
EXTRADITION LAWS IN INDIA: ADDRESSING THE CHALLENGES OF ECONOMIC OFFENSES

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ABSTRACT

This study explores the relevance of extradition laws to economic crimes in India, focusing on the governing legal framework, international commitments, and practical obstacles. Cross-border offenses such as financial fraud, money laundering, and tax evasion require robust international collaboration. The Extradition Act, 1962, forms the legal foundation for extraditing individuals implicated in economic crimes, contingent on factors like the presence of bilateral or multilateral treaties, the principle of dual criminality, and the rule of specialty.

The research examines prominent cases to demonstrate how India has handled extradition requests for economic offenses, highlighting procedural challenges and the influence of geopolitical considerations. It also addresses issues such as legal discrepancies, delays, and concerns over human rights. The findings suggest that while India's extradition laws are applicable to economic crimes, there is a pressing need for reforms and stronger international partnerships to ensure a more efficient and timely extradition process, ultimately enhancing efforts to combat transnational economic crimes

Keywords: Extradition Act 1962, Economic Offenses, International Cooperation, Dual Criminality, Transnational Crime

Introduction

Extradition is a vital mechanism in international law, facilitating the surrender of individuals accused or convicted of crimes from one jurisdiction to another. In the context of economic crimes, extradition assumes heightened significance due to the transnational nature of such offenses, which often involve fraud, money laundering, corruption, and tax evasion. With globalization expanding economic opportunities, it has also enabled sophisticated financial crimes that transcend borders, posing challenges for law enforcement and judicial authorities. In India, the issue of extradition for economic crimes has garnered increasing attention, given the growing number of high-profile cases involving economic offenders fleeing the country to evade prosecution.

Economic crimes have far-reaching implications for India's economic stability, governance, and public trust. They erode financial systems, deplete public resources, and undermine the credibility of institutions. To combat these crimes effectively, India relies on a robust legal framework for extradition, comprising domestic laws, bilateral treaties, and multilateral agreements. The Extradition Act, 1962¹ serves as the cornerstone of India's extradition law, providing procedures and guidelines for the extradition of individuals based on treaties or reciprocal arrangements with foreign nations.

India has entered into extradition treaties with over 50 countries and maintains extradition arrangements with numerous others. These agreements are instrumental in facilitating cooperation between states to bring economic offenders to justice. However, extradition processes are inherently complex and often fraught with legal and diplomatic challenges. Issues such as dual criminality (where the act must be considered a crime in both jurisdictions), the principle of specialty (restricting prosecution to the offense for which extradition was granted), and concerns over human rights can complicate extradition proceedings².

Notable cases, such as the extradition requests for Vijay Mallya, Nirav Modi, and Mehul Choksi, have underscored the difficulties India faces in securing the return of economic offenders³. These cases have highlighted procedural delays, the role of foreign judicial systems,

¹ The Extradition Act, No. 34 of 1962, Acts of Parliament, 1962 (India).

² Extradition and Dual Criminality: Issues in Economic Crimes, 29 *J. Int'l L.* 341, 348–50 (2020).

³ Shweta Mohan, Vijay Mallya, Nirav Modi, and the Extradition Conundrum: A Legal Analysis, 14 *NUJS L. Rev.* 105, 110–15 (2021).

and the interplay of political and legal considerations in extradition matters. Moreover, economic crimes often involve intricate networks and significant evidence gathering, necessitating cooperation among various international agencies, including Interpol and financial watchdogs.

Legal research on extradition for economic crimes in India delves into these multifaceted challenges, analyzing the interplay of domestic laws, international treaties, and judicial precedents. It also examines the role of international organizations and the evolving jurisprudence on economic crimes and extradition. The research explores strategies to streamline the extradition process, strengthen bilateral and multilateral cooperation, and address barriers to effective enforcement.

In an increasingly interconnected world, effective extradition mechanisms are indispensable to ensuring accountability for economic crimes. By enhancing its legal framework, fostering international cooperation, and addressing procedural inefficiencies, India can strengthen its ability to bring economic offenders to justice and uphold the rule of law. Legal research in this domain is crucial to advancing these objectives, contributing to a more resilient and transparent global financial system.

Research Questions

1. Are India's extradition laws effectively applicable to economic crimes?
2. What are the legal principles governing extradition under Indian law?
3. How do bilateral and multilateral treaties influence extradition in economic crime cases?
4. What challenges hinder the extradition process for economic offenders?

Research methodology

Researcher has opted for a doctrinal research approach, Information for the doctrinal research was collected from a range of primary and secondary sources. Primary sources included statutes enacted by legislatures, court rulings, and regulations from administrative entities. Secondary sources encompassed books, legal journals, periodicals, scholarly articles, newspapers, websites, and other publications.

Legislative Framework For Extradition Laws In India

The Extradition Act, 1962

The Extradition Act, 1962 serves as the primary legal framework for handling extradition requests in India. While the Act provides a comprehensive procedural structure for extraditing individuals accused or convicted of crimes, it has significant strengths and weaknesses that impact its effectiveness, particularly in the context of modern transnational crimes like economic offenses.

1 Principles of Double Criminality in Extradition

The principle of double criminality is a fundamental concept in international extradition law. It dictates that an individual can only be extradited from one country to another if the act for which extradition is requested is considered a crime in both the requesting and requested countries. This principle ensures that individuals are not subject to extradition for acts that are not criminalized in their own country, thus protecting them from arbitrary prosecution⁴.

Key Elements of Double Criminality

The principle of double criminality requires that an offense be recognized as a crime in both the requesting and requested states for extradition to proceed. It focuses on the underlying conduct rather than the legal terminology used, ensuring that the act is criminal in both jurisdictions. This principle applies to both completed and attempted crimes. Its purpose is to ensure fairness, respect national sovereignty, and provide clear, predictable guidelines for extradition requests.

Challenges in Applying Double Criminality

Differences in legal definitions across countries can complicate the application of double criminality, particularly for modern crimes like cybercrimes and financial offenses. Transnational crimes such as cyber fraud, terrorism, and environmental violations often lack consistent definitions, making their application challenging. Additionally, the complexity of

⁴ United Nations Office on Drugs and Crime, Double Criminality, <https://www.unodc.org>.

economic crimes, which may overlap civil and criminal law, adds further ambiguity to their classification across jurisdictions.

Judicial Interpretation

Courts often prioritize the core nature of an offense over its technical classification, interpreting crimes like fraud and corruption broadly. However, in high-profile cases such as Vijay Mallya and Nirav Modi, differences in legal definitions across jurisdictions have led to delays and challenges in the extradition process.

2. Principle of Speciality

The principle of speciality is a fundamental doctrine in extradition law. It ensures that a person extradited from one country to another is prosecuted or punished only for the specific offense for which extradition was granted. This principle protects the rights of the extradited individual and upholds the terms of the agreement between the requesting and requested states⁵.

Key Elements of the Principle of Speciality

The principle of speciality ensures that an extradited individual is prosecuted only for the offenses specified in the extradition request, safeguarding the sovereignty of the requested state and requiring its consent for any additional charges. It prevents misuse of the extradition process, fosters trust between nations by upholding agreements, and protects the rights of the individual through legal certainty and fairness.

Challenge in the Principle of Speciality

Modern transnational crimes, such as terrorism and organized crime, often involve multiple interconnected offenses, making it challenging to limit prosecution to a single charge. Additionally, seeking consent from the requested state for new charges can cause delays, while varying judicial interpretations across jurisdictions lead to inconsistencies in applying the principle. Globally, courts emphasize the principle's role in protecting sovereignty and

⁵ Principle of Speciality, United Nations Office on Drugs and Crime (UNODC), available at <https://www.unodc.org>.

individual rights, as seen in *US v. Rauscher*. Indian courts, too, stress strict adherence to preserve the integrity of extradition treaties⁶.

3. Political Exception

The political exception is a widely recognized principle in extradition law, which prevents individuals from being extradited for offenses deemed to be political in nature. This exception is grounded in the idea that certain acts, motivated by political ideologies or goals, should not be subjected to criminal prosecution under ordinary laws. India incorporates this principle into its extradition framework, primarily governed by the Extradition Act, 1962.

Key Provisions in Indian Law

The Extradition Act, 1962, under Section 31(b), prohibits extradition for political offenses but does not define them, leaving interpretation to the judiciary. India's extradition treaties also exclude political offenses and provide guidance on their treatment. The purpose of this exception is to protect individuals from persecution, safeguard human rights, and respect differences in political systems by ensuring that acts of political dissent are not criminalized across jurisdictions.

Challenges in Applying the Political Exception in India

The absence of a clear definition of "political offenses" in Indian law creates uncertainty about the scope of the exception. Additionally, distinguishing political acts from criminal offenses like terrorism or sedition is challenging due to overlapping motivations. Political offenses may also cause diplomatic conflicts when one state views the act as political while another treats it as criminal.

Procedure of Extradition:

Around the world

Extradition is governed by international treaties, whether bilateral or multilateral, based on the principle of *nulla extraditio sine lege* (no extradition without a law), which is a derivative of

⁶ *US v. Rauscher*, 119 U.S. 407 (1886).

nullum crimen nulla poena sine lege (no crime and no punishment without a law). A state requesting the extradition of an individual must submit a formal request, identifying the individual and the alleged offense. The request must be accompanied by specific documents, with the type and format of evidence and the standard of proof varying across jurisdictions. A provisional arrest warrant may be issued prior to the formal request.

The principle of comity of nations requires member states to honor requests from courts or prosecutors of other member states for arrest warrants in cases involving offenses punishable by a minimum sentence of 12 months. The arrest warrant need only describe the circumstances under which the offense occurred. Decisions regarding extradition requests are made by judicial authorities rather than the executive. Certain offenses, including military, political, and fiscal offenses, have traditionally been excluded from extradition. In recent years, the “political offense exemption” has further evolved in this context.

In India

A request for the extradition of a fugitive criminal must be made to the Central Government through one of the following methods: (a) A diplomatic representation by the foreign state in Delhi; (b) Communication from the foreign state’s government via its diplomatic representation in India; or (c) Other methods as agreed upon between India and the foreign country. Upon receiving the request, the Central Government may order an inquiry by a Magistrate, who is defined under Section 5 of the Extradition Act, 1962⁷ as a First-Class Magistrate or a Presidency Magistrate (as per Section 2(g)), or any Magistrate with jurisdiction over the offense if it were committed within there area. After receiving an order under Section 5, the Magistrate will issue an arrest warrant for the fugitive⁸.

When the fugitive appears before the Magistrate, the Magistrate will: (a) Investigate the case; (b) Collect evidence supporting the extradition request; and (c) Take evidence on behalf of the fugitive, including evidence challenging the extradition offense. Evidence in these proceedings may include exhibits, depositions, official certificates, and judicial documents (if properly authenticated).

⁷ Interpretation of Section 5 of the Extradition Act, 1962*, The Hindu, available at www.thehindu.com.

⁸ Evidence in Extradition Proceedings: Indian and International Perspectives*, Economic Times, available at economictimes.indiatimes.com.

Authenticated documents, such as warrants, sworn statements, and judicial documents stating convictions, are considered valid evidence. If a prima facie case is established, the Magistrate will commit the fugitive to prison, report the inquiry's result to the Central Government, and send any written submissions by the fugitive for consideration. If no prima facie case is made, the Magistrate will discharge the fugitive. Once the Magistrate's report is reviewed and found satisfactory, the fugitive may be surrendered to the foreign state. According to Section 25 of the Extradition Act, 1962, the Criminal Procedure Code, 1973⁹, provisions regarding bail apply to fugitives arrested under the Act. The Magistrate has similar powers to those of a Sessions Court, and both anticipatory and regular bail options are available. Extradition may be refused if the offense is political, if the prosecution is time-barred in the requesting state, if the individual is facing other charges in India, or if they are serving a sentence in India. Additionally, extradition can be delayed for up to 15 days after the individual has been committed to prison by the Magistrate.

If the Central Government deems that extradition is not possible, it may choose to prosecute the fugitive in India. Under Section 34B of the Act, the Central Government may request the Magistrate to issue a provisional arrest warrant in urgent cases. However, the fugitive must be released after 60 days if no further extradition request is received. Section 34C of the Act addresses cases where the fugitive faces the death penalty in India, but the foreign state does not impose such a penalty for the offense. In such cases, the fugitive will face a life sentence instead of the death penalty upon extradition¹⁰.

The Extradition Act does not provide an appeal process for extradition proceedings. Any grievances can be addressed through the writ jurisdiction of the concerned High Court. As of July 31, 2015, the Central Bureau of Investigation (CBI) had issued 650 red-corner notices for individuals facing prosecution, with 192 of these individuals charged under laws that carry the death penalty¹¹. These laws include the Arms Act, 1959, the Indian Penal Code, 1860, the Maharashtra Control of Organized Crime Act, 1999, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Terrorist and

⁹ Criminal Procedure Code, 1973, Ministry of Law and Justice, Government of India, available at www.indiacode.nic.in.

¹⁰ Role of the Central Government in Extradition Under Section 34B and 34C of the Extradition Act, 1962, United Nations Office on Drugs and Crime (UNODC), available at www.unodc.org.

¹¹ Analysis of Laws Carrying the Death Penalty in India, The Hindu, available at www.thehindu.com.

Disruptive Activities (Prevention) Act, 1987, and the Prevention of Terrorism Act, 2002.

Case studies relating to Extradition

The case of Nirav Modi

The case of Nirav Modi, a prominent Indian diamond jeweler and businessman, has drawn significant attention due to its implications for extradition laws. Modi is accused of masterminding one of India's largest banking frauds, amounting to over \$2 billion, involving Punjab National Bank (PNB). He allegedly used fraudulent Letters of Undertaking (LoUs) to secure loans from foreign banks by colluding with bank officials. This high-profile case has tested the effectiveness of international extradition laws, particularly between India and the United Kingdom, where Modi fled after the scam came to light.

Nirav Modi was first identified as a fugitive after his involvement in the PNB fraud was exposed in January 2018. As the details of the scam unfolded, Indian authorities moved quickly to initiate legal proceedings against him. India issued a request for his extradition based on several charges, including fraud, money laundering, and conspiracy. Modi had fled to the UK in early 2018, and his extradition process began in earnest shortly after he was located in London.

The formal extradition request was submitted by the Indian government, relying on the Extradition Act of 1962, which provides the legal framework for the extradition of individuals from foreign countries. Under this act, India can request the return of a person charged with offenses such as fraud and money laundering, provided the crime is also punishable in the requesting state (i.e., the UK). The principle of dual criminality, which is a core tenet of international extradition, dictates that the offense for which extradition is requested must be recognized as a crime in both jurisdictions.

Despite the seriousness of the charges, Nirav Modi's extradition faced several challenges. One of the most significant hurdles was the legal defense mounted by Modi's legal team. His lawyers argued that he was being persecuted for political reasons, which could fall under the "political offense exception" in extradition treaties. However, the UK courts rejected these arguments, stating that the charges against Modi were related to financial crimes and not political offenses.

Additionally, Modi's legal team raised concerns about the fairness of Indian judicial processes, claiming that he would not receive a fair trial in India due to the high-profile nature of the case. They further argued that Modi could face mistreatment in Indian prisons, potentially violating his human rights. These issues led to delays in the extradition hearings, prolonging the legal battle.

In December 2019, a UK court ruled in favor of Modi's extradition to India. The court determined that there was a strong prima facie case against him and that the charges fell under offenses that both the UK and India recognized. However, the case was appealed, and the extradition process continued to face delays due to legal challenges in the UK courts. In 2020, the UK High Court ruled to uphold the decision for extradition, rejecting the claims of political motivation and the concerns about the fairness of the trial in India. Modi's legal team appealed to the UK Supreme Court, but the process of extradition was significantly delayed due to these ongoing legal proceedings¹².

The Nirav Modi extradition case underscores the complexity and challenges of international legal cooperation in financial crime cases. While India's legal framework for extradition provides clear guidelines, the principle of dual criminality and exceptions like the political offense defense can complicate matters. Modi's case highlights the necessity for robust legal processes and international cooperation to combat cross-border financial crimes, ensuring that individuals accused of large-scale fraud are held accountable in the jurisdiction where the crime was committed¹³.

Vijay mallya case

The Vijay Mallya extradition case is one of India's most high-profile legal battles, highlighting the complexities of international extradition law, financial crimes, and the challenges of securing justice in cross-border cases. Vijay Mallya, a former Indian businessman and the owner of now-defunct Kingfisher Airlines, is accused of defaulting on loans worth approximately ₹9,000 crores (around \$1.3 billion) from a consortium of Indian banks. The charges against him include financial crimes such as money laundering, fraud, and the

¹² India-UK Extradition Treaty: Legal Provisions and Principles of Dual Criminality, United Nations Office on Drugs and Crime (UNODC), available at www.unodc.org.

¹³ Nirav Modi Extradition Case: Legal and Judicial Challenges, The Hindu, available at www.thehindu.com.

misappropriation of funds. Mallya fled India in 2016 and sought refuge in the United Kingdom, where his extradition process has since been pursued by Indian authorities.

The Indian government formally requested Mallya's extradition in 2017, invoking the provisions of the Extradition Act of 1962, which governs the process of requesting and granting extradition from foreign countries. Extradition in India is governed by bilateral treaties with other nations, and the UK-India Extradition Treaty plays a central role in the case. This treaty outlines the circumstances under which a person may be extradited from the UK to India, and it stipulates that extradition can only occur if the crime committed in the requesting country is also a crime in the requested country (the principle of dual criminality). In Mallya's case, the offenses he is accused of, including money laundering and fraud, are recognized as crimes under both Indian and UK law. Therefore, the principle of dual criminality, a cornerstone of international extradition, provided the foundation for India's request. The Indian authorities also presented evidence supporting the charges against Mallya, including details of the alleged fraudulent transactions, financial mismanagement, and his flight from India to evade justice. Mallya's extradition has been delayed due to several legal challenges raised by his defense team. One of the central arguments against his extradition was that the charges against him were politically motivated, which could invoke the ****political offense exception**** to extradition. This exception prevents extradition if the offense is political in nature. However, the UK courts rejected this argument, ruling that the charges against Mallya were related to financial crimes, not political dissent.

Another significant challenge was Mallya's claim that he would not receive a fair trial in India. His legal team argued that he would be subject to political persecution and that the Indian legal system was not capable of ensuring a fair and impartial trial, particularly in a case as high-profile as his. The UK courts were also concerned about the conditions in Indian jails and whether Mallya would face mistreatment. However, Indian authorities assured the UK courts that Mallya would receive fair treatment and protection from undue harm.

In December 2018, the Westminster Magistrates' Court in London ruled in favor of Mallya's extradition, concluding that there was a prima facie case against him and that he should be sent back to India to face trial. Mallya's defense team appealed this decision, which led to further delays. In 2019, the UK High Court upheld the extradition order, rejecting the claims of

political motivation and unfair trial¹⁴.

However, Mallya's legal team continued to challenge the decision, and in 2020, the UK Supreme Court agreed to review his case, further prolonging the process. This appeal process has delayed the finality of the extradition, with Mallya remaining in the UK.

The Vijay Mallya extradition case highlights the intricacies of international extradition law, particularly the dual criminality principle and the political offense exception. While India's legal framework for extradition is clear, securing Mallya's return has been complicated by legal challenges related to his rights and the fairness of the judicial process. Despite the significant evidence against Mallya, the case illustrates how extradition can be delayed by lengthy legal proceedings, appeals, and international diplomatic considerations. Ultimately, this case underscores the importance of international cooperation in tackling financial crimes and ensuring that individuals accused of major offenses are held accountable in the jurisdiction where the crimes were committed¹⁵.

SUGGESTION

1. Inclusion of Economic Offenses as Specific Extraditable Crimes

Amend the Extradition Act to specifically list economic offenses like money laundering, bank fraud, corporate fraud, and cybercrime as extraditable crimes, ensuring they are recognized in treaties and enabling India to request extradition for these offenses.

2. Clarification on Dual Criminality for Economic Offenses

Amend the Extradition Act to expand the range of economic crimes eligible for extradition under dual criminality, creating a clearer framework that accounts for the evolving nature of financial crimes, even when legal classifications vary across jurisdictions.

3. Provisional Arrest Provisions for Economic Offenses

The Extradition Act should include provisions for expedited provisional arrests in cases of

¹⁴ Westminster Magistrates' Court Rules in Favor of Vijay Mallya's Extradition, Reuters, available at www.reuters.com.

¹⁵ Vijay Mallya Case: Timeline of Events in India's Extradition Battle, BBC News, available at www.bbc.com.

economic offenses, enabling law enforcement to act quickly, especially when there is a risk of fleeing individuals or dissipating financial assets.

4. Clarifying the Extradition Process for Financial Crimes

The law should be amended to provide clear guidelines for handling complex financial crimes, including the management of international financial evidence and establishing the burden of proof in cases like fraud, money laundering, and tax evasion. This should include specific rules on the admissibility of electronic evidence and witness testimony.

5. Incorporating Provisions for Cybercrime Extradition

The Extradition Act should be amended to specifically include cybercrimes linked to economic offenses, such as online banking fraud and digital money laundering, as extraditable crimes. This would enhance India's ability to pursue the extradition of individuals involved in global cyberfraud and financial crimes that cross national borders.

6. Special Provisions for Fugitive Economic Offenders

To streamline the extradition process for fugitive economic offenders like Vijay Mallya and Nirav Modi, the Extradition Act should be amended to allow for faster provisional arrests, establish a dedicated extradition unit focused on economic offenders, and enable expedited hearings with direct evidence submission from agencies like the Enforcement Directorate (ED) and the Central Bureau of Investigation (CBI).

7. Overcoming the Political Offense Exception in Economic Crimes

Amend the Extradition Act to exclude economic offenses, such as money laundering and fraud, from the political offense exemption, clarifying that these crimes are not considered political, regardless of motivation. This would streamline the extradition process for economic offenders.

8. Enhancing Bilateral and Multilateral Treaties

India should update existing extradition treaties and negotiate new multilateral agreements to address modern economic crimes, reflecting the evolving global financial system. Regular

consultations with other countries are essential to adapt to changes in financial crimes and ensure efficient extradition procedures.

9. Assurances Regarding Fair Trial and Detention Conditions

Concerns over the treatment of economic offenders in Indian custody, particularly regarding trial fairness and detention conditions, often complicate extradition requests, especially from EU countries. To address this, India should offer clear assurances to foreign states that extradited individuals will be guaranteed a fair trial and humane treatment, with transparent prison conditions and access to legal representation, which would enhance the likelihood of successful extraditions.

CONCLUSION

In conclusion, India's extradition laws, while robust, face several challenges in addressing the growing complexity of economic offenses, particularly those involving cross-border financial crimes. The current legal framework, though comprehensive, requires significant amendments to keep pace with the evolving nature of global financial crimes, including cybercrimes and corporate frauds. Key reforms should focus on streamlining the extradition process, expanding the scope of extraditable economic offenses, and ensuring that the dual criminality principle accommodates the diverse legal frameworks of different jurisdictions. Additionally, addressing concerns related to human rights and improving international cooperation through updated treaties will be essential in ensuring the timely and effective extradition of economic offenders. By making these necessary changes, India can strengthen its legal apparatus, enhance its ability to combat international economic crimes, and hold offenders accountable for their actions on a global scale.