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CRITICAL EVALUATE EXTRADITION LAWS OF INDIA ALONG WITH SUITABLE SUGGESTIONS

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Abstract

Extradition laws play a vital role in ensuring justice by facilitating the transfer of fugitives between countries. In India, the Extradition Act, 1962 governs this process, establishing guidelines for extradition treaties and procedural requirements. However, the system faces significant challenges, including delays, political considerations, dual criminality issues, and concerns about human rights violations. These challenges often result in foreign jurisdictions hesitating to extradite individuals to India due to apprehensions about prison conditions and judicial delays.

This paper critically examines the effectiveness of India's extradition laws by analysing prominent cases and identifying procedural and diplomatic hurdles. The paper suggests reforms such as strengthening bilateral treaties, expediting judicial processes, improving prison conditions, and enhancing diplomatic cooperation. These measures aim to create a more efficient and credible extradition framework, enabling India to tackle transnational crime more effectively while upholding international legal standards.

1. Introduction

Extradition is an important mechanism in international law, facilitating the transfer of a fugitive from one sovereign jurisdiction to another for criminal prosecution or sentencing. India's extradition laws, governed by the Extradition Act of 1962, have played a crucial role in dealing with cross-border criminal activities. However, in light of increasing transnational crimes, terrorism, and economic offenses, the effectiveness of these laws has been called into question.¹

Extradition is a legal process whereby one country surrenders an accused or convicted person to another country where they are charged with criminal offenses or where they have been

¹ Bhardwaj, R. (2018). "India's Extradition Law and its Compatibility with International Norms," Indian Journal of International Law, Vol 58, No. 2, pp. 205-221.

convicted and fled justice. It plays a crucial role in international law and justice, ensuring that offenders do not escape prosecution or punishment by crossing borders. In India, extradition is governed by the Extradition Act, 1962, which outlines the process, requirements, and limitations associated with extraditing individuals to or from foreign countries.

As cross-border crimes and international fugitives become more common, the relevance of robust extradition mechanisms has grown. While India has made considerable strides in streamlining its extradition process, issues like political interference, delays, and lack of uniformity still hinder the law's full potential.

This paper aims to critically evaluate the legal framework of extradition in India and suggest reforms to align it with contemporary demands of international criminal justice. It seeks to critically evaluate the extradition laws of India, examining its current framework, limitations, and how these laws compare to international standards. Further, the paper proposes potential reforms to improve the efficacy and fairness of India's extradition process.

2. The Extradition Act, 1962

The Extradition Act, 1962, is the primary legislation governing the extradition of individuals to and from India. The Act applies to all individuals, regardless of nationality, and enables India to enter into bilateral extradition treaties with other countries.² The two primary conditions under which extradition can occur include:

India can extradite individuals to countries with which it has an extradition treaty. As of 2024, India has signed extradition treaties with over 48 countries and extradition arrangements with around 12 countries.³

Key Features of the Extradition Act

1. Section 2(d)⁴ of The Indian Extradition Act 1962: This section defines an 'Extradition Treaty' as "a Treaty or an Agreement made by India with a Foreign State, relating to the extradition of fugitive criminals which extends to and is binding on India." Extradition treaties are traditionally bilateral in character.⁵

² Singh, G. (2020). "Extradition and Human Rights in India," Asian Journal of International Law, pp. 300-315.

³ Ministry of External Affairs, Extradition from India, GOV'T OF INDIA, <https://www.mea.gov.in/extradition-from-india.htm> (last visited Nov. 28, 2024).

⁴ The Indian Extradition Act 1962, Section 2(d).

⁵ Indian Extradition Act 1962.

2. Principle of Reciprocity: In cases where no treaty exists, extradition can occur on the basis of reciprocal agreements or understanding between two countries, although this is rare and limited by the lack of formal procedures.⁶
3. Dual Criminality: For extradition to be valid, the offense for which extradition is sought must be considered a crime in both the requesting and requested countries.
4. Rule of Specialty: The individual extradited can only be prosecuted or punished for the crime for which their extradition was sought.
5. Human Rights Protections (concerns): The Act prevents extradition if the requested individual may face persecution, discrimination, or inhumane treatment in the requesting country. This is particularly important in cases involving capital punishment or unfair trials.⁷
6. The Double Jeopardy Principle: A person who has previously been charged with and found guilty of the same crime is protected by the principle of double jeopardy and cannot be extradited. No person tried and found guilty of a crime once may be extradited for the same offense, with the exception of the sentencing time having passed.⁸
7. Protection Against Political Extradition: Individuals cannot be extradited for political offenses under the Indian Act. Offenses under India's extradition treaties typically involve serious criminal acts, including terrorism, money laundering, and other serious crimes.⁹
8. Nodal Authority: The Ministry of External Affairs' Consular, Passport and Visa Division oversees the administration of the Extradition Act and handles both incoming and departing requests for extradition.
9. Implementation: Under-investigation, under-trial, and convicted criminal cases may give rise to extradition. When a case is being investigated, the law enforcement agency must take great care to make sure that it has sufficient preliminary evidence to support the charge in front of the foreign state's courts.¹⁰

⁶ Investigations Review, Extradition: India, GLOBAL INVESTIGATIONS REVIEW, <https://globalinvestigationsreview.com/insight/knowhow/extradition/report/india> (last visited Nov. 23, 2024).

⁷ Ghosh, M. (2021). "Challenges in Extradition from India: A Legal and Procedural Analysis," *Economic and Political Weekly*, Vol. 56, No. 7, pp. 45-51.

⁸ *Supra* 2 at 2.

⁹ Indian Extradition Act 1962, Section 31.

¹⁰ *Supra* 1 at 1.

Process of Extradition in India

The extradition process begins with the requesting state submitting an extradition request to India. Once the request is received, the Indian government, through the Ministry of External Affairs, evaluates whether the conditions for extradition are met. If the request satisfies legal requirements, the government issues an extradition warrant, and the courts become involved to assess the merits of the case.¹¹

The process for that criminal to enter India from the territorial state officially begins when the Consular, Passport and Visa (CPV) Division of the Ministry of External Affairs (MEA), GOI receives a request from the legally qualified Magistrate in India subsequent to the establishment of a case against the fugitive.¹²

The magistrate sends the request, relevant paperwork, and an arrest warrant with an open date. The request is sent to the territorial state via diplomatic channels and then received by an inquiry magistrate.¹³

Process of extradition of a criminal to India:¹⁴

1. Extradition Request

- The Government of India, typically through its Ministry of External Affairs (MEA), makes an official extradition request to the foreign country where the accused is residing. This request is generally initiated at the request of law enforcement agencies in India.
- The request is made under the provisions of a bilateral extradition treaty, a multilateral treaty, or the principle of reciprocity (if no treaty exists).

2. Grounds for Extradition

- The person sought must be charged with an extraditable offense. Most extradition treaties specify a list of offenses or outline that the act must be a crime in both countries (known as dual criminality).
- The crime must not be of a political nature or fall under exceptions like persecution

¹¹ R.K. Dixit, The Extradition Process in India: An Overview, *Journal of Indian Law and Society*, 3(2), 2016, at 45-60.

¹² Sarthak Gupta, A Comprehensive Study of Extradition Law in India, SCC Online (May 3, 2020), <https://www.sconline.com/blog/post/2020/05/03/a-comprehensive-study-of-extradition-law-in-india/>.

¹³ Ministry of External Affairs, Extradition Process, Government of India, <https://www.mea.gov.in/extradition-process.htm>.

¹⁴ M.C. Mehta, *Extradition Law in India: Comparative Analysis* 35 (2018).

for race, religion, or nationality.

3. Review by the Requested Country

- Once the request is received, the foreign country's government reviews the request to ensure it complies with local laws and the extradition treaty.
- The judicial authorities in that country may hold an extradition hearing to determine whether the evidence presented is sufficient to justify the extradition.
- The accused may be allowed to challenge the extradition in the foreign court on grounds such as lack of dual criminality or concerns about human rights violations.

4. Decision by the Requested Country

- After the judicial review, the decision to extradite is usually made by the government of the requested country (typically the foreign ministry or a designated authority).
- If the decision is favourable to India, the accused is handed over to Indian authorities.

5. Transfer to India

- Once the decision to extradite is approved, arrangements are made for the physical transfer of the individual to India.
- Indian law enforcement or diplomatic officials usually accompany the person back to India.¹⁵

3. Critical Evaluation of Indian Extradition Laws

1. Inadequate Treaty Network

India's extradition network, while growing, is still limited compared to other major countries. This limitation hampers India's ability to bring fugitives to justice from several countries, especially those that lack formal arrangements. Many offenders, particularly those involved in financial crimes or terrorism, exploit these gaps by seeking refuge in jurisdictions without treaties.¹⁶

2. Prolonged Extradition Process

Extradition cases in India often face significant delays, primarily due to bureaucratic procedures and extensive legal challenges. High-profile cases, such as those involving Vijay Mallya and Nirav Modi, have highlighted the lengthy and often cumbersome nature of the extradition process, leading to frustration among law enforcement agencies and the

¹⁵ Know-How: Extradition – India, GLOBAL INVESTIGATIONS REV., <https://globalinvestigationsreview.com/insight/know-how/extradition/report/india> (last visited Dec. 28, 2024).

¹⁶ Law Commission of India, Report No. 230: Reforms in the Extradition Law, (Aug. 2009), <https://lawcommissionofindia.nic.in/reports/report230.pdf>.

public. The extradition process in India is frequently delayed due to prolonged judicial procedures and political factors. For example, it took several years for India to successfully extradite notorious criminal Abu Salem from Portugal due to complex legal battles.¹⁷

3. Dual Criminality Principal Limitations

The requirement of dual criminality can sometimes impede the extradition process. For example, offenses that may not be classified as crimes in India, such as certain forms of financial fraud or regulatory violations, can result in the refusal of an extradition request. This limitation reduces the effectiveness of the process and allows offenders to escape justice.¹⁸

4. Human Rights Concerns

India's extradition process is deeply rooted in concerns over human rights violations. While this is a commendable aspect, it often leads to challenges in extraditing individuals to countries where the death penalty is prevalent or where political and judicial systems may not meet the highest standards of fairness. Such concerns have been raised in extradition cases involving India and the United Arab Emirates (UAE) or Saudi Arabia, where human rights conditions are sometimes questioned.¹⁹

5. Political Considerations

In some instances, political considerations have influenced the extradition process, causing delays or refusals. India has faced difficulties in extraditing individuals who claim political asylum or persecution in their home countries. This often complicates matters, especially in cases involving politically sensitive issues or high-profile figures.²⁰

6. Lack of Modernization

India's extradition laws are based on the 1962 Act, which has not been significantly updated to reflect modern-day concerns, particularly regarding cybercrimes, transnational terrorism, and economic offenses. The rise in white-collar crimes and the increasing use of digital platforms for fraud require amendments that address these contemporary issues.²¹

¹⁷ Dr. Ramesh & S.B. Boregowda, A Critical Study on Evolution of Extradition Laws in Indian Context, *Int'l J. Legal Res. & Stud.*, (2020).

¹⁸ Beyond Borders: Navigating Extradition in Indian Law, IIPRD (Aug. 23, 2024), <https://www.iiprd.com/beyond-borders-navigating-extradition-in-indian-law/>.

¹⁹ Nandita Haksar, Extradition and Human Rights: The Indian Perspective, 25 *J. Indian L. Inst.* 137 (1983).

²⁰ V.K. Bansal "Law of Extradition in India", LexisNexis Butterworth's Wadhwa. Nagpur, 1st Ed. 2008, P.1

²¹ *Supra* 10.

4. Comparison with International Standards

Several countries, including the United States and the United Kingdom, have modernized their extradition frameworks to reflect current geopolitical challenges and criminal trends. For instance, the United States employs a more robust network of bilateral treaties and a clearer judicial process, while the European Union relies on the European Arrest Warrant (EAW) to streamline extradition among member states.²²

The Geneva Conventions and their Additional Protocols: A number of bilateral and multilateral extradition treaties have been signed by most nations; the United States of America has extradition treaties with over 100 nations; other nations have extradition provisions incorporated into their penal codes. The Geneva Conventions and their Additional Protocols (1949) were among the first conventions that dealt with extradition to some extent; they recognized the state's cooperation in extradition.²³

United Nations Model Treaty on Extradition (1990): International cooperation in extradition-related situations was strongly emphasized in the UN Model Treaty on Extradition, which contains 18 Articles covering topics like the rule of specialization, the reasons for rejecting extradition requests, etc., but it prioritizes the discretion of the territorial States. The Model

Treaty on Extradition is an important tool for international collaboration in criminal cases because of its structure and contents.²⁴

The United Nations Model Law on Extradition (2004): The UN Model Treaty serves as the basis for the UN Model Law, which aims to enhance international collaboration. It also aims to act as an extra legislation for countries that do not have extradition treaties. Extradition is prohibited under Sections 5²⁵ and 6²⁶ of the Model Law if the territorial state believes that the fugitive is being tortured or punished because of his caste, ethnic origin, race, or any other reason.²⁷

²² M.C. Mehanathan, *Law of Extradition in India and International Perspectives* (2d ed. 2021).

²³ [Model Law on Extradition – United Nations and the Rule of Law](#).

²⁴ R.C. Hingorani, *India's Approach to Extradition Treaties: Challenges in Compliance with International Standards*, 33 *J. Indian L. Inst.* 45 (2015).

²⁵ The United Nations Model Law on Extradition (2004), Section 5.

²⁶ The United Nations Model Law on Extradition (2004), Section 6.

²⁷ Khurana & Khurana, *Analysis of Indian and the UK's Extradition Laws*, (Oct. 31, 2023), <https://www.khuranaandkhurana.com>.

India's framework, by comparison, is more decentralized, reliant on diplomatic negotiations, and lacks harmonization with international norms.²⁸ For example, extradition cases between India and the UK often face delays due to differences in their legal systems and the absence of clear, binding guidelines.²⁹

5. Judicial Interpretation of Extradition Laws in India

The judiciary plays a pivotal role in shaping India's extradition law. Courts in India have often dealt with the balance between safeguarding individual rights and ensuring that international obligations are met.³⁰ Notable cases include:

Emperor v. Vinayak Damodar Savarkar (1910): In 1910, Vinayak Damodar Savarkar, enroute to India for trial, escaped to France while aboard the British vessel "Morea". A French policeman mistakenly captured and handed him over to British authorities without following extradition procedures. France later requested Savarkar's return for formal extradition, but Britain refused. The case went to the Permanent Court of Arbitration in Hague, which acknowledged the French policeman's error but rejected France's demand for a new extradition process due to the lack of applicable international law.³¹

The Extradition case of Surjit Badesha and Malkit Kaur Sidhu: The extradition case involves the 2000 murder of Jaswinder Kaur Sidhu (Jassi), a Canadian citizen of Indian origin, allegedly orchestrated by her mother, Malkit Kaur, and uncle, Surjit Badesha, after she secretly married Sukhwinder Singh in India. Indian authorities sought their extradition from Canada. The Canadian Minister of Justice ordered their surrender, with assurances from India against mistreatment. Surjit and Malkit appealed, citing concerns about the death penalty, fair trial, prison conditions, and insufficient evidence. The Canadian Supreme Court ruled that India's assurances were adequate, allowing their extradition, noting diplomatic repercussions if India failed to comply.³²

The Extradition of Kishan Singh: Kishan Singh, an Indian citizen turned UK citizen in 2015, was involved in an international drug syndicate supplying narcotics to various countries,

²⁸ Vijayashri Sripathi, *The Evolution of Extradition Law in India: A Comparative Perspective*, 47 J. Indian L. Inst. 255, 262 (2005).

²⁹ A. Shearer "Starks international law" oxford university press. 11th Ed.1994, P.317

³⁰ R.K. Raghavan, *Challenges in Extradition from a Law Enforcement Perspective*, 38 Nat'l L. Sch. India Rev. 18, 22 (2019).

³¹ (1911)13BOMLR296.

³² *India v. Badesha* [2017] 2 SCR 127.

including India and the UK. Coordinating with Indian athlete Harpreet Singh, his activities were monitored by Delhi Police, leading to his arrest in London. Despite being granted bail, the strong evidence presented resulted in his extradition to India. The Westminster Magistrate's Court rejected his claims of inhumane conditions in Tihar Jail and unfair trial concerns. His appeals to the London High Court and European Court of Human Rights were also dismissed, and he was extradited to India.³³

Sambasivam v. Union of India (1991): The Supreme Court emphasized the importance of adhering to international treaty obligations.³⁴

Abu Salem Extradition Case: In this case, the Supreme Court of India ruled in favour of extradition despite concerns raised about the death penalty, thus setting a precedent for such high-profile cases.³⁵

6. Suggestions for Reform

1. Expansion of Extradition Treaties

India should seek to expand its network of extradition treaties, particularly with countries where offenders frequently seek refuge. Formalizing agreements with nations in Latin America, Africa, and Asia will reduce the loopholes exploited by criminals.³⁶

2. Revisiting the Dual Criminality Principle

With the rise of new forms of transnational crime, including cybercrimes and financial fraud, the definition of offenses needs to be revisited. India should push for international consensus on the recognition of these crimes to make extradition more feasible.³⁷

3. Addressing Human Rights Concerns

To address concerns about the fair treatment of prisoners and human rights issues, India should consider amending its laws to explicitly ensure protection of human rights during the extradition process. This could be achieved by ratifying relevant international treaties or revising domestic prison conditions and legal procedures.³⁸

³³ Kishan Singh v. The State.

³⁴ The Secretary v. Mr. Sambasivam A.S.No.488 of 2015,

³⁵ 2011 (11) SCC 214.

³⁶ Soli Sorabjee, Extradition Law Needs Urgent Reform, Indian Express (Jan. 5, 2020), <https://indianexpress.com/article/opinion/columns/extradition-law-needs-urgent-reform-6203387/>.

³⁷ Desai, P. (2022). "Extradition in India: A Roadmap for Reform," National Law Review, outlines procedural inefficiencies and suggests aligning Indian extradition law with international human rights standards.

³⁸ Vandana Felicia Golya, Need for Reforms in India's Extradition Laws, The Leaflet (Feb. 12, 2021), <https://theleaflet.in/need-for-reforms-in-indias-extradition-laws/>.

4. Streamlining the Process

The government should implement reforms to streamline the extradition process by reducing bureaucratic delays and enhancing cooperation between judicial and diplomatic agencies. A specialized body to handle extradition cases could improve efficiency and expedite proceedings. To reduce the delays in extradition processes, the government should establish a specialized extradition tribunal or fast-track courts. These would focus exclusively on extradition-related cases, allowing for faster adjudication.³⁹

5. Modernization of the Act

The Extradition Act, 1962, requires significant modernization of the act to address contemporary challenges. Amendments should be made to include provisions on cybercrimes, digital fraud, and other transnational crimes that have emerged since the original law was enacted. India should focus on enhancing its mutual legal assistance (MLA) agreements with other nations to exchange evidence and support in criminal matters. Additionally, leveraging technology for real-time tracking and reporting can make the process more efficient.⁴⁰

6. Strengthening Judicial Oversight

Greater judicial oversight of extradition proceedings, coupled with clearer timelines and accountability mechanisms, can reduce delays and enhance transparency. Courts should have explicit guidelines on how to deal with complex cases involving international law, human rights concerns, and political asylum claims.⁴¹

7. Harmonization with International Law

India should work towards greater harmonization with international legal standards, such as those laid out by the United Nations and the International Criminal Court. Incorporating best practices from global extradition frameworks will improve India's ability to collaborate with foreign countries effectively.⁴²

³⁹ Law Commission of India, Report No. 241: Need for a Fresh Look at the Law of Extradition, (July 2012), <https://lawcommissionofindia.nic.in/reports/report241.pdf>.

⁴⁰ Karnika Seth, Extradition Laws in India: Time for a Change, Legal Services India (2019), <http://www.legalserviceindia.com/legal/article-3252-extradition-laws-in-india-time-for-a-change.html>.

⁴¹ "Report of the Law Commission of India on Extradition Law" (Law Commission of India, Report No. 203, 2008), which provides an analysis of issues and recommends amendments to the Extradition Act, 1962.

⁴² Aparna Viswanathan, India's Extradition Regime: Challenges and Solutions, Economic Times (Oct. 18, 2019), <https://economictimes.indiatimes.com/news/politics-and-nation/extradition-regime-challenges-and-solutions/articleshow/71653727.cms>.

7. Conclusion

India's extradition laws play a critical role in ensuring that fugitives are brought to justice and that international cooperation in criminal matters remains robust. However, the current framework suffers from significant limitations, including an inadequate treaty network, prolonged procedures, and outdated provisions. By modernizing the Extradition Act, expanding its treaties, and enhancing judicial processes, India can strengthen its extradition system to meet the evolving challenges of international crime and justice.

India's extradition laws provide a framework for international cooperation in criminal matters, but they also face significant challenges. From procedural delays to human rights concerns, India needs to modernize its extradition laws to meet the demands of a rapidly evolving global landscape. The expansion of bilateral treaties, modernization of legal provisions, and enhanced judicial efficiency are essential steps toward a more robust and effective extradition regime.

