The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

LAW OF EXTRADITION TREATIES IN INDIA

~Aaysha Khan

Extradition is a delivery of an accused or a convicted individual to the State on whose territory he is alleged to have committed or to have been convicted of a crime, by the State on whose territory the alleged criminal happens to be for the time. It is a process of handing over a fugitive to a state with a jurisdiction based on reciprocity. No crime is left unpunished is a key principle of extradition. Extradition legislation of the home country and extradition treaty guides the extradition process between and among two or more countries. A bilateral or multilateral agreement facilitating the handing over of accused or convicted persons between states

As per Section 2(d) of the Extradition Act, Extradition treaty means 'a treaty, agreement, or arrangement with a foreign state relating to extradition of fugitive criminals. An extradition treaty also spells out the conditions precedent for an extradition. It also includes a list of crimes which are extraditable.

There are two states involved in extradition- the *territorial state* and the *requesting state*. The "territorial state" is where the accused or convict flees to escape the trial or punishment. On the other hand, the "requesting state" is the one where the offence is or is allegedly committed. The requesting state formally demands the surrender of the accused or convict through diplomatic channels and in conformity with any treaty.

The mutual interests of both the territorial state and the requesting state for the maintenance of law and order and the administration of justice require that the nations should cooperate with each other in returning the accused person or convict to the requesting state. Hence, to avoid the clash between state sovereignty and administration of justice, most states enter into various treaties governing extradition. Also, various countries incorporate provisions for extradition in their penal codes. Most nations refuse to extradite individuals for acts which would not be considered a crime locally and they might also not extradite individuals accused or convicted of certain political crimes in addition to having other procedural requirements. Some nations may also refuse to extradite individuals who might be subjected to torture or be given death penalty in the requesting country. In light of growing crimes rates that cross international borders, the need to cooperate in the international battle of crime.

Consequently, in view of the growing internationalisation of crime, easy mobility and porous borders, a need was perceived to co-operate in legal processes for transfer of criminals, with a view to ensure that the rule of law is upheld and no crime goes unpunished. The law of extradition has evolved under the principle for seeking justice in the country where the crime has been committed. By conducting the trial, for the crime that has been conducted in the vicinity, as this enables easy availability of evidence, and also a criminal is punished in the very vicinity of the original offence thus sending out a strong signal of deterrence and restoring the societal equilibrium, which the crime had upset.

Hence, extradition is a means to resolve two apparently conflicting principles – firstly, that the criminal jurisdiction extends only to offences committed within geographical boundaries; Secondly, the rule that frowns over a crime or a criminal going unpunished on account of jurisdictional reasons.

The law of extradition attempts to harmonise the two principles are ensured, while at the same time, it guarantees the due process and protection of basic human rights of fugitives, along with the protection from persecution, inhuman treatment cruel punishment, and torture. This balance is sought to be achieved by Extradition laws thereby laying down a procedure that is to be satisfied prior to surrender. A zealous approach with respect to protection of personal liberty and the right to life is reflected by these procedures. This includes a judicial inquiry by a Magistrate, followed by a decision of the Central Government. There are certain guidelines as to the exercise of this power within the Extradition Act and treaty obligations with specific states.

“India signs bilateral extradition treaties to encompass a broader category of offences. It is the policy of the Government to sign extradition treaties with as many countries as possible. The Extradition Treaties/Arrangement concerned provide a legal framework for seeking extradition of persons of any nationality who are wanted in India for offences involving imprisonment of at least one year and vice-versa. The Treaty is aimed at suppressing crime including terrorism, by ensuring the availability of fugitive criminals for trial.

Extradition Treaties have been entered into with the following 37 countries: Australia, Bahrain, Bangladesh, Belarus, Belgium, Bhutan, Bulgaria, Canada, Egypt, France, Germany, Hong Kong, Kuwait, Malaysia, Mauritius, Mexico, Mongolia, Nepal, Netherlands, Oman, Poland, Portugal, Republic of Korea, Russia, Saudi Arabia, South Africa, Spain, Switzerland, Tajikistan, Turkey, Tunisia, United Arab Emirates, United Kingdom, United States of America, Uzbekistan, Ukraine and Vietnam.”

This was stated by the Minister of State for Home Affairs, Shri Haribhai Parthibhai Chaudhary in the Lok Sabha on 05-May-2015

The Extradition Act 1962, as amended from time to time provides the legislative basis for extradition of a fugitive criminal from India. The primary consideration for the request of extradition is the assurance of reciprocity. This principle has been upheld in a number of cases. Usually there is a bilateral

extraction treaty agreement or arrangement. But in case of absence of a bilateral extradition treaty, agreement or arrangement, one could use a relevant multilateral convention providing for extradition.

Excluding the bilateral Extraction Treaties, the Government of India has also entered into extradition arrangements with some countries.

Extradition offence means:

(i)in relation to a foreign State, being a treaty State, an offence provided for in the extradition treaty or arrangement with that State;

(ii) in relation to a foreign State other than a treaty State, an offence punishable with imprisonment for a term which shall not be less than one year under the laws of India and of a foreign State, and includes a composite offence. (Section 2(c) of Extradition Act, 1962)

'Foreign State' means any State outside India and includes every constituent part, colony or dependency of such State. (Section 2(e) of Extradition Act, 1962)

Provisional Arrest Requests

The Extradition Act 1962 as well as bilateral extradition treaties/agreements also provide for the provisional arrest of the accused pending the submission of a formal extradition request.

A request for provisional arrest is generally transmitted through diplomatic channels, to the CPV Division of the Ministry of External Affairs. The facilities of the International Criminal Police Organization (INTERPOL) may also be used to transmit such a request.

After the provisional arrest, the foreign country concerned gets a limited time to submit a formal extradition request. This period generally ranges from 45 to 60 days in accordance with the provisions of the relevant extradition treaty. Under Section 34B of the Extradition Act, within 60 days from the date of provisional arrest, a formal extradition request needs to be submitted. However, even if the FC has been released by the Court on this account, it shall not prejudice the subsequent re-arrest and extradition of that person, if the extradition request and supporting documents are received at a later date.

In the case of Extradition Request:

A request for the surrender of a fugitive criminal from India may be made through diplomatic channels, either by a diplomatic representative of a foreign State at Delhi or by the Government of that foreign State or through the Indian diplomatic Mission in that State or such other mode as agreed in the extradition treaty/agreement concerned.

An extradition request should be submitted to the CPV Division in the Ministry of External Affairs being the Central Authority in extradition matters. The request is examined in the Ministry and taking

into account the relevant extradition treaty/arrangement if it considers it fit, an Inquiry Magistrate may be appointed to inquire into the case. If on the basis of the extradition request, the proof of identity of the fugitive, the supporting evidence, the provisions of the relevant treaty and the Extradition Act, the Inquiry Magistrate considers that it is a fit case for the surrender of the fugitive criminal pursuant to the request, the Magistrate may in its report recommend extradition of the FC and may commit him to prison to await the orders of the Central Government. While submitting his Inquiry report to the Central Government, the Magistrate shall forward together with such report any written statement which the fugitive criminal may desire to submit for the consideration of the Central Government.

On the other hand, if, on conclusion of the extradition inquiry, the Extradition Magistrate is of the opinion that a prima facie case is not made out in support of the requisition of the foreign State, he shall discharge the fugitive criminal.

Grounds for Refusal of Extradition:

The grounds for refusal are invariably contained in the relevant extradition treaty. Generally, these grounds are:

(i) where a person's extradition is sought for an offence of a political character. However, the Extradition Act in general and the extradition treaties, in particular, also list out many offences which shall not be considered as an offence of a political character.

(ii) The offence of which a person is accused or convicted is a military offence;

(iii) If the person whose extradition is sought has, according to the law of the requesting State becomes immune from prosecution or punishment by reason of lapse of time;

(iv) The person has been tried and acquitted/pardoned/ undergone punishment with respect to the offence for which his extradition is sought;

(v) If the requested State has substantial grounds to believe that the person's extradition is sought for the purpose of prosecuting or punishing the person on account of his/her race, sex, religion, nationality, or political opinions, or that the person's position may be prejudiced for any of those reasons. Waiver of Extradition:

Though the Extradition Act, 1962 is silent on this issue, generally extradition treaties contain provisions relating to waiver of extradition. If during an extradition inquiry, the FC voluntarily deposes before the Inquiry Magistrate his willingness to face the charges or undergo sentence in the foreign State pursuant to the extradition request, the Inquiry Magistrate may on the basis of the voluntary surrender request made by FC, and after being satisfied that dual criminality exists, recommended to the Central Government the extradition of FC with respect to the offences for which his extradition is sought. In

such cases all other procedures, including the establishment of a prima facie case will be dispensed with.

Also, the offences charged against the accused must satisfy the following:

- Double Criminality: The offence for which the accused is sought for, must be an offence in the state where the accused is found. That is the extradition granting state must also regard the alleged act as an offence.
- Principle of Specialty: If the extradition of the accused is granted, the accused must be tried only for the offence
- Prima Facie case: There must be a prima facie case against the requested person and he must be answerable to it
- Human Rights: The extradition will be granted only if the Requested State is satisfied that the requested person won't be subjected to inhumane treatments in the Requesting country (Normally, European countries require it).

As of 2021, India has entered into extradition treaties with 47 countries and has extradition agreements with 11 countries.

Some of the Extradition Cases fought by India are:

- The Vijay Mallya Extradition case: United Breweries Holdings Ltd and King Fisher Airline owned by Vijay Mallya, was accused by a total of 13 banks led by State Bank of India of not repaying a loan of Rs.6000 and not providing salaries to the employees. In the most recent advancement of the case, A special court in Mumbai has issued a non-bailable warrant (NBW) against fugitive businessman Vijay Mallya in a Rs 180-crore loan default case linked to Indian Overseas Bank (IOB). The NBW was issued against Mallya on June 29 by special CBI court judge SP Naik Nimbalkar and a detailed order was made available in June 2024.
- The Nirav Modi Extradition case: Nirav Modi was the founder of Firestar Diamond International and was closely associated with the Gitanjali Group. In 2018 the Punjab National Bank (PNB) filed a complaint before the Central Bureau of Investigation (CBI) for the alleged fraud committed by Mr. Nirav Modi, his wife and some of his employees. It was alleged that he defrauded the bank by obtaining fake Lou’s (Letter of Undertaking) worth 11,400 crores with the help of some employees in their Mumbai branch. The latest advancement in this case follows September,2026 where the Indian authorities secured the extradition of his close associate, Sandeep Mistry, from the UAE. The European Court of Human Rights rejected his final appeal, exhausting his international legal avenues. Finally, in Oct 2026, the UK High

Court ruled that his claims regarding a risk of torture did not meet the exceptional threshold required to reopen the case.

Citations

- Press Trust of India, *Non-Bailable Warrant Against Vijay Mallya in 180-Crore Loan Default Case*, NDTV (July 2, 2024),.
- The Hindu, *U.K. Has Said It Cannot Extradite Vijay Mallya, Centre Informs SC*, (Feb. 4, 2021), .
- News On AIR, *Nirav Modi Faces Setback as UK High Court Rejects Plea to Reopen Extradition Case* (Mar. 26, 2026),
- Radhika M., *Recent Extradition Cases Fought by India*, Law Insider India (June 15, 2021), .
- The Extradition Act, No. 34 of 1962, § 2(c) (India).
- Ministry of External Affairs, Government of India, *Extradition from India*, .
- Sanhita Chakrabarty, *Extradition Laws: Full Paper*, Indian Legal Solution (June 8, 2018), .
- United Nations, Model Treaty on Extradition art. 2 (1990),
- J. Jerusha Melanie, *Extradition in International Law*, iPleaders (June 13, 2022), .
- Ministry of External Affairs, Government of India, *Legal and Treaties Division*, .
- Embassy of India, Doha, *Extradition*, .