
A COMPARATIVE ANALYSIS OF EXTRADITION LAWS AROUND THE WORLD

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INTRODUCTION

States negotiate extradition accords in order to pursue fugitives and other wanted persons in foreign territories, a practice that dates back to ancient times. Extradition has become increasingly significant as international criminal groups, such as those linked to terrorism, narcotics trafficking, counterfeit, and cybercrime, have grown substantially. It can be said that the source of power of extradition arises from treaties. Upwards of a hundred nations have extradition treaties with the United States. Extraditions are typically problematic, and they may become mired in geopolitical tensions even when accords are in place. Formally, "Extradition" refers to the handover of any individual demanded by the requesting State seeking criminal prosecution or the imposition or implementation of a sentence in connection with an extraditable offence. The presence of an enforceable extradition treaty as well as the municipal laws of the land for which extradition is requested are two elements that influence international extradition proceedings. However, as a gesture of good faith, an extradition procedure between two nations can take place with no such agreement or arrangement. Although, the cases wherein a country extradites without the prior existence of a bilateral treaty are rare occurrences. The aim of this essay is to provide an insight into how countries like the United States of America, United Kingdom and India have their extradition laws framed. Furthermore, popular case-laws pertaining to extradition will be employed to provide a practical understanding and application of the said laws.

To understand different extradition laws, it is imperative to understand the fundamental functioning of extradition laws in real time. Belgium established the first legal statute authorizing for extradition in 1833, including the first ordinance on the claim to asylum. Extradition Acts define the link between the Act and the treaty by specifying extraditable offences, as well as processes and protections. The correlation among extradition statutes and treaties varies widely between countries. Extradition is only possible in the United States if it

is based on a treaty and if the Congress has not passed any legislation to the contrary, as it is in the United Kingdom, Belgium, as well as the Netherlands. In circumstances when their governments and the seeking state have exchanged reciprocity declarations, Germany and Switzerland extradite without the need for a formal agreement. Numerous governments, for instance, reject any duty to surrender their own citizens; notably, Slovenian, and Colombian constitutions barred extradition of their citizens until 1997. Extradition is only possible in Argentina, the United Kingdom, and the United States if the prevailing extradition treaty permits such. There are three fundamental theories or principles that form the foundational basis of extradition laws globally. The first principle is that of Dual Criminality. The said principle entails that Extradition is only possible when the activity in issue is unlawful in both states (i.e., the State requesting, and the State requested). The purpose is to give the State that has been sought the option of refusing to extradite the fleeing offender if their actions are not deemed illegal by them. The second principle is that of specialty. To avoid sweeping extradition demands, an extradited person can only be prosecuted for the crimes specified inside the extradition request. This criterion can only be disregarded if the fleeing convict surrenders to the requesting State. This permits the fugitive criminal to face charges related to the crimes for which they have surrendered. Lastly, if an extradition request has been made to prosecute someone with a political or strictly military crime, the request must be denied. Although the phrase 'political offence' is not described under international law, it is often assumed to encompass, but not confined to, the expressing of political ideas. The same has been stated under the European Convention on Extradition, 1957¹. Article 3 (1) states that *“Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested party as a political offence or as an offence connected with a political offence.”* Extradition based on political offences is illegal owing to human rights concerns. Similarly, the leading authorities on Human rights such as the Universal Declaration on Human Rights (UDHR)² as well as International Covenant on Civil and Political Rights³ explicitly declare that no discrimination is permitted based on political opinion as per Article 2 and Article 26 respectively. Moreover, fugitives of political crimes can seek refuge from territorial nations, according to article 14 of the UDHR. However, it is mostly governed by the requesting State's domestic legislation. Acts of terrorism with a political motivation, as well as other

¹ <https://rm.coe.int/1680064587>

² <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

³ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

violent crimes, are not included in this exclusion. Several nations have certain extradition principles in commonality.

Edward Snowden's case is a historic case involving political offence that will very certainly go down in the history books as among the most significant whistleblower cases. In 2013, Edward Snowden, a former CIA systems administrator and computer engineer, disclosed sensitive government intelligence to the media, confirming the existence of government surveillance programmes. According to a few legal academics and the US government, his actions were in violation of the 1917 Espionage Act, which defined treason as the revelation of government secrets. Although he had broken the law, Snowden claimed that he had an obligation to act. He rationalized his "whistleblowing" by asserting that it was his job to tell the public of actions conducted in their name and against them. Snowden flew from Hong Kong to Moscow, and after being in transit for 39 days, the federal migration service granted him asylum for one year in Russia. In the present case, the United States Government wanted Russia to extradite Snowden back to the United States so that he could be prosecuted under the Espionage Act. Stephen Vladeck, a legal scholar stated that it was impossible to ascertain at the time whether Snowden would be extradited back to the US. He claims that much of what has complicated the US stance in the Snowden case is enmity and resentment from nations like as China and Russia, which seem to be angry of the US surveillance methods that Snowden has revealed. Also, it depends on diplomatic and foreign policy concerns that are hard to quantify because extradition is a political—rather than a legal—process, especially when extraditing someone from a nation with which an extradition treaty is absent, such as Russia.⁴ As of 2020, Edward Snowden was granted permanent Residence in Russia and could never be extradited despite all the US government's efforts.

Since Snowden's case has been addressed, it is only right to understand how the Extradition process works in the US. The procedure usually starts with a foreign country submitting treaty-required documentation to the US State Department, which commonly includes information on the individual pursued, the purported charges, prosecution documents, warrants issued, and proof. Foreign authorities may demand a preliminary arrest and detention until they gather the necessary information if they feel there is a flight risk. The secretary of state then determines whether to forward the application to the Justice Department, which investigates the matter for

⁴ Jonathan Masters, 'Extraditing Edward Snowden' (*Council on Foreign Relations*, 2022) <<https://www.cfr.org/interview/extraditing-edward-snowden>> accessed 12 April 2022.

treaty compliance, gets a warrant of arrest, and apprehends the offender, who is then brought in front of a federal judge or magistrate. The court next assesses if there are probable grounds to think the accused committed a crime covered by the treaty in question. If indeed the court finds reasonable grounds, it approves the extradition and sends that case back to the secretary of state, who would have the ultimate word. Rather than determining whether the facts charged form a crime in the prosecuting nation, this certification method evaluates whether the facts claimed establish a crime in the prosecuting nation. The above-mentioned procedure is applicable when extraditions happen from the US. Now, extraditions to the US will be discussed. A state or federal prosecutor contacts the appropriate law enforcement agency to discover more about the offence and determine if the considerable expenses of extradition are justified. (Translation expenses are covered by the asking state or federal attorney's office.) Prosecutors subsequently draft an application for submission to the Justice Department, that evaluates it for legality. Justice submits this to the Department Of state if it has been authorized. The State Department submits the request to the appropriate US embassy, which passes it to the authorities in the nation of asylum after it has been approved. The procedure thereafter differs each nation, although it often follows a similar route to that of the United States. Many nations allow suspects to fight or challenge extradition. The US Marshals Service will most commonly transport the fugitive to the United States after receiving consent from the place of sanctuary. The length of time it takes to extradite someone from the United States varies greatly between case to case, however on an average, it takes upwards of a year from request to surrendering. Several cases have lasted more than a decade to resolve, while others are concluded without a fugitive being apprehended. We end the discussion of the American extradition laws with a successful case of extradition of “El-Chapo”, or Joaquin Guzman Loera. Guzman, the former boss of the Sinaloa Cartel, was extradited to the United States in 2017 to face several drug-related indictments. Leading up to his transfer, Guzman escaped from Mexico's maximum-security institutions twice, raising questions about the country's system of justice. After a three-month trial that gave extensive insight into the inner workings of one of the most profitable international crime syndicates in history, he was sentenced in a New York federal district court in February 2019.⁵

Moving on, Indian Extradition laws will be discussed, along-with the extraditions laws of United Kingdom. The Indian Extradition Act, 1962 is the source of law governing extradition

⁵ Jonathan Masters, 'What Is Extradition?' (Council on Foreign Relations, 2022) <<https://www.cfr.org/background/what-extradition>> accessed 12 April 2022.

in India. The legislation governs extradition of fugitives from India, as well as to India. The presence of any extradition treaty between India and a different country act as a basis of extradition. Section 2 (c) of the Act defines “extradition offence” as (i) *“in relation to a foreign State, being a treaty State, an offence provided for in the extradition treaty with that State;”* Furthermore, (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 or of a foreign State and includes a composite offence;”* As per the provisions under Indian Extradition Act, 1962, extradition can be requested for criminals who are under investigation, awaiting trial, or who have been convicted. In instances under investigation, the law enforcement agency must work tirelessly to ensure that it has prima facie evidence to support the claim before the foreign state's courts of law. The Extradition Act is administered by the Ministry of External Affairs' Consular, Passport and Visa Division, that also processes incoming and departing Extradition Requests. To speed up and streamline the extradition process, the Indian government has bilateral Extradition Treaties with 42 nations and Extradition Procedures with nine other nations. Extradition might be based on a treaty involving India and a foreign country, or, in the lieu of a treaty, an extradition agreement. The Government of India might make a notice under Section 3 of the Act, extending the Act's provisions to the nation or countries notified. Section 3(4) of the Indian Extradition Act, 1962, stipulates that the Central Government may, by proclaimed order, treat any convention to which India and a foreign nation are parties as an Extradition Treaty formed by India with that foreign state allowing for extradition in respect of the offences mentioned in that Convention. India is also a signatory to the International Convention to Prevent Terrorist Bombings, which was signed in 1997. It also creates a legal foundation for extradition in cases involving terrorism. Where the participating nations have signed an Extradition Treaty, the extradition request must be made in accordance with the treaty's particular procedures. Extradition petitions are issued only after the lodging of a charge sheet, cognizance of the same, and issuing of an arrest warrant, according to the Ministry of Home Affairs' Comprehensive Guidelines for Investigation Abroad and Issue of Letters Rogatory (LRs). The extradition procedure is essential if the offender is to be apprehended and brought before Indian courts. The plea for extradition will be made to the Ministry of External Affairs after the Investigative Agency has filed the charge sheet and the Magistrate has taken cognizance of it, issuing rulings justifying the committal of the alleged perpetrator to trial and seeking the appearance of the alleged perpetrator to face trial. The Magistrate will be directed by the grounds listed above when executing any such arrest warrant for the accused. The request appears in the form of a self-

contained affidavit from the Magistrate that establishes a prima facie suit against the accused. Defendant's identification is established through the affidavit's concise facts and history of the case, including witness testimony and pertinent documentary evidence. The acts for which the offender is charged, as well as the articles of law specifying the maximum penalty, must be specified. The extradition request should include a replica of the First Information Report (FIR) duly counter-signed by a qualified judicial authority, as well as an order of the Magistrate justifying the accused person's sentencing to trial based on the evidence made accessible in the charge-sheet, with instructions seeking to secure the perpetrator's appearance in Court to face prosecution in the said court from the nation of current stay. Any such request should be accompanied with an authentic, open-dated warrant of arrest stating the crimes for which the accused has been charged, as well as the fact that the Court has taken cognizance of the relevant provisions. In case wherein the specified procedure under the Indian Extradition Act, 1962 is not followed, any such extradition request may be denied.⁶

Since both the US and Indian extradition laws have been discussed, lastly, the extradition treaty between India and the United Kingdom will be addressed. The reasoning behind the same is such that there is one treaty which has been a constant source of challenges for India since it was struck, i.e., the infamous India-UK bilateral treaty. In 1992, India and the United Kingdom struck an extradition deal. Just two petitions for extradition of fugitives living in the UK have been approved ever since. Until now, all previous pleas have remained unanswered. Extradition procedures in the United Kingdom are sluggish. UK extradition has encountered a brick block due to either general extradition conditions not being satisfied or relevant impediment to the procedure being triggered. Throughout all cases, the defense teams sought to smear the Indian authorities, charging them of ill faith and heinous conduct. For the past several years, it has been difficult to keep Indian fugitives' white-collar offences out of the press. To mention a few from a lengthy array, Vijay Mallya, Nirav Modi, and Lalit Modi. Vijay Mallya, accused of the biggest economic frauds and financial crimes, is yet to be extradited due to allegations of political motivation and human rights violations in Indian jails. Affluent fugitive Nirav Modi has relied heavily on the Vijay Mallya case rulings. His claim is based on human rights, citing a dreadful physical state in Indian Prisons that leads to suicide. Most extradition cases involve

⁶ Faraz Alam Sagar and Pragati Sharma, 'Extradition Law: Fundamentals And Processes - Part I' (*India Corporate Law*, 2022) <https://corporate.cyrilamarchandblogs.com/2019/08/extradition-law-fundamentals-processes-part1/?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration> accessed 14 April 2022.

significant financial criminals, like the ones mentioned above. As per Article 1 of the Extradition Treaty involving India and the United Kingdom, it is India's and the United Kingdom's responsibility to extradite any individual charged or convicted of an extradition crime committed inside the territory of one State before or after the Treaty's entering into force.⁷ In criminal proceedings, each contracting state must provide mutual aid to the other. An extradition offence is characterized as one that is chargeable by a prison term of at least one year by the laws of both contracting States, excluding political offences but including pecuniary offences or major crimes such as murder, triggering an explosion, terrorism, and so on. If the individual is being prosecuted for the extradition offence in the requested State's courts, or if the accused can show that the trial in the requested State is unfair, repressive, biased, or discriminating, the plea for extradition may very well be declined. A certificate of conviction is essential when the request is for someone who has already been convicted. The individual may be temporarily detained by the requesting State before his extradition request is processed in emergency circumstances. Assuming his extradition request has still not been received within 60 days from the date of detention, he may be released. After being extradited to the asking State, a person can only be prosecuted for the crime sought, any lesser crime, or any crime agreed to by the requesting State within 45 days. Extradition may be rejected for an offence that carries the death penalty in the seeking state but does not carry the death penalty in the requested state for a similar offence. When extradition is authorized, the requested State must deliver the accused at a designated location or the requesting state ought to remove the individual from the territory inside one month or as otherwise stated. Above all, the UK-India extradition treaty requires reforming. This is especially significant in the case of UK-India renditions. The UK does not require a valid passport to remain in the country if it was valid when leave to remain or enter was granted. The UK does not deport anyone whose passports have been revoked by India. While there is a need to align treaty responsibilities with national enforcement legislation and guarantees of human rights duties, the truth remains that the UK's lenient attitude toward extradition proceedings has created a New Haven for economic criminals. It's worth considering if the UK has taken the simplest approach to attracting investment by becoming a refuge for money launderers. The sheer volume of Indian requests, along with the nature of the offences, calls for reform since current legislation and practice are

⁷ Extradition Treaty between the Government of the Republic of India and the Government of the United Kingdom of Great Britain and Northern Ireland, signed September 22, 1992, ratified November 15th, 1993.

being abused by economic criminals.⁸

For decades, extradition has been the favored method of implementing domestic criminal law beyond the jurisdictional bounds of a nation. While bilateral and multilateral conventions legitimize the existence of extradition, it is essentially the result of diplomacy and international relations. A development worthy of noting in the field of extradition is that of the increasing allegiance to the ideology of human rights. A fresh emphasis on human rights ideology has succeeded in bringing under emphasis even the concerns of fugitive criminals. Until lately, the principle of sovereignty prohibited the court and executive from investigating the requester's judicial system. Individuals' rights have replaced the rule of non-inquiry, which was based on civility and friendliness amongst governments. As a result, the fugitive's right to life and freedom from torture became a consideration in the decision to extradite. Extradition was originally employed to protect states' political and religious interests, but it progressively evolved into an international collaboration to protect global social values and fight crime. Weakening the inflated perception of national sovereignty unrestrained by law, and the creation of humanitarian international law protecting human rights and interests have cleared the path for a true international law concerning extradition. Justice is essential to international and national security. In a politically divided world, governments must overcome sovereign impediments to expand their criminal justice systems beyond national borders. As a result, the offender's (accused or convicted) inability to enter the country is a substantial hindrance to the victim state's criminal justice system. When a criminal escapes to another nation to avoid prosecution in a certain state, extradition allows the state to reclaim the fugitive and prosecute him. Extradition is therefore a method that helps a state that is politically handicapped owing to sovereign obstacles. Despite the political obstacles, extradition is a vital legal tool in assisting a state's criminal justice system.

⁸ Vaishali Basu Sharma, 'As UK Becomes A Haven For Financial Fraudsters, How Can India Improve Its Extradition Success Rate?' (*The Wire*, 2022) <<https://thewire.in/business/uk-haven-financial-fraudsters-india-extradition>> accessed 15 April 2022.