JUDICIAL REVIEW IN EXTRADITION MATTERS: AN ANALYSIS OF THE INDIAN LEGAL FRAMEWORK

Amrita Tiwari, Teaching Assistant, School of Law,
Sandip University, Nashik, Maharashtra, India

ABSTRACT

Extradition lies at the intersection of state sovereignty, international cooperation and personal freedom. The Extradition Act, 1962, confers a wide discretion on the executive in India to surrender fugitive criminals to requesting states. However, this discretion is not unfettered. It operates within the parameters of Articles 14, 20 and 21 of the Constitution and is amenable to judicial review under Articles 32 and 226. This paper deals with the scope, doctrinal foundation and efficacy of judicial review as a safeguard in Indian extradition proceedings, by referring to statutory provisions and landmark rulings including. It situates the Indian position in a comparative context, positioning it against the post 2003 model of judicial review as a residual safeguard in the United Kingdom and the narrower doctrine of non-inquiry in the United States, moderated by obligations under the Convention Against Torture. Recent cases, including the extraditions of Vijay Mallya, Sanjeev Chawla and Nirav Modi, illustrate how these doctrinal tensions play out in practice. The paper concludes that Indian courts have developed meaningful protections in the form of the rule of specialty, the political offense exception and human rights safeguards, but the lack of clear statutory standards leaves the door open for inconsistency, and suggests targeted legislative and procedural reforms.

Keywords: Extradition; Judicial Review; Extradition Act 1962; Fundamental Rights; Article 21; Comparative Constitutional Law; Human Rights; India–UK Extradition.

INTRODUCTION

"*The surrender by one State or Country to another of a person accused or convicted of an offence outside its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender.*" - **Black's Law Dictionary**[1]

MEANING OF EXTRADITION

The procedure by which a country surrenders someone who has been accused or found guilty of a crime inside its borders to another country for prosecution and punishment is known as international extradition.[2] The target of an extradition request is typically a fugitive criminal who has been legally accused, charged, or found guilty of an extradition sentence.[3]

A person who is wanted as a criminal, fugitive, or accused criminal is transferred by one sovereign to another sovereign through a series of actions known as extradition. This transfer of people to the requesting sovereign is based on treaties and/or bilateral agreements; however, reciprocity and comity are frequently utilized as a symbol of goodwill and politeness between the sovereigns. The fundamental idea behind the states' use of extradition is global public order.[4] The conclusions in the case of U.S. v. Rauscher,[5] however, are always beneficial to keep in mind: "In addition to these (treaties), there exists no distinct commitment of a single nation to surrender these criminals into the hands of another" it has never been acknowledged as one of those governmental obligations to one another that are based on well-established international legal principles.

To put it briefly, extradition is the legal procedure of sending a person who has been charged with a crime to the foreign nation where the crime was committed so they can stand trial there. The method by which the courts decide whether and under what conditions extradition may be permitted is governed by the local law of the area, even if extradition is recognized as a way for the State to fulfilll its international obligations. Therefore, extradition is founded on the broad idea that it is in the best interests of civilised societies to ensure that criminals are held accountable, and as a result, it is recognised as a part of international comity that one state

[1] Henry Campbell Black, Black's Law Dictionary (6th edn, Centennial edn 1891–1991, West Publishing 1990) 585.
[2] P Ramanatha Aiyar, Concise Law Dictionary (5th edn, Lexis Nexis 2011) 476.
[3] Extradition Act 1962, s 2(c).
[4] Abu Salem Abdul Qayyum Ansari v CBI (2013) 7 SCR 1061.
[5] 119 US 407, 411–12 (1886).

should typically assist another state in prosecuting the guilty.[6]

EVOLUTION OF EXTRADITION LAWS IN INDIA

Extradition processes have grown in popularity and benefits in the modern era. War crimes, economic crimes, terrorism, drug trafficking, murder, and small-time robberies are among the offenses for which extradition is requested and granted. Extradition has been the standard in the international system for thousands of years.[7] In the past, extradition was mostly focused on political offenses rather than private ones. Up to the eighteenth century, states established their control over political prisoners through extradition. The treaty that Charles II of England signed with Denmark and other countries in 1661 to extradite individuals who had executed his father, Charles I, during the English Civil War in the 1640s is an example of a treaty made during this time. By that time, these kinds of treaties were seen as having been made on the basis of friendly and peaceful relations between states.[8]

During the eighteenth and nineteenth centuries, extradition mostly targeted military criminals. Only in the seventeenth century did extradition accords begin to cover common criminals in addition to political, military, and other offenders. Multilateral treaties allow several nations to participate in common extradition processes and broaden the extent of extradition jurisdiction, even if bilateral treaties continue to be the most common type of extradition treaties. In the past, when it came to matters of respect for sovereignty, the other nation's judiciary would not look into the neutrality of the seeking nation's legal system.[9] This illustrates how extradition laws and treaties have evolved from being a means of bringing political criminals back to face punishment to being a means of preserving human rights and administering justice for the purpose of reducing crime.

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[6] Henry Campbell Black, Black's Law Dictionary (6th edn, Centennial edn 1891–1991, West Publishing 1990) 585.

[7] M Cherif Bassiouni, International Extradition and World Public Order (Sijthoff 1974).

[8] Rebecca Fraser, "The Story of Britain: From the Romans to the Present – A Narrative History" (W W Norton & Company 2005) 327–77.

[9] Matthew Murchison, "Extradition's Paradox: Duty, Discretion and Rights in the World of Non-Inquiry" (2007) 21 Emory International Law Review 143.

LITERATURE REVIEW

- **"Judicial Review as a Safety Valve in Extradition Proceedings"** by *Ben Joyes*[10]

The work of Joyes (2020) considers judicial review of extradition as a safety valve to correct wrongs not observed by statutory appeals in the UK.[1] His argument derives from the Extradition Act 2003, but my research changes perspective to the Indian context under the Extradition Act 1962 and constitutional protection. This comparative perspective is worthwhile since it demonstrates that while contexts vary, both jurisdictions acknowledge judicial review as an extraordinary but indispensable security against erroneous extradition. Building on this work makes my study stronger by exposing global commonalities and reaffirming the function of courts to balance executive authority and individual rights.

- **''Law of Extradition and Its Implications for Human Rights Violations: A Critical Analysis in National Perspective"** by *Kamya Wahal*[11]

Wahal (2023) discusses extradition in the 21st century as an instrument of global cooperation, but also highlights its dimensions for the protection of human rights.[1] The research highlights concerns regarding the extent of the Extradition Act, its implications, and the imperative to reform Indian law in accordance with international humanitarian norms. In contrast to my own research, which takes a particular look at judicial review in extradition cases, this literature gives a more general policy and human rights context. It places my research within a broader context by demonstrating how judicial review performs as part of the mechanisms for preventing the very human rights abuses that Wahal criticizes.

- **"The Judicial Reviewability of Extradition Decisions: Are They Effectively Immune from Challenge in the Absence of a Requirement to Give Reasons?"** by *Peter Johnston*[12]

Johnston (2021) contends that decisions on extradition are actually effectively beyond judicial

[10] Ben Joyes, 'Judicial Review as a Safety Valve in Extradition Proceedings' (9 Bedford Row, 2020) https://www.9bedfordrow.co.uk/judicial-review-as-a-safety-valve-in-extradition-proceedings/accessed 4 September 2025.
[11] Kamya Wahal, 'Law of Extradition and Its Implications for Human Rights Violations: A Critical Analysis in National Perspective' (2023) 6(3) International Journal of Law Management & Humanities 2128.
[12] Peter Johnston, 'The Judicial Reviewability of Extradition Decisions: Are They Effectively Immune from Challenge in the Absence of a Requirement to Give Reasons?' (2021) Melbourne Journal of International Law 1.

review because there is no statutory requirement for ministers to provide reasons.[1] He points to structural, procedural, and evidentiary hurdles that prevent courts from inquiring into ministerial discretion under the Extradition Act 1988 (Cth). In contrast to my own work, which concerns judicial review within India's extradition system, Johnston's study provides an interesting point of comparison: while Indian courts place a strong emphasis on constitutional protections under Article 21, the Australian system demonstrates how a lack of transparency and reasoning can reduce judicial control. This comparative approach makes my own analysis more robust by highlighting how various legal systems are unable to balance executive discretion and human rights protection in extradition proceedings.

- **"Reviewing Extraditions to Torture"** by *Nitisha Baronia*[13]

Baronia (2021) examines how U.S. courts are unable to effectively implement the Convention Against Torture (CAT) in extradition cases, giving the Secretary of State a great deal of decision-making authority with minimal judicial involvement. In order to ensure compliance with CAT, she highlights troubling activities like "extradition shopping" and advocates for a more thorough habeas corpus assessment. Baronia's research supports the argument that strong judicial review is necessary to prevent torture and human rights violations during extradition proceedings, while my research focuses on judicial review of extradition in India. Conversely, Baronia's research emphasises the risks of weak judicial activism.

- **"India–UK Extradition Law and Practice: The Case for Reform"** by *Paul Arnell*[14]

In the Commonwealth Law Bulletin, Arnell (2020) makes the case that India and the UK's extradition relationship is not working as planned, citing India's consistently poor success rate in obtaining extraditions from Britain in spite of the 1992 Treaty. He attributes this failure to repeated court rulings on the need for prima facie evidence, the rule of specialty, and human rights restrictions like guaranties of prison conditions in cases like those of Vijay Mallya and Sanjeev Chawla. He also advocates for India to be named a reliable Category 2 partner in order to do away with the evidentiary threshold. In contrast to Arnell, who focuses on the UK side of the relationship and the practical failure of outgoing requests, my research looks at how Indian courts use the Extradition Act 1962 to conduct judicial assessment of incoming extradition petitions. The idea that judicial review serves as a two-way protection rather than a

[13] Nitisha Baronia, Note, Reviewing Extraditions to Torture, 73 Stan. L. Rev. 1221 (2021).
[14] Paul Arnell, India–UK Extradition Law and Practice: The Case for Reform, 45 Commonw. L. Bull. 411 (2020).

one-sided executive check is supported by the fact that, depending on which nation's courts are examining the request, the identical landmark instances generate completely different doctrinal concerns.

- **"The Role of Human Rights in Extradition: The Imperatives of Reforming the Indian Extradition Law"** by *S.R. Subramanian*[15]

Subramanian (2014) argues in the Commonwealth Law Bulletin that the Extradition Act 1962 has not changed much since it was passed, with the exception of a few minor revisions, and that this legislative stasis puts Indian extradition practices out of sync with modern human rights standards. Instead of reforming the statute piecemeal, he advocates for a complete rewrite. This immediately supports my research, which looks at how judicial review under Articles 14, 20, and 21 has filled the gap in practice, while Subramanian emphasizes the legislative vacuum as the primary issue. His criticism supports my paper's argument that courts are compelled to take on a broad, occasionally erratic, supervisory role since there are no clear legislative rules.

STATEMENT OF PROBLEM

Extradition in India is mainly regulated by the Extradition Act 1962, which confers broad discretion on the executive to determine whether or not to extradite a person to a requesting state. Although extradition is an instrument of international cooperation, it poses serious issues about fundamental rights of the person to be surrendered, particularly under Articles 14, 20, and 21 of the Constitution. Judicial review is the main check against arbitrary or unfair executive action in this area. But the ambit, boundaries, and efficacy of judicial review in extradition matters are still not thoroughly investigated in Indian jurisprudence. There is a need to analyze whether Indian courts have managed to strike a balance between sovereignty, international commitments, and human rights, and how judicial review can be made more robust to avoid abuse.

OBJECTIVES OF THE STUDY

- To examine the constitutional foundation and statutory scheme of judicial review in

[15] S.R. Subramanian, The Role of Human Rights in Extradition: The Imperatives of Reforming the Indian Extradition Law, 40 Commonw. L. Bull. 233 (2014).

extradition cases in India and consider the role of Indian courts in striking a balance between executive discretion and the protection of fundamental rights.

- To evaluate how judicial review is used in the USA, UK, and India to verify extradition decisions and determine whether system offers greater protection for an individual's rights.
- To find procedural and legislative changes that would improve judicial review as a defense against arbitrary or unfair extradition.

RESEARCH QUESTIONS

- How is judicial review applied by Indian courts in matters involving extradition, and what extent does it uphold fundamental rights?
- What is the difference between the US and UK models and the Indian approach to judicial review in extradition?
- What changes would be required to ensure that judicial review serves as a reliable safeguard against arbitrary or unfair extradition?

RESEARCH METHODOLOGY

A doctrinal and analytical research methodology is used in this study. The Extradition Act, 1962, the Indian Constitution (especially Articles 14, 20, 21, 32, and 226), and significant court rulings from Indian courts are the main legal sources it uses to analyze the constitutional and statutory basis of judicial review in extradition proceedings and determine the extent to which it serves as a check on executive overreach.

The paper uses a comparative approach to achieve the second objective, placing the Indian framework in relation to the United States' non-inquiry doctrine as qualified by the Convention Against Torture and the United Kingdom's extradition policy under the Extradition Act of 2003. In order to determine the level of judicial scrutiny allowed under each system and to assess the relative strength of India's model, this comparative analysis draws on US and UK case law, statutory provisions, and scholarly discussion. Using recent and ongoing high-profile extradition proceedings, such as those involving Vijay Mallya, Sanjeev Chawla, Nirav Modi, and Christian Michel, a case-study approach is also employed throughout to test the viability of the legal position under consideration and to demonstrate how the doctrinal principles discussed function in practice.

In order to accomplish the third objective, the study conducts a normative and reform-oriented analysis, identifying particular legislative and procedural measures that could improve judicial review in India by drawing on comparative practice and current scholarly critique (such as the Baker Review in the UK and academic commentary advocating for reform of Indian extradition law).

Throughout, secondary sources are used to contextualize the primary material, confirm the legality of the law, and point out any gaps or discrepancies in the current Indian framework. These sources include books, academic journal articles, government and legislative reports, and law commission-style evaluations. As stated in the Limitations section, the study's conclusions are solely based on textual and doctrinal examination of legal texts and secondary literature; neither empirical nor field-based research was used.

JUDICIAL REVIEW UNDER INDIAN EXTRADITION LAW

The foundation of the Indian constitutional system is the judicial review theory, which holds the legislature and executive branch accountable to the court. Regarding extradition, the Central Government's authority under the Extradition Act of 1962 to repatriate or extradite a criminal fugitive to another country is not unrestricted. The constitutional checks and balances, particularly those found in Articles 14, 20, and 21, as well as the judiciary's jurisdiction under Articles 32 and 226 of the Constitution, also apply to this executive power. The Indian judiciary has always emphasised the necessity to uphold individual liberties while reconciling India's obligations under extradition treaties with other countries.

The Extradition Act[16] and the Extradition Treaties signed between India and other countries govern extradition law in India. Section 34[17] of the 1962 Act grants the Extradition Act of 1962 extraterritorial jurisdiction, meaning that any extradition offence committed in a foreign country will be deemed to have occurred in India and the perpetrator will face consequences in India. The act of turning over a criminal fugitive to the authorities of the State in which the

[16] Extradition Act 1962, Preamble.
[17] Extradition Act 1962, s 34.

offence was committed is known as extradition, as stated in Section 216 of the Indian Penal Code, 1860[18] read with the Constitution of India, 1950 (Schedule VII, List I, Item 18).

A treaty, agreement, or arrangement with a foreign state relating to the extradition of fugitive criminals is referred to as an extradition treaty.[19] A treaty state is a foreign state with which an extradition treaty is in effect.[20] According to Section 3(4) of the 1962 Act, the Central Government may, by notified order,[21] treat any Convention to which India as well as a Foreign State are parties as an extradition treaty entered into by India with that Foreign State with regard to the extradition of the offences listed in that Convention if there isn't an extradition treaty between India as well as that State. Only "fugitive criminals" may be extradited, per Section 2(f) of the Extradition Act of 1962. According to India's extradition laws, a fugitive criminal is someone who has been accused (or found guilty) of committing an extradition crime within the borders of a foreign state, as well as someone who, while in India, plots, tries to commit, incites, or participates in the commission of an extradition crime in a foreign state. An extradition offence is defined as one listed in the extradition treaty with foreign states and is punishable by imprisonment for a minimum of one year under the laws of India or a foreign state, as stated in Section 2(c) of the Extradition Act, 1962.[22] According to Section 2(a) of the 1962 Act,[23] a composite offence is defined as an individual's act or conduct that occurs entirely or in part in India or a foreign country and that, when regarded as a whole, would constitute an extradition offence in India or a foreign country, as applicable.

The primary law governing the extradition of fugitive convicts from India to another foreign country or from a foreign country to India is the Extradition Act, 1962. Although it is assumed in the framework of this Act, judicial review has not been explicitly codified. For instance, Section 5 permits the Central Government to forward a request for extradition to a Magistrate of the First Class, who is then in charge of conducting an investigation. The magistrate must decide whether there is a prima facie case against the fugitive criminal for the alleged offence in accordance with Section 7. The Magistrate's investigation is a judicial one, and the High Courts have the authority to review the order it makes through writ jurisdiction. Furthermore, Section 29 of the Act upholds the breadth of judicial oversight by stating that the High Courts

[18] IPC 1860, s 216.
[19] Extradition Act 1962, s 2(c)(i); Extradition Act 1962, s 2(d).
[20] Extradition Act 1962, s 2(j).
[21] Extradition Act 1962, s 2(h) says that 'notified order' means order notified by Official Gazette
[22] Extradition Act 1962, s 2(c).
[23] Extradition Act 1962, s 2(a).

have the authority to issue directives or instructions respecting individuals who are sought to be extradited.

Analysing the issue of whether the Act's terms have been fulfilled would give rise to judicial review. The concept of dual criminality is reflected, for instance, in Section 2(c)'s definition of "extradition offence," which stipulates that the offence must be punishable under both Indian and the requesting state's laws. The courts have the authority to step in if the Central Government approves extradition without meeting this condition. In a similar vein, extradition must be predicated on reciprocity or a "extradition treaty," as defined by Section 2(d). Judicial review acts as a check on unlawful surrender in cases where such requirements are broken.

The Indian judiciary has also pointed out restrictions on the executive branch's extradition authority. The Supreme Court ruled in Daya Singh Lahoria v. Union of India[24] that while extradition is essentially an executive action, courts have the authority to investigate whether statutory requirements and constitutional protections have been met. "Extradition is a great step towards international cooperation in the suppression of crime," the Supreme Court of India stated authoritatively in its elaboration on the importance of the extradition. In a similar vein, the Court adopted the rule of speciality in Abu Salem Abdul Qayyum Ansari v. Central Bureau of Investigation[25] to ensure that the accused was tried exclusively for the charges for which Portugal had authorised extradition. The Court reaffirmed that breaking the rule of speciality would be against the Act and would also reflect poorly on India's international commitments. In a previous ruling in State of West Bengal v. Jugal Kishore More,[26] the Supreme Court underlined the judiciary's watchdog function while restating that extradition may only be carried out in compliance with the Act and applicable treaty obligations.

Judicial review in extradition is also supplemented by constitutional provisions. Article 14[27] prohibits arbitrary executive action and guarantees equality before the law. Since extradition may expose the accused to repeated prosecutions or retroactive criminal punishment, Article 20's[28] exemption from ex post facto legislation, double jeopardy, and self-incrimination becomes crucial. Insofar as the protection against torture, harsh treatment, and unfair trial are

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[24] (2001) 4 SCC 516.
[25] *Supra* note 3.
[26] (1969) AIR 1171.
[27] Constitution of India 1950, art 14.
[28] Constitution of India 1950, art 20.

concerned, Indian courts have generously read Article 21,[29] which protects the right to life and liberty, to encompass prosecution only via due process of law. This allows for the judicial rejection of extradition to a country where the fugitive may be tortured, exposed to cruel treatment, or denied a fair trial. The Supreme Court emphasised the judiciary's duty to protect basic rights in Kartar Singh v. State of Punjab,[30] noting that constitutional guarantees cannot be violated even in areas of foreign policy or national security.

Judicial assessment also ensures adherence to extradition theories accepted by international law, such as the political offence exception and the rule of speciality. According to Section 31[31] of the Act, unless the other state agrees, an extradited person cannot be prosecuted for any other offence than the one for which extradition was permitted. Indian courts have used this judicially enforceable clause to prevent misuse of extradition procedures.[32] Similar to this, extradition petitions with political motivations are also subject to judicial review, protecting people from persecution under false pretenses of legal action.[33]

Recent high-profile cases illustrate these principles in practice. In the Vijay Mallya proceedings, the UK High Court examined prison-condition assurances and fair-trial safeguards before upholding extradition, testing precisely the Article 21-equivalent protections Indian courts invoke domestically.[34] Similarly, in Sanjeev Chawla, the Divisional Court initially set aside a Magistrates' Court order on Article 3 ECHR grounds concerning Tihar Jail conditions, before extradition was ultimately permitted on the strength of sovereign assurances.[35] On the Indian side, Christian Michel's continuing challenge to Article 17 of the India–UAE extradition treaty currently pending before the Supreme Court directly tests whether treaty provisions permitting prosecution for "connected offences" can override Section 21's speciality rule, a live illustration of the tension this paper identifies between treaty obligations and statutory limits. Nirav Modi's repeated but unsuccessful attempts to reopen his UK extradition appeal on torture-risk grounds further demonstrate how assurances of humane treatment remain central to judicial scrutiny even after the fact-finding stage concludes.[36]

[29] Constitution of India 1950, art 21.
[30] (1994) 3 SCC 569.
[31] Extradition Act 1962, s 31.
[32] *Supra* note 20.
[33] Soering v United Kingdom (1989) 11 EHRR 439.
[34] *Government of India v. Mallya* [2020] EWHC 924 (Admin) (Eng.).
[35] *Government of India v. Chawla* [2018] EWHC 3096 (Admin) (Eng.).
[36] *Nirav Modi v Government of India* [2024] EWHC 118 (Admin) (Eng.)

Therefore, the Extradition Act of 1962's court review functions as a constitutional safety valve. The executive is subject to judicial review even though it has the authority to handle foreign affairs and satisfy treaty obligations. To ensure that people's rights are not being sacrificed for expediency because of diplomatic need, the judiciary acts as a check and balance. Through the concurrent operation of legal provisions, constitutional safeguards, and judicial interpretation, India has established a robust system that permits extradition requests without undermining the rule of law.

COMPARATIVE PERSPECTIVES

JUDICIAL REVIEW IN THE UK

The Extradition Act 2003, which streamlined and consolidated the processes for handling extradition requests, is the primary law governing extradition in the United Kingdom. The Act distinguishes between Part 1 (European Arrest Warrant and Gibraltar)[37] and Part 2 (other territories with treaties or specific arrangements).[38] Judicial review is a crucial constitutional check, particularly where statutory redress is insufficient or unavailable, even if the 2003 Act created official channels of statutory appeal.

Before the 2003 Act, extradition rulings were subject to habeas corpus and judicial review, which frequently resulted in lengthy delays. By forcing most disputes into the appeals process under sections 34 (Part 1) and 116 (Part 2), the 2003 Act sought to curtail this. However, the courts have recognised that judicial review is still applicable in situations when there is no legal appeal or when new issues arise after the statutory process is finished.

The Secretary of State's remaining authority under Part 2 of the Act is one of the main areas where judicial review has been used. Following the court's approval of extradition, the matter is referred to the Home Secretary, who decides whether to apply the death penalty, grant exceptional protection, or consider other options. According to Section 6 of the Human Rights Act of 1998, the Secretary of State is a public authority and must make sure that decisions are consistent with the Convention. The courts have consistently maintained that judicial review is an appropriate method of examining these decisions. The High Court recognised in McKinnon

[37] Extradition Act 2003, Part 1.
[38] Extradition Act 2003, Part 2.

v. Government of the USA[39] that changes in an individual's circumstances, such as a deterioration in health, might warrant judicial review on the basis of new considerations.

In order to hold administrative acts at earlier stages of the process accountable, judicial review has also been crucial. In Nikonovs v. HMP Brixton,[40] the Divisional Court affirmed that the rule of law requires access to review when liberty is implicated and allowed judicial review as a remedy against judgements that lie outside the purview of statutory appeal. In a similar vein, the Court of Appeal held in Raissi v. Secretary of State for the Home Department[41] that the Home Secretary's discretion in extradition cases must be used sensibly as well as subject to judicial review when it violates reasonable expectations or procedural fairness.

There has been criticism of the executive and judicial branches' dual roles. In order to avoid redundancy and politicisation, the Baker Review (2011) recommended that the courts alone decide human rights matters rather than the Secretary of State.[42] According to this theory, judges, not the executive branch, should make decisions about legality and rights protection.

In conclusion, judicial review is a last-resort protection under UK extradition legislation. The courts have kept it in place for situations where statutory appeals are insufficient or if new circumstances call for a reevaluation, even though the 2003 Act limited its scope. The judiciary has emphasised the importance of fairness, proportionality, and adherence to Convention rights in seminal cases such as McKinnon, Norris, and Raissi. Therefore, judicial review is a crucial protection to guarantee that extradition stays within the bounds of justice and the rule of law, despite its substantial repercussions for liberty.

JUDICIAL REVIEW IN USA

The extradition system in the United States has a dual concept of executive discretion and court certification for judicial review. Title 18 of United States Code[43] serves as the statutory foundation, requiring an initial hearing before a district or federal magistrate judge to determine if the treaty's requirements are met as well as whether there is probable cause. The Secretary of State has the last say over surrender when the court confirms extraditability; he or she may

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[39] McKinnon v Government of the United States of America [2007] EWHC 762 (Admin)
[40] [2006] 1 WLR 1518 (Admin)
[41] [2008] QB 836 (CA).
[42] Scott Baker, David Perry and Anand Doobay, A Review of the United Kingdom's Extradition Arrangements (Cm 8203, 2011).
[43] 18 USC § 3184.

refuse extradition for political or humanitarian reasons. This two-tiered arrangement gives the executive the last decision in surrendering people to foreign governments while restricting court intervention to restricted fact-finding.

Following the certification process, US courts apply two deeply rooted ideas that significantly limit judicial review. The two are the "rule of non-contradiction," which allows the fugitive to provide evidence that clarifies but does not conflict with the requesting state's arguments, and the "rule of non-inquiry," which forbids courts from investigating the conditions of incarceration or the impartiality of the requesting state's judiciary. These theories hold that certification hearings should be short and provisional, as well as that the executive branch should tackle more general policy or humanitarian issues.[44]

A statutory ban on extradition in cases where there are good reasons to suspect someone of torture was established by the 1984 adoption of the Convention Against Torture (CAT) as well as its incorporation into the Foreign Affairs Reform and Restructuring Act of 1998 (FARR Act). Due to the growing need for thorough investigation into claims of likely torture, this put strain on the long-standing rule of non-inquiry. Under CAT, the Secretary of State is required to evaluate such claims "more likely than not." However, it is currently unclear how and whether courts can review the Secretary's CAT decisions.[45]

Jurisdictional restrictions on court review in extradition procedures were established by the Thomas Kaine ruling (1852).[46] The 1842 U.S.-UK treaty called for Kaine to be extradited after being accused in Ireland; but, the Supreme Court denied habeas corpus, claiming it lacked appellate authority over executive warrants. The Court held that commissioners operating under executive authority were not judicial entities that were subject to review, making a distinction between executive power and judicial authority. The Court reiterated that extradition processes under executive warrants are outside the purview of the Supreme Court by citing cases like Marbury v. Madison[47] and Ex parte Metzger.[48] The ruling safeguarded executive-initiated extradition against judicial interference by upholding the separation of powers. The case became a cornerstone precedent, ensuring the independence of the court

[44] Charlton v Kelly, 229 US 447 (1913); Neely v Henkel, 180 US 109 (1901).
[45] CAT and Other Cruel, Inhuman or Degrading Treatment or Punishment 1465 UNTS 85 (CAT).
[46] In re Thomas Kaine, 55 U.S. (14 How.) 103 (1852).
[47] 5 US (1 Cranch) 137 (1803).
[48] Ex parte Metzger 46 US (5 How) 176 (1847)

while upholding the executive branch's authority under treaty obligations.

The extradition scenario has been indirectly impacted by the Supreme Court's decisions regarding habeas corpus jurisdiction in immigration and national security cases. In spite of statutory restrictions, the Court upheld habeas review of deportation orders in INS v. St Cyr.[49] It reaffirmed the constitutional scope of habeas under the Suspension Clause in Boumediene v. Bush.[50] In DHS v. Thuraissigiam,[51] the Court restricted habeas to procedural legality rather than substantive relief in expedited removal, whereas in Nasrallah v. Barr, the Court allowed appellate review of factual objections to CAT allegations in the process of removal.[52] These instances highlight a conflict between Congress's attempts to direct or limit judicial review and the broad constitutional protections of habeas corpus.

There is demand for more review because of executive strategies like "extradition shopping"—re-filing with consecutive different magistrates until certification is obtained—and "extradition shuffling" suspending ongoing immigration processes in order to seek extradition. These strategies pose a danger to treaty obligations as well as procedural justice. Scholars think that in order to uphold accountability as well as avoid misuse of the legal system, a robust habeas review based on the common law writ and international commitments should be employed.[53]

Lastly, judicial review in US extradition proceedings is inherently slender but progressively stretched out by considerations of human rights. Statutory interpretation coupled with evolving habeas corpus jurisprudence means that historically courts defer to the executive under the rule of non-inquiry, yet CAT obligations necessitate some form of substantive review. A balanced solution where the courts ensure legality in certification and respect by the Secretary for statutory and treaty commitments, without compromising discretion in foreign policy appears to be most conducive to constitutional values and international commitments.

JUDICIAL REVIEW AS A SAFEGUARD IN EXTRADITION PROCEEDINGS

The formal process by which a person accused or found guilty of a crime is turned over to another sovereign nation is known as extradition. The Extradition Act 1962, which establishes

[49] 533 US 289 (2001).
[50] Boumediene v Bush 553 US 723 (2008).
[51] 140 S Ct 1959 (2020).
[52] 140 S Ct 1683 (2020).
[53] 'Habeas Review of Extradition under the Convention Against Torture' (2021) 73 *Stanford Law Review* 1221.

the legal foundation for handling requests from other nations, essentially governs this procedure in India. However, court review is an essential safeguard because extradition directly affects human liberty. According to Articles 14, 20, and 21 of the Indian Constitution, it guarantees that extradition orders respect constitutional rights. The Indian judiciary has consistently maintained that it must regulate extradition and that it cannot be a wholly governmental process.

To guarantee that a person's surrender from one nation to another is founded on constitutional protections, international agreements, and the principles of natural justice, judicial scrutiny is crucial to the extradition procedure. The removal of liberty is a component of extradition, and arbitrary transfer or custody may occur in the absence of strong judicial control. The courts have often stated that extradition procedures should balance individual liberty with the state's commitment to uphold treaty obligations.

The Supreme Court of India decided in the State of West Bengal v. Jugal Kishore[54] that extradition is subject to judicial review in order to protect individual freedom under Article 21 of the Constitution, even though it is an executive decision. And also stated that it is the judiciary's responsibility to ensure that the extradition procedure does not infringe upon the individuals' basic rights. In Re Schmidt,[55] the House of Lords in the United Kingdom also stressed the need for strict judicial scrutiny of extradition decisions in order to prevent abuse of authority and ensure adherence to the European Convention on Human Rights.

In a similar spirit, the Court held in the Abu Salem case[56] involving the extradition of the accused from Portugal that India had to adhere strictly to the "rule of speciality," which states that an extradited person cannot be tried for anything other than the crime for which extradition has been granted. Here, judicial review reaffirmed the necessity of honouring both constitutional rights and international obligations.

In the asking jurisdiction, judicial review also offers protections against torture, harsh treatment, and political persecution. In Soering v. United Kingdom,[57] the European Court of

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[54] *Supra* note 24.
[55] Re Schmidt [1995] 1 AC 339 (HL).
[56] *Supra* note 3.
[57] *Supra* note 28.

Human Rights emphasised the court's protective role by ruling that extradition could be refused if it would put the person in actual danger of cruel or inhuman treatment.

Judicial review is therefore a constitutional safeguard that upholds the rule of law and protects individuals from potential violations of their human rights as well as due process. Extradition is guaranteed by judicial review to be a fair and lawful form of international collaboration rather than a haphazard state action.

LIMITATIONS

- There is no empirical or field-based evidence, such as interviews with judges, attorneys, or extradited individuals, in this doctrinal study.
- Primarily Indian and a few foreign countries (the UK and the USA) have their jurisprudence taken into consideration; other systems, like the EU's European Arrest Warrant framework, are not looked at.
- The study does not thoroughly investigate the political and diplomatic factors that frequently influence extradition decisions in practice, instead concentrating on court review as a legal safeguard.

CONCLUSION

At the intersection of constitutional safeguards and international responsibilities, judicial scrutiny in extradition cases occupies a unique and delicate position. Extradition inherently affects national sovereignty, international comity, as well as the fight against transnational crime, but it also affects individual fundamental rights, particularly those guaranteed by Articles 14, 20, and 21 of the Indian Constitution. This duality highlights the need for judicial review. Although the Extradition Act of 1962 established the statutory foundation, the Indian judiciary has added significant protections to the system by upholding laws such as the rule of specialisation, the exception for political offences, and the prohibition against torture and unfair trials.

A comparative analysis reveals that India's judicial intervention is more extensive than that of the United States, whose courts are constrained by the doctrine of non-inquiry. Additionally, India's judicial intervention is comparable to certain aspects of the United Kingdom's rightscentered review system. However, inconsistency and a lack of transparency are allowed in India due to the absence of clear statutory norms as well as an over-reliance on administrative discretion. Therefore, judicial review serves as both a procedural and a substantive constitutional tool to ensure that extradition is not used as a tool for political expediency or injustice.

Judicial review of extradition essentially serves three crucial functions: it upholds the supremacy of the constitution, ensures adherence to international norms such as the right to a fair trial and non-refoulement, and sustains the legitimacy of India's involvement in international crime-fighting cooperation. To bring India's extradition policy into compliance with international law and constitutional morality, it will be crucial to improve this procedure by statutory clarification, procedural transparency, and consistent implementation of human rights standards.

SUGGESTIONS

- **Statutory Reforms:** It is necessary to amend the Extradition Act of 1962 in order to explicitly establish the foundation for court review, including guarantees of a fair trial, rule of specialisation, dual criminality, and protection from torture. A clear set of legislative standards will reduce the need for excessive judicial creativity.

- **Transparency of Executive Action:** After redacting sensitive national security material, the Central Government must be obliged to maintain and make known to the public written justifications for extradition decisions so that courts can evaluate them in a meaningful way.

- **Human Rights Protection:** In accordance with India's obligations under the Convention Against Torture, a law must be passed requiring an evaluation of the risk of torture or degrading treatment before extradition is granted, supported by findings that may be reviewed by a judge.

- **Independent Oversight of Assurances:** In order to verify compliance after surrender and make sure that diplomatic assurances are more than just words, independent monitoring systems must be put in place whenever requesting states give them.

- **Enhancing the Function of the Magistrate:** To make appellate and judicial review easier, the evidentiary criteria for the magistrate's prima facie examination must be made clear and the proceedings must be properly recorded.

BIBLIOGRAPHY

Books

P Ramanatha Aiyar, Concise Law Dictionary (5th edn, Lexis Nexis 2011) 476.

Henry Campbell Black, Black's Law Dictionary (6th edn, Centennial edn 1891–1991, West Publishing 1990) 585.

M Cherif Bassiouni, International Extradition and World Public Order (Sijthoff 1974).

Rebecca Fraser, The Story of Britain: From the Romans to the Present – A Narrative History (W W Norton & Company 2005) 327–77.

Scott Baker, David Perry and Anand Doobay, A Review of the United Kingdom's Extradition Arrangements (Cm 8203, 2011).

Statutes

Constitution of India 1950, art 14.

Constitution of India 1950, art 20.

Constitution of India 1950, art 21.

Extradition Act 1962, Preamble.

Extradition Act 1962, s 2

Extradition Act 1962, s 31.

Extradition Act 1962, s 34.

Extradition Act 2003, Part 1 (UK).

Extradition Act 2003, Part 2 (UK).

Indian Penal Code 1860, s 216.

18 USC § 3184.

Case Laws

Abu Salem Abdul Qayyum Ansari v CBI (2013) 7 SCR 1061.

Boumediene v Bush 553 US 723 (2008).

Charlton v Kelly, 229 US 447 (1913).

Daya Singh Lahoria v Union of India (2001) 4 SCC 516.

DHS v Thuraissigiam 140 S Ct 1959 (2020).

Ex parte Metzger 46 US (5 How) 176 (1847).

Government of India v Chawla [2018] EWHC 3096 (Admin).

Government of India v Mallya [2020] EWHC 924 (Admin).

In re Thomas Kaine, 55 US 103 (1852).

INS v St Cyr 533 US 289 (2001).

Kartar Singh v State of Punjab (1994) 3 SCC 569.

Marbury v Madison 5 US (1 Cranch) 137 (1803).

McKinnon v Government of the United States of America [2007] EWHC 762 (Admin).

Nasrallah v Barr 140 S Ct 1683 (2020).

Neely v Henkel, 180 US 109 (1901).

Nikonovs v HMP Brixton [2006] 1 WLR 1518 (Admin).

Nirav Modi v Government of India [2024] EWHC 118 (Admin); Nirav Modi v Government of India [2026] EWHC ___ (Admin) (dismissing application to reopen appeal).

Raissi v Secretary of State for the Home Department [2008] QB 836 (CA).

Re Schmidt [1995] 1 AC 339 (HL).

Soering v United Kingdom (1989) 11 EHRR 439.

State of West Bengal v Jugal Kishore More (1969) AIR 1171.

U.S. v Rauscher 119 US 407, 411–12 (1886).

Journal Articles

'Habeas Review of Extradition under the Convention Against Torture' (2021) 73 Stanford Law Review 1221.

Ben Joyes, 'Judicial Review as a Safety Valve in Extradition Proceedings' (9 Bedford Row, 2020) https://www.9bedfordrow.co.uk/judicial-review-as-a-safety-valve-in-extradition-proceedings/ accessed 4 September 2025.

Matthew Murchison, 'Extradition's Paradox: Duty, Discretion and Rights in the World of Non-Inquiry' (2007) 21 Emory International Law Review 143.

Peter Johnston, 'The Judicial Reviewability of Extradition Decisions: Are They Effectively Immune from Challenge in the Absence of a Requirement to Give Reasons?' (2021) Melbourne Journal of International Law 1.

Kamya Wahal, 'Law of Extradition and Its Implications for Human Rights Violations: A Critical Analysis in National Perspective' (2023) 6(3) International Journal of Law Management & Humanities 2128.

International Instruments

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1465 UNTS 85.