

## FUGITIVE ECONOMIC OFFENDERS: A COMPREHENSIVE WORLD STUDY

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### Abstract

Offenders in India may now more easily flee to other countries and evade punishment due to the advent of globalisation and growing interconnection. Fugitive detainees should be extradited and brought before Indian courts, which becomes a cumbersome process. On top of that, it acts as an effective deterrent to those who would otherwise flee. There is a dismal one-in-three chance that a wanted fugitive would be returned to India, despite India's efforts to extradite them. With the help of extradition accords with other nations, India has brought back certain prisoners, but there have also been setbacks. There are certain legal and non-legal hurdles involved in the process of extradition. This paper has examined these issues to suggest methods to enhance India's extradition procedure. The paper analyses fugitive economic offenders and laws against them, along with a comparative study of such laws in countries like India, Canada, Australia, the U.K. and the U.S.A. The study has followed doctrinal research with analysis of both primary and secondary data wherein the research scholar has concluded that India needs to have a structured and strengthened legal framework for fugitive offenders just like the developed countries U.S., UK, Canada and Australia.

**KEYWORDS:** *Fugitive Offenders, Economic offenders, Extradition, Criminals*

### INTRODUCTION

#### Background

To emphasise the purpose of legal systems: if someone commits an offence, they will be brought to justice regardless of where they are or how far away they are. However, this core goal faces considerable obstacles due to globalisation and greater interconnection. Offenders in India may now flee to other nations with greater ease because of developments in the speed, affordability, and efficiency of international travel. Furthermore, the globalisation of crime makes it more challenging to enforce jurisdiction over Indian citizens and non-resident foreigners. To bring fugitives home, extradition is an accepted international method. Extradition is "the transfer of an accused or convicted person from the nation in which he is located to another country that has requested his extradition".<sup>1</sup> With slight modifications, treaties and conventions adopted globally recognise a set of legal rules and regulations governing fugitives' surrender, controlling the surrender and extradition procedure.

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<sup>1</sup> Bharat Chugh and Anirban Bhattacharya, "[Understanding the Law of Extradition in India](#)", *Mondaq*, 2017.

Furthermore, factors like bilateral ties and “reciprocity” directly influence the judgement. Foreign laws concerning human rights and other international matters all have a direct impact on an extradition judgement. As a result of the influences above, extradition proceedings are notoriously tricky and time-consuming. Bringing foreign criminals back to the United States is critical to ensure swift justice and reparation for victims. It acts as a deterrent to criminals who may otherwise regard evading as a simple means of getting around the legal system in India. Unquestionably, a danger to the safety and security of India is posed by the delay in the apprehension and conviction of terrorists. The Indian government faced tremendous challenges and pressure in extraditing fugitives like Vijay Mallya, who fraud the Indian Banks. David Hadley, the American terrorist and Warren Anderson case was similar, making it difficult for India to extradite them. Understanding the difficulties faced by the government in bringing them back is critical. Documentation on India’s experience capturing wanted criminals and the statutory and common law hurdles to extraditing them is included in this summary.<sup>2</sup>

### **Literature Review**

Francis J. Kishner, in his book,<sup>3</sup> talks about various countries and their treaties concerning the offenders who fly from the country. He says that even if the claimed person cannot be apprehended after being ordered to surrender, it will still occur. However, the rights of other parties concerning the property or products remain unaffected. Each of the High Contracting Parties must bear the costs incurred by the arrest, imprisonment, and transportation to its border of the people it agrees to surrender following the terms of this treaty. The provisions of this treaty apply to the two High Contracting Parties' colonies and overseas possessions. If the fugitive is wanted for a crime that occurred in the colony or foreign possession of the person making the demand, the Governor or Chief Authority of that colony or foreign possession should be contacted. If a request is made to surrender a person following this treaty, the request may be processed by the respective governors or top authorities. They may either authorise the surrender or submit the problem to their government. British colonial and overseas possessions will allow Her Majesty to make special arrangements for the surrender of fleeing Belgian offenders, based as closely as possible on the requirements of the current treaty.

In his book “Transnational Fugitive Offenders,” Geoff Gilbert<sup>4</sup> read, along with the Article of John Murphy<sup>5</sup> forms the basis in the context of international fugitives. Expulsion for political offences is free from the human rights limitations on return in Part I of the extradition procedure. This section examines several methods for dealing with transnational fugitive criminals, including armed conflict refuge and return and irregular rendition types. Appendices: The Schengen Agreement of 1990 and the Commonwealth Scheme (selected clauses only) Euro-Union treaty governs extradition between E.U. members (selected clauses only).

<sup>2</sup> Aarshi Tirkey-“India’s challenges in extraditing fugitives from foreign countries”, O.R.F., Available at: <https://www.orfonline.org/research/indias-challenges-in-extraditing-fugitives-from-foreign-countries-45809/> (Last accessed on 13.07.2022).

<sup>3</sup> Francis J. Kishner-“Fugitive Offenders: Being The Law And Practice Relating To Offenders Flying To Or From This Country. Including The Extradition Acts And Treatises”, Nabu Press, 2011.

<sup>4</sup> Geogg Gilber-“International Studies in Human Rights”, Vol. 55, 2021.

<sup>5</sup> MURPHY JOHN F.-“TRANSNATIONAL FUGITIVE OFFENDERS IN INTERNATIONAL LAW: EXTRADITION AND OTHER MECHANISMS”, AMERICAN JOURNAL OF INTERNATIONAL LAW, VOL. 93, IS. 3, 1999.

### **Aims/Objectives**

To analyse various laws for fugitive economic offenders around the world.

To identify the differences and give a detailed examination of comparative analysis in the laws for Fugitive Economic Offenders of nations like India, Canada, U.S.A., U.K. and Australia.

To draw necessary implications and conclusions from the above said comparative analysis.

To analyse whether the legal framework of India is sufficient following the increasing globalisation and digitalisation.

### **Hypothesis**

H0- Canada, U.S.A., U.K., Australia and India and structured legal framework for fugitive economic offenders in the form of international treaties.

H0- There are differences between the position of law and the nature of offenders concerning the law relating to fugitive offenders in India, Canada, the U.S.A., the U.K. and Australia.

Ha- Legal framework in India is insufficient with the current pace of the advent of globalisation and digitalisation.

### **MATERIAL AND METHOD**

The present study followed doctrinal research with primary and secondary data collected from various sources.

#### **Study Design**

Since the study is doctrinal, qualitative research has been conducted, and data has been analysed based on the material present on record, various case studies and case analyses.

#### **Data Collection**

The data has been collected from primary sources such as statutes, treaties, conventions, and case laws. In contrast, secondary data has been collected from various articles, journals, international jurists and their opinions, seminars etc.

#### **Data analysis**

A comparative analysis has been conducted post-data collection to justify the research theme and topic.

### **RESULT AND DISCUSSION**

The odds of successfully extraditing a wanted criminal are based on the provisions laid forth in extradition treaties. Older bilateral treaties, including the ones between India, Chile (1897), Netherlands (1898), Switzerland (1990), and Belgium (1901 offer exhaustive lists of crimes due to which the fugitive had to surrender (1880). Under the “dual criminality” approach applied in more recent accords, a fugitive may only be extradited for a crime if it is also a crime in the receiving country. The dual criminality technique, as opposed to the list method, is more practical and guarantees that new crimes, such as cybercrime, are correctly recognised in both countries without requiring treaty terms to be renegotiated. Although "dual criminality" has benefits, it also comes with challenges. Firstly, it is difficult to create treaty criteria for offences like dowry harassment specific to India's socio-cultural conditions. There are many legal avenues available for challenging an extradition order. However, this provision does not apply

in cases involving political offences, nationals of the country making the request, crimes punishable by death, double jeopardy, or religious, racial, or national prejudice.<sup>6</sup>

Extradition is a legal practice in which one country sends a citizen or resident to another country to face criminal accusations and possibly punishment. A treaty would create a partnership between the United States Federal Government and the government of another country. Extradition in the United States typically requires treaty permission. Even without a treaty, some countries will agree to extradition; nevertheless, most will need promises of equitable treatment. Furthermore, the United States may extradite individuals (non-citizens, nationals, or P.R. residents) who have “committed acts of violence” against United States nationals abroad without regard to the presence of a treaty. If the “wanted person” cannot be extradited, other measures can be adopted to bring them back to the United States or confine their movement worldwide. Suppose the prosecution does not seek extradition or take any active efforts to return the fugitive to the United States, and the fugitive is arrested after a lengthy wait. In that case, the prosecution may have to fight a motion claiming a constitutional speedy trial violation. To be prepared for an accelerated trial application, all decisions about extradition or other efforts to obtain custody of the fugitive should be documented. The percentage of Indian criminals who have escaped to the United States is 6%, with 33 people on the run.<sup>7</sup>

The nation has established extradition agreements for justice in Australia with foreign countries. As a result of our international collaboration in the fight against crime, Australia is not a shelter for those who have been wrongfully charged or convicted of significant crimes in other nations. If a person commits a crime in Australia, such as murder, and then escapes to the United States of America (U.S.A.) before being brought to justice, extradition may be employed. For example, if an Australian citizen is in the United States, Australia may issue a request for their arrest and extradition. He or she may be extradited to Australia and face murder charges. For Australia to accept or initiate an extradition request, the Extradition Act 1988 outlines several conditions. A multilateral or bilateral treaty may add to or augment these standards.

The “Extradition Act” of Canada allows it to transfer individuals to face trial, be sentenced, or serve a jail term, following the request of another country that is an “extradition partner”. You cannot be extradited to another country unless you can prove that the alleged criminal activity for which you are being sought is illegal in both nations. All information about particular cases is private and cannot be made public until an arrest is made according to an extradition demand since communications between states are guarded. After this phase, public information can be made accessible and available only based on individual cases. A court order prohibiting publication may keep the details private even while the lawsuit is still in progress. A formal request with accompanying documents for extraditing or a request for the temporary arrest of the individual, followed by a formal extradition request, may be made by the foreign nationals seeking the extradition of a person to Canada.<sup>8</sup> Of 25 fugitive offenders of mixed origin in

<sup>6</sup> Ned Aughterson, “*The Extradition Process: An Unreviewable Executive Discretion*”, 24 Australian Yearbook of International Law 13, 2005.

<sup>7</sup> Ibid.

<sup>8</sup> “*General Overview of Canadian Extradition Process*”, Available at-<https://www.justice.gc.ca/eng/cj-jp/emla-cej/extradition.html>, last accessed on 16.07.2022.

Canada,<sup>13</sup> have been traced to Ontario. Canada and India have an easy extradition treaty, which has made extradition smooth with the country.<sup>9</sup>

The “double jeopardy” law hinders India in the extradition of David Headley from America, preventing his trial and punishment. An American terrorist suspected of involvement in the 26/11 Mumbai attacks, Headley, was already serving a term of punishment for the 2006 murders of six Americans in American courts. However, Indian authorities have failed to bring charges against Headley for the deaths of roughly 140 Indian people in the same assaults.<sup>10</sup> Extradition orders may also be challenged outside of the limits of the treaty. Concerns about human rights breaches, such as torture, are often the driving force for these measures. The importance of the judiciary in domestic justice systems and the strength of a country's human rights movement affect how far international tribunals will go to examine similar situations in other nations. By way of illustration, the United States generally adheres to the “non-inquiry” principle within the judicial review of extradition orders. It does not inquire into the circumstances into which the extradited individual will be placed.<sup>11</sup> Human rights concerns, including the potential for “torture, cruel and degrading treatment,” have made European and British governments more likely to oppose extradition requests. Protest movements for civil liberties in many European nations have helped bring human rights into the spotlight. Following World War II, Europe and the United Kingdom established the European Convention on Human Rights (ECHR) and the European Court of Human Rights to safeguard people's fundamental freedoms. Within a state's borders is the only place where citizens are protected by the European Convention on Human Rights and its protection of human rights and political freedoms (ECHR). Torture, as well as other forms of cruel or humiliating treatment or punishment, is prohibited under Article 3 of the European Convention on Human Rights (ECHR). For India, this is an immense worry when it comes to extradition. In the landmark case *Soering v. the United Kingdom*, the European Court of Human Rights ruled that torture occurred when prisoners were subjected to brutal and humiliating conditions.<sup>12</sup>

Therefore, European nations, including the U.K., have regularly denied petitions related to extraditing due to terrible circumstances or violence in Indian jails for the wanted individual. Overcrowding, decaying infrastructure, poor sanitary conditions, and a general lack of basic amenities are some factors that make Indian jails less rehabilitative and more punishment-focused. Misconduct on the part of the police, such as maltreatment in custody, mistreatment, arbitrary imprisonment, torture, and extrajudicial murders, are all considered when determining whether or not an Article 3 violation has occurred. In 1996, the “European Court of Human Rights” ruled that “Sikh separatist Karamjit Singh Chahal could not be returned to India due to claims of maltreatment at the hands of Punjab police”. International courts reached this decision after reviewing reports from non-governmental organisations, including “Amnesty International”, the “British High Commission”, the “United States Department of State”, and

<sup>9</sup> Ibid.

<sup>10</sup> Vijaita Singh, “[India to press U.S. for Headley's extradition](#)”, The Hindu, 2016.

<sup>11</sup> Ibid.

<sup>12</sup> *Soering v. United Kingdom*, 161 Eur. Ct. H. R. (ser. A) (1989).

“India’s National Commission for Human Rights”.<sup>13</sup> In 2017, British courts refused to extradite suspected bookie Sanjeev Kumar Chawla due to the fear of his human rights violation if he was sent to Delhi’s Tihar jail. The Netherlands did not extradite Neils Holck (also known as Kim Davy), who was a suspect in the “Purulia weapons drops case”, to India because of concerns about the violation of human rights and the poor condition of the Indian Jails.<sup>14</sup> During extradition proceedings, fugitives often bring up the issue of terrible jail circumstances, arguing that the courts in the U.K. and Europe are more likely to see this as a human rights violation. Vijay Mallya's lawyers alleged the unfortunate circumstances at Arthur Road Jail (Mumbai), for example, to constitute cruel and degrading treatment. The C.B.I. and E.D. are involved in the inquiry against Mallya to investigate the alleged fraud he committed with the banks.<sup>15</sup> The government in India received an order from the court in the U.K. to send them video footage of Arthur Road Jail to evaluate the jail’s condition based on Mallya’s lawsuit.<sup>16</sup> As a result, given the importance placed on human rights, India must decide if these nations pose a threat to fugitive suspects seeking refuge. There are 14 fugitive offenders India has given to the United Kingdom who have settled out after extorting money from India. India must follow the relevant treaty’s terms if it can regain custody of a wanted individual. One of the essential treaty articles is that a wanted criminal may only be prosecuted for the offence that led to his extradition. After being extradited from Portugal to India in the wake of the 1993 Mumbai serial blasts, Abu Salem faced new charges. The highest court in Portugal found that India had broken international extradition law, prompting considerable outrage. For the trust, cooperation, and mutual benefit to continue, countries must keep their treaty commitments. The extradition treaty between Portugal and India is not included in the most recent M.E.A. list of India’s extradition treaties. Since the pact’s status is now unknown, it is unclear if it has been temporarily halted or formally terminated. However, the current status of India's arrangement with Portugal is unclear.

## CONCLUSION

India’s legislative framework concerning the process of extradition stands weak compared to the developed countries like the U.S.A., the UK, Canada, and Australia, for which India decided to have Fugitive Offenders Act. The said act was introduced post Kulbhushan Jadhav Case but, still the legal framework lags due to weak implementation of said act. India, being a developing nation due to its political agendas, cannot stand before developed countries. Henceforth, author proposes a proper mechanism and cheque along with appointment of a regulatory authority under the act who can work on international relations as well.

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<sup>14</sup> “[Danish court says Davy cannot be extradited to India](#)”, *Livemint*, 2011.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

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