

## THE EXTRADITION CONCEPT

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### ABSTRACT

*An individual who has committed or is accused of committing an offence is typically prosecuted in the nation in which the offence was committed. But what happens when someone leaves such a nation to avoid going to trial? Or, what happens if a prisoner flees the borders of that country in order to avoid being found guilty? In these situations, the nation where the accused or guilty fled formally demands that the nation where he fled return him. Extradition is the process of sending an accused person or convict back to the country from where they fled. Extradition, in a near-invisible definition, is the legal process through which one country officially turns over an individual who has been accused or convicted of a crime to another country. This is directed by reciprocal or global arrangements and universal law, which guarantees that crooks won't have the option to sidestep equity by running over lines. This procedure is an essential tool for international law enforcement cooperation and compliance with the principles of justice in a globalized world where people can quickly switch countries. Extradition proceedings also are based on the principle of double criminality, meaning that for a suspect to be extradited to another country, his or her alleged crime must be illegal in both the country. The requesting County must prove that the charges warrant extradition and therefore protect the rights of the individual. Factors such as international relations between the requesting state and the requested state, their respective laws and legal systems; common political backgrounds, long-term centralising governments preparing trade patterns, human rights or judicial implications; etc. make extradition complex. The Extradition Act of 1962 is the primary legal framework that governs extradition operations in India. The mechanisms underpinning this statute are thoroughly examined, and then notable extradition cases involving Nirav Modi and Vijay Mallya are examined in detail.*

**Keywords:** Extradition, Double Criminality, Fugitive, Reciprocity, Territorial State, Requesting State, Extradite.

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## INTRODUCTION

Extradition is a crucial legal process that allows people who are accused or found guilty of a crime to be extradited from one nation to another for prosecution or sentencing. It is an essential component of public international law, with the goal of fostering international cooperation and upholding justice and security. The nations sign a treaty or accord pertaining to criminal extradition. The requesting state starts the extradition process through its diplomat or the other state's official present in the nation. In order to extradite fugitives back to their country, countries make every effort to keep cordial diplomatic ties with other countries. Human rights, diplomacy, and other concerns are among those that can impact extradition. Sometimes, countries refuse to give their citizens to other nations in an attempt to preserve their reputation. International law does not impose a general obligation to extradite. It depends upon the terms of current extradition agreements and agreements between two jurisdictions.

### WHAT IS EXTRADITION?<sup>1</sup>

The term Extradition is derived from two Latin words, "ex" (which means "out") and "tradium," which means "give up," are the roots of the word. *Aut dedere aut judicare*, which translates to "either extradite or prosecute," is the Latin legal principle upon which it is founded.

As Oppenheim defined, "extradition is the delivery of an accused or a convicted individual to the State on whose territory he is alleged to have committed or to have been convicted of, a crime by the State on whose territory he happens for the time to be".

Extradition is supposed to stop people suspected/convicted of serious crimes from evading justice by leaving the country. Some famous Extradition Cases are:

- Julian Assange (founder of Wikileaks): His case involves various countries and relates to the question of whether he will be extradited from the UK to the US on charges of espionage.
- Wanted by the United States to face charges of espionage, Snowden fled first to

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<sup>1</sup> <https://blog.ipleaders.in/extradition-in-international-law/>

Russia before reaching out to other countries for asylum.

The territory state and the state making the request are the two states that are involved in extradition. The accused or convicted person leaves to avoid trial or punishment in the "territorial state." The "requesting state," on the other hand, is the location of the offence or the purported location of the offence. Through diplomatic channels and in accordance with any treaty, the requesting state formally seeks the accused or convict's surrender.

## **PURPOSE OF EXTRADITION<sup>2</sup>**

Extradition is designed to prevent individuals who have been accused or convicted of serious crimes from escaping to another country or jurisdiction in order to escape justice. Given that combating crime often traverses international boundaries, the strict legal definition of extradition can become a powerful weapon in the fight against cross-border transnational crime and terrorism. Extradition was designed for certain purposes.

### **1. Suppression of crime**

One method of preventing crime is through extradition. Generally, due to a lack of jurisdiction or specific technicalities in criminal law, an individual cannot be punished or prosecuted in a state where they have fled. Therefore, extradition is used to ensure that those who commit crimes face consequences.

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### **2. Ensuring Justice**

When a country agrees to extradite a criminal, it is allowing the prosecution — or in this case, punishment — of individuals who have engaged in illegal activity by shipping them back to the location of an offence. Here's the key part: without extradition, fugitives could evade justice by nation-hopping.

### **3. No Safe Havens for Criminals**

Countries, when they collaborate in extradition are denying themselves to be a refuge for escapees. This dissuades criminals from escaping justice because they know that returning to their province means putting their feet back in the garters.

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<sup>2</sup> Hassan, Amna. (2020). Extradition.

#### **4. Promoting International Cooperation**

Extradition treaties and agreements provide a framework to assist in the fight against transnational crime, wherein international cooperation is necessary. In a world where globalized crime does not respect borders, it is common in cases like terrorism, drug trafficking, cybercrime and so on that cooperate to defeat the enemy

#### **5. Reciprocity**

The core principle of extradition is reciprocity. If a state is asked to turn over a criminal now, it might later need to ask for the person's extradition.

#### **6. To maintain peace in the territorial state**

In order to keep the territorial state peaceful, the refusal of the territorial state to extradite the convicted or accused individuals will send the wrong message to those who are planning to elude the jurisdiction of the legally competent state. The territorial state will encourage more of these people to flee into it if it refuses to extradite the accused or prisoners who are now residing there. Thus, the safety and tranquillity of its borders may eventually be threatened if such a nation ends up turning into a shelter for transnational criminals.

#### **7. Deterrent effect**

Criminals are cautioned by tradition that they cannot evade punishment by moving to another state. Thus, extradition serves as a deterrent.

### **THE EXTRADITION PROCESS<sup>3</sup>**

In order to carry out an extradition, countries generally follow a set of tight procedures that are established in accordance with domestic law and, when appropriate, international treaties. Practically speaking, this implies that the procedure usually follows a well-defined set of steps in which the Requesting country formally demands the extradition of a wanted or fugitive from the Sending country in which they now live. The principle of dual criminality, which guarantees that the crime is recognised as a criminal offence in both countries, the existence of an extradition treaty between the two countries, and whether the

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<sup>3</sup> [www.legalserviceindia.com](http://www.legalserviceindia.com) > legal

offender and the offence qualify for extradition under the law are the main considerations. If the request is approved, the person—if they are not already in custody—is usually taken into custody. Following that, they are taken before the court for an extradition hearing when the validity of the request is reviewed. The accused may object to extradition by bringing up issues such as allegations of political persecution, the possibility of torture or other cruel treatment, or the possibility of unfair trials in the state making the request. The court will review whether all requirements for extradition have been satisfied. The extradition process may still be prolonged if the court grants the person's request to appeal the ruling. The judge is frequently involved in the final decision to extradite, and in certain nations, the consent of a senior government official may also be necessary. When all possible legal challenges have been made, the person is turned over to the requesting state's authorities and sent to another location to either stand trial or serve their sentence. Important guidelines<sup>4</sup> are closely followed throughout the process, including the speciality principle, which restricts prosecution to the particular offence for which extradition was authorised, and human rights considerations. Although extradition promotes global collaboration in the field of criminal justice, it often entails difficult legal and diplomatic talks, especially when dealing with instances involving political offences or human rights issues.

## **PRINCIPLE OF EXTRADITION**

### **1. Principle of Reciprocity**

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International law provides strong support for the reciprocity principle. According to this, any favour, deference, advantage, or punishment that a nation bestows on its citizens or legal entities must be returned (reciprocated) in kind. It allows for the reciprocal manifestation of global solidarity. The principle of reciprocity governs extradition, which states that the territory state must extradite the accused or convicts in return for any diplomatic courtesy extended by the requesting state. Any act of this nature can be considered diplomatic; it can be as broad as easing tariffs, upholding foreign court rulings, or providing financial or military support. This principle may also apply to the mutual extradition of nationals who have been found guilty or charged.

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<sup>4</sup> [www.sconline.com](http://www.sconline.com)

## 2. Principle of Double Criminality

According to the principle of double criminality, the offence for which the state seeking the extradition of the accused or convicted person requested must also be a crime committed in the territory state. This means that the fugitive's actions must be illegal in both the state of the request and the territory they are fleeing. For example, in the event that a person is found guilty of "perjury" in accordance with English law, but his actions do not qualify as "perjury" in accordance with American law, America has the authority to deny England's request for his extradition.

## 3. Principle of Double Jeopardy

Another name for the double jeopardy concept is "non-bis in-idem." It stipulates that if the request relates to the same offence, someone who has already been prosecuted and sentenced cannot be extradited. Except in cases where the sentence has served its course, no offender who has been tried and found guilty once may be extradited for the same offence.

## 4. Principle of Speciality

According to the concept of specialisation, the state making the request must trial or punish the extradited individual solely for the offence for which he was extradited. For example, in *United States v. Rauscher* (1886), a British wanted man was extradited to the United States to stand trial for a murder that occurred on board an American ship. After being extradited, the criminal was found guilty of grievously injuring a man rather than the supposed murder for which he was originally charged. This was due to the lack of strong evidence that would have established his guilt for the purported murder. The conviction was overturned by the Supreme Court, which ruled that there had been a breach of the Extradition Treaty.

In the case of *Emperor v. Vinayak Damodar Savarkar*<sup>5</sup>, in 1910 Vinayak Damodar Savarkar was being transported to India from Britain on the ship *Morea* in order to stand trial for treason and murder. While the ship was being held at Marseilles, he managed to flee to France. But in the course of performing his duty, a French policeman made a mistake and captured Savarkar, turning him over to the British without waiting for the extradition process

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<sup>5</sup> [www.manupatra.com](http://www.manupatra.com)

to be completed. Later, in order to properly proceed with Savarkar's extradition, France insisted that Britain turn him over. The matter was brought before the Permanent Court of Arbitration in The Hague after Britain rejected France's claim. The French police officer's irregularities were acknowledged by the court. However, because there is no international legislation, France's request for a new extradition procedure was turned down regarding the circumstances.

Also in the case of *Dr Vijay Mallya v. State Bank Of India*<sup>6</sup>, Vijay Mallya, the most well-known extradition case in India is likely that of the business magnate and proprietor of Kingfisher Airlines and United Breweries Holdings Ltd. He owed 17 Indian institutions, including the State Bank of India and the Indian Overseas Bank, an astounding ₹6,000 crores in debt. In 2016, Mallya escaped India for the United Kingdom out of fear of being arrested. India requested his extradition in 2017. Westminster Magistrate's Court in London heard the extradition case of Mallya. The Court granted his extradition to India in 2018. Despite the fact that his appeal at the London High Court was denied, he has not yet been returned to India because of pending legal proceedings. Not to mention, he was designated a "Fugitive Economic Offender" in 2019 under the Fugitive Economic Offender Act, 2018.

In another case *Nirav Modi v. Punjab National Bank*<sup>7</sup>, Mr. Nirav Modi sold expensive diamond jewellery. The Central Bureau of Investigation (CBI) received a complaint from the Punjab National Bank (PNB) in 2018, saying that Nirav and his wife, Mrs Ami Modi, had obtained fictitious Letters of Understanding (LoU) worth ₹11,400 crores through fraud. After that, the funds were transferred to his fifteen fictitious firms abroad. Nirav's assets in India were seized by the Enforcement Directorate (ED) after a CBI investigation. He left India and applied for asylum in the UK. In 2018, he received a Red Corner Notice from Interpol. Nirav's arrest warrant was issued by a Westminster Court in response to an extradition request from India. In 2021, the Court ruled to extradite him to India.

## **EXTRADITION UNDER INDIAN LAWS**

The Extradition Act (1870) of the United Kingdom and the Extradition Act (1903) of India governed extradition. Currently, extradition in India is governed by the Extradition Act (1962). The Act allows for the extradition of criminals who are on the run from India to

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<sup>6</sup> [www.manupatra.com](http://www.manupatra.com)

<sup>7</sup> [www.sconline.com](http://www.sconline.com)

India. Any extradition treaty that the requesting or territory state has with another state may govern the extradition process. The Act does, however, stipulate that any Convention to which India and the requesting or territory state are signatories may be regarded as the extradition treaty in that particular case if there isn't one. (Section 3).

Currently, India has extradition treaties in force with 48 countries. **Section 2(d)** of the act Defines "extradition offence" as an offence that is punishable under the laws of both India and the requesting country (dual criminality). The offence must also be serious, such as murder, terrorism, or fraud.

### **RESTRICTIONS ON SURRENDER UNDER INDIAN LAWS:**

- The Act's Section 31 states that the fleeing offender cannot be turned over:
- In the event that the crime he is accused of committing is political in nature;
- If, according to the laws of the requesting state, the offence he committed or is accused of committing has run its course;
- If the extradition treaty or agreement does not contain a clause specifying that he will only be tried for the offence for which he was extradited,
- If he has been charged with any crime in India other than the one for which extradition is being requested; and
- Fifteen days have passed since the magistrate committed him to prison.

### **CONCLUSION**

Extradition serves as a vital legal process that enables countries to cooperate in bringing fugitives to justice, ensuring that individuals accused or convicted of serious crimes cannot escape legal consequences by fleeing across borders. It is essential for maintaining global law and order, particularly in cases involving transnational crimes such as terrorism, drug trafficking, cybercrime, and money laundering. The extradition process is typically governed by bilateral or multilateral treaties, which establish the legal framework for cooperation between countries. In the absence of a treaty, countries may still agree to extradite fugitives on the basis of diplomatic arrangements or mutual goodwill, as seen in the provisions of the Extradition Act, of 1962 in India.



The legal foundation of extradition rests on several key principles. The first is dual criminality, which requires that the offence for which extradition is sought must be a crime in both the requesting and requested states. This ensures that individuals are not extradited for acts that are legal in one country but not in the other. Another critical principle is the speciality principle, which restricts the prosecution or punishment of an extradited individual to only the offence for which extradition was granted. This protects the individual from being tried for unrelated crimes unless the requesting state obtains the consent of the requested state or other specific conditions are met. The speciality principle is explicitly safeguarded under Section 31 of India's Extradition Act, 1962.

Extradition also comes with important human rights protections. Many countries, including India, are reluctant to extradite individuals if there is a risk of political persecution, torture, unfair trial, or the death penalty in the requesting state. Section 29 of India's Extradition Act, 1962, provides the Central Government with the discretion to refuse extradition if the individual is likely to face persecution or if the offence is of a political nature. This safeguard ensures that extradition is not used as a tool for political vendettas or human rights abuses.

In conclusion, extradition is an indispensable part of modern international law enforcement, balancing the need for justice with the protection of individual rights. It facilitates cooperation between nations to ensure that criminals cannot evade accountability, while also ensuring that extradition is not abused for political purposes or human rights violations. The process, as outlined in laws such as the Extradition Act, of 1962, reflects the careful balance between state sovereignty, international legal obligations, and respect for fundamental human rights