

THE EFFICACY OF EXTRADITION LAWS IN INDIA

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Abstract

Crimes have crossed territorial borders. It's easier for a fugitive to commit crime in his native country and flee to another country to escape prosecution. Globalization and technological advances have provided better connectivity, which is exploited by the fugitives to flee the country after committing crime and find a safe haven in another country. India's record has been abysmal in utilizing Extradition Laws in bringing back criminals. This Paper tries to assess the efficacy of the Extradition laws and find out the challenges faced by India in executing these. It also makes suggestions to improve the Law to book the culprits and bring them to justice.

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INTRODUCTION

In the olden days it was very difficult to leave one's own country and visit another. Getting information and processing papers took a long time. Globalization and technological advances have provided better connectivity. It is easier to get information and even to process papers sitting at home. This is exploited by fugitives to flee the parent country after committing a crime to find a safe haven in another country, in order to escape prosecution. Extradition Laws are in existence but they are not enough to bring back the culprits as they may have taken citizenship of the country they have fled to. Political offenders do not come under the purview of extradition and these people are generally granted asylum. Other social and judicial factors play an important role in taking the final decision. The process is intricate and the existing laws are not enough to extradite the fugitive criminals and try them in a Court of Law. A treaty should be in existence for extradition and the principle of reciprocity is generally followed but many a times it's not possible to have treaties with all the nations and to accede to their requests. Human Rights concern and Laws of the foreign jurisdiction also affects extradition. There are many cultural instances as well affecting extradition i.e. exploitation for dowry which is unique to India and which would not be considered a crime in other countries. Hence, getting criminals offending this Law in India would be difficult as they would not be extradited by other countries. As it is, India's record has been abysmal in utilizing Extradition Laws in bringing back criminals. Extradition process is complex but necessary to provide timely justice. It also serves as a deterrent against criminal fugitives who undermine the Laws of the land and flee to other countries to escape prosecution. India was not successful in bringing back Vijay Mallya, David Headley, Nirav Modi, Mehul Choksi, Lalit Modi etc., hence, it is necessary to look at the problems that the Law faces in bringing back criminals to India.

What is Extradition?

Extradition is derived from the words 'ex' and 'traditum' which means 'delivery of criminals' or 'handover of criminals'¹. Oppenheim says --- "Extradition is a delivery of an accused or a convicted individual to the state where he is accused of, or has been convicted of

¹ Agarwal, I. (2016). Extradition Under International Law-Aid for the Angst of Fugitives. *International Journal of Law and Legal Jurisprudence Studies*, Vol 3(3) pp. 453-466

a crime, by the state on whose territory he happens for the time to be.”²

The extradition of a person is governed by the Indian Extradition Act, 1962. The basis could be a treaty between India and a foreign country. Information regarding the fugitive criminal is received from the affected country through the General Secretariat of the ICPO – Interpol in the form of Red Notices.

Extradition Rules and Regulations

Extradition Treaty

It is a legal framework which states the principles and rules of extradition governing the return of fugitive criminals to the land where the crime was committed. India has bilateral Extradition Treaties with 43 countries³ (Table 1). This treaty contains a list of crimes for which a fugitive will be surrendered and also the condition that the punishment is more than one year imprisonment. The crime must be recognized in both the countries. This is known as Dual Criminality Treaty.

Table 1. Extradition Treaties with other countries

Azerbaijan (2013)	Egypt (2008)	Nepal (1953)	Tajikistan (2003)
Australia (2008)	France (2003)	Netherlands (1898)	Thailand (2013)
Bahrain (2004)	Germany (2001)	Oman (2004)	Tunisia (2000)
Bangladesh (2013)	Hong Kong (1997)	Poland (2003)	Turkey (2001)
Belarus (2007)	Indonesia (2011)	Philippines (2004)	UAE (1999)
Belgium (1901)	Iran (2001)	Russia (1998)	UK (1992)
Bhutan (1996)	Kuwait (2004)	Saudi Arabia (2010)	Ukraine (2002)
Brazil (2008)	Malaysia (2010)	South Africa (2003)	USA (1997)
Bulgaria (2003)	Mauritius (2003)	South Korea (2004)	Uzbekistan (2000)

² ‘International Law’ Vol. I, Ninth Edition (1992), p. 949.

³ Ministry of External Affairs, Available at <https://mea.gov.in/leta.html>; (Accessed 21 October 2019)

Canada (1987)	Mexico (2007)	Spain (2002)	Vietnam (2011)
Chile (1897)	Mongolia (2001)	Switzerland (1880)	Malawi (2018) ^{VI}

Extradition Arrangements

India also has extradition arrangements with 10 countries⁴ (Table 2) but these arrangements are not binding and do not impose any legal obligations. Requests can be made to these States for extradition of fugitives and they may be considered according to the Laws of their country and on the Principle of Reciprocity from the 'Requesting State.'

Table 2. Extradition Treaties with other countries

Sweden (1963)	Fiji (1979)
Tanzania (1966)	Italy (2003)
Singapore (1972)	Antigua & Barbuda (2001)
Papua New Guinea (1978)	Croatia (2011)
Sri Lanka (1978)	Peru (2011)

Multilateral Conventions

India has signed several Conventions that provide a legal framework for Extradition to minimize transnational crimes like Terrorism, Hijacking, Money Laundering, Drug Peddling etc.⁵ (Table 3)

Table 3. Extradition Conventions

1	United Nations Convention Against Corruption (2003)	Article 44
2	United Nations Convention against Transnational Organized Crime (2000)	Article 16
3	United Nations Convention Against Illicit Traffic in Narcotic Drugs and	Article 6

⁴ CBI, Available at <http://www.cbi.gov.in/interpol/extradition.php#pos> (Accessed 21 October 2019).

⁵ United Nation Convention Against Transnational Organized Crime And The Protocols Thereto

	Psychotropic Substances (1988)	
4	International Convention for the Suppression of the Financing of Terrorism (1999)	Article 11
5	International Convention on the Suppression of Terrorist Bombings (1997)	Article 9
6	Convention for the Suppression of Unlawful Seizure of Aircraft (1970)	Article 8

EXTRADITION PROCESS⁶

The Ministry of External Affairs (MEA) is responsible for sending Extradition requests to other countries. The Ministry is intimated by the investigating agencies like the CID or Court of Law. When the foreign government receives this request it begins the enquiry and the Magistrate issues an Order to extradite the fugitive. If the fugitive challenges the Order then the matter is brought before the foreign courts for judicial review. If the foreign government finalizes the Extradition Order then it makes arrangement with the Requesting State to send back the fugitive.

CHALLENGES TO EXTRADITION⁷

There are laid out formats for Extradition under Treaties that are signed. The offences are listed and through this 'list system' fugitives can be extradited. In newer treaties the crime should be listed in both the countries. In spite of this, the process of Extradition throws various challenges as discussed below:

- a) **Political and Religious Offenders:** Extradition is not granted for political offences. Extradition is not granted if there is potential discrimination on the basis of religion, race and nationality. There is no clarity as to what constitutes political and religious offence in the law of extradition.
- b) **Death Penalty:** Extradition is not granted if death penalty would be imposed but for heinous crimes death penalty is still practiced and favored.
- c) **Double Jeopardy:** Extradition is not granted in the cases of 'Double Jeopardy' that is a person cannot be punished for the same crime twice. This is the reason why David Headley, the American terrorist involved in 29/11 Mumbai attacks have not

⁶ CBI; Available at <http://www.cbi.gov.in/interpol/extradition.php#pos> (Accessed 21st October 2019)

⁷ Tirkey A. (2018). India's Challenges in extraditing fugitives from foreign countries; Available at <https://www.orfonline.org/research/indias-challenges-in-extraditing-fugitives-from-foreign-countries-45809/>; (Accessed 21st October 2019)

been tried in India as he is undergoing trial for killing six Americans⁸. He is responsible for the deaths of 140 Indian Nationals.

- d) **Human Rights Violation and Jail Conditions:** Some Human Rights violation like torture or denial of fair trial, cruel and inhuman treatment etc. may not allow Extradition. America does not enquire regarding the conditions prevalent in the Requesting Country but UK and Europe have rejected Extradition on Human Rights concern. Over crowded Prisons with dilapidated infrastructure, poor hygiene and amenities, police torture and violence, misconduct etc. are categorized under inhuman or degrading treatment and Extradition requests are denied. British Courts rejected Extradition of Sanjeev Kumar Chawla⁹ and Netherland refused to extradite Neils Holck accused in Purulia Arms Drop Case due to Prison conditions in India as a Human Rights violation¹⁰. Vijay Mallay's lawyers argued that Arthur Road Jail's condition is also inhabitable and degrading¹¹. Hence, these countries prove a safe haven for fugitives. Protection of Human Rights of fugitives sometimes is an obstacle to Extradition.
- e) **Absence of bilateral Extradition Treaties:** India does not have bilateral Extradition Treaties with its neighbours like Pakistan, Afghanistan, Myanmar, China etc. The borders are porous and the climate very harsh. To add to it the terrain is also very difficult hence, it is very easy for fugitives to cross borders after committing crime without detection and bringing them back is a herculean task.
- f) **Rule of Specialty:** It is mandatory to take legal action against a fugitive criminal only for the offences he was extradited for. This rule is known as Rule of Specialty. Sometimes the fugitive commits fresh crime which needs investigation. India brought Abu Salem from Portugal and the law enforcement agencies framed additional charges on him for his role in 1993 Mumbai Serial Blast¹². Portugal widely criticized it and the treaty seems to have been revoked. Computer crimes can be committed anytime and anywhere.

⁸ David Headley: India for US Mumbai attacker's extradition", BBC News

⁹ UK rejects two Indian extradition requests", The Times of India, November 5, 2017

¹⁰ Danish court says Davy cannot be extradited to India, Livemint, June 30, 2011.

¹¹ Extradition hearing: U.K. judge asks for video of jail where Vijay Mallya would be held", The Hindu, July 31, 2018.

¹² Charul Shah, "Gangster Abu Salem moves European Court of Human Rights to cancel his extradition to India", Hindustan Times, February 10, 2018.

- g) **Financial Irregularities are treated as Civil Offences:** Financial irregularities are treated as civil offence rather than a criminal one as it is not an immediate threat to foreign nations. There is no urgency to return these criminals to the requesting state. This is the reason why Nirav Modi and Mehul Choksi who duped PNB to INR 140 billion are not back in India.
- h) **Different Domestic Laws in Countries:** Domestic Laws are different in different countries and the documentary proofs as evidence must comply with such Laws. The documents required by foreign countries, differ. There can be delays in investigation, misbehavior by Police, fabricated documents, incorrect affidavits etc. These may only be detected at the end when a judicial review is going on in a foreign land. When issues fall below standards of the foreign countries, Extradition can be denied.

The UK Court denied the request for Extradition of an Indian couple Jatinder and Asha Rani Angurala, criticizing¹³ CBI for delays and the case has been pending for 25 years. No request for Extradition has been received from investigating agencies for the return of Lalit Modi, the Chairman of Indian Premier League accused of financial irregularities in the tournament in 2009¹⁴. There are factors involved in Extradition over which India could exercise control. It could adopt a targeted approach to resolve these issues.

- i) **The Burden of Costs:** The cost incurred in buying the tickets and bringing back the fugitive has to be borne by the Requesting Country and sometimes the cost can be high. Extradition of a fugitive is not undertaken because of financial constraints.
- j) **Use of Executive Discretion:** In matters of Extradition, the decision taken by the Secretary is final in spite of Extradition Laws. This leaves one with no option.
- k) **Effect of State Succession on Extradition Treaties:** What happens when a Parent State refuses to recognize the official status of the Succeeding State? What if that State becomes part of another State which the Parent State has refused to recognize?

A new Treaty will be required before Extradition. The time, expense and hassles

¹³ Supra note 10

¹⁴ No formal extradition request submitted against Lalit Modi to MEA”, Hindustan Times, May 14, 2017

involved may decrease the Parent State's desire to continue with Extradition.

- l) **Effect on Treaty during War:** War terminates all existing obligations between the two countries.

SUGGESTED REFORMS

The challenges facing the Extradition Law have been discussed above. Some reforms are suggested below to make the Law more effective so suit the transnational nature of the crime the criminals have perfected.

- a. **Issues with Dual Criminality:** Issues like dowry are cultural and cannot be found in dual criminality list⁷ so this should not be a reason for non-extradition of fugitives. If the offence is not a crime under the Law of both the nations, a separate list of such areas should be made. Person should be extraditable for all crimes and offences punishable by Law.
- b. **Multilateral Treaties are Recommended:** India has only 43 bilateral Extradition Treaties as compared to the following countries:

US UK- 100	Russia – 64	Canada 49	China- 50
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India should increase Extradition Treaties. In fact, India should have multilateral Treaties based on geographical or political affinities e.g. Arab League Extradition Agreement. In this case the withdrawal of a single party will not dissolve the agreement.

- c. **Creation of a Single World Convention on a Global Scale:** A single world convention on Extradition should be created on the global scale to prevent abuse of the system. The convention will work as a watch dog against the integrity of the system paying greater attention to individual rights and liberties. It should also cater to grant Extradition even when a Treaty is not signed.
- d. **Initiating Strict Preventive Law and Policy Measures:** India should come up with strict preventive law and policy measures to prevent offenders from committing crimes and escaping to safe havens. They must be deterred in the parent country itself.

- e. **Using Diplomatic Skills and Bilateral Negotiations:** Diplomacy can come in handy when Rules and Laws are not that stringent and bilateral negotiations will certainly help in getting the criminals extradited.
- f. **Prison Conditions should be changed:** Prison conditions in India are stated as inhuman by developed nations and requests for Extradition are not granted. Hence, Prison conditions must be changed. Police handling and behaviour should adhere to accepted standards. Fugitives who have not committed violent crimes can be detained in well maintained Prisons. Slowly systematic Prison reforms can be introduced.
- g. **Establishing a Central Agency like FBI:** Extradition is a complex process and takes a lot of time. A central agency on the lines of FBI can be set up to expedite the cases and manage Extradition in India. Rejection of requests can be mitigated by providing expert legal advice, assistance on drafting, certification and translation of evidence.

CONCLUSION

India must introduce these reforms to get full results from Extradition Laws. India has suffered heavy financial losses on account of financial frauds by Indian fugitives like Lalit Modi, Vijay Mallaya, Nirav Modi, Mehul Choksi etc. because of Extradition Laws that could be twisted. The time is ripe to understand the modus operandi of the criminals and frame stringent Extradition Laws to bring them to justice as well as sew the loopholes aiding fugitives take undue advantage of the existing laws.