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# **EXTRADITION UNDER INTERNATIONAL LAW: AN OVERVIEW OF BASIC PRINCIPLES, APPLICATIONS, AND CHALLENGES IN EXTRADITION LAW**

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## **ABSTRACT**

The Fugitive Offenders Act is currently gaining significant global attention due to the rapid increase in international crime and transnational organized crime. Extradition, derived from the Latin phrase "aut punier aut dedere" meaning "punish or surrender," forms the basis of this act. The importance of extradition laws lies in their role in extraditing and bringing to justice fugitive criminals who attempt to evade legal consequences. These laws are primarily based on bilateral or multilateral treaties, as well as specific domestic laws enacted by individual countries. This research primarily focuses on examining the fundamental principles and practical application of extradition law, as well as its position within international law. The study undertakes a critical analysis of the current progress of India's extradition law, its implementation, and the challenges it faces within the criminal justice system.

**Key words-** *Extradition, International Law, Fugitive criminals, Treaties, India*

## **INTRODUCTION**

Extradition refers to the process of transferring individuals accused or convicted of a crime from one jurisdiction to another. According to the definition provided by the Oxford Law Dictionary, extradition is when one state, under certain conditions, agrees to surrender a person accused or convicted of committing a crime within its territory to another state that has the authority to try and punish them. This involves the requested state complying with the demand for surrender. The jurisdiction where the suspect is located is commonly referred to as the "territorial state," while the jurisdiction where the crime was committed is known as the "requesting state." It is important to note that extradition is not exclusively governed by international law, but instead relies on bilateral and multilateral treaties as well as domestic legislation.

Extradition law can be considered dual in nature, as it is enforced through both domestic and international legal mechanisms. Decisions regarding the extradition of refugees are typically made by the domestic courts of the territorial state. However, these decisions have broader implications on the relationships between multiple states and, therefore, can be regarded as part of international law.

## **TREATIES AND NATIONAL LAWS**

Extradition law derives its principles from various sources, including conventions, regional treaties, and national legislation. While bilateral treaties have historically been utilized for extradition, the use of multilateral and regional treaties for this purpose has become increasingly common. A bilateral treaty refers to an agreement between two parties, which can be two states, two international organizations, or one state and one international organization. On the other hand, a multilateral treaty involves three or more sovereign states, wherein all parties make similar commitments. Furthermore, many states have enacted their own domestic extradition laws.

Extradition agreements are categorized based on the types of offenses for which individuals can be extradited. The first type is known as a "list treaty," which includes a specific list of offenses for which suspects can be extradited. This is the conventional and traditional approach. The second type is the "dual criminality treaty," which emerged in the 1980s. Under these agreements, individuals can be extradited if the offense carries a sentence of at least one year in both the requested and requesting countries.

## **PRINCIPLES OF EXTRADITION**

The law of extradition is governed by three major principles:

### **Principle of double criminality (dual criminality):**

According to this principle, the alleged act for which extradition is sought must be considered a criminal offense in both the territorial state (where the suspect is located) and the requesting state. The purpose of this principle is to ensure that if the act is not deemed an offense in the territorial state, extradition may be refused. It is not necessary for the offense to have the same name or identical elements in both states, but it should be recognized as a crime in both jurisdictions.

**Principle of Specialty:**

Under the principle of specialty, the extradited individual should only be prosecuted or tried for the alleged offense(s) specified in the extradition request. In other words, the requesting state must clearly mention the specific offense(s) committed by the fugitive in the territorial state for the extradition to be valid. This principle prevents the requesting state from trying the individual for unrelated offenses or extending the scope of prosecution beyond what was initially agreed upon.

**Political Offense Exception:**

Extradition generally does not apply to political offenses. Offenses committed for political purposes, motivated by politics, or connected to political activities are typically considered non-extraditable. This exception is recognized in many extradition treaties and domestic laws. The prohibition of extradition for political offenses is primarily based on human rights considerations. Human rights conventions, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights, explicitly state that political opinion should not be a basis for discrimination. The right to seek asylum is also provided to individuals who are considered fugitives of political crimes under Article 14 of the UDHR.

In summary, the principles of double criminality, specialty, and the political offense exception play significant roles in the law of extradition, ensuring that extraditions are based on recognized criminal offenses, have clear limitations on prosecution, and respect human rights.

## **EXTRADITION LAW IN INDIA**

In India, the extradition of fugitive criminals is regulated by the Indian Extradition Act of 1962, which provides a comprehensive legal framework for both inbound and outbound extraditions. This legislation ensures that the entire extradition process adheres to established procedures and principles.

The extradition process in India primarily relies on bilateral extradition treaties that have been established between India and other countries. These treaties form the foundation for cooperation and mutual legal assistance in matters of extradition. Currently, India has entered into extradition treaties with a substantial number of nations, totaling 48 countries. These treaties delineate the specific terms and conditions under which fugitives can be extradited between the respective countries.

The Indian Extradition Act of 1962 outlines the legal requirements and procedures that must be followed when making extradition requests. It encompasses aspects such as the formal submission of requests, the evaluation of evidence, and the issuance of arrest warrants. The Act also includes provisions for conducting extradition hearings, allowing for judicial review, and safeguarding the rights of the accused throughout the extradition process.

By adhering to the Indian Extradition Act and the bilateral extradition treaties, India actively contributes to international endeavors aimed at combating transnational crimes and ensuring that fugitive criminals face justice. The Act, along with the existing treaties, serves as essential instruments in facilitating the extradition process, fostering collaboration among nations, and upholding the fundamental principles of justice and the rule of law.

## **CHALLENGES IN EXTRADITION LAW**

The Extradition Act remained unchanged until the onset of World War II. However, the subsequent rise in drug trafficking, transnational crime, terrorism, cybercrime, and white-collar crime, coupled with advancements in mass media and transportation, has significantly impacted the global landscape. In order to address these challenges and combat transnational crimes effectively, it has become crucial to establish robust extradition laws. These laws are developed and widely accepted through bilateral and multilateral treaties, regional agreements, and domestic legislation.

In contemporary times, the evolution of international law and the emphasis on human rights present various challenges to the extradition process. These challenges can be categorized as follows:

### **(A) Political Offences:**

Extradition treaties typically include an exception for "political crimes," but the lack of a clear definition for such offenses makes it difficult to distinguish between acts of terrorism and political crimes. This poses challenges for the judiciary in determining the extradition eligibility of individuals involved in politically motivated acts.

### **(B) Granting Asylum:**

Territory states often grant asylum to individuals involved in political, military, or religious crimes, which can hinder the indirect extradition process. Granting asylum may be perceived as a

means of shielding criminals from justice. Additionally, individuals who are nationals of the country providing asylum are generally not extradited, in line with principles recognized by public international law.

**(C) Irregular Rendition (Extraordinary Rendition or Forced Rendition):**

The United States government has engaged in irregular rendition practices with the cooperation of other countries. This involves the extrajudicial transfer of fugitives or suspects from one state to another. Informal extradition methods are employed, bypassing normal judicial procedures under international law. Such practices have been used to extradite individuals without adhering to the established extradition processes, leading to concerns regarding due process and human rights.

**(D) Human Rights Issues:**

While extradition itself is not considered a violation of human rights, human rights violations can occur during detention, prosecution, and sentencing in the extradition process. Striking a balance between national sovereignty and the protection of individual human and civil rights is paramount. Extradition treaties often incorporate mechanisms to safeguard human rights, such as prohibiting the imposition of the death penalty on extradited individuals. Exceptions to the political crimes doctrine, as well as the principles of double criminality and specialty, are also considered safeguards for the rights of extradited individuals. However, once extradited, the trial and sentencing fall under the jurisdiction of the requesting country, limiting the ability of sovereign states to ensure the protection of the rights of extradited criminals.

It is incumbent upon all states to uphold and protect the human rights and dignity of extradited individuals throughout the extradition process, recognizing their responsibility to maintain justice while respecting individual rights.

## **LANDMARK CASES**

❖ **Dr. Vijay Mallya v. State Bank of India**

One of the most prominent extradition cases in India involves Vijay Mallya, the businessman and owner of Kingfisher Airlines and United Breweries Holdings, Inc. Mallya had outstanding debts of over ₹6,000 crores to several Indian banks, including the State Bank of India and the Indian Overseas Bank. Fearing arrest, he fled from India to the United Kingdom in 2016. In 2017, India

made an extradition request to the UK authorities to bring Mallya back to India to face legal proceedings.

The extradition case of Vijay Mallya was presented before the Westminster Magistrate's Court in London. In 2018, the court ruled in favor of Mallya's extradition to India. Despite his subsequent appeal to the High Court of London, his appeal was dismissed. However, due to ongoing legal proceedings, Mallya has not yet been extradited back to India.

It is worth mentioning that in 2019, Mallya was designated as a "fugitive economic criminal" under the Fugitive Economic Criminals Act of 2018, highlighting the legal status assigned to him in India.

#### ❖ Nirav Modi's case

Nirav Modi, a renowned luxury diamond jewellery merchant, was at the center of a high-profile case in India. The Punjab National Bank (PNB) lodged a complaint with the Central Bureau of Investigation (CBI) in 2018, alleging that Mr. Nirav Modi and his wife, Mrs. Ami Modi, had engaged in fraudulent activities by obtaining fraudulent Letters of Understanding (LoUs) valued at ₹11,400 crores. These funds were subsequently transferred to fifteen fictitious overseas companies associated with him. The CBI conducted an investigation into the matter, and the Enforcement Directorate (ED) took possession of Nirav Modi's assets in India.

To evade legal proceedings, Nirav Modi fled to the United Kingdom and sought asylum there. In response to a request from India, Interpol issued a Red Corner Notice against him in 2018. Following this, a Westminster Court issued an arrest warrant for Nirav Modi, marking a significant step towards his extradition to India. The court has ordered his extradition, and it is expected to take place in 2021, subject to the legal process.

## **CONCLUSION**

The extradition process is renowned for its intricate and time-consuming nature, encompassing a range of legal and procedural complexities. Although binding treaty mechanisms provide a foundational structure, the practical implementation of extradition is often influenced by the domestic laws and policies of the requesting country. This is to be expected, as extradition ultimately rests on the sovereign decisions of individual states. Nevertheless, India retains the

authority to address specific facets of the extradition process. By placing emphasis on these areas and enacting necessary reforms, India has the potential to enhance its success rate in extraditing individuals sought for criminal offenses. Potential measures include streamlining procedures, ensuring adherence to international standards, and fostering closer collaboration with relevant authorities. Such actions can contribute to a more streamlined and efficient extradition system, bolstering India's capacity to bring fugitive criminals to justice.

