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## Challenges in Cross-Border Extradition: A Study of India's Extradition Framework

**Introduction**:

The fact that crime has crossed international boundaries means that modern procedures for criminal justice require a level of cooperation between different nations that was not originally in place when national justice systems operated independently. Due to technological improvements in communication, international trade, and travel people who have been charged with serious criminal offenses, including financial crime, terrorism, cybercrime, drug trafficking, etc., can escape prosecution by simply moving to another country to avoid being processed through a judicial system. In these cases, extradition is one of the most important legal tools available to law enforcement to enable one country to give up a person who has been accused or convicted of a criminal offense to another country so that they can be prosecuted or punished for that crime by the requesting country. The use of substitute methods to execute legal orders from other countries (i.e., by fleeing) undermines the rule of law; but by prohibiting people from using jurisdictional borders to escape criminal prosecution, extradition helps prevent transnational crime and uphold the rule of law.

India's growing economic and geopolitical significance has brought renewed attention to the effectiveness of its extradition framework. High-profile cases involving fugitives such as Vijay Mallya, Nirav Modi, Mehul Choksi, and Abu Salem have exposed both the strengths and limitations of India's efforts to secure the return of offenders from foreign jurisdictions. While the Extradition Act, 1962 and a network of bilateral treaties provide the legal foundation for extradition requests, their implementation often encounters significant obstacles. Differences in legal systems, concerns regarding human rights protections, the political offence exception, evidentiary requirements, and prolonged diplomatic and judicial processes frequently complicate extradition proceedings.

The challenge of extradition extends beyond mere legal procedure; it involves a delicate balance between State sovereignty, international cooperation, and the protection of individual rights. As international human rights norms continue to evolve, States are increasingly scrutinizing extradition requests to ensure compliance with principles of due process, fair trial, and protection from inhuman or degrading treatment. Consequently, extradition has emerged as one of the most contested areas of international criminal law.

In keeping with this theme, the objective of this paper is to review the legal principles that govern the topic of extradition as well as the statutory provisions associated with extradition under India's current legal framework. This includes an evaluation of significant case law and the development of the European Union's Global Criminal Jurisdiction Act. The analysis will also discuss how these laws affect International Criminal Society and the extent to which reforms are needed to improve cooperation between countries in combating crime in an increasingly global economy.

## Concept and Evolution of Extradition in International Law

The process by which one State hands over an individual found guilty or accused of committing a crime so that that individual may be tried or punished in another State is known as extradition. It differs from deportation, which one Sovereign State may carry out using its sovereign powers as described above in the administrative usage of the term. Extradition is based on the principle of co-operation between States and one of the ways that States may work together in this area is through extradition treaties; other means are domestic legislation and International law.[1] The primary objective of extradition is to prevent offenders from evading justice by seeking refuge beyond the territorial jurisdiction where the offence was committed.

Extradition has its roots in ancient times when kings used to send back criminals for various socio-political or economic reasons. The original concept of the extradition process has changed considerably since the 19th century. The rise of nation-states and the increased need for cooperation between nations for the prosecution of crime were the two main factors that led to the establishment of modern-day extradition law. With the advent of bilateral extradition treaties, extradition was no longer simply an act of a State providing fugitives to another State because of political or other reasons; instead, it became a clearly defined, regulated legal process by which States have established mutual obligations to carry out extradition requests.[2] Over time, international legal principles such as dual criminality, specialty, and non-extradition for political offences evolved to safeguard both State sovereignty and individual rights.

In the contemporary era, globalization has significantly expanded the scope and importance of extradition. The rise of transnational crimes such as terrorism, cybercrime, money laundering, human trafficking, and financial fraud has necessitated greater collaboration among States.[3] At the same time, international human rights criteria have impacted the development of extradition law and procedure as courts and governments routinely assess whether the extradition would subject an individual to an unfair trial, torture, inhumane treatment, or violations of original human rights before granting an order of extradition.[4] Consequently, extradition today represents a complex intersection of criminal justice, international cooperation, human rights protection, and State sovereignty.

## India's Extradition Framework: Legal and Institutional Structure

The Extradition Act of 1962 provides the primary governing statute for extradition between foreign countries and India. The Act consolidates the law on extradition and authorises the Indian Government to enter into treaties and other agreements related to extradition with other nations. The Act applies to requests from foreign governments to surrender persons in India to their countries as well as requests from Indian authorities for the return of persons located

[1] M. Cherif Bassiouni, *International Extradition: United States Law and Practice* 1–5 (7th ed. 2020).
[2] Geoff Gilbert, *Responding to International Crime* 86–92 (2022).
[3] United Nations Office on Drugs and Crime, *Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime* (2021).
[4] Cedric Ryngaert, *Jurisdiction in International Law* 247–52 (3d ed. 2021).

outside of India.[5] The legislation seeks to balance the objectives of international criminal cooperation with the protection of individual rights and procedural safeguards.

India's system for extraditing individuals is based on a system of treaties and agreements with other nations. A treaty is a legally binding contract that explains the obligations of both nations in relation to extradition. An agreement, on the other hand, allows for cooperation between the two nations without having to create an agreement. In support of this, India has entered into a number of treaties and agreements with European, North American, Asian and Middle Eastern nations so that it may effectively return individuals who are accused of having committed serious crimes.[6] However, the absence of treaties with certain jurisdictions continues to pose challenges in securing the return of accused persons who flee abroad.

Extradition procedures within an institution involve many government and judicial entities. The MEA is the primary coordinating authority for sending and receiving extradition requests by means of diplomatic communication. The MHA is responsible for the processing of extradition requests, working with their respective law enforcement agencies to ensure that the domestic law provisions are followed, and for coordinating the issuing of evidence required to support extradition proceedings. Investigating agencies (CBI and ED) will typically assist with the collection and preparation of the evidence necessary to support extradition proceedings for high-profile offences, such as economic crimes, and inter-jurisdictional criminal activities.

Within the extradition framework in India, the judiciary plays an important role. When courts receive extradition requests, they must review whether the request adheres to requirements stipulated by the Extradition Act (1962) and traditional treaty obligations. Courts' review may involve an examination of the following issues: whether the request is based on a "dual criminality" standard, whether there is enough evidence, whether the process meets the requisite standards of fairness, and whether all constitutional protections have been provided.[7] This multi-layered legal and institutional framework reflects India's attempt to reconcile international cooperation in criminal matters with the principles of due process, sovereignty, and human rights protection.

**Fundamental Principles and Major Challenges of Cross-Border Extradition**

There are numerous established principles under International Law that govern the process of extradition. These principles apply to both: the effective prosecution of crime, as well as the protection of individuals and states' rights. Underneath these principles, extradition is subject to the principle of double criminality; meaning that the act for which the extradition is requested must constitute a crime in both the requesting state and the requested state.[8] A major component of this principle is that an individual should not be extradited for performing an act that does not constitute a violation of law in the requesting country. A second component is that once a person has been extradited from one country to another, they should not be prosecuted for any offence other than the one that were the basis for the request for extradition (known as the Rule of Specialty).[9] This safeguard ensures that extradition is not used as a means to circumvent legal protections.

[5] Extradition Act, No. 34 of 1962, §§ 2–31, India Code (1962).
[6] Ministry of External Affairs, Government of India, *Extradition Treaties/Arrangements*
[7] *Abu Salem Abdul Qayoom Ansari v. State of Maharashtra*, (2011) 11 S.C.C. 214.
[8] M. Cherif Bassiouni, *International Extradition: United States Law and Practice* 541–49 (7th ed. 2020).
[9] Geoff Gilbert, *Responding to International Crime* 102–06 (2022).

A further limitation on extradition is the political offence exception, under which States may refuse extradition requests involving offences that are political in nature.[10] While the purpose of extradition is still meant to assist the court system in delivering justice to within a country where a political prisoner has committed a crime, there has been an increasing trend towards reducing the particularity associated with crimes involving terrorism and transient organized crime. Any extradition proceeding that's going to occur will have major human rights implications surrounding whether every individual gets a fair trial, whether that individual is likely to be tortured, suffer inhuman treatment, or face capital punishment.[11]

Extradition continues to face numerous challenges despite the existence of certain principles. A key obstacle is a lack of extradition treaties between many states, which precludes the availability of an effective and timely legal basis on which to seek the return of a fugitive. Further, disparities in legal systems, evidentiary standards, and procedural requirements often delay the resolution of requests for extradition. Human rights issues, particularly with regard to the conditions in prisons and capital punishment, are also frequently cited as grounds to oppose extradition requests.[12]

Extraditions are also often complicated by political and diplomatic factors. The requested state may oppose the surrender of a person if there are geopolitical interests, political sensitivities, or allegations of political persecution involved. High-profile cases, which typically involve alleged economic offenders, have illustrated just how difficult it can be to obtain an extradition in light of lengthy judicial review processes and the significant degree of scrutiny that is applied by foreign courts when evaluating a request for extradition. Therefore, although extradition has long been considered an essential tool in combatting transnational crime, its efficacy is often limited by legal, governmental, and human rights factors that continue to shape the extent of international cooperation in this area of law.

**Case Studies: India's Extradition Experience**

India has plenty of experience in extraditing criminals who have fled to other countries. Many cases highlight the fact that extradition is not just about the law, but also involves the many factors involved in deciding to extradite, including: the involvement of other states in getting the criminal back; the involvement of other countries in helping to return the criminal; the judgement of the Indian judiciary; human rights considerations; and the co-operation of other countries.

**Vijay Mallya**

Vijay Mallya is one of the most high-profile extradition cases in recent years for allegedly committing fraud and money laundering in relation to loans taken out by Kingfisher Airlines. After leaving India in 2016, Mallya was subject to extradition proceedings in the United Kingdom. His extradition request was made through the India-UK Extradition Treaty; however, it took several years for Mallya to be extradited due to various legal habeas corpus actions regarding his treatment (conditions of detention), his human rights and due process rights.[13]

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[10] Ilias Bantekas & Susan Nash, *International Criminal Law* 409–12 (5th ed. 2023).
[11] Cedric Ryngaert, *Jurisdiction in International Law* 247–52 (3d ed. 2021).
[12] *Abu Salem Abdul Qayoom Ansari v. State of Maharashtra*, (2011) 11 S.C.C. 214.
[13] *Govt of India v. Vijay Mallya*, [2018] EWHC (Admin) 1880 (Eng.); *Mallya v. Govt of India*, [2020] EWHC (Admin) 924 (Eng.).

The case highlighted the extensive scrutiny applied by foreign courts before surrendering an individual to India.

**Nirav Modi**

Nirav Modi's Extrajudicial Proceedings were initiated because he was charged with fraud regarding how the Punjab National Bank was able to conduct such large-scale banking operations without anyone knowing about it until after it was too late. His departure from India triggered the government's initiation of an Extradition proceeding against him in the United Kingdom. Like Mallya, Nirav challenged the Extradition Request by raising the same type of mental health and prison conditions, and the possibility of being subjected to discriminatory treatment upon his return as he was; he was ever subjected to that type of treatment throughout his life.[14] The case demonstrated how human rights arguments have become a significant factor in modern extradition litigation.

**Abu Salem**

Abu Salem's successful extradition from Portugal to India has been a remarkable accomplishment for international cooperation in criminal prosecutions. Following extensive negotiations between the two countries regarding the release of Abu Salem (who was wanted for his alleged involvement in the Mumbai Bombings of 1993) were completed successfully in January 2002, the Portuguese government agreed to extradite Abu Salem to India; however, the extradition was conditional on both assurances from the Indian government that Abu Salem would not be sentenced to death and that he would only face prosecution for charges related to the extradition request.[15] The case demonstrates the practical application of the principles of specialty and human rights protection in extradition law.

**Lessons from India's Extradition Experience**

Together these cases illustrate that extradition is frequently affected by factors other than the actual commission of the alleged crime. For example, human rights issues, detention facility conditions, political reasons, citizenship status, and long judicial review processes can all lead to delays and/or complications to extradition. Additionally, they show how maintaining strong diplomatic relations with countries will be increasingly important in negotiating successful extradition treaties and adhering to international standards for human rights when extraditing individuals from one country to another. As such, the Indian experience with extradition is evidence of the need to work together internationally and continue reforming to improve the effectiveness of India's extradition framework.

**Reassessing India's Extradition Framework: Need for Reform**

Given the continued increase in transnational crime, there is greater need for an efficient and responsive extradition system. While India currently has a legal framework that allows for cooperation with other legal systems around the world, recent occurrences in this area have shown that there are still many deficiencies regarding procedural delays, limitations on treaties, and differing levels of international cooperation.

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[14] *Govt of India v. Nirav Deepak Modi*, [2021] Westminster Magistrates' Ct. (Eng.), [2022] EWHC (Admin) 1119 (Eng.).

[15] *Abu Salem Abdul Qayoom Ansari v. State of Maharashtra*, (2011) 11 S.C.C. 214.

Thus, reform efforts should not simply focus on increasing the number of extradition treaties, but rather on developing a system of extradition that is both effective and consistent with international law. Therefore, India should pursue an enhanced extradition policy by increasing its numbers of treaties, especially with countries that have developed as popular locations for economic offenders and financial fugitives. In addition, India should develop negotiated treaty provisions that will allow for smoother cooperation between parties by establishing defined timelines and standardising forms of proof to minimize delays.

Establishing a specialised extradition division with legal experts, diplomats and investigators to manage international surrender requests will be necessary, as the current extradition process usually involves multiple agencies, resulting in bureaucratic inefficiencies. Having a dedicated strategy and procedure for this would provide better coordination of resources and help ensure timely completion of extradition requests.

India should also review its extradition framework to reinforce procedural protections and guarantee due process. When reviewing extradition requests, foreign courts often consider the conditions of prisons; whether the trial process is fair, and whether the applicable human rights provisions will be followed. Addressing these issues via transparent safeguards and using internationally accepted standards or practices regarding how individuals will be detained upon extradition will enhance India's reputation abroad, thereby reducing the number of times countries refuse to honour India's requests for the return of suspected offenders.

India needs to take a more stringent stance when it comes to apprehending persons accused of serious non-political crimes who are attempting to escape prosecution by obtaining refuge in another nation. While the international legal principle of the protection of persons who have a political motive for opposing the government's policies is firmly established, it should not also provide a safe haven for persons suspected of massive financial crimes, corruption, organized crime, terrorist activities, and other serious offences. To accomplish this, much greater levels of international cooperation are needed to differentiate between bona fide claims of political persecution and cases where persons are trying to avoid being held criminally accountable for their actions.

Lastly, India needs to develop digital evidence-sharing programs and mutual legal assistance agreements as well as to enhance the degree to which law enforcement agencies cooperate with each other on a real-time basis. Since increasing numbers of financial transactions, communications, and criminal acts occur on electronic platforms as opposed to non-digital means, the traditional processes for the extradition of persons charged with these types of crimes are insufficient. Therefore, enhancing the degree to which authorities use technology to support their mutual legal assistance and evidence-gathering processes will both expedite the speed at which criminal cases are prosecuted, and enhance the quality of the evidentiary basis on which they are prosecuted.

Thus, an accomplished international extradition system must effectively provide a means to protect individual freedoms versus providing a means for nation-states to hide behind their borders from being held accountable for crimes. This can be achieved through enhanced institutional frameworks, improved cooperation on an international level, improved due process, and a more robust approach to not permitting the misuse (i.e., use for non-political reasons) of the asylum system by non-political offenders; India should develop additional, expanded extradition provisions to effectively deal with the realities of transnational crimes in the 21st century.

## Conclusion

In an increasingly interconnected globe where criminal offenses are perpetrated across international borders and those committing crimes are able to utilize differences in jurisdiction to avoid prosecution and escape justice, extradition has become one of the most important tools available for International Criminal Cooperation. As a result of the need of States to recover fugitives to ensure proper administration of Justice, India has constructed an Extradition System through the Extradition Act of 1962 as well as through bilateral treaties and other diplomatic mechanisms to enhance international assistance for combating transnational crimes and holding accountable those who commit them.

However, the experience from India with individuals such as Vijay Mallya, Nirav Modi, Mehul Choksi and Abu Salem has shown that extradition is a very complex and convoluted process that is affected by a number of different factors which include legal issues, diplomatic relations and human rights issues. Furthermore, there are a significant number of issues that inhibit the return of fugitive criminals and they include limitations within extradition treaties, procedural delays in the extradition process, evidentiary requirements for the extradition and rights to a fair trial. Given the numerous obstacles associated with the extradition process, there is a need for a comprehensive legal framework for the extradition process that not only meets the needs of each individual State and conforms to international standards but also adapts to the evolving international legal standard.

Ultimately, the effectiveness of extradition should be measured not merely by the number of successful surrender requests but by its ability to balance State sovereignty, individual rights, and the demands of justice. As transnational criminal networks continue to grow in sophistication, India must strengthen its extradition mechanisms through institutional reforms, enhanced international cooperation, and stronger procedural safeguards. A modern and efficient extradition regime is no longer a matter of diplomatic convenience; it is an indispensable component of ensuring that justice does not end at national borders.