

## **“Contemporary Challenges for Extraditing Criminals in India: An Analysis”**

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### **Abstract**

At present, it has become essentially important and necessary to extradite criminal fugitive who escapes to another county after committing a criminal offense or other offenses which are punishable by law within the territory of the country from where he had fled. In general extradition laws of a country are based on the extradition treaties between two or more countries. Currently, since 2002 India has filed a request for extraditing fugitive to the United Kingdom for 28 fugitives, who are Indian citizens. The United Kingdom has extradited only one Indian citizen. As the United Kingdom has strong human rights laws it is often quite challenging for the Indian authority to extradite a criminal fugitive from the authority of the United Kingdom as fugitives often take plea in the extradition hearing submitting in the Court of competent jurisdiction that the condition of the prison is very poor in India and subject to inhuman treatment which results in the violation of Article 3 of the European Convention on Human Right.

**Key Words:** Fugitive Economic Act, 2018; Westminster Magistrates Court; Bank Fraud; Embezzlement; Counterfeit Currencies, Chief Executive Officer, European Convention on Human Rights.

### **INTRODUCTION**

As according to an old proverb, “no one can outrun the long arm of law”, profoundly illustrates the objectives of legal systems whereupon committing an offense in one country and thereafter escaping or fleeing or absconding to other country and reside in that country to evade legal prosecution and arrest, no matter where they reside shall eventually be brought to justice. However, since the dawn of globalization and increased interconnectivity, it has sufficiently created significant hurdles to this fundamental objective. Also, due to more efficiency and affordability in travel expenses and it becoming more fast and convenient, it relatively has become easier for the criminal fugitive in India to escape or flee to foreign countries to evade arrest and prosecution in the country. Furthermore, challenges are created due to the internationalization of crime for enforcing jurisdiction over the person responsible or offenders who currently do not reside in India. Extradition is a process mechanism that is recognized internationally for the timely return of criminal fugitives from foreign countries.<sup>1</sup>

Extradition, according to the Hon’ble Supreme Court of India is the delivery on the part of one State to another of those whom it is desired to deal with the crimes of which they have been accused or convicted and are justifiable in the Courts of the other State. Requests for

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<sup>1</sup> Aasrshi Tirkey, “India’s Challenges in Extraditing Fugitives from Foreign Countries”, issue no. 270 *orf*, 2018

extradition can be initiated for an accused in the case of under investigation, under-trial, and convicted criminals. There is a requirement of abundant precautions in the cases of under investigation which is to be exercised by the law enforcement agencies to ensure that these law enforcement agencies have Prima facie evidence to sustain the allegations before the Courts of Law in Foreign nationals.<sup>2</sup> There are economic fugitives, who are Indian nationals. These fugitives flee to foreign nations to avoid legal proceedings or abscond to avoid being extradited. In some cases, the extradition of a fugitive is not granted, such cases are due to lack of dual criminality. A person's extradition cannot be granted if the crime committed is not considered as a crime in either of the countries. For instance, if offenses relating to bank fraud, embezzlement, counterfeit currencies which relate to economic offenses in the requesting nation, it should be an offense or be considered as an offense or crime in the requested nation. In case crimes are of political, extradition requests can be refused. Many countries do refuse to extradite a person whose offense or crime relates to political crimes. Certain countries refuse to extradite on the ground that in case the extradition process is carried out, the person extradited may receive capital punishment or torture. The UK government upon receiving assurance from the requested nation that the death sentence will not be carried out only then the UK government grant extradition. Also, the UK government if it thinks that there is a risk that the person extradited would be subject to torture, inhuman treatment, degrading treatment or punishment, in such a case extradition request of that particular person would be denied. Some countries such as Australia, Brazil, Bulgaria, France, Germany do not allow to extradite their citizen nor even consider extradite their nationals. These countries have laws of their own that give them jurisdiction over crimes committed abroad as if the crime had occurred within the territory of their country and by such jurisdiction, these countries try their citizens who are accused of committing crimes abroad by or against their nationals as if the crime was committed in their own country or within their territory. These are a few cases where a country can deny extradition requests by one country to another country of a criminal.<sup>3</sup>

Most of the Indian nationals, fleas to the UK to avoid legal proceedings. Since the UK has a strong human rights law it is a bit complicated to extradite the economic offenders to India who is fugitive from the law. Economic offenses are mostly related to bank fraud, counterfeit currencies, embezzlement, tax evasion, and henceforth. Hence, it is important and necessary to extradite such economic offenders and make them accountable and answerable to the Indian authority. However, it is a very technical process as it is relevant to convince the government by the requested party that the concerned person is indeed charged with the offenses provided.

According to Starke, "The Term 'Extradition' denotes the process whereby under a treaty or upon a basis of reciprocity one state surrenders to another State at its request a person

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<sup>2</sup> **Extradition, available at:** <https://mea.gov.in/extradition-faq.htm> (Visited on 2nd Jul. 2020).

<sup>3</sup> **Extradition, Available at:** <https://en.wikipedia.org/wiki/Extradition> (Visited on 20 July 2020).

accused or convicted of a criminal offense committed against the laws of the requesting State, such requesting State is competent to try the alleged offender."<sup>4</sup>

There can be few elements that can be seen in the definition of Extradition by Starke, Firstly, it is a process under a treaty, meaning treaty between two or more countries, whereby on its request surrender the fugitive criminal. Secondly, the basis of reciprocity, meaning a kind of practice of exchanging things with others for a mutual benefit or a kind of special privileges granted by a Country or an Organization to other Countries or an Organization. In context to extradition it means exchanging of a fugitive or an offender of one country to another on its request who have fled the country of the requesting country to avoid prosecution, such an offender might be a person who is an accused or convicted of a criminal offense. Thirdly, the competency of a requesting country, here it simply means that the requesting country to extradite such a criminal or offender who is a fugitive or fled to another country, the requesting country must be competent enough to extradite and prosecute the fugitive concerned in the country so requested.

## **HISTORICAL BACKGROUND**

The *Gulshan Kumar Murder case* was one of the cases that were related to extradition in India. In this case, the victim Gulshan Kumar was an Indian Businessman, founder of T-series, and Bollywood movie producer. On 12<sup>th</sup> August 1997, he was shot to death by Mumbai Underworld Crime Syndicate D-Company.<sup>5</sup>

In spite, of him receiving threatening calls twice on 5<sup>th</sup> and 8<sup>th</sup> August, he refused to pay the extortion money. For a month, the killer so hired including Rauf and Rashid conducted reconnaissance. However, they could not proceed due to an armed bodyguard. It was considered that the Mumbai Underworld Organization called D-Company was responsible for the assassination. The police accused Nadeem Saifi, a film composer of having paid for the murder due to a personal dispute with the victim and fled the country. It was alleged by the police that Saifi paid to Abu Salem, who was a known associate of Dawood Ibrahim to assassinate Gulshan Kumar. However, Abdul Rauf Merchant, who was also known as Raja confessed to being the murderer on 9<sup>th</sup> January 2001. However, at that juncture, Ibrahim and Abu Salem were already planning to murder Mr. Gulshan as he refused to pay protection money, which was a part of an extortion attempt to D-Company. The sessions Judge M. L. Tahilyani, stating that he was not imposing the death penalty because the prosecution failed to prove that Rauf was a contract killer and sentenced him to life imprisonment on 20<sup>th</sup> April 2002.

Nadeem Saifi fled to the United Kingdom to avoid prosecution after police filed allegation against him. On the request for extradition by the Indian government, the London High Court rejected the extradition request for Saifi on the ground that there was no prima facie case

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<sup>4</sup> Dr. S. K. Kapoor, *International Law & Human Rights* (Central Law Agency, 19th Edn., 2000).

<sup>5</sup> **Gulshan Kumar**, Available at: [https://en.wikipedia.org/wiki/Gulshan\\_Kumar](https://en.wikipedia.org/wiki/Gulshan_Kumar) (Visited on 15 July, 2020).

against him. Also, the prosecution main witness Mohammed Ali Hussain Shaikh, who claimed that Saifi participates in the murder eventually claimed complete denial of knowing Saifi and ever seeing him. Abu Salem also denied Nadeem Saifi's involvement in the Gulshan Kumar murder case.

Nadeem Saifi was exonerated by four Courts including the House of Lords in the United Kingdom and Mumbai's Sessions Court. Eventually, Saifi acquired British citizenship.<sup>6</sup> Abu Salem Abdul Qayoom Ansari was involved in the murder of Bollywood film producer Gulshan Kumar and three other producers namely, Rakesh Roshan, Rajiv Rai, and Subash Ghai. He was said to be the mastermind behind threatening Bollywood film producers for terrorizing and extorting money. They attempted to assassinate the producers, they succeed in assassinating Gulshan Kumar. However, was unsuccessful in assassinating the remaining three producers. He was said to be involved in several murders, murder related cases, extortion, and other cases. However, in 2002 he was arrested by the Portugal police and was extradited to India on its request for extradition of the criminal fugitive. The fugitive was arrested on the charge of a fake passport and was tried and convicted in some cases and was sentenced for life imprisonment in 2015.<sup>7</sup>

His involvement in organized crime started in the eighties when he left for Mumbai. In Mumbai, he started working in his cousin's electronic shop. His cousin, Akther worked for a person named Sayyed Topi a member of the Dawood Ibrahim gang. He started to work as a driver for the Dawood Ibrahim gang, he used to deliver weapons, illegal cash, and goods to different gang members in Mumbai. Due to his competency at delivering the goods, weapons, illegal cash, etc., at the right time and place, he was called Abu Samaan. He took an active part in the Mumbai serial boom blast which happened in March 1993. This mass genocide which took place in Mumbai killed over 250 people leaving 700 injured victims and damaged property that was worth Rs. 720 million. In the same year, he fled the country to Dubai when the police investigation was in effect. He established a trading business in Dubai and the name of the business establishment was King of Car Trading. The downfall of the gang started in the mid-nineties where the sharpshooters were killed in an encounter by the Mumbai police or by the other gang members. It was he who gave the idea or new strategy of hiring Muslim youths from his hometown who are unemployed to carry out the deed and soon back to their hometown. The Police Administration of Mumbai was unable to track down since the culprit had no criminal history or record in their criminal database. Due to this act, he was supported by Dawood's brother Anees Ibrahim. He assassinated the Bollywood film producers without Dawood's consent. He succeeded in assassinating one producer and failed to assassinate three others. He fled to Dubai in fear of Dawood's wrath.<sup>8</sup>

He was convicted for criminal offenses committed by him, for the serial boom blast in Mumbai in 1993 which took life's of more than 250 people and injured 700 people and

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<sup>6</sup> *Ibid.*

<sup>7</sup> **Abu Salem, available at:** [https://en.wikipedia.org/wiki/Abu\\_Salem](https://en.wikipedia.org/wiki/Abu_Salem) (Visited on 22 August 2020).

<sup>8</sup> *Ibid.*

damaging property worth 720 million, murdering Bollywood producer Gulshan Kumar and property builder and more than 50 other cases. He was arrested by Interpol in Lisbon, Portugal in 2002. In 2004, the Portugal Court cleared his extradition on the request from India to face trial in the Mumbai boom blast case, 1993. On the assurance by the Indian authority that the death penalty shall not be provided to the criminal fugitive, the Portuguese authority handed him over to the Indian authority. The only proof that was provided by the Indian authority was his fingerprint and a photograph taken after his arrest in 1991. At present Abu Salem is sentenced to life imprisonment in Mumbai's Arthur Roar Jail for planning the Mumbai boom blast in 1993 and for several other cases.<sup>9</sup>

### **CONTEMPORARY CHALLENGES IN INDIA**

Extraditing Criminals to India from the UK has become the biggest hurdle especially to extradite economic fugitives fleeing to avoid prosecution to the UK. To extradite a Criminal or Fugitive, the offense so committed by the Criminal or Fugitive in the country where he had committed an offense to be it criminal offense or an offense relating to finance. In other words, an economic offense and flees to another country to avoid the legal proceeding of the country in which he or she has committed such offense or to avoid to be extradited, to extradite such fugitive, the crime so committed must be a crime in the country where he had absconded. Currently, since 2002 the total number of requests to extradite by India for the economic fugitive to the UK is twenty-eight. However, at present so far only one has been extradited namely Samirbhi Vinubhai Patel. According to some experts, as a matter from the list of the twenty-eight names, the UK government has declined nine fugitives, who were from India. Besides that, the UK Courts have declined to issue an arrest warrant of three fugitives, who belonged to India. Also, there are more than fifteen cases that are still pending against whom India has requested to extradite including Vijay Mallya and Tiger Hanif to the government of the UK.<sup>10</sup> In the case of the process of extradition, there are a lot of checks and balances in the UK's legal system. The UK's process of extradition is rather very complex. As the UK, has very strong laws relating to Human Rights, it becomes very difficult to extradite a fugitive by the Indian government from the government of the UK. Since the UK's Human Rights Laws are strong, the fugitives who are to be extradited to India and who is of Indian origin often state in their plea during the proceedings for extradition that the Indian jail system or the condition of it is in nature very dilapidated. Due to this very reason the UK Courts mostly deny or refuse to extradite the fugitive. The process of extradition is mostly based on the treaties or agreements which can be bilateral treaties or multilateral treaties, in absence of any treaties between two or more countries, the cooperation, coordination between the two nations legal system becomes paramount importance and as well as the International Relation between those countries. It required the investigating agencies of India to convince the UK Courts in the matters relating to

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<sup>9</sup> *Ibid.*

<sup>10</sup> Dipanjan Roy Chaudhary, "UK's law a big hurdle for India to extradite fugitives", Economic Times, June 15, 2018.

extraditing the fugitive who is accused of an offense or offense relating to economic matters of India which is generally a very challenging task. It is a bit complicated to extradite fugitive from the UK to India. Since India belong to category 2 in comparison to the countries belonging to Category 1, few of the countries belonging to category 1 are the USA, Europe, UK, Canada, Germany. In recent times, Vijay Mallya, one of the economic fugitive fled to the UK from India. The Indian legal authorities requested the extradition of the economic fugitive to the UK's Court under the recently passed Act of 2018, Fugitive Economic Offenders Act. The UK's Westminster Magistrates Court had stated that he indeed has to answer to the authority of India. Vijay Mallya had appealed against the order of the UK's Westminster Magistrates Court of 2018. However, the UK's High Court dismissed the appeal against the order to extradite him to India and refused to grant any relief. It enables the Indian authority to bring him back to Indian jurisdiction on the charges of money laundering and criminal conspiracy.<sup>11</sup> Besides Mallya's extradition case, there are other cases pending relating to extradition which involves former Indian Premier League boss Lalit Modi, who has been accused of laundering money collected for the cricketing extravaganza and a promoter of leading jewelry brands in India. Also, two individuals namely- Nirav Modi and Mehul Choksi were caught in a fraud of epic proportions.<sup>12</sup>

In the case of *Mallya v. India*,<sup>13</sup> the appellant in this case is an Indian citizen, a businessman. He appealed the decision of a district judge. The district judge decided to send the appellants case to the Secretary of State for the Home Department for extradition decision of the appellant. In India, he had been a Chief Executive Officer of a large group of companies which includes an airline. In 2008, there was an inflation in the rate of aviation fuel and a decline in the value of the rupee. The global financial crash affected the appellant's companies. As the appellant's companies were financially at risk, the airline company which belongs to the appellant acquired loans from various banks. However, had a shortfall in its desired cash infusion. To meet the shortfall in its cash infusion, the airline approached another bank and it acquired a loan in three tranches.

The Indian authority sought a request for extraditing the appellant for the charges filed against him. The charges filed against were relating to obtaining a loan utilizing fraudulent misrepresentation, conspiracy to defraud, and his involvement in money laundering. The allegation made by the requesting state for his extradition was based on evidence collected by the investigation agency using various emails and statements acquired about the financial position of the airlines and its ability to repay loans. The appellant in the instant case submitted that the finding of the judge was wrong under section 84(1) of the Extradition Act, 2003. He alleged that the judge had mistaken in applying the test of whether there was any prima facie case against him while taking Indian evidence into

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<sup>11</sup> **Vijay Mallya loses UK High Court appeal in extradition**, Available at: <https://economictimes.indiatimes.com/news/politics-and-nation/vijay-mallya-loses-uk-high-court-appeal-in-extradition-case/articleshow/75249673.cms> (Visited on July 13, 2020).

<sup>12</sup> *Supra* note 3

<sup>13</sup> [2020] EWHC 924; [2020] 4 WLUK 168.

account, the judge wrongly concluded that there was a prima facie case of fraudulent misrepresentation and conspiracy to defraud. The appeal was dismissed.

The Delhi Court in June 2018 held Abu Salem held guilty in extortion related case of 2002 for demanding 5 crore rupees from a Delhi businessman Ashok Gupta and was sentenced for seven years of imprisonment.<sup>14</sup>

According to United States prosecutor, Mr. Tahawwur Rana a Pakistani born Canadian businessman was rearrested on the request for extraditing him by the Indian government in Los Angeles for his involvement in Mumbai terror attack where 166 people lost their life in 2008. Recently, it was told by him to the United States Court that he has tested positive for COVID-19 because of this he was released from jail on compassionate ground. The Indian government requested for extraditing the declared criminal fugitive as per the bilateral treaty signed in 1997 for his arrest and detention.<sup>15</sup> It was informed by the Indian government to the United States that the fugitive is being prosecuted for several offenses committed by him in India which include conspiracy to commit murder and murder in violation of sections 302 and 120B of Indian Penal Code. The Indian government charged him for the conspiracy to commit forgery for cheating and conspiracy to use a forged document as genuine. The arrest warrant issued for the extradition of the fugitive is said to be covered by Article 2 of the India-US extradition treaty. On August 28, 2018, the District and Sessions Judge issued an arrest warrant against the fugitive. The fugitive conspired with his childhood friend and others who were in Pakistan to assist Laskar-e-Taiba and Haraket-ul-Jihad-e-Islami both are terrorist organizations. These terrorist organizations planned and carried out the Mumbai terror attack in 2008 who took the life of 166 victims, including the life of six Americans. The Pakistani-American LeT terrorist Headley, the childhood friend of the fugitive against whom Indian authority has sought extradition request was involved in the Mumbai terror attack. On 18 October 2009, the fugitive was first arrested in Chicago. In Denmark, the Jury convicted the fugitive for the conspiracy to provide material support to terrorism and for providing material support to LeT. However, the fugitive was acquitted for the conspiracy to provide material support in India. The United States District Judge, Harry D Leinenweber Justice sentenced the fugitive for a term of 168 months. The fugitive was serving his sentence at the Federal Correctional Institution Terminal Island, San Pedro, California. The Department of Homeland Security filed an immigration detainer for the fugitive. Since he is a Canadian Nationals. Formally he was rearrested and currently he is being held at the Bureau of Prisons till the compilation of his immigration process. It was submitted before the Court that a formal request for extraditing the fugitive with support of all the necessary and

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<sup>14</sup> *Supra* note 7.

<sup>15</sup> **Pak-Origin Canadian rearrested in US on India's extradition request for role in Mumbai terror attack, available at:** <https://economictimes.indiatimes.com/news/politics-and-nation/pak-origin-canadian-rearrested-in-us-on-indias-extradition-request-for-role-in-mumbai-terror-attack/articleshow/76477585.cms?from=mdr> (Last Modified Jun 20, 2020).

essential documents will be presented and finalized within the required time as specified in the treaty by the Indian government.<sup>16</sup>

### **SUGGESTION**

The government should take necessary measures for reforming prison in India. As it is often taken as a plea by the fugitive in the extradition hearing that the condition of the prison in India is not in good condition. Also, they are often subject to inhuman treatment, torture, and that it is a violation against their rights under Article 3 of the European Convention on Human Rights.

### **CONCLUSION**

There is the utmost importance, urgency, and requirement to extradite fugitive who has committed an economic offense as it is required for the development of a nation. To make a country strong and developed in the field of education, technological infrastructure, agriculture, or in any field such as the development of an armed force or defense system of a country or nation. The country must be economically sound; the country's economy plays a very vital role in the development of a country. If the country's economy is not sound or is very dilapidated, then it becomes very challenging for the country to tackle the issues in hand relating to the economy. Therefore, it is required to extradite such fugitive to India who has committed an economic offense in India and fled to another country and make answerable to the India Court and impose a heavy penalty.

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