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Extradition Law of India: Its treaties and arrangements with other countries

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Advancements in technology and transportation have created a gateway for fugitive criminals to abscond to other countries to evade trial and punishment. It has become easier for them to find loopholes in the present laws and manipulate them to their own will. Possessing a system that enables to capture and prosecution of these criminals has been a boon to the justice system. The extradition process aids a country to maintain law and order and stands as a reminder to those who try to evade the law that they would eventually be brought to justice. This article aims to inquire into the extradition treaties and agreements that India has entered into with foreign countries and describe the challenges it faces with surrendering offenders.

Keywords: *extradition, treaty, technology, criminal justice system.*

INTRODUCTION

With the rapid progress in technologies and transportation, transnational crimes have become a common occurrence. Sometimes people commit offenses and flee to another country to avoid prosecution. This hampers the justice process of a country as it loses its jurisdiction to punish the offender. To maintain healthy relationships between countries and ensure proper enforcement of the law, countries enter into extradition treaties and agreements. Black's Law

Dictionary¹ defines extradition as, “*The surrender by one state or country to another of an individual accused or convicted of an offense outside its territory and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender.*” Extradition is a process wherein one state hands over a criminal offender or an accused to another state. When a person has been convicted of an offense or is accused of an offense in one country and flees to another country to escape trial or punishment, the latter would have to surrender the offender at the request of the former.

International law does not mandate extradition. States enter into bilateral treaties, agreements, and arrangements to extradite fugitives without complications. In the absence of any treaties or arrangements, any multilateral conventions that the states are part of which institutes a duty to extradite will be considered as the same. Currently, India has extradition treaties with 48 countries including Malawi, Lithuania, and Afghanistan being the most recent treaties. It has also signed extradition agreements with Antigua & Barbuda, Armenia, Croatia, Fiji, Italy, Papua New Guinea, Peru, Singapore, Sri Lanka, Sweden, Tanzania, and New Zealand.² In India, extradition is governed by The Extradition Act 1962 and its preamble explains extradition as “*An Act to consolidate and amend the law relating to the extradition of fugitive criminals and to provide for matters connected therewith or incidental thereto.*”³ Therefore, India's extradition process is as per the provisions of the Extradition Act 1962 and must be read along with the various treaties and agreements it has entered into.

AN OUTLINE OF EXTRADITION IN INDIA

Currently, India has extradition treaties with 48 countries and agreements with 9 countries. Extradition treaties are legally enforceable but agreements are not. In India, the processing of extradition requests is done through the Ministry of External Affairs. Such matters are handled by the CPV division.⁴ Any law enforcement agency or competent courts at the time of an

¹ *Black's Law Dictionary* (4th Edition) 698

² 'Useful Links' (Ministry of External affairs) <<https://www.mea.gov.in/leta.htm>> accessed on 16 January 2022

³ Extradition Act, 1962

⁴ 'Extradition' (Embassy of India) <<https://www.indianembassyqatar.gov.in/Extradition>> accessed on 16 January 2022

appropriate complaint case can make an extradition request.⁵ Extradition Treaty has been defined in the Extradition Act 1962 under section 2(d) as, “*a Treaty, Agreement or Arrangement made by India with a Foreign State, relating to the Extradition of fugitive criminals and includes any treaty, agreement, or arrangement relating to the Extradition of fugitive criminals made before the 15th day of August 1947, which extends to and is binding on, India.*”⁶The Act specifies that the treaty, arrangement, or agreement which has been made has a retrospective effect. Extradition is settled between countries by forming a bilateral treaty or an arrangement. If no specific extradition treaty or arrangement exists between two countries, then any international convention they have entered into will be considered as an extradition treaty given the offense in question has been specified in the international convention.

International conventions that India is a part of:⁷

- United Nations Convention Against Transnational Organized Crime, 2000,
- United Nations Convention Against Corruption, 2003,
- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substance, 1988 (Vienna Convention),
- Hague Convention,
- SAARC Convention,
- Commonwealth Scheme (Harare Scheme)

India has entered into many bilateral treaties and agreements but they are nowhere close to other countries when compared. For instance, the UK and the US have over 100 treaties, China has over 50, and Russia has over 49. It is of concern that India does not have extradition treaties with several neighboring states like China, Pakistan, Myanmar, and others due to political tensions, difficult terrain, harsh climate, and poor border infrastructure.⁸ This allows offenders to cross borders and place a hamper on the extradition process. India has succeeded

⁵ *Ibid*

⁶ Extradition Act, 1962, s 2(d)

⁷ ‘Guidelines on Mutual legal assistance in Criminal matters’ (Ministry of Home Affairs, 2019) <[ISII_ComprehensiveGuidelines16032020.pdf \(mha.gov.in\)](https://www.orfonline.org/wp-content/uploads/2018/11/ORE_Issue_Brief_270_Extraditions.pdf)> accessed on 16 January 2022

⁸ Aarshi Tirkey, ‘India’s challenges in extraditing fugitives from foreign countries’ (Rf Issue Brief, 28 November 2018) <https://www.orfonline.org/wp-content/uploads/2018/11/ORE_Issue_Brief_270_Extraditions.pdf> accessed on 16 January 2022

in extraditing 62 people out of 21 countries in the past few years. From the UK, India has extradited Grant Duncan Alexander for committing offenses against children and Samirbhai Vinubhai Patel for murder.⁹ Out of the 62 extradited since 2002, 54 of them are Indian nationals and 3 of them are British. The list also includes one US citizen, one Australian, one Canadian, one Israeli, and one Thai.¹⁰ Sanjay Bhandari, a fugitive arms dealer who was wanted for money laundering and tax evasion has fled to the United Kingdom. India is attempting to extradite him with the coordination of the Ministry of External Affairs.¹¹ Suresh Pujari, who is wanted in several cases of extortion across Mumbai, Thane, and Karnataka, was extradited from the Philippines.

India was successful in its attempt to extradite Christian Michel James from the United Arab Emirates, a British national who was accused of cheating and criminal conspiracy in the Agusta Westland case.¹² India also extradited Mohammed Yahya from Indonesia for cheating, forgery, and criminal conspiracy.¹³ Others extradited include Kumar Krishna Pillai from Singapore for the attempt to murder and Abdul Wahid Siddibapa from UAE for waging war against India.¹⁴ Sanjeev Kumar Chawla who was accused of cricket match-fixing was cleared by the court for extradition.¹⁵ It had earlier been denied in 2017 by the UK government citing the deplorable prison conditions of New Delhi's Tihar Jail. Similarly, India has been engaged in various other extradition processes in the past decade.

⁹ Rakesh Dubbudy, '62 fugitives extradited to India since 2002, another 110 yet to be extradited' (*Factly*, 20 April 2017) <<https://factly.in/62-fugitives-extradited-to-india-since-2002-another-110-yet-to-be-extradited/>> accessed on 16 January 2022

¹⁰ *Ibid*

¹¹ 'Indian agencies prepare for extradition hearing of fugitive arms dealer Sanjay Bhandari in UK next month' (ANI, 12 January 2022) <<https://www.aninews.in/news/national/general-news/indian-agencies-prepare-for-extradition-hearing-of-fugitive-arms-dealer-sanjay-bhandari-in-uk-next-month20220112155010/>> accessed on 16 January 2022

¹² IANS, '18 fugitives brought back to India in five years' (*Business Standard*, 20 March 2019) <[18 fugitives brought back to India in five years | Business Standard News \(business-standard.com\)](https://www.business-standard.com/news/india/18-fugitives-brought-back-to-india-in-five-years)> accessed on 16 January 2022

¹³ *Ibid*

¹⁴ *Ibid*

¹⁵ 'UK court clears extradition of alleged bookie Sanjeev Chawla' (*Hindustan Times*, 7 Jan 2019) <<https://www.hindustantimes.com/cricket/uk-court-clears-extradition-of-alleged-bookie-sanjeev-chawla/story-tZKt7IaxzAprXogV7OBHcP.html>> accessed on 16 January 2022

THE PROCESS OF EXTRADITION IN INDIA

Extradition of fugitives in India is governed by the Extradition Act 1962 which lays down a consolidated process of extraditing fugitives to and from India. Generally, a formal extradition request is made by a state, seeking to extradite the fugitive criminal, to the state where he has fled. Section 2(f) of the extradition Act 1962 defines fugitive criminal as, "fugitive criminal means a person who is accused or convicted of an extradition offense within the jurisdiction of a foreign State and includes a person who, while in India, conspires, attempts to commit or incites or participates as an accomplice in the commission of an extradition offense in a foreign State"¹⁶

Only those offenses which have been approved in the treaty between countries would amount to an extradition offense and when there is no treaty, the extradition offense must be punishable with imprisonment for 12 months as per Indian or foreign courts. Extradition offense has been defined in the Act under section 2(c), "extradition offense means—(i) in relation to a foreign State, being a treaty State, an offense provided for in the extradition treaty with that State;(ii) in relation to a foreign State other than a treaty State an offense punishable with imprisonment for a term which shall not be less than one year under the laws of India or a foreign State and includes a composite offense"¹⁷

EXTRADITION OF A FUGITIVE CRIMINAL TO A FOREIGN STATE

A request for the surrender of the fugitive criminal is made to the central government by the foreign state's government or by diplomatic personnel of the foreign state or in other ways specified in the agreement or the treaty made between the states. The central government, on receiving the request issues an order to the magistrate. The magistrate on receiving the order investigates the issue and inquiries into the evidence against the accused submitted by the requesting state and the evidence which proves that the offense is an extradition offense and not a political offense. A political offense is not considered as a ground for extradition.

¹⁶ Extradition Act, 1962, s 2(f)

¹⁷ Extradition Act, 1962, s 2(c)

If the magistrate rules in favour of the accused, the requisition of the foreign state is dismissed. If ruled in favour of the requesting state then the fugitive criminal is put in prison and a report is made to the central government containing details of the proceedings. The central government, if satisfied with the report which criminalizes the accused, issues a warrant to remove the criminal and deliver them to the appropriate authorities of the requesting state. In the case of *P. Pushpavathy v Ministry of External Affairs*¹⁸, a magistrate issued an arrest warrant against a fugitive criminal after conducting a necessary inquiry as per the directions of the Central Government. Here the arrest is not unlawful and therefore an issuance of a writ of Habeas Corpus cannot stand.¹⁹

The evidence submitted to the magistrate is as follows:

Exhibits, dispositions, or the copies of the exhibits and dispositions, official certificates of facts, judicial documents stating facts are used as evidence if they are duly authenticated.²⁰ Warrants, dispositions, statements of an oath, certificates of, or judicial documents stating facts of convictions before any court are considered to be authenticated when they are signed by a judge, magistrate, or officer of the state or by the oath of some witness or by the official seal of a Minister of the State.²¹

If the Central Government thinks that the reason for requisition is trivial, or made with mala fide intention or for some political agenda, they can cancel any warrant issued or endorsed under this Act and the accused to be discharged. If requisitions for surrender are made from more than one state, the fugitive will be surrendered to the state the government thinks fit. If the nature of the offense committed by the fugitive criminal is political and the request for surrender has been made to punish him for a political offense instead of a criminal offense then he cannot be surrendered on requisition. If a fugitive criminal has been put in prison to await his surrender to the foreign state and he has not been conveyed out of India within 2

¹⁸ *P. Pushpavathy v Ministry of External Affairs* [2013] Cri LJ 4420

¹⁹ Shivam Goel, 'Extradition Law: Indian Perspective' (SSRN, 07 January 2016)

<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2712453> accessed on 16 Jan 2022

²⁰ Extradition Act, 1962, s 10(1)

²¹ *Ibid*

months, the High Court, on an application made by the fugitive or on behalf of him, can order the discharge of the prisoner.²²

A fugitive criminal can avail bail just as any person accused of committing an offense in India according to the provisions of the Code of Criminal Procedure, 1973. The magistrate will have the same powers and jurisdiction as a court of session under that code. An extradition offense committed by any person in a foreign state will be considered as to have been committed in India and such person is liable to be tried in India for that offense. On an urgent request of the foreign state, a provisional arrest warrant can be issued for the immediate arrest of the fugitive criminal on the order of the central government.²³ The fugitive criminal will be released if no request for his surrender has been received within 60 days from the date of his arrest.²⁴ If an extradition offense is punishable by death in India but not in a foreign state and the fugitive criminal has absconded to such a state, then he will only be liable for life imprisonment for that offense.²⁵

In the case of *Mohammed Zubair Fauzal Awam v State (Represented by the Inspector of Police & Another)*,²⁶ In this case, an arrest warrant was issued by a court in Sri Lanka against a Sri Lankan residing in India with the permission of respective authorities. Subsequently, a case was registered for his arrest and registration of FIR under section 41(1)(g) of the Criminal Procedure Code, 1973²⁷. Section 41(1)(g) enables the police to arrest without a warrant in certain circumstances. The court in this instance held that for the arrest to be valid there should have been a formal request from the Sri Lankan government for the extradition of the person. Since it was done without a formal requisition, the arrest was held to be invalid.

²² The Extradition Act, 1962, s 24

²³ The Extradition Act, 1962, s 34B

²⁴ *Ibid*

²⁵ Extradition Act, 1962, s 34C

²⁶ *Mohammed Zubair Fauzal Awam v State (Represented by the Inspector of Police & Another)*, [2011] Cri LJ 297

²⁷ Code of Criminal Procedure, 1973, s 41(1)(g)

CHALLENGES FACED BY THE INDIAN GOVERNMENT IN EXTRADITION OF FUGITIVE CRIMINALS

India has created comprehensive machinery for the extradition of fugitive criminals. But even with such an elaborate mechanism, India has had a low success rate as compared to other countries in the extradition process. There have been a lot of delays and rejections which has allowed a lot of criminals to walk free.

Poor prison conditions and humanitarian approach of countries: Earlier the foreign court had adopted an approach of 'non-inquiry'²⁸ wherein they do not enquire into the treatment and conditions of the fugitive criminals after their extradition. Now, they have adopted a more humanitarian approach which has resulted in the reduction in extradition of individuals. The courts will inquire into the requesting state's agenda for the fugitive, after his extradition to the requesting state. Article 3 of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment states that "No State Party shall extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture".²⁹ India has poor prison infrastructure which has been a cause for refusal of extradition. The UK courts opine that the Indian prison conditions fail to achieve the objective of rehabilitation for the fugitive criminal due to its deplorable conditions. For the extradition of Vijay Mallya, the London Court required India to produce a clip of the Mumbai Arthur Road Jail.³⁰

Vijay Mallya had fled to the UK over a default on Kingfisher Airlines Loans. He was arrested by UK officials due to an extradition request made by India. He was charged under the fugitive economic offender's Act 2018 for defrauding 17 banks for an amount of approximately Rs. 9000 Crore. He like many fugitive criminals took the opportunity of the UK's humanitarian policy which disallows the extradition of criminals to inhuman treatments in the recipient

²⁸Aarshi Tirkey (n 8)

²⁹Aftab Alam 'Why 'Deplorable' Prison Conditions In India Are Major Hurdle To Bringing Back Mallya' (*The Wire*, 20 September 2018) <<https://thewire.in/rights/india-prisons-uk-vijay-mallya>> accessed in 16 January 2022

³⁰ *Ibid*

country. Article 3 of ECHR says that the prison conditions have to be explored before the court decides on the extradition of the fugitive criminal.³¹

Double jeopardy: Another challenge India faces is that the principle of double jeopardy cannot be imposed on fugitive criminals. According to the principle, a person cannot be tried for the same offense twice. The United States – India treaty disallows double jeopardy. Due to this, India was denied the extradition of David Headley, the principal offender of the Mumbai terror attack in 2008 as he was already punished under American law with 35 years of imprisonment.³²

Dual criminality: The principle of dual criminality means the offense committed by a fugitive criminal has to be considered as an offense in both States. This allows the other state to refuse the extradition of the criminal if the act committed by him is not considered an offense by them. But due to socio-cultural differences between India and other foreign nations, there may be discrepancies between their laws. What is considered an offense in India might not be considered an offense in another state. So, the foreign country may evoke the principle of criminality to refuse any extradition request.

Rule of Specialty: According to this rule, a person can only be tried for an offense cited in the extradition request. This has created a challenge for India in various circumstances. In the case of *Vinay Mittal v Union of India*³³, the court held that a person cannot be arrested for an offense other than the extradition offense for which he was surrendered.

Other procedural discrepancies in the submission of the extradition request, corrupt practices of police officials and other authorities, delays in submitting evidence, fabricating documents, etc. have also resulted in the rejection of the extradition requests of India.

³¹ *Ibid*

³² Vijaita Singh, 'India to press U.S. for Headley's extradition' (*The Hindu*, 28 December 2018) <<https://www.thehindu.com/news/national/india-to-press-us-for-headleys-extradition/article8034693.ece>> accessed 16 January 2022

³³ *Vinay Mittal v Union of India* [2019]

CONCLUSION

Regardless of its challenges, extradition is essential for upholding law and order in countries. Its existence gives hope that despite territorial boundaries and restrictions every fugitive criminal will be punished for his crime. India can improve its rate of extradition by strengthening and participating in both bilateral treaties and multilateral conventions. India must indulge in reciprocation with its treaty states. When a state supports India with an extradition request, India must also reciprocate that support by accepting its request. This ensures good diplomatic relations between countries and creates a strong alliance for the future. India should familiarize itself with the procedural laws and regulations of other countries. This enables them to reduce any delays that arise due to the incompetence of authorities and investigational delays. India must try to upgrade its prison facilities so that fugitives don't use it as an excuse to evade prosecution. Accelerated development in technology and travel cannot be immobilized. As long as there is advancement, fugitives will find new and more disruptive methods to abscond from the law. So, it is up to the country to strengthen its laws, focus on its inadequacies and create a reliable and guaranteed machinery to carry out its extradition process.