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Review of Indian Extradition Law & Policy and the Impact of the Fugitive Economic Offender's Act 2018

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ABSTRACT

The paper seeks to provide a comprehensive review of the India Extradition Law and Policy exploring their dynamic nature by discussing various treaties. To present an illustrative analysis of the existing Extradition system in India and to suggest ways to strengthen its Extradition process, the paper reviews the India-U.K Extradition relations. The rise in economic offenders is a global concern. The paper has analyzed data available with reference to economic offences in India which presents a very low success rate in Extradition of Fugitives to India. And gives reasons as to why there has been such a tremendous rise in economic offences in India. The rise of economic offences was one of the prime reasons for the enactment of the Fugitive Economic Offender's Act 2018 by the Government of India. The paper seeks to answer the question as to whether the act has actually had a substantial impact on Extradition proceedings or not by taking as an example the Vijay Mallya Extradition case.

Keywords: Indian Extradition, Fugitive Economic Offenders Act, Vijay Mallya, Economic Offences

I. INTRODUCTION

With the advent of time states have vocalized and materialized their will and desire to cooperate with each other on various matters including the fight against crime and criminals. Extradition is one such law in which state realize this vision. It is a law of dual nature, dealing with both municipal and international laws. It is often called unreliable owing to the fact that treaty obligations are not always followed. But nevertheless, it does not change the fact that it is one of the most important laws upholding the rule of law today.

With the enactment of the Extradition Act of 1962, the law of Extradition in India is principally governed under that statute. It divided India's relation with reference to Extradition with other

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states in two types, one being extradition with states with whom India has any treaty or arrangement and the other being extradition with states with whom India does not have any treaty or arrangement. It is to be noted however that the Supreme Court in number of cases have restated what is also enumerated in the act that “*where there is no extradition treaty made by India with any foreign State, the Central Government may, by notified order, treat any Convention to which India and a foreign State are parties, as an extradition treaty made by India with that foreign State providing for extradition in respect of the offences specified in that Convention.*”³ This is to further the idea that, absence of treaties does not mean absence of international law in general. States should always try to honour commitments to conventions and treaties, and in light of mutual cooperation and international peace and security offer all help and assistance they can to each of the general interest of all.

II. INDIAN EXTRADITION TREATIES

India has Extradition Treaties with 47 nation states of the world and have entered into extradition arrangement with 11 nation state.⁴ Out of the total 195 member states of the United Nations, India has a total of 58 states with whom it has entered into Extradition treaty and arrangements. The United Kingdom and the United States of America have entered into extradition treaties with over a 100 states, Russia has entered into more than 60 Extradition treaties with various states. It is clear that India lacks behind compared to other states, and therefore provides more opportunity to offenders to flee to various nation states. Efforts are being made to finalize Extradition Treaty/Agreement with Bosnia & Herzegovina, Côte d'Ivoire, Ethiopia, Nigeria and Algeria.⁵ But it is pertinent to note that, the question to be dealt with here is not the lack of treaties India has with regards to extradition but rather the workings of the current treaties that are in force.

The Republic of India entered into a treaty with the Kingdom of Thailand on 29th June 2015 and on 14th September 1999 it entered into treaty with the United States of America. While both the treaties are very similar in there general terminologies but there are some striking difference over some aspects. For example, while the treaty with Thailand provides a clause for refusal to extradite on grounds of an individual being a national, in the sub-clause of the same article it puts an obligation on that state to prosecute such individual if indeed they are to

³ Abu Salem Abdul Qayoom Ansari vs. State of Maharashtra and Ors. 2010 (58) BLJR 1353

⁴ Countries with which India has Extradition Treaties/Arrangements. Available at- <https://mea.gov.in/leta.htm> (Visited 27th May, 2021)

⁵ QUESTION NO.2380 EXTRADITION AGREEMENT, LOK SABHA UNSTARRED QUESTION NO.2380 TO BE ANSWERED ON 26.12.2018. Available at- https://www.mea.gov.in/lok-sabha.htm?dtl/30818/QUESTION_NO2380_EXTRADITION_AGREEMENT (Visited 31st May, 2021)

refuse such individual's extradition. But in the extradition treaty between USA and India, article 3 clearly states that no requested state shall have the right to refuse extradition on grounds of an individual sought being its own national. While the treaty with Thailand has no grounds for refusal of extradition in a case where an individual is to face capital punishment upon extradition, the treaty with USA clearly states that extradition can be refused if the individual may be subjected to capital punishment upon such extradition.

Thus, on one had India may refuse to extradite its own citizen to Thailand it will not be able to do so in case the requesting state is USA. Furthermore, if an individual were to be subjected to capital punishment upon Extradition between India and Thailand, they may still be extradited while in case of extradition between USA and India, they will not. What this reflects is that it is difficult for Extradition laws and policies to be completely universal as they are highly governed by bilateral relations of two states more than the generality of accepting norms of extradition for mutual cooperation.

Since extradition treaty texts from state to state differ widely, the process of actually extraditing an individual from another state is another predicament. India's success rate for securing fugitive criminals in India has been notably low as opposed to the extradition of individuals to various requesting states. An answer to a parliamentary question in 2016 revealed that India had made 110 extradition requests to various Foreign nations namely, USA(33), UAE(19), UK(15), Canada (13), Germany (3), Nepal (3), Bangladesh (3), Singapore (3), Italy (3), Australia (2), South Africa (2), Denmark (2), Nigeria (2), France (1), Spain (1), Venezuela (1), Saudi Arabia (1), Thailand (1), Hong Kong (1) and Oman (1).⁶ Since 2015, India has sent 132 extradition requests to various foreign governments out of which only 16 have resulted in extradition of fugitives as of 2018. The data depicts a very low rate of realization of extradition requests of India by various states. Some common reasons for such refusal is often argued as torture and ostracism to political gains. Another reason for such rejection, which can be argued, is the lack of international prowess that states like India have when it comes to creating pressure on another nation state to act according to the treaty signed. Furthermore, it has been observed by many scholars that more than bilateral treaties it is multilateral treaties which create more impact and build for hope for better implementation not eclipsed by lack of political will.

A fine example of such multilateral approach is the European Arrest Warrant. A rather enigmatic, efficient and game changing network in terms of multilateral cooperation by various

⁶ Question no.964 Extradition request for fugitives hiding abroad, Rajya Sabha Unstarred question no.964 to be answered on 24.11.2016 Available at- https://www.mea.gov.in/rajya-sabha.htm?dtl/27678/QUESTION_NO_964_EXTRADITION_REQUEST_FOR_FUGITIVES_HIDING_AB

nations by consolidation of their resources. Designed for the European Union nations, it is used to identify, arrest and then transfer fugitive criminals from one member state to the other, to face prosecution or prison in the requested state. It was brought to expedite the extradition process among nations. Another important feature of the European Arrest Warrant is it is governed by the judiciary and not by diplomatic channels and procedures motivated by political will. This features makes it a much faster, clearer and much more reliable method of ascertaining that a fugitive criminal is brought back to face punishment for their crimes. Perhaps, in the light of furthering international cooperation and stricter compliance of extradition principles a model in the likes of the European Arrest Warrant can be championed by geographically close states for example the ASEAN or SAARC countries etc. In the meantime, the main model for extradition remains in bilateral treaties.

Canada, U.K, U.S.A and U.A.E are the top states that fugitives from India find an escape route to and India has bilateral extradition signed with all four countries in 1987 1992 1997 and 1999 respectively. It is curious to notice that despite having one of the oldest Extradition treaty signed with the U.K, India-U.K relations with regards to Extradition from U.K have been poor. 2016 marks as the first case of extradition, of Samir Bhai Vinubhai Patel, that was approved by U.K and he remains to be the only extradited person from the U.K ever. While it is reported that most of India's most wanted fugitives have been identified to have taken shelter in the U.K, which poses a great security and growth threat. The reason for such discrepancy is something that needs discussion on its own.

(A) Extradition- India and U.K

1. Legislation governing Extradition

The government of Republic of India and the government of Kingdom of Great Britain and Northern Ireland signed an extradition Treaty on 22nd September 1992 which was ratified on the 15th of November 1993. The purpose behind the treaty was states as to make effective the co-operation between the two countries in the suppression of crime by making further provisions for the reciprocal extradition of offenders.⁷

U.K's act divides the implementation of the act in two parts. Part one deals with the European Union nations. The act has further divided part two in two different categories, namely Category 1 states (*which need to provide admissible evidence for a prima facie case*) and Category 2 states (*which do not need to provide any admissible evidence for prima facie case.*)

⁷ The Extradition Treaty between the government of Republic of India and the government of Kingdom of Great Britain and Northern Ireland, G.S.R 790(E) Ministry of External Affairs Order, New Delhi (30th December, 1993)

India is a Category 1 state under that Act. India's extradition act has, however, made two simple distinction between states a) states with whom it has an extradition treaty/arrangement and b) foreign states with whom it does not have any extradition treaty/arrangement.

2. Implementation

Since the implementation of the treaty in 1993, there has only been one accused that has been surrendered by U.K to India, namely S. Vinubhai Patel, despite several other requests. On the other hand, India has surrendered three fugitives to the United Kingdom.⁸ India falls into category 1 of U.K's extradition act, which makes the extradition process tougher and longer. There are over thirty states which fall under category two of the act and the reasons for the same are mostly summarized as close diplomatic ties, which clearly reflects the vague nature of such categorization and decision. States like U.S.A, which are in Category 2, have received more than seventy extraditions from the U.K. The request to Extradite Vijay Mallya over default on Kingfisher Airline Loans, along with sixteen other fugitives (all of whom are Indian nationals) was made in 2017 to United Kingdom by India and since then, it has been a cumbersome process to realize these requests.

It was on 18th April 2017 when Vijay Mallya was arrested in London on a request for extradition moved by India to U.K. Mallya was charged to have defrauded 17 banks in India with a total estimate of 9,000/ crore rupees. On 05th January 2019, he was declared as India's first Fugitive Economic Offender, under the Fugitive Economic Offender's Act, 2018. On 4th February, 2019 he was approved for Extradition by the U.K Home Secretary. It took three years for the approval for Extradition. As of 26th June 2021 the Extradition has still not been realized by U.K, five years after the request, on grounds of a legal issued between Mr. Mallya and the U.K government which cannot be disclosed as the reason for the inability of extradition.

3. Way Ahead

Given the changing nature of India-U.K relations since the adoption of U.K's Extradition Act in 2003. In 2010, the visit of the U.K Prime Minister David Cameron resulted in the relations getting elevation to "Enhanced Partnership for the Future." U.K supported India's proposal to gain a permanent membership for the UNSC. UK's keen interest in India can be gauged by their request for increasing their diplomatic presence in India.⁹ As per 2013 data India's

⁸ Ministry of External Affairs, Government of India, 'List of Fugitives Extradited to Foreign Countries' Available at- <https://www.mea.gov.in/byindia.htm> (Visited on 01st June, 2021)

⁹ Foreign Relations, India-UK, Available at- <http://mea.gov.in/Portal/ForeignRelation/India-UK.pdf> (Visited on 01st June, 2021)

merchandise exports to UK grew by about 20% from USD7.166 billion to USD 8.597 billion and imports from UK rose by over 40% from USD5.397 billion to US\$7.593 billion.¹⁰ The 2016 visit of U.K Prime Minister Theresa May which was her first foreign visit outside of European Union and the 2018 visit of India's Prime Minister Narendra Modi where he held multiple bilateral talks with his U.K counterpart, provide a clear vision of both nation state's eagerness in not only continuing relations but also strengthen them.

As of 2019, the British Parliament has a total of fifteen Indian-origin candidates in its seat, besides Indian-origin people comprising of a total of 2.3 per cent of U.K's total population. To set it all to stone, on 4th May 2021 India-UK released a joint statement during the India-U.K virtual summit which focused on the roadmap for bilateral relations between the two states and for a comprehensive strategic partnership. With specific reference to Extradition this joint statement brings hope and encouragement by the signing of the India-UK comprehensive Migration and Mobility Partnership (MMP.) Both nations have conveyed their mutual confidence in the benefits this MMP will facilitate, especially with the "legal movement of students and professionals, and combating illegal migration and organized immigration crime."¹¹

Reflecting on such data, one can suggest that when it comes to international cooperation among states, India's position in the first category country under the U.K act only contradicts all the relationship growth that the two states have entered upon over the years. India can, in furtherance of its goal of better implementation of the Economic Fugitive Offender's Act 2018 thereby facilitating Extradition (all of which will be dealt with in detail in chapter four), set in motion the process of obtaining the status of category two country under U.K's act. And for U.K to show promise to this developing relations would perhaps be the quickest delivery of the fugitive economic offender Mr. Vijay Mallya back to India.

III. NEED FOR FUGITIVE ECONOMIC OFFENDER'S ACT 2018

In a list provided by CARE Ratings, India ranked 5th among countries with the highest Non-Performing Asset (NPA) ratio. A Non-performing Asset is a loan or an advance given to a borrower by the bank which has passed its due date. The four countries preceding India namely, Ireland Portugal Greece and Italy, were all victims of financial crisis in the past few years. India's rise in NPAs could be linked to reasons of leniency in lending norms by the Banking

¹⁰ *Ibid.*

¹¹ Joint Statement on India-UK Virtual Summit (Roadmap 2030 for a Comprehensive Strategic Partnership) 04th May, 2021. (Visited on 01st June, 2021) Available at- https://mea.gov.in/bilateral-documents.htm?dtl/33837/Joinnt_Statement_on_IndiaUK_Virtual_Summit_Roadmap_2030_for_a_Comprehensive_Strategic_Partnership

sector resulting in the rise of fraud, cheating and money laundering.

The Insolvency and Bankruptcy Code of 2016 is playing an important role with regard to recovery of assets of those creditors whose case has been filed with the National Company Law Tribunal. In fact, figures given by the RBI point to a declining phase in the NPA growth rate, which is a positive development.¹² Thus, it is pertinent to note that, India already has laws in place for the crimes that are leading to the rise in NPAs and is undergoing reforms perennially. The issue therefore cannot be restricted to lack of legal structure but rather an accused's evasion from it.

The laws dealing with Economic Offences are present but to simply put are not enough especially in case of defaulters of high value, having property in various parts of the world. In such cases, the enforcement bodies may be able to confiscate their properties but under the current procedural law they will have to deal with multiplicity of proceedings which will hamper speedy justice. Furthermore, multiplicity of proceedings cause an unnecessary burden upon courts of the state and lead to an unwise usage of their precious time.

The biggest issues faced by the state presents itself is in the form of those willful defaulters who evade from the jurisdiction of the country's courts and by doing so render all the laws dealing with their offences dormant, if not useless. Vijay Mallya with a default of Rupees 9000 crore, Nirav Modi and Mehul Choksi with default of Rupees 13,600 crore etc., are only a few examples amongst thousands of willful defaulters accused in the likes of fraud, cheating, money laundering etc. who have fled the country to avoid answering for those charges.

Therefore, the need to bring these accused within the jurisdiction of the state to undergo fair trial becomes the need of the hour. All offenders of law must be subjected to the proper law and punishment. And keeping that principle in mind, the Fugitive Economic Offender's Act 2018 was brought before the parliament and subsequently passed and enacted. The Act takes measures to function as a deterrent against Economic Offenders thereby upholding the sanctity of law in the country. And also in case of Fugitive Offenders who evade the process of law by remaining outside the jurisdiction of the country.

IV. FUGITIVE ECONOMIC OFFENDER'S ACT, 2018.

On 31st July 2018 the parliament of India enacted The Fugitive Economic Offender's Act 2018 and thereby repealed the Fugitive Economic Offender's Ordinance 2018 by virtue section 26 of the act. The preamble to the act clearly presents the purpose of the act which in essence is

¹² Varuna Agarwala and Nidhi Agarwala "A critical review of non-performing assets in the Indian banking industry" Vol. 13, No. 2 *RAMJ* pp 12-23 (2019)

to uphold the rule of law in the country.

To uphold the rule of law, the acts purposes to adopt a mechanism of confiscation of the property of the offender so as to deter them from evading the process of law in the country. The salient feature of the act can be synthesized to the process of compelling the offender, by means the confiscation of their property, to submit themselves to the process of law in the country, and undergo trial.

V. RELATION BETWEEN EXTRADITION ACT 1962 AND FUGITIVE ECONOMIC OFFENDER'S ACT 2018

(A) Economic Offenders Status Quo

According to a written reply to a Parliament Question in Rajya Sabha by Union Minister of Finance & Corporate Affairs, Smt. Nirmala Sitharaman as reported by the Press Information Bureau of India¹³ as of 2019 there are 28 individuals who have been accused of criminal cases and are being investigated by the Enforcement Directorate. All twenty eight of the individuals are economic offenders. Twenty five Red Corner Notices have been issued with reference to these individuals and extradition requests have been filed against fourteen of them. Out of the twenty eight individuals, proceedings under the Fugitive Economic Offender's Act have been initiated against 7 of them.

(B) Extradition of Fugitive Economic Offenders

India has been able to secure the extradition of three fugitive criminals on accounts of economic offences. Those three fugitives are Ravinder Kumar Rastogi from UAE in 2003, Charan Jeet Singh "Cheema" also from the UAE in 2005 and Narendra Rastogi from the USA in 2008 as per the data¹⁴ provided by the Ministry of External Affairs. From the period of five years between 2016 and 2020, 72 economic offenders i.e. criminals charged with frauds and financial irregularities by various enforcement agencies have fled India.¹⁵ Given India's track record, the criminals who have fled the process of law have tremendously outnumbered the criminals who are put under trial.

It is of no question that any form of monetary or fiscal frauds especially of large scale such as

¹³ Extradition of Economic Offenders, Press Information Bureau Government of India Ministry of Finance, (25th June, 2019) Available at- <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1575642> (Last modified 06:32PM 25th June, 2019 New Delhi)

¹⁴ List of Fugitives Extradited/Deported by Foreign Governments to India. Available at- http://mea.gov.in/Images/attach/lu2797_Annexure_B.pdf (Visited on 01st June, 2021)

¹⁵ India catches only 2 of 72 fugitive economic offenders in 5 years: RTI, Available at- https://www.business-standard.com/article/current-affairs/india-catches-only-2-of-72-fugitive-economic-offenders-in-5-years-rti-120112000580_1.html (Visited on 02nd June, 2021)

that of the recent infamous criminal fugitives such as Nirav Modi, Vijaya Mallaya, and Mehul Chowski etc. have a huge impact on the economy of any nation. Therefore, their impact not only impacts the upholding of the rule of law but also threatens to damage the economic stability of a state. Threat to economic stability consequently leads to threat to the overall growth, development and security of the nation state. It is because of these reasons, it becomes the utmost priority of any government to *first-* prevent such offences from being committed and the criminals running away from the state's jurisdiction by way of strengthening law enforcement mechanisms and *second-* in cases where such offences do indeed end up taking place, have proper diplomatic doors open for the speedy extradition of such fugitives from the state to which they have fled. This is where the Fugitive Economic Offenders Act 2018 and the Extradition Act 1962 come together to form the perfect harmony of the two solutions.

In both the acts, the central government has the power to issue orders with regards to the applicability of the act. While the Extradition Act is applicable to all those fugitives who have fled the jurisdiction of India, the Fugitive Economic Offenders Act on the other hand is only applicable to those fugitives who have committed an economic offence which is worth over 100 crores. The fugitive economic offenders act is a special act, enacted to serve a specific purpose unlike the Extradition Act which is relatively general. The setting of cap on the total minimum sum of 100 crore as a mandate for the applicability of the act indicates the urgency in bringing to justice high stake offenders, as they are the ones who have a large scale impact on the overall well-being of the state.

(C) Implementation and Effect of the Acts

It is very important to state ab initio that as provided under Section 22 of the Fugitive Economic Offender's Act, the application of the act is "in addition to and not in derogation of any other law for the time being in force."¹⁶ The Fugitive Economic Offender's Act is derived from various other pieces of legislation which govern economic offenders of different kinds for example the Prevention of Money Laundering Act 2005 etc. The Extradition Act is another such piece of legislation for the benefit of which this act has been brought into the legislation. The Extradition Act's provisions are complimented by that of the Fugitive Economic Offenders Act.

The central government has the power to issue orders under the Extradition Act directing the application and extent of application of the act to certain foreign states. The central government by order can also direct restrictive application of the act to specific fugitive criminals found or

¹⁶ Section 22, The Fugitive Economic Offender's Act, 2018 (Act 17 of 2018)

suspected thereof in India. It can make a request for the extradition of a fugitive criminal who has either committed an extradition offence in India or is suspected thereof and is in any foreign state.

Every person has a right to resist extradition and in most states, the approval of the Extradition requests from other states requires judicial scrutiny. The individual requested to be extradited has the right to appeal against any order of the courts, if after scrutiny their extradition request is upheld. One of the salient feature of the Fugitive Economic Offender's Act is the process of compelling the offender, by means the confiscation of their property, to submit themselves to the process of law in the country, and undergo trial.

It is not necessary or mandatory that an extradition request has already been placed before an individual has been declared as Fugitive Economic Offender under the act but it is safe to presume that it is the subsequent step or vice versa.

(D) Criticisms and Issues related therewith

There are various issues raised and criticisms thus arrived with regards to the applicability of the Extradition Act with the Fugitive Economic Offender's Act. Under the Fugitive Economic Offender's Act appropriate authorities can take away the right to claim or defend any "civil claims"¹⁷, cause "attachment of property"¹⁸ and "search and seizure"¹⁹ of the property of an individual who has been declared a fugitive under the Act. These provisions are placed to primarily "deter" the fugitives from ever evading the process of law by evading from the jurisdiction of India and secondly in case they end up fleeing then create pressure on the fugitive to submit themselves to the jurisdiction of India and the process of law. It can be argued that this form of pressure tactic can lead to the violation of rights of an individual.

As per the principles of natural justice of "audi altrem partem" every person has to be given the right to heard and no one should be left unheard. Let us take an illustrative example- A fugitive has taken residence in one state and extradition is sought by the other state from which they have evaded. The fugitive resists the extradition proceedings, and presents their own evidence in court. The government of the requested state simultaneously declares the fugitive a "fugitive economic offender" under the act aforementioned. In this case, the question that arises is whether this action of the government imposes unreasonable, arbitrary and unfair pressure on the individual to render him unable to exercise properly their right to be heard in

¹⁷ Section 14, The Fugitive Economic Offender's Act, 2018 (Act 17 of 2018)

¹⁸ *Id.* Section 5

¹⁹ *Id.* Section 8

court.

The answer, the researcher would argue, is in the negative for the following reasons. Before an individual is declared a “Fugitive Economic Offender” under the act, the burden of proof to confirm through evidence that an individual is a “Fugitive Economic Offender” under this act lies on the Director or any other officer which the Director has appointed on this behalf (who is not below the rank of Deputy Director) under the act. They then submit such application with evidence to Special Courts under the act and then after judicial scrutiny a decision is made. But not before notice for such proceedings is mandatorily sent to the individual against whom such application is moved and they have been provided a proper time to either present themselves in person or via any legal representative to the court. They are given a fair chance to present their case as to why they should not be declared so.

The process under the act merely provides an alternative to the individual to voluntarily submit themselves to the process of law and if proved, face the consequences of their crimes instead of being surrendered through the process of extradition. It can be further argued that instead of viewing it as only pressurizing mechanism, it can also be seen as an alternative to extradition by voluntary submission to the individual, if they are proved to be a fugitive economic offender having committed a crime worth rupees 100 crore or more.

Furthermore, it is to be noted that the confiscation and attachment of property that takes place under the act is only equivalent to the “proceeds of crime” and not of any other property. Reasonable restriction on an individual on grounds of evasion from law cannot said to be a violation of rights of an individual.

In international law discourse, even the process of Extradition is not saved from an extradited individual’s fear of facing unfair prosecution or unfair treatment or being used as scapegoat by governments for political gains. When it comes to determination of treatment of individual once extradited judicial courts of many countries have often stated that the doctrine of separation and abiding by the sovereignty of states limits their inquiry in an extradition hearing to only the determination of prima facie cases. However, this does not change the fact that when it comes to the actual determination of whether or not an individual should be extradited or not, it still remains with the laws of the requested state with a combination of judicial as well as executive discretion.

(E) Relevance and impact of the Fugitive Economic Offender’s Act 2018

Since Vijay Mallya is the first person to be ever declared ‘Fugitive Economic Offender’ under this act and is undergoing Extradition proceedings, his case is the best to understand the

relevance and impact of the Act.

Vijay Mallya fled from India in 2016, the request for his extradition was made in 2017, order to extradite him was passed in 2018 and yet as of June 2021 Vijay Mallya has not been surrendered to India. It is evident that the process of Extradition is not an easy one. It is not just the result of the strenuous process of judicial scrutiny that leads to such delays but also diplomatic strains, and “confidential” reasons for states for not being able to process such requests expediently.

The order passed by the PMLA Special Courts in 2019, declaring Mr. Mallya a “Fugitive Economic Offender” is of utmost relevance. It gave authorities in India an opportunity to confiscate his properties and attach them, the property being equivalent to the “proceeds of crime” only. Such property can even be sold by appropriate authorities to repay the damage caused by his refusal to repay his loans. This is very important because in cases where the fugitive refuses to return to face the process of law, the people who have incurred losses due to the fraudulent practices of such individual become helpless victims of such proceedings.

An issue that is often debated for with reference to the ‘pressure tactic’ that is employed under the Fugitive Economic Offender’s Act 2018 is that it takes away the right of any economic offender to resist their extradition fully. The right to resist extradition cannot be deemed to be ‘curtailed’ just by an act on part of the requesting party to incur losses that are caused by the individual they want to extradite.

The Fugitive Economic Offender Act does not provide for a creation of any new crime but in actuality the core reasoning of this act can be bottled down to one primary drive which is to cause for an accused to submit themselves to the process of law in India.

Vijay Mallya was declared Fugitive Economic Offender in the 5th of January and it is a curious coincidence that one month later in February 2019 his Extradition was approved by U.K’s home secretary. Whether or not Vijay Mallya being declared as a Fugitive Economic Offender had any impact on his extradition process to be quicker remains indeterminate but one thing is for sure that it is due to the proceedings under the act and the Special Court’s decision that many banks that he has defrauded have been able to take his properties to be sold to compensate themselves with the losses that he’s incurred them.

VI. CONCLUSION

Despite all its lacunas, it is of no doubt that Extradition in today’s modern world is an essential tool utilized by governments to deter criminals from fleeing the jurisdiction, in order to escape

from the consequences of their crimes. It is pertinent to note that, the more treaties a state enters into with other states, it creates more and more a sense of security among its people that no one can escape from the custody of law by mere geographical and territorial restrictions. It upholds the principle of rule of law and propagates the idea of a just and fair society.

The Fugitive Economic Offenders Act 2018 is a huge stepping stone by the Indian government towards taking a strong stand on its intolerance of rising fugitive economic criminals. India within its 75 years of independence has been able to achieve a myriad of tasks. And its external affairs policies and internal laws have reflected the same.
