the inherent coherence in its establishment, yet this survival has been at the price of a strain of doctrinal accumulation which has been met only to a limited extent by amendment.

The applicability of this question continues far beyond the doctrinal interest. The question that this chapter attempts to answer is three-fold: whether the legislative framework of the Act, as originally designed and later revised, stands up to the demands of modern-day international criminal cooperation; whether judicial interpretation has distorted (and sometimes stretched) the statutory categories of the Act in a way that the drafters never intended; and whether the Act's statutory categories need to be restructured to meet the demands of The chapter follows a doctrinal approach, which incorporates statutory interpretation, judicial rationale, and comparative law reference, relying on primary legal materials with the input of the most prominent practitioners of the international criminal and extradition law .[1009]

OVERVIEW: HISTORICAL FOUNDATIONS AND LEGISLATIVE GENEALOGY

The historical background of the extradition law in India cannot be seen out of context of the overall development of the extradition as a concept under the international law. The principle that states are not generally subject to a general customary international law obligation to extradite, which does not exist in a treaty or other specific legal instrument, was firmly established by the end of the nineteenth century, and found expression in the logic of aut dedere aut judicare (either extradite or prosecute): that impunity could not be allowed to take refuge behind borders. The legal tradition of the 1870 Act was explicitly recognized by Indian legislators when it was time to draft the post-independence statutory framework.

The surrender of fugitives in colonial India was regulated by the Indian Extradition Act of 1903 which was largely based on the system of treaties between British India and other countries. The weaknesses of this tool became evident shortly after the independence: it did not consider the new treaty-making ability of India as an independent state, did not provide any pattern of extradition to those countries that did not have formal treaty agreements, and did not include any guidelines on the constitutional rights of individuals whose surrender was requested. The increasing pattern of bilateral extradition treaties that India was negotiating in the 1950s, along with the normative weakness of the colonial statute, led to the passage of the Extradition Act, 1962 a statute that continues to be the primary legal tool governing this field of law up to the present day, and whose continued functionality over such a period of time itself requires critical examination.[1010]

As it was originally enacted, the Act was designed to have two main axes. The former applied to extradition to treaty states, where the issuance of a formal requisition by a foreign state initiated a judicial inquiry before either a Metropolitan Magistrate or Court of Session, after which the Central Government still had a residual discretionary power to surrender or to refuse to surrender the fugitive. Although coherent when originally conceived, this bifurcated structure has been placed under considerable constitutional pressure as the

[1009] Clive Nicholls, Clare Montgomery & Julian B. Knowles, The Law of Extradition and Mutual Legal Assistance 1 (3d ed. 2013).

[1010] The Indian Extradition Act, No. 15 of 1903 (India) (repealed).

network of treaties that India had entered into extended and constitutional jurisprudence increasingly asserted itself within the area of executive discretion in extradition cases.[1011]

LEGISLATIVE ARCHITECTURE AND STRUCTURAL FRAMEWORK OF THE EXTRADITION ACT, 1962

The formal design of the Extradition Act, 1962 is worth studying, as it is here in the statutory text that the normative undertakings of the legislature and their constraints are most easily observed. The Act (consisting of thirty-four sections and two schedules) is structured around a set of major operative concepts which determine the range of the extraditable offence, the surrender procedure, and the boundaries within which the executive and the judiciary may operate. Section 2(c) describes an extradition offence as such through reference to the First Schedule, listing offences the gravity of which is found to be sufficient to warrant the extraordinary act of handing over to a foreign state, a risk which, as with cybercrime, money laundering and terrorism financing, is now seen to be the major preoccupation of transnational criminal law enforcement.

Section 2(c) as revised by the First Schedule requires that the offence upon which extradition is requested must be an offence under the law of the requesting state and under Indian law. This condition is necessary to a principle of justice: that a person should not be given up to an act which is not criminal in the legal system of the surrendering state. Whether the dual criminality is to be determined by reference to the particular statutory brand used by the requesting state, or by reference to the underlying conduct, abstracted of its particular formulation, has long been a divisive matter in common law jurisdictions. Although it did not decisively adjudicate this interpretive dispute, Daya Singh Lahoria v. Union of India, [1012]established the primacy of the dual criminality principle as a constitutional protection against arbitrary executive discretion in extradition matters. Importantly, the Court concluded that the rule of speciality, according to which the extradited individual can be charged with the crime only in relation to which he was extradited, is an implied provision of any extradition, whether it was explicitly provided in the corresponding bilateral treaty or not. The impact was to transform the speciality rule, which is a term of treaty that differs with each bilateral agreement, into a constitutional suggestion of consistent application across all extradition processes, an interpretative change of some structural importance.

Political offence exception under Section 31 of the Act exemplifies what is probably the most conceptually disputed ground in Indian extradition jurisprudence. The provision outlaws the extradition of a fugitive in cases where the offence the extradition is requested in connection with is a political offence, but does not provide any statutory definition of the term, leaving its substance to judicial development. This legislative silence is a reflection of the policy followed in the Extradition Act of 1870 of the United Kingdom and the European Convention on Extradition, 1957[1013], and a conscious political decision: an effort to engage in comprehensive statutory definition would either be over-inclusive, and would protect genuine criminals behind a political label, or would be under-inclusive, and would expose political diss The challenge, as courts in common law jurisdictions have always realised, is that the line between political offence and a crime of ordinary character is not easy to draw nor is it constant through time. Political violence which the current generation would describe as a form of terrorism can in other historical contexts assume the disguise of opposition to unjust power- a guise that no formalistic jurisprudential test has been able to answer satisfactorily. Section 31 is ambiguous and this has created a lot of litigation in India with the courts in every case having to determine the prevailing nature of the so-called offence with no reference to a clear statutory

1011 John Dugard & Christine Van den Wyngaert, Reconciling Extradition with Human Rights, 92 Am. J. Int'l L. 187, 191 (1998).

1012 Daya Singh Lahoria v. Union of India, (2001) 4 S.C.C. 516 (India).

1013 European Convention on Extradition art. 3, Dec. 13, 1957, E.T.S. No. 024.

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 6 AND ISSUE 9 OF 2026
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

criterion, which has inevitably led to doctrinal inconsistency.[1014]

Table 1: Key Legislative and Judicial Milestones in the Development of the Extradition Act, 1962

Year	Development / Authority	Category	Key Legislative or Judicial Impact
1903	Indian Extradition Act, 1903	Legislation	Colonial statutory framework; bilateral treaty-based surrender mechanism under British imperial authority
1962	Extradition Act, 1962 (Act No. 34)	Legislation	Post-independence consolidation; mandatory judicial inquiry under §10; bifurcated treaty / non-treaty extradition regime
1969	State of W.B. v. Jugal Kishore More, AIR 1969 SC 1171	Judicial	Affirmed limited but existing judicial review of Central Government's extradition discretion
1993	Extradition (Amendment) Act, 1993 (Act No. 66)	Legislation	Reduced punishment threshold to 1 year; inserted §34C (rule of speciality); expanded multilateral convention offences
2001	Daya Singh Lahoria v. Union of India, (2001) 4 SCC 516	Judicial	Elevated speciality principle to constitutional status under Art. 21; affirmed dual criminality as a constitutional safeguard
2008	Sarabjit Rick Singh v. Union of India, (2008) 2 SCC 417	Judicial	Implied procedural protections read into the §10 inquiry; right to legal representation and representations to Government affirmed
2011	Abu Salem v. State of Maharashtr	Judicial	Treaty assurances held binding under Art. 21;

[1014] Christopher L. Blakesley & Otto Lagodny, Finding Harmony Amidst Disagreement Over Extradition, Jurisdiction, the Role of Human Rights, and Issues of Extraterritoriality Under International Criminal Law, 24 Vand. J. Transnat'l L. 1, 17 (1991).

	a, (2011) 11 SCC 214		prosecution confined to offences specified in extradition request
2018	Fugitive Economic Offenders Act, 2018 (Act No. 17)	Legislation	Complementary asset-forfeiture mechanism for economic fugitives; operative threshold of ₹100 crore
2020	R (Mallya) v. Westminster Magistrates' Court, [2020] EWHC 1782 (Admin)	Foreign Judicial	India's prison conditions scrutinised by English courts; sovereign assurances required as pre-condition of surrender

Source: Compiled from Indian statutory instruments, Supreme Court records, and foreign judicial decisions (1903–2023).

Section 29 of the Act vests in the Central Government an obiter discretion, to decline surrender, in any case where all the formal statutory requirements of extradition have been met. This discretion of the executive, which is in line with the classical view of international law of extradition as a matter of comity and not a matter of law, has received a lot of constitutional review over the decades. This discretion has gradually been brought by the Supreme Court to a duty of reasoned decision-making that has been rooted in the constitutional provisions of Articles 14 and 21 of the Constitution of India, which enshrines equality before law and protection of life and personal liberty respectively. The net impact of this judicial intervention has been to turn what was initially a quite free executive prerogative into a discretion that must be exercised in a manner that is compatible with constitutional values- a structural and jurisprudential development of considerable importance to the conduct of extradition proceedings.

The main procedural tool by which the legality of an extradition is determined at the judicial level is the Section 10 inquiry before the Magistrate. In the original scheme of the Act, the office of the Magistrate was envisioned as fundamentally ministerial; to decide whether the fugitive was the individual sought, whether the offence in question was an extradition offence, and whether evidence presented showed a prima facie case against the fugitive. The area of this investigation was carefully limited to ensure that extradition proceedings did not turn into full-scale criminal trials in the courts of the requested state- a design principle which was also consistent with the contemporary practice in Commonwealth jurisdictions and had its origins in the understanding that the role of extradition was to assist, rather than to replace the criminal process of the requesting state. With the development of constitutional doctrine and increased judicial consideration of the rights of extradited individuals, however, the enquiry of the Magistrate came to be increasingly construed as requiring consideration of additional factors, such as the determination of whether the extradition request presented a prima facie case devoid of abuse of process and whether surrender would not infringe upon the constitutional rights of the fugitive a broad interpretation which has added to the complexity and delay that character

JUDICIAL INTERPRETATION AND THE DEVELOPMENT OF EXTRADITION JURISPRUDENCE

The Indian judiciary has made a significant contribution to the law of extradition, which has become a body of jurisprudence with increasingly sophisticated demarcation of the statutory framework, but at the same time has

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 6 AND ISSUE 9 OF 2026
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344
Published by
Institute of Legal Education
https://iledu.in

exposed the executive action to increased constitutional review. That course of this judicial involvement can be followed by a series of landmark decisions which together reveal the strains in the architecture of the Act and demonstrate how far constitutional values have transformed what was originally seen as a highly administrative process. The initial years of Act operation were marked by a generally deferential judicial approach towards executive determinations in extradition cases, in line with the prevailing interpretation of foreign affairs, to which extradition is a subset, as being in the area of executive competence. An early example of such a posture was provided in State of West Bengal v. Jugal Kishore More[1015], where the Supreme Court upheld the wide discretionary authority of the Central Government, but recognized that judicial review was not completely unavailable. What is important about this early choice is not the scope of review it allowed, which was limited, but its underlying acceptance that extradition proceedings, even though of an executive nature, were not beyond constitutional review, the basis on which later judicial development would proceed in a consistent way.

The transformational turning point of the judicial direction emerged with the case that erupted of Abu Salem Abdul Qayoom Ansari v. State of Maharashtra[1016]. Abu Salem who had been wanted in relation to the fateful 1993 Bombay serial explosions was extradited under certain promises offered by India that he would not be sentenced to death, and that he would not be charged with any other The issue the Supreme Court considered was, were these assurances, which had been provided as a condition of extradition under pressure by the Portuguese authorities, in the exercise of which the constitutional forbearing of the Portuguese state against cooperation in proceedings which might lead to the death penalty, legally binding upon Indian courts and Indian prosecutors in any future criminal proceedings. The Court in its affirmative judgment was of a jurisprudential breadth: it fixed that India was bound by a constitutional and international duty to respect the terms on which extradition was sought, a duty based on not only the principle of good faith in treaty relations, but also the constitutional safeguard of Article 21. Any such prosecution of Abu Salem on other grounds than those sought in the extradition request, the Court concluded, would amount to a deprivation of liberty not, and could not be, authorised by law, in contravention of Article 21 a finding that greatly limited the discretion of the prosecutor in cases involving extradited individuals and added a new layer of constitutional responsibility to the handling of extradition matters. This case essentially raised the principle of speciality to the status of a bilateral treaty term into a constitutional obligation of universal application, as a complement to and extension of the holding in Daya Singh Lahoria.

The procedural rights of individuals, who are to be extradited, were further described in Sarabjit Rick Singh v. Union of India[1017], in which the petitioner argued about the legality of the detention pending the investigation under the Section 10. Although the Court affirmed the constitutionality of the procedural scheme of the Act, it implied a set of protections within the statutory framework, such as the right to know the reasons of detention, the right to counsel during the inquiry of the Magistrate, and the right to present oneself before the Central Government makes the crucial decision of surrendering. These were implied protections, which were based on the constitutional requirement of procedure as laid down by the law under Article 21 and were materially beyond the text of the Act and were a major example of constitutional values restructuring statutory procedure in the extradition context. What is especially interesting in Sarabjit Rick Singh is the approach of the Court: instead of declaring the

1015 State of West Bengal v. Jugal Kishore More, A.I.R. 1969 S.C. 1171 (India).
1016 Abu Salem Abdul Qayoom Ansari v. State of Maharashtra, (2011) 11 S.C.C. 214 (India).
1017 Sarabjit Rick Singh v. Union of India, (2008) 2 S.C.C. 417 (India).

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]
VOLUME 6 AND ISSUE 9 OF 2026
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by
Institute of Legal Education
https://iledu.in

statutory scheme as constitutionally inadequate, the Court chose to interpret it as maintaining the structure of the Act, but significantly expanding its procedural content, a practice that has since become typical of how the Supreme Court interprets extradition laws.

The intersection of the extradition law with the international human rights obligations took on a special urgency in the instances when the criminal justice system of the requesting state was suspected to be able to subject the extradited individual to treatment that violates the basic rights. The landmark ruling of the European Court of Human Rights in Soering v. United Kingdom[1018] that a contracting state could be barred in extraditing an individual where there was substantial reason to suspect that in the state to which the individual was extradited he or she would risk being subjected to a genuine risk of torture or inhuman treatment was a fundamental principle that rendered the previously established meaning of the obligation to surrender under treaty inapplicable Although India itself is not bound by the European Convention on Human Rights, the idea of Soaring that human rights duties can take the place of a treaty duty to extradite has been echoed in Indian constitutional judicial thinking through the vehicle of Article 21. The fact that one who is extradited by India to a demanding state may be subjected to conditions amounting to inhuman or degrading treatment begs the question, which is yet to be settled by the Supreme Court, whether the Indian state has any constitutional obligation over the fate of individuals it has surrendered once the surrender is made, a question whose consequences on the policy of extradition are of considerable importance.

Although this case occurred in a different jurisdictional setting, the case of R v. Bartle and the Commissioner of Police ex parte Pinochet[1019] in the House of Lords helped to add to the international discussion of the connection between the law of extradition and the peremptory norms of international law. The decision of the Lords that former heads of state could not be extradited to foreign countries to face charges of international crimes, especially systematic torture in an official capacity, put the classical interpretation of sovereign immunity as a categorical bar to surrender into comparative perspective and gave some comparative authority to a narrow interpretation of the political offence exception in international law cases involving serious crimes. In the case of India, Pinochet is inapplicable, but real: it cemented the idea that the political nature of a former office of an accused should not shield criminal action against the extradition process, and it helped to establish the intellectual context within which the Indian courts have been dealing with the Section 31 political offence exception.

The case involving Vijay Mallya, which was principally heard in the Westminster Magistrates' Court and the High Court of England and Wales, had a significant impact on the legal and policy debate on extradition in the country, although these cases were not the creations of the Indian judiciary. The careful inspection of conditions in Arthur Road Jail in Mumbai by the English courts, and the resultant demand that India provide detailed guarantees as to the treatment and conditions of detention which would prevail in the event of Mallya surrendering himself, was an illustration of the extent to which domestic prison conditions might become a decisive element in foreign extradition cases, one that the Indian extradition regime itself could not control. The episode highlighted the indirect, yet strong connection between prison reform and the credibility of the extradition system in India, and showed that the successful functioning of extradition law cannot be explained or reformed outside of the overall institutional context in which surrendered individuals will be received.

1018 Soering v. United Kingdom, 161 Eur. Ct. H.R. (ser. A) (1989).

1019 R v. Bartle & the Comm'r of Police for the Metropolis ex parte Pinochet, [1999] 2 All E.R. 97 (H.L.) (U.K.).

INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 9 OF 2026

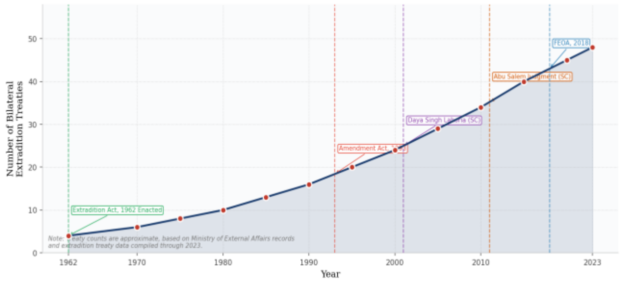
APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

Figure 1: Growth of India's Bilateral Extradition Treaty Network (1962-2023) with Key Legislative and Judicial Milestones



AMENDMENTS, TREATY DEVELOPMENTS, AND CONTEMPORARY CHALLENGES

A history of reactive amendment The legislative history of the Extradition Act, 1962 is typified by reactive amendment, that is, amendments made in response to particular events, high-profile cases, or judicial decisions as opposed to a review of the statute on a comprehensive basis informed by a coherent overarching policy framework. This intermittent legislative reform process has resulted in an Act that, although having changed significantly in content since its inception, still contains structural elements that inhibit its successful functioning in the modern legal context and which are indicative of the nature and scope of transnational crime that time has outgrown.

The Extradition (Amendment) Act, 1993[1020] was the biggest single act of legislative intervention in the history of the Act. The amendment broadened the definition of extraditable offences by replacing the two-year limit on the definition of extradition offence with a one-year limit, and thus expanding the scope of criminal conduct that India could seek- and indeed had to provide- extradition. The amendment also contained clauses that dealt directly with the question of extradition in the context of offences subject to multilateral treaties to which India was bound bearing in mind that the duties that accrued out of the multilateral treaty commitments had to be given statutory expression that the bilateral treaty framework alone could not have permitted. Above all to the development of doctrine, the 1993 amendment added Section 34C, which gave the rule of speciality a textual basis and codified what the courts had hitherto understood merely as an implied term of all extraditions. This legislative affirmation was not only to give some certainty to the legal framework but also to indicate to the potential treaty partners whether to negotiate extradition arrangements with India or not an important signal indeed.[1021]

The decades that followed saw the negotiation and ratification of an ever-growing system of bilateral treaties that gradually broadened the number of countries to whom the Act had extradition regime of the treaty-based regime. Both treaties had their own versions of extradition formulae, definitions of extraditable offences, treatment of the political offence exception, and procedural conditions of extradition requests, and created a complex and internally inconsistent treaty environment that the general provisions of the Act did not always place in its proper perspective. The UN Model Treaty on Extradition[1022] had a normative impact on these bilateral negotiations, offering a model on the provisions of the treaties that attempted to reconcile the interests of the requesting and requested states and to introduce the human rights protection into the extradition process, although it did not bind any state. The development of bilateral treaties has, ironically, brought some form of disintegration to the extradition regime of India, since the different terms of the different treaties provide different obligations that the domestic statute was not crafted to address with the fine-tuning.

The rise of transnational financial crime as a law enforcement issue of concern in the late 1990s and early 2000s revealed a major gap in the structure of the Act. Economic crimes such as large-scale fraud, money laundering, breach of fiduciary duty, and the evasion of regulatory obligations posed specific challenges in the extradition context, both due to the complex evidentiary nature of such crimes and due to the

1020 The Extradition (Amendment) Act, No. 66 of 1993 (India).

1021 Geoff Gilbert, Transnational Fugitive Offenders in International Law: Extradition and Other Mechanisms 12 (1998).

1022 G.A. Res. 45/116, United Nations Model Treaty on Extradition (Dec. 14, 1990).

dual criminality requirement placing a technical burden where the statutory definition of the corresponding offence varied across jurisdictions. The most important response to this challenge by the legislature was the Fugitive Economic Offenders Act, 2018[1023], which was a complementary rather than an amending instrument. The 2018 Act established a system of attachment and confiscation of domestic property of individuals who escape India to evade prosecution of economic crimes involving over one hundred crore rupees, as the formal extradition procedure was not seen to be adequate in deterring flight by rich individuals having large offshore holdings. Nevertheless, critics have found serious shortcomings in the practical application of the Act: tracing and seizure of assets located in offshore jurisdictions is challenging, and the connection between the Act and the asset recovery provisions of the Extradition Act itself is conceptually underexplored, which should be bridged by a thorough review of the Act.

The issue of non-refoulement, or the idea that a state should not hand over an individual to a territory where they may be at risk of persecution, torture or other serious human rights abuses, is perhaps the greatest conceptual gap in the current framework of the Act, though, unlike most modern extrad Although the Supreme Court has been willing to apply Article 21 in the extradition context, the lack of a statutory provision leaves the system open to doctrinal uncertainty and excessively dependent upon ad hoc judicial intervention, which cannot extend the same system-wide protection to all individuals subjected to extradition processes, whether or not they can afford to bring forward sophisticated constitutional challenges.

The fact that the Indian extradition is a procedural process, which is marked by delays, is another structural issue of significant practical significance. The inquiry, to be made by a Magistrate, as required by the Act, in Section 10, and the consideration, to be made by the Central Government, in Section 11, and the subsequent accessibility of judicial review, in the High Court and Supreme Court, has provided a procedural route, which, though intended to offer the individual a strong protection of his rights, has in practice caused delays that greatly hamper the efficient working The case of Bhavesh Jayanti Lakhani v. State of Maharashtra[1024] demonstrates how repeated cycles of judicial challenge can prolong proceedings over a long period, during which time fugitives may be free on bail, witnesses may have their memory lapsed, documentary evidence may lose its freshness, and the prosecuting state may lose its commitment to prosecute. These procedural features taken together with the fact that the Act does not directly articulate the need to incorporate modern human rights protections points to a dual inefficiency in its framework that is both over-procedural in its delay-producing aspects and under-protective in its fundamental rights-destroying aspects, a two-fold ineffectiveness that can only be properly addressed through wholesale reform of the law.

FINDINGS AND SUGGESTIONS

The above discussion provides a number of legal and policy implications. The Extradition Act, 1962, which forms the basis of the Indian system of international cooperation in the fight against crime, has structural tensions which have grown over the 60 years of its existence. The chronological definition of extraditable offences, the lack of a statutory non-refoulement clause, the procedural design that facilitates systemic delay without corresponding rights protection, and the undertheorised interaction between the Act and other laws including the Fugitive Economic Offenders Act, 2018 all contributes to a framework that has become increasingly insufficient to the requirements of modern transnational criminality and the changing norms The inability to eliminate these structural

[1023] The Fugitive Economic Offenders Act, No. 17 of 2018, India Code (2018).

[1024] Bhavesh Jayanti Lakhani v. State of Maharashtra, (2009) 9 S.C.C. 551 (India).

shortcomings, even after many years of the existence of the Act, is indicative of a larger trend of ad hoc legislative reaction which has dominated the attitude of India to extradition reform during the post-independence era.

It is quite remarkable how the judiciary has added to the extradition statute, but this is not a permanent replacement of such a law. The interpretive broadening of the procedural protections and internationalisation of the constitutional structure the decisions in Abu Salem, Daya Singh Lahoria and Sarabjit Rick Singh have been welcome to fill significant gaps, but have done so in a way that creates doctrinal uncertainty and unpredictability-both conditions that are hostile to the successful workings of any extradition system. International criminal law scholars have long acknowledged that extradition systems are best served by ensuring that they offer a combination of procedural certainty and substantive rights protection and that neither of the two dimensions can be compromised at the expense of the other without undermining the legitimacy of the system and its ability to inspire the trust of the treaty partners of India.

It is against this background that some directions of reform are subject to serious legislative consideration. The definition of extraditable offences as a schedule-based definition should be replaced with a conduct-based test with a dual criminality requirement, which makes new types of transnational criminality, such as cybercrime, cryptocurrency fraud, and environmental crime among them, automatically fall under the scope of the Act without necessitating a periodic and reactive update to the Act. A non-refoulement statutory provision, based on similar provisions in the Canadian and the United Kingdom systems, is needed to give textual guidance to the human rights safeguards already derived by uncertain constitutional interpretation, to extend protection to those who are not able to afford quality legal services. Procedural reforms to minimize delay (such as sensible statutory time limits to the completion of the Magistrate inquiry, and the consideration of surrender decisions by the Central Government) should be adopted without eliminating sufficient possibilities of judicial review of decisions involving fundamental rights. India should also consider seriously joining the United Nations Convention against Torture and should pass the domestic law to provide full effect to the obligations of extradition related obligations thus assumed. Lastly, the operational and conceptual linkage between the Extradition Act and the Fugitive Economic Offenders Act, 2018 needs to be rationalised and codified in a comprehensive legislative review that puts both laws in the context of a principled framework of international criminal collaboration one that will command the good will of treaty partners in India and respond to the aspirations of a constitutional order that understands the rule of law in all its dimensions.

References

i. Bassiouni, M. Cherif. International Extradition: United States Law and Practice. 6th ed. Oxford: Oxford University Press, 2014.
ii. Blakesley, Christopher L. & Otto Lagodny. Finding Harmony Amidst Disagreement Over Extradition, Jurisdiction, the Role of Human Rights, and Issues of Extraterritoriality Under International Criminal Law. 24 Vand. J. Transnat'l L. 1 (1991).
iii. Dugard, John & Christine Van den Wyngaert. Reconciling Extradition with Human Rights. 92 Am. J. Int'l L. 187 (1998).
iv. Gilbert, Geoff. Transnational Fugitive Offenders in International Law: Extradition and Other Mechanisms. Dordrecht: Martinus Nijhoff, 1998.
v. Nicholls, Clive, Clare Montgomery & Julian B. Knowles. The Law of Extradition and Mutual Legal Assistance. 3rd ed. Oxford: Oxford University Press, 2013.
vi. Shearer, Ivan Anthony. Extradition in International Law. Manchester: Manchester University Press, 1971.

vii. Van den Wyngaert, Christine. The Political Offence Exception to Extradition: How to Plug the 'Terrorist's Loophole' Without Departing from the Fundamental Guarantees of International Law. 19 Int'l J. Comp. & Applied Crim. Just. 297 (1995).
viii. Abu Salem Abdul Qayoom Ansari v. State of Maharashtra, (2011) 11 SCC 214.
ix. Bhavesh Jayanti Lakhani v. State of Maharashtra, (2009) 9 SCC 551.
x. Constitution of India, 1950.
xi. Daya Singh Lahoria v. Union of India, (2001) 4 SCC 516.
xii. European Convention on Extradition, Dec. 13, 1957, E.T.S. No. 024.
xiii. Extradition Act, 1870, 33 & 34 Vict., c. 52 (UK).
xiv. Extradition Act, 1962, No. 34, Acts of Parliament, 1962 (India).
xv. Extradition (Amendment) Act, 1993, No. 66, Acts of Parliament, 1993 (India).
xvi. Extradition Act, S.C. 1999, c. 18 (Can.).
xvii. Extradition Act, 2003, c. 41 (UK).
xviii. Fugitive Economic Offenders Act, 2018, No. 17, Acts of Parliament, 2018 (India).
xix. Human Rights Act, 1998, c. 42 (UK).
xx. The Indian Extradition Act, 1903, No. 15, Acts of Parliament, 1903 (India).
xxi. R v. Bartle and the Commissioner of Police for the Metropolis ex parte Pinochet, [1999] 2 All ER 97 (HL).
xxii. R (Mallya) v. Westminster Magistrates' Court, [2020] EWHC 1782 (Admin).
xxiii. Sarabjit Rick Singh v. Union of India, (2008) 2 SCC 417.
xxiv. Soering v. United Kingdom, App. No. 14038/88, 11 Eur. Ct. H.R. 439 (1989).
xxv. State of West Bengal v. Jugal Kishore More, AIR 1969 SC 1171.
xxvi. United Nations Convention Against Corruption, Oct. 31, 2003, 2349 U.N.T.S. 41.
xxvii. United Nations Model Treaty on Extradition, G.A. Res. 45/116, U.N. Doc. A/RES/45/116 (Dec. 14, 1990).

INSTITUTE OF LEGAL EDUCATION

GRASP - EDUCATE - EVOLVE

INSTITUTE OF LEGAL EDUCATION

(Managed by L TO J LAW ASSOCIATES)

NO. 08, ARUL NAGAR, SEERA THOPPU,
MARUDHAANDA KURICHI, SRIRANGAM - 620102,
TAMILNADU, INDIA.

ISSN 2583-2344

9 772583 234004