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# Extradition Law in India: A Legal Odyssey

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KRISHNA HARITWAL<sup>1</sup>

## ABSTRACT

*Globalisation and increased connectivity have made it easier for criminals to evade the reach of the Courts. Extradition is the surrender of a person accused or convicted of an offence committed within the jurisdiction of the requesting state, by the requested state based on the maxim 'Aut dedere aut judicare' which means either to extradite or prosecute. New international legal frameworks are being developed with an aim to enhance international responses to organised crimes, including terror crimes and drug trafficking etc. Extradition is that legal framework through which on the principle of reciprocity, mutual assistance and comity countries can bring such fugitives to justice.*

*This research paper aims to examine the Indian legislative framework on extradition and India's success rate in obtaining the return of fugitives along with a brief evaluation of challenges faced by India in extradition. The paper delves deeper into India's extradition treaties with countries like the United States of America, United Kingdom and United Arab Emirates. The methodology used for this paper is doctrinal research with empirical and comparative approach*

## I. INTRODUCTION

A person can escape to another state after committing a crime in his own state. Such cases are on the rise and have started to occur more frequently as a result of technological development and increased global connectivity. A question arises as to whether such a fugitive shall be tried in the country where he has fled away or in the country where the crime or an offence has been committed. Normally, a state finds itself in a difficult situation to punish a person who has committed the crime elsewhere primarily due to lack of jurisdiction and therefore, such persons are sometimes surrendered to the state where the crime has been committed. Such surrendering of a person accused or convicted is referred to as extradition.

Extradition is the delivery of an accused or a convicted individual to the state where he is accused of or has been convicted of a crime, by the state on whose territory he happens for the time to be.<sup>2</sup> The term 'Extradition' can be defined as the surrender of an individual by one nation or state to another nation or state where that individual is sought for trial or punishment for the

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<sup>1</sup> Author is a student at University of Mumbai Law Academy, Mumbai, India.

<sup>2</sup> Oppenheim's International Law, Vol I, 9<sup>th</sup> Edition (1992).

commission of a crime.<sup>3</sup> In the case of *'State of West Bengal V. Jugal Kishore More'*<sup>4</sup> the Hon'ble Supreme Court of India stated that extradition is found on the broad principle that in the interest of civilized communities, crime should not go unpunished and on that account, it is recognized as part of the comity of nations that one state should ordinarily afford the another state assistance towards bringing justice.

According to Black's Law Dictionary, extradition means the surrender by one State or country to another of an individual accused or convicted of an offence outside its own territory and within the territorial jurisdiction of the other, which, competent to try and punish him, demands the surrender.<sup>5</sup> The principle of extradition has been expressed by the maxim **'Aut dedere aut judicare'** meaning either to extradite or prosecute. This principle has been adopted in various International instruments, for instance in the Convention on Narcotic Drugs, 1961, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, Convention on Psychotropic Substances, 1971 and many more.<sup>6</sup>

Extradition in International Law is based on the principle of reciprocity. Extradition between countries is governed by treaties and international conventions to which both the countries are party to. With the changing times and changes in world order, extradition of criminals is affected by various factors. These factors include both legal and non-legal factors. The extradition of criminals requires cooperation between states in order to bring them to justice. The need for such a mechanism was felt when the criminals found it an easy escape to leave the country far away from the jurisdiction of the Courts. Extradition is an important aspect of international law as it helps in maintaining world peace and also assures justice to crime victims. It is an international process that involves various bodies and statutes. It involves treaties with other countries, local laws, international conventions, governments, the judiciary of the two countries, bilateral ties; etc. Extradition is established on the idea of comity and correspondence.<sup>7</sup>

### **Aims and Objectives**

1. To understand the Indian legislative framework on extradition.
2. To collect and analyse data on India's success rate in extraditing fugitives and to find out the challenges faced by the Indian Government in extradition.

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<sup>3</sup> The American Heritage Dictionary of English Language, (2022).

<sup>4</sup> State of West Bengal V. Jugal Kishore More, AIR 1969 SC 1171 : (1969) 1 SCC 440.

<sup>5</sup> Black's Law Dictionary, Centennial Edition (1891-1991), 6<sup>th</sup> Edition, p. 585.

<sup>6</sup> Dan E. Stigall, 'Ungoverned Spaces, Transnational crime and the Prohibition on Extraterritorial Enforcement Jurisdiction in International Law', International and Comparative Law, 2013 - accessed on 9.08.2023.

<sup>7</sup> Regina V. Governor of Belmarsh Prison, ex-parte Francis, [1995] 1 WLR 1121 : [1995] 1 WLR 1121.

3. To analyse the extradition treaties of India with the United States of America, United Kingdom and United Arab Emirates.

### **Literature Review**

The literature review of this paper is majorly focused on understanding the extradition law in India, its evolution and the other related aspects.

Chittella Venkataramana<sup>8</sup> considers the concept of extradition as an important aspect of international law concerning human rights. The paper studies in detail the evolution of extradition and its legal framework in India. The paper further explores the impact of human rights ideology, particularly with reference to torture and also studies the influence of human rights ideology on the legal institution of extradition. It lays down the major deterrent for countries considering India's request for extradition which is subjected to human rights with respect to torture.

Author Shivam Goel<sup>9</sup> in his paper expounds on the subject of extradition law and policy in India. The paper discusses various principles in extradition law viz. principle of speciality, principle of dual-criminality and principle of political exception. The paper also examines in detail the procedure of extradition followed generally and the procedure followed in India along with a brief evaluation of provisions of the Extradition Act, 1962. The paper also discusses various judicial pronouncements to understand the evolution of extradition law and the role of judiciary in India.

Prof. Dr. Ramesh and Prof. S.B. Boregowda's<sup>10</sup> paper delves into the crucial developments in extradition laws in India. The paper elucidates the rationale behind the adoption of extradition policies, the evolving global perspective on extradition and the impact of international agreements on this legal framework. It also discusses the success rate of India in extradition with the help of relevant data majorly focused on the number of fugitives extradited from the countries like United Kingdom, United States of America and United Arab Emirates. The paper also gives a brief analysis on the process of extradition and its objectives.

Aarshi Tirkey<sup>11</sup> through her paper gives a brief explanation about the challenges faced in

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<sup>8</sup> Chittella Venkataramana, 'Changing Dimensions of Extradition- A Study with Special reference to law, practice and experiences in India', submitted to Andhra University, Visakhapatnam for the award of Doctor of Philosophy of Law, 2013 accessed on 9.08.2023.

<sup>9</sup> Shivam Goel, 'Extradition Law: Indian Perspective', SSRN Electronic Journal, 10(6), 2016 accessed on 10.08.2023.

<sup>10</sup> Prof. Dr. Ramesh and Prof. S.B. Boregowda, 'A critical study on evolution of extradition laws in Indian context', International Journal of Legal Research and Studies, Vol. 5, Issue 1, 2020 accessed on 10.08.2023.

<sup>11</sup> Aarshi Tirkey, 'India's challenges in extraditing fugitives from foreign countries', Issue No. 270, November 2018, Observer Research Foundation accessed on 10.08.2023.

extraditing fugitives. The paper also highlights the success rate of India in extraditing criminals, procedural irregularities and bilateral relations of India with other countries. The Author also gives suggestions in order to boost India's success rate in extraditing criminals. Shrabana Chattopadhyay<sup>12</sup> also through her paper examined the concept of extradition laws in India with a special reference to judicial dicta. The paper also provides for critical analysis of India's success rate in extradition and the interplay between extradition and diplomacy, bilateral relations and domestic politics.

### **Hypothesis:**

1. The Extradition Act, 1962 requires reforms for the faster delivery of justice to crime victims.
2. Keeping in mind the success rate, the extradition policy of India does not render justice to crime victims.
3. India needs to find new ways to tackle legal and non-legal barriers while extraditing criminals.
4. India needs to have extradition relations with more countries.

## **II. INDIAN LEGISLATIVE FRAMEWORK ON EXTRADITION**

The Extradition Act, 1870<sup>13</sup> was applicable in British India, by virtue of a provision enshrined under Section 17 of the Act.<sup>14</sup> Later, India Extradition Act, 1903<sup>15</sup> was passed to govern the extradition of criminals in India. After Independence, various imminent questions arose concerning the validity of treaties made by British India with other countries. The question as to how far the extradition treaty of 1869 held between the State of Tonk and British India was affected due to the merger of the state in India was discussed in the case of '**Dr. Ram Babu Saksena V. The State**'.<sup>16</sup> In this case, the Supreme Court held that the treaty was ineffective. Later, the Fugitive Offenders Act, 1881 which was part of extradition law in India was declared inapplicable by the Hon'ble Supreme Court in the case of '**State of Madras V. C.G. Menon**'.<sup>17</sup>

The parliament therefore felt the need for a law to regulate extradition. This led to the passing

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<sup>12</sup> Shrabana Chattopadhyay, 'Refusal of Fugitive Criminals – Current Status of India through Extradition Treaty – A Critique', International Journal of Science and Innovation, Vol. 1, Issue 2, 2019 accessed on 12.08.2023.

<sup>13</sup> 33 and 34 Vict.c.52.

<sup>14</sup> §17: "This Act when applied by order in Council, shall unless it is otherwise provided by such order, extend to every British possession in the same manner as if throughout this Act the British possession were substituted for the United Kingdom or England, as the case may require."

<sup>15</sup> Act No. 15 of 1903.

<sup>16</sup> Dr. Ram Babu Saksena V. The State, AIR 1950 SC 155.

<sup>17</sup> State of Madras V. C G. Menon, AIR 1954 SC 517.

of the Extradition Act, 1962 which received Presidential assent on 15<sup>th</sup> September, 1962 and it came into force on 5<sup>th</sup> January, 1963. This Act governs the extradition of fugitives from India and from foreign countries outside the territorial jurisdiction of India. The Act consists of 5 chapters and 1 schedule and has been amended once in 1993.<sup>18</sup> The Act prescribes definition for fugitive criminals, extradition offence and extradition treaty among many others. This Indian legislative framework prescribes procedure for extradition of fugitive criminals from and to India as specified in Chapters II, III and IV of the Act. Chapter II and III provides for the procedure of extradition of fugitives to foreign state. The process of extradition of criminals to a foreign state starts with a formal request issued by such state.

A formal request for the surrender of fugitive criminals of a foreign state has to be made to the Central Government by:

1. The diplomatic representative of the foreign state at Delhi, or;
2. By the Foreign Government communicating with the diplomatic representative of the Central Government in that state, or;
3. By any other mode as settled by arrangement between the two states.

After the requisition so made, the Central Government may order the Magistrate to inquire into the case and issue a warrant.<sup>19</sup> The Magistrate can also act on its own, if it appears that a person within his jurisdiction is a fugitive criminal by issuing a warrant for arrest. However, after the arrest, the Magistrate shall forthwith report the issue of warrant to the Central Government justifying the arrest of such a person.<sup>20</sup> In case of, extradition of a fugitive to a foreign state with whom India has an extradition agreement the Magistrate can issue a provisional warrant.<sup>21</sup> After the trial is concluded the Magistrate shall pass an order specifying that the extradition should take place or not and shall submit all the material pieces of evidence along with a report to the Central Government. The Magistrate also has to submit a written statement of the person so arrested if any, for consideration of the Central Government. However, the final decision-making power lies on the Central Government.

Section 21 of the Act states that a person accused or convicted shall be tried for an offence:

1. In relation to which he was surrendered by the requested state.
2. Any lessor offence proved for the purpose of securing his surrender or return.

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<sup>18</sup> Act No. 66 of 1993.

<sup>19</sup> § 6 of the Extradition Act, 1962.

<sup>20</sup> § 9 of the Extradition Act, 1962.

<sup>21</sup> § 16 of the Extradition Act, 1962.

3. In respect to which the foreign state has given consent.

This Section highlights the principle of speciality which is one of the principles of extradition law. However, such a principle was not followed in the landmark case of Abu Salem. Abu Salem was one of the most wanted terrorists in India. He was sentenced to 4 years of imprisonment by the Portugal Court in a forged passport case. In 2005, after he completed his sentence, the Portugal Court passed an extradition order on the assurance given by the Indian Government that he won't be punished with death penalty and imprisonment of more than 25 years. After he was extradited, the Central Bureau of Investigation (CBI) framed charges of murder and extortion against him which is punishable with imprisonment for life or a death penalty. The Supreme Court of Portugal held such charges as a violation of the extradition order. The Supreme Court of India in 2022, in a plea on violation of this order held that the Government of India is bound by its commitment.<sup>22</sup> The Act also prescribes a list of offences which should not be considered as offences of political nature.

By studying this Act, it can be pointed out that the role of the Central Government is very crucial in the extradition of fugitives as the final decision-making power lies on the Central Government. Also, the Act does not set out appeal provisions so that the arrested individual can appeal against the extradition order of the Magistrate. However, the High Court can on the basis of an application discharge a person so apprehended if he is not surrendered within two months of committal under Section 24 of the Act.

### **III. INDIA'S SUCCESS RATE IN EXTRADITING CRIMINALS**

Extradition serves as a crucial element in fostering strong bilateral relationships between nations, functioning as a potent instrument to combat crimes across border thereby serving justice to the crime victims. Extradition treaties provides for a legal framework for extradition of fugitives between two countries. Other form of mechanism is in the form of an arrangement. Apart from treaties, extradition arrangements are non-binding on party nations. Various international conventions such as the United Nations Convention Against Corruption, 2003, Convention on Narcotic Drugs, 1961 etc. can also serve as legal framework for extradition of fugitives if both the countries involved are signatories to these conventions.

India has extradition treaties with 48 countries and arrangements with 12 countries.<sup>23</sup> These numbers are significant as it describes India's strong diplomatic relations with other countries.

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<sup>22</sup> "Abu Salem must be released, says Supreme Court", available at <https://www.livemint.com/news/india/abu-salem-must-be-released-says-supreme-court-1165719203686.html> - accessed on 13.08.2023.

<sup>23</sup> Countries with whom India has treaties/arrangements, <https://www.mea.gov.in/leta.htm> - accessed on 16.08.2023.

However, when compared with the countries like United States of America (109) and United Kingdom (84, 74 in force),<sup>24</sup> it can be concluded that India needs to enter into more extradition treaties with other countries in the world. Also, it has to be noted that India does not have any extradition relations with its neighbouring countries like Pakistan and China. Following is the list of countries with whom India has extradition treaties and arrangements:

**Table 1.1 Countries with which India has Extradition Treaties<sup>25</sup>**

| Sr. No. | Country     | Year of Treaty |
|---------|-------------|----------------|
| 1.      | Afghanistan | 2016           |
| 2.      | Australia   | 2008           |
| 3.      | Azerbaijan  | 2013           |
| 4.      | Bahrain     | 2004           |
| 5.      | Bangladesh  | 2013           |
| 7.      | Belgium     | 1901           |
| 8.      | Bhutan      | 1996           |
| 9.      | Brazil      | 2008           |
| 10.     | Bulgaria    | 2003           |
| 11.     | Canada      | 1987           |
| 12.     | Chile       | 1897           |
| 13.     | Egypt       | 2008           |
| 14.     | France      | 2003           |
| 15.     | Germany     | 2001           |
| 16.     | Hong Kong   | 1997           |
| 17.     | Indonesia   | 2011           |

<sup>24</sup> list of Participating Countries/Governments, <https://www.state.gov/treaties-in-force/>. UK MLA Agreements, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1183243/Treaty\\_List\\_August\\_2023.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1183243/Treaty_List_August_2023.pdf) - accessed on 16.08.2023.

<sup>25</sup> Supra Note 22.



|     |              |      |
|-----|--------------|------|
| 18. | Iran         | 2008 |
| 19. | Israel       | 2012 |
| 20. | Kuwait       | 2004 |
| 21. | Lithuania    | 2017 |
| 22. | Malaysia     | 2010 |
| 23. | Malawi       | 2018 |
| 24. | Mauritius    | 2003 |
| 25. | Mexico       | 2007 |
| 26. | Mongolia     | 2001 |
| 27. | Nepal        | 1953 |
| 28. | Netherlands  | 1898 |
| 29. | Oman         | 2004 |
| 30. | Philippines  | 2004 |
| 31. | Poland       | 2003 |
| 32. | Portugal     | 2007 |
| 33. | Russia       | 1998 |
| 34. | Saudi Arabia | 2010 |
| 35. | South Africa | 2003 |
| 36. | South Korea  | 2003 |
| 37. | Spain        | 2002 |
| 38. | Switzerland  | 1880 |
| 39. | Tajikistan   | 2003 |
| 40. | Thailand     | 2013 |

|     |            |      |
|-----|------------|------|
| 41. | Tunisia    | 2000 |
| 42. | Turkey     | 2001 |
| 43. | UAE        | 1999 |
| 44. | UK         | 1992 |
| 45. | Ukraine    | 2002 |
| 46. | USA        | 1997 |
| 47. | Uzbekistan | 2000 |
| 48. | Vietnam    | 2011 |

**Table 1.2 Countries with which India has Extradition Arrangements** <sup>26</sup>

| <b>Sr. No.</b> | <b>Country</b>    | <b>Year of Arrangement</b> |
|----------------|-------------------|----------------------------|
| 1.             | Antigua & Barbuda | 2001                       |
| 2.             | Armenia           | 2019                       |
| 3.             | Croatia           | 2011                       |
| 4.             | Fiji              | 1979                       |
| 5.             | Italy             | 2003                       |
| 6.             | Papua New Guinea  | 1978                       |
| 7.             | Peru              | 2011                       |
| 8.             | Singapore         | 1972                       |
| 9.             | Sri Lanka         | 1978                       |
| 10.            | Sweden            | 1963                       |
| 11.            | Tanzania          | 1966                       |

<sup>26</sup> Supra Note 22.

|     |             |      |
|-----|-------------|------|
| 12. | New Zealand | 2021 |
|-----|-------------|------|

Since 2002, 73 fugitives have been extradited to India successfully as per the data (As of January 2019) which is available on the government website.<sup>27</sup> 23 fugitives have been brought in the period of 5 years, from September 2014 to August 2019.<sup>28</sup>

As per the answer given by the Government in 2018 there were 150 pending requests for extradition and the government was processing 16 more requests.<sup>29</sup> India has the highest no. of extradited criminals from the United Arab Emirates (23) followed by the United States of America (10). In the last 21 years, since 2002 only two persons have been extradited from the United Kingdom. However, India has been successful in extraditing 33 criminals since January 2022 including 6 in 2023.<sup>30</sup> From this analysis, it is evident that the Indian Government is proactively working towards improving its extradition success rate, while also fostering diplomatic relations with a range of nations. A closer examination of list of countries indicates that India is making efforts to establish stronger extradition connections worldwide. Additionally, India has effectively nurtured bilateral relationships with majority of its neighbouring countries.

## IV. CHALLENGES

### 1. Poor prison conditions

One of the most serious concerns in India is the deplorable state of prison infrastructure. Overcrowded, unclean environment, poor sanitation, lack of protection staff, no separate rooms for men and women prisoners etc. are some of the major problems existing in prisons in India. As a matter of fact (till now), only 2 fugitives that is Samirbhai Vinubhai Patel (2016) and Sanjeev Chawla (2020) have been extradited from the United Kingdom. In the context of a European Country, the paramount focus lies in ensuring the protection of human rights. All the European Countries are party to the European Convention on Human Rights, 1950 (ECHR). Article 3 of the said convention prohibits inhuman and degrading treatment or punishment. In the case of *'Soering V. United Kingdom'*<sup>31</sup> the European Court of Human Rights for the first time denied extradition on the grounds of inhuman punishment. Jens Soering was detained in United Kingdom and was pending extradition to the USA for the charges of murder in the

<sup>27</sup> <https://www.mea.gov.in/toindia.htm> - accessed on 20.08.2023.

<sup>28</sup> Answer to Rajya Sabha Question No. 1164, 28.11.2019.

<sup>29</sup> Answer to Rajya Sabha Question No. 4338, 5.04.2018.

<sup>30</sup> "33 fugitives extradited in last one year under CBI's 'Trishul' Operation", available at <https://m.timesofindia.com/india/33-fugitives-extradited-in-last-one-year-under-cbis-trishul-operation/articleshow/98589741.cms>. - accessed on 21.08.2023.

<sup>31</sup> *Soering V. United Kingdom*, (1989) 11 EHRR 439.

Commonwealth of Virginia. The UK Government had requested the USA that Great Britain had abolished death penalty as a punishment and had sought assurance that such punishment if sentenced shall not be carried out. The European Court of Human Rights, keeping in mind Article 3 of the said Convention, denied extradition as there were substantial grounds to believe that the person shall be subjected to torture or inhuman treatment.

Similar, circumstances were faced by India in extraditing Abu Salem in 2005 from Portugal. He was extradited only on the basis of an assurance which was issued by the Indian Government for not punishing him with imprisonment of more than 25 years.<sup>32</sup>

In case of Vijay Mallya, poor prison and inhuman conditions were taken as defence before the Court. Even the UK Court had ordered a video survey of the Arthur Road prison where the fugitive businessman was supposed to be kept.<sup>33</sup> The poor conditions of Arthur Rd. Jail was also highlighted in an inquiry conducted in October 2015.<sup>34</sup> There were 905 convicts and 2887 undertrial prisoners as against the sanctioned capacity of 2323 prisoners. Also, there were no separate bathrooms for men and women prisoners. Some of the toilets meant for female prisoners were in dilapidated conditions. Not just in matters of extradition, prisoners are entitled to human rights and the right against torture and inhuman treatment is one of the essential fundamental rights guaranteed by our Constitution under Article 21.

In another case, a formal request for extradition was sent by India to the United Kingdom on 1<sup>st</sup> February, 2016 concerning the extradition of Sanjeev Chawla. He was accused for the offence of cheating under the Indian Penal Code, 1860 for match-fixing. The major challenge deterring this extradition was the poor condition of Tihar Jail, New Delhi. This extradition request was barred under Article 3 of the ECHR. The Magistrate Court of the UK rejected the first letter of assurance given by India. On appeal to the High Court, the second letter was considered by the Court, however, the letter did not provide for protection against torture. Later, a third letter of assurance was sent by India, based on which the High Court quashed the order of the Magistrate. The Magistrate later referred the request to the Secretary of the State which approved the order of extradition.<sup>35</sup>

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<sup>32</sup> Supra Note 21.

<sup>33</sup> "Show us video of Arthur Road Jail cell for Vijay Mallya, says UK Court" available at <https://www.livemint.com/Companies/cMdQIesqXIYiJOFmdWIrQO/UK-court-extends-Vijay-Mallyas-bail-in-extradition-case.html> - accessed on 22.08.2023.

<sup>34</sup> Jan Adalat, Centre of Paralegal Services & Legal Aid and Anr. V. State of Maharashtra and Ors. (Judgment delivered by Justice Abhay Oka and Justice A.A. Sayed), Criminal PIL No. 46 of 2015 (Unreported).

<sup>35</sup> Sanjeev Chawla V. Union of India, Case No: CO/5183/2017, (2018) EWHC 3096.

## **2. Irregularities in investigation.**

Extradition procedure requires due diligence and proper investigation. If an investigation is not carried out properly by the investigating agency, the requested country would not be able to deliberate whether to extradite such a person or not. Improper investigation can lead a possible fugitive to escape. Investigation involves a very lengthy procedure which leads to delay in extradition. An investigation can also have irregularities such as misbehaviour by police officials, fabricated evidences, improper documentations etc. all of which affects the process of extradition. Similar circumstances arose in the extradition of a British-Indian couple, Jatinder and Asha Rani Angurala. While denying the extradition request the UK Court criticized the Central Bureau of Investigation (CBI) for delay in the investigation.<sup>36</sup>

## **3. Bilateral relations with other countries.**

Bilateral relations with other countries play a very vital role in extradition. If a country does not have any extradition relations with other countries, it can still extradite a criminal if they have a strong bilateral relation. But if a country does not have good ties with the other there are chances that the extradition request be rejected. For example, it is been said that Dawood Ibrahim is domiciled in Pakistan, however, due to poor relations between India and Pakistan he cannot be extradited from Pakistan.<sup>37</sup> Bilateral relations have been an important aspect of world politics. The reason why the USA has extradition agreements with more than 100 countries<sup>38</sup> is due to its bilateral relations with other countries. It also has a very stronghold in world politics.

## **4. Principle of Reciprocity.**

Extradition as a part of International Law works on the principle of reciprocity. Reciprocity simply means that if a country today extradites a fugitive on the request of the requesting country, it may expect the same from the requesting state at the time when it makes an extradition request. This principle poses as a major challenge because reciprocity of extradition can sometimes, violate the laws of the requested country or there might be a possibility that the country shall not reciprocate the same in the near future.

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<sup>36</sup> “U.K. rejects two extradition requests from India”, available at <https://www.thehindu.com/news/national/uk-rejects-two-extradition-requests-from-india/article19988190.ece>. – accessed on 24.08.2023.

<sup>37</sup> “Dawood is in Karachi: A timeline of how the D Company chief became India’s most wanted” available at <https://www.cnbctv18.com/india/gangster-dawood-ibrahim-at-karachi-in-pakistan-nephew-alishah-parkar-tells-ed-13596132.htm> - accessed on 25.08.2023.

<sup>38</sup> Supra Note 23.

## **V. ANALYSIS OF EXTRADITION TREATIES.**

### **i. India - USA Extradition Treaty**

India signed an extradition treaty with the United States of America in Washington on 28<sup>th</sup> June, 1997 and instruments of ratification were exchanged at New Delhi on 21<sup>st</sup> July, 1999. The treaty envisages about an offence to be an extradition offence only when it is an offence under the laws of both the countries.<sup>39</sup> This highlights that the treaty is based on the principle of dual criminality. Also, the treaty exempts extradition for political offences.<sup>40</sup> The treaty also states which of the offences cannot be regarded as a political offence.

Under the treaty, extradition can be denied if the request is politically motivated or the offence for extradition is an offence under military law which is not an offence under ordinary criminal law. Article 6 prescribes that extradition shall not be granted when a person has been convicted or acquitted in the requested state for the same offence for which extradition is requested. This principle of double jeopardy is a major obstacle in extraditing fugitives. For example, David Headley, who is an accused in Mumbai terror attacks. However, the USA denied his extradition request as he was already sentenced to imprisonment for 35 years in 11 International terror cases.<sup>41</sup> As part of dual criminality is concerned the extradition offence should also be punishable with the same quantum under the laws of both the States. If the extradition offence is punishable with death under the laws of the requesting state and not under the laws of the requested state, the requested state can deny extradition unless: 1. The offence constitutes murder under the laws of the requested state or 2. The requesting state provides assurances that the death penalty, if imposed will not be carried out. The treaty also prescribes procedures for extradition between the two countries. The essence of the principle of speciality can be found under Article 17 of the said treaty.

### **ii. India - UK Extradition Treaty**

India signed an extradition treaty with the United Kingdom on 22<sup>nd</sup> September, 1992 and the instruments for ratification was exchanged at New Delhi on 15<sup>th</sup> November, 1993. The treaty specifies the extradition for only those offences which are punishable under the laws of both the countries and punishable with a term of imprisonment for a period of at least one year.<sup>42</sup> As in the India-US treaty, this treaty also exempts extradition of offences of political nature.<sup>43</sup> It

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<sup>39</sup> Article 2 of the India-USA Treaty.

<sup>40</sup> Article 4 of the India-USA Treaty.

<sup>41</sup> "David Coleman Headley", <https://www.justice.gov/opa/pr/david-coleman-headley-sentenced-35-years-prison-role-india-and-denmark-terror-plots/> - accessed on 28.08.2023.

<sup>42</sup> Article 2 of India-UK Treaty.

<sup>43</sup> Article 5 of India-UK Treaty.

also provides for other grounds for refusal of extradition.

According to the treaty, a person may not be extradited if he satisfies that having regards to the circumstance of the case, it would be unjust or oppressive to extradite him by reason of:

1. The trivial nature of the offence for which he is accused or was convicted;
2. The passage of time, since the person is alleged to have committed it or to have become unlawfully at large as the case may be;
3. The accusation against the person is not been made in good faith in the interest of justice.

Extradition can also be denied for the offence under military law. Article 16 of the treaty is more in pari materia with Article 8 of the India-US Extradition Treaty, providing grounds for refusal of extradition for offence punishable with death penalty under the laws of the requesting state and not punishable with death under the laws of the requested state. Capital punishment has been abolished in the United Kingdom ever since the commencement of the Human Rights Act, 1998.

#### **4. India – UAE Extradition Treaty**

This Extradition treaty was signed by the contracting states on 25<sup>th</sup> October, 1999 and instrument of ratification was exchanged in Abu Dhabi on 29<sup>th</sup> May, 2000. The treaty follows the principle of dual criminality and also prescribes exceptions in case of political offences. Under the said treaty, if the requested state refuses a request for extradition for the reasons set out under the said treaty, it shall submit the case to its component authorities for prosecution. Those authorities shall take their decision in the same manner as in the case of any offence of a similar nature under the law of that state.<sup>44</sup> The treaty highlights the procedure for extradition between the two states. In case, where numerous states make requests for extradition, priority shall be given to the state whose security or interest or its nationals or their interest is affected by the offence and then to the state on whose territory the offence is committed and lastly to the state of which the person to be extradited is a national. The rule of speciality is also applicable to this treaty.<sup>45</sup>

Pursuant to the agreement signed by the two countries in 2011, for the purpose of transfer of sentenced prisoners both the countries allow for the sentenced prisoners to be transported/ extradited to their home country for the remaining imprisonment terms.

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<sup>44</sup> Article 7 of India-UAE Treaty.

<sup>45</sup> Article 17 of India-UAE Treaty.

However, these provisions do not apply to heinous crimes like murder, drug abuse, financial fraud etc. These transfers are subject to certain conditions:

1. A minimum imprisonment term of at least 6 months should be pending.
2. A final conviction should have been awarded against the person and no other cases should exist against the said prisoner.
3. The transfer request should be confirmed by both the Countries.

India's extradition relations with the United Arab Emirates have been built over the time on the values of cooperation, mutual assistance and reciprocity. India has the highest no. of extradited fugitives (23) from UAE.<sup>46</sup>

## **VI. CONCLUSION AND SUGGESTIONS**

Extradition remains a cornerstone of International Law, marked by its dynamic evolution over the period of time. When a fugitive eludes the grasp of a nation's legal jurisdiction, extradition emerges as a vital global instrument for ensuring their apprehension and prosecution. Its adaptability has solidified its place as one of the most prominent and extensively deliberated subjects in the world. Grounded in principles of mutual respect and collaborative efforts among nations, extradition exemplifies the collective commitment to uphold justice and maintaining global order.

Lord Griffiths has established in a case that the process of extradition aims at the transfer of suspected criminals from one nation to another.<sup>47</sup> It was held that evidence has to be proved so that a prima facie matter is made against the suspect in order to preserve and respect the accused individual's human rights. Indian Government needs to take steps to improve prison conditions and to eradicate potential human rights violations of the requested person. Assurances issued by the Indian Government in this regard are also not considered many times by the foreign Courts.<sup>48</sup> India should consider signing international instruments like the United Nations Convention Against Torture, 1984 etc. Signing such an instrument would send a positive message about India's zero tolerance towards torture and custodial violence. India has extradition treaties with 48 countries and arrangements with 12 countries.<sup>49</sup> Indian Government must take measures to enter into extradition treaties with as many countries as possible. Other mechanisms that can facilitate the arrest and extradition of offenders like mutual legal assistance

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<sup>46</sup> Supra Note 26.

<sup>47</sup> R. V. Horseferry Road Magistrate Court, ex-parte Bennett, (1994) 1 A.C. 42.

<sup>48</sup> Supra Note 21 & 33.

<sup>49</sup> Supra Note 22.



treaties, issuing letter rogatory, information exchange MOUs etc. can be used. The Government has also started to take preventive law and policy measures to deter the escape of offenders. The Economic Offenders Act, 2018<sup>50</sup> was a small step that was taken by the Government as a preventive measure. Thus, in a nutshell, it can be concluded that the law of extradition helps in maintaining peace in the society by serving justice to crime victims. From, the analysis it is quite apparent that the success rate of India in extraditing fugitives is low, however, the Government is actively striving to improving its extradition policy.

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<sup>50</sup> Act No. 17 of 2018.

## VII. BIBLIOGRAPHY

### **Books:**

1. Oppenheim's International Law, Vol I, 9<sup>th</sup> Edition (1992).
2. The American Heritage Dictionary of English Language (2022).
3. Black's Law Dictionary, Centennial Edition (1891-1991), 6<sup>th</sup> Edition.
4. Prem and Saharay's Judicial Dictionary of words and phrases (2016), 2<sup>nd</sup> Edition, Vol. 2.

### **Statutes:**

1. The Extradition Act, 1870.
2. The India Extradition Act, 1903.
3. The Fugitive Offenders Act, 1881.
4. The Indian Extradition Act, 1962.
5. The India-US Treaty, 1997.
6. The India-UK Treaty, 1992.
7. The India-UAE Treaty, 1999.

### **Case laws:**

1. State of West Bengal V. Jugal Kishore More, AIR 1969 SC 1171.
2. Regina V. Governor of Belmarsh Prison, ex-parte francis, (1995) 1 WLR 1121.
3. Dr. Ram Babu Saksena V. The State, AIR 1950 SC 155.
4. State of Madras V. C.G. Menon, AIR 1954 SC 517.
5. Soering V. United Kingdom, (1989) 11 EHRR 439.
6. Jan Adalat, Centre of Paralegal Services & Legal Aid and Anr. V. State of Maharashtra and Ors. (Judgment delivered by Justice Abhay Oka and Justice A.A. Sayed), Criminal PIL No. 46 of 2015 (Unreported).
7. Sanjeev Chawla V. Union of India, Case No: CO/5183/2017, (2018) EWHC 3096.
8. R. V. Horseferry Road Magistrate Court, ex-parte Bennett, (1994) 1 A.C. 42.

### **Manuscripts:**

1. Dan E-Stigall, 'Ungoverned Spaces, Transnational Crime & the Prohibition on

- Extraterritorial Enforcement Jurisdiction in International Law’, *International and Comparative Law* -2013, accessed on 9.08.2023.
2. Chittella Venkataramana, ‘Changing Dimensions of Extradition- A Study with Special reference to law, practice and experiences in India’, submitted to Andhra University, Visakhapatnam for award of Doctor of Philosophy of Law, 2013 accessed on 9.08.2023.
  3. Shivam Goel, ‘Extradition Law: Indian Perspective’. *SSRN Electronic Journal*, 10 (6), 2016 accessed on 10.08.2023.
  4. Prof. Dr. Ramesh and Prof. S.B. Boregowda, ‘A critical study on evolution of extradition laws in Indian context’, *International Journal of Legal Research and Studies*, Vol. 5, Issue 1, 2020 accessed on 10.08.2023.
  5. Aarshi Tirkey, ‘India’s challenges in extraditing fugitives from foreign countries’, Issue No. 270, November 2018, Observer Research Foundation accessed on 10.08.2023.
  6. Shrabana Chattopadhyay, ‘Refusal of Fugitive Criminals – Current Status of India through Extradition Treaty – A Critique’, *International Journal of Science and Innovation*, Vol. 1, Issue 2, 2019 accessed on 12.08.2023.
  7. “Abu Salem must be released, says Supreme Court”, available at <https://www.livemint.com/news/india/abu-salem-must-be-released-says-supreme-court-1165719203686.html> - accessed on 13.08.2023.
  8. Countries with whom India has treaties/arrangements, Ministry of External Affairs, Government of India, available at <https://www.mea.gov.in/leta.htm> - accessed on 16.08.2023.
  9. list of Participating Countries/Governments, U.S. Department of States, available at <https://www.state.gov/treaties-in-force/> - accessed on 16.08.2023.
  10. UK MLA Agreements, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1183243/Treaty\\_List\\_August\\_2023.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1183243/Treaty_List_August_2023.pdf) - accessed on 16.08.2023.
  11. “33 fugitives extradited in last one year under CBI’s ‘Trishul’ Operation”, available at <https://m.timesofindia.com/india/33-fugitives-extradited-in-last-one-year-under-cbis-trishul-operation/articleshow/98589741.cms> - accessed on 21.08.2023.
  12. “Show us video of Arthur Road Jail cell for Vijay Mallya, says UK Court” available at <https://www.livemint.com/Companies/cMdQIesqXIYiJOFmdWIrQO/UK-court-extends-Vijay-Mallyas-bail-in-extradition-case.html> - accessed on 22.08.2023.

13. “U.K. rejects two extradition requests from India”, available at <https://www.thehindu.com/news/national/uk-rejects-two-extradition-requests-from-india/article19988190.ece> - accessed on 24.08.2023.
14. “Dawood is in Karachi: A timeline of how the D Company chief became India’s most wanted” available at <https://www.cnbctv18.com/india/gangster-dawood-ibrahim-at-karachi-in-pakistan-nephew-alishah-parkar-tells-ed-13596132.htm> - accessed on 25.08.2023.
15. “David Coleman Headley”, <https://www.justice.gov/opa/pr/david-coleman-headley-sentenced-35-years-prison-role-india-and-denmark-terror-plots/> accessed on 28.08.2023.

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