TOPIC : ANALYSIS OF INDIA’S EXTRADITION TRACK RECORD

THE CONTEXT: The recent extradition of British Businessman Christian Michel (middleman in the Agusta Westland helicopters case) from UAE and UK court’s order to extradite Vijay Mallya, the fugitive businessman have potential to improve India’s extradition track record. Let’s analyse why India faces so many difficulties in extradition of criminals despite having extradition treaties with many countries.

WHAT IS EXTRADITION?
❖ Extradition is the recognised international mechanism for the timely return of fugitives from foreign countries. It is defined as the “delivery of an accused or convicted individual from the country he is found in, to another country that requests his extradition”.
❖ India’s SC has defined it as ‘Extradition is the delivery on the part of one State to another of those whom it is desired to deal with for crimes of which they have been accused or convicted and are justifiable in the Courts of the other State’.

The process
❖ The process is governed by treaties and agreements which, albeit with minor variations, adopt internationally recognised legal principles for the surrender of fugitives.
❖ Apart from this, factors outside treaties—including bilateral relations and reciprocity, laws and regulations of foreign jurisdictions, and human rights concerns—directly affect a favourable extradition order.
❖ Given the influence of these factors, extradition procedures are known to be complex, entailing huge amounts of resources and time.
❖ An Extradition request for an accused can be initiated in the case of under-investigation, under-trial and convicted criminals. In cases under investigation, abundant precautions have to be exercised by the law enforcement agency to ensure that it is in possession of prima facie evidence to sustain the allegation before the Courts of Law in the Foreign State.
INDIA’S LEGAL FRAMEWORK FOR EXTRADITION

The Extradition Act, 1962 is the Indian law governing extradition of fugitive criminals to and from India. This primary law is read along with the applicable extradition treaties, arrangements and conventions entered into by India with other countries, which are recognized under the Extradition Act for the purpose of seeking surrender.

<table>
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<tr>
<th>Extradition Treaties</th>
<th>Extradition treaties help provide a defined legal framework for the return of fugitives between countries. At present, India has bilateral extradition treaties with 44 countries. For Ex: USA, UK, Russia, UAE etc.</th>
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<td>Extradition Arrangements</td>
<td>India also has extradition arrangements with 10 countries. Unlike treaty mechanisms, where states are obligated to consider requests for extradition, “extradition arrangements” are non-binding and do not impose any legal obligations on party states. For Ex: Sweden, Singapore, Italy, Peru etc.</td>
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<tr>
<td>Other Countries</td>
<td>Requests for surrender of fugitives can also be made to non-treaty states. These requests will be considered in accordance with laws and procedures of the foreign state, and with the assurance of reciprocity from India.</td>
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| Multilateral Conventions | They provide a binding extradition framework for curbing transnational crimes such as drug trafficking, terrorism and aircraft hijacking. For Ex:  
  ➢ United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)  
  ➢ Convention for the Suppression of Unlawful Seizure of Aircraft (1970) |
DISMAL EXTRADITION SUCCESS RATE

Various reports say that India’s extradition success rate is around 30%. From the publicly available data since 2002, only 62 fugitives have been extradited so far. As per MEA, in 2018, India has around 150 pending request for extradition.

![Number of Fugitives extradited from various Countries to India since 2002]

ISSUES AND CHALLENGES IN EXTRADITING FUGITIVES FROM ABROAD

**Issues With Extradition Treaties Itself**

- Extradition treaties adopt the “dual criminality” approach, which provides that a fugitive will be extradited for an offence, only if it is a crime in both countries. It is difficult to establish treaty principles for crimes peculiar to India’s socio-cultural conditions, such as dowry harassment etc.
- Extradition is usually not granted for “political offences”; for nationals of the requested country; offences where death penalty may be imposed; where there will be “double jeopardy”; or where there could be actual or potential discrimination on account of religion, race and nationality.
- The “double jeopardy” clause, which debars punishment for the same crime twice, is the primary reason why India, for example, has been unable to extradite David Headley from the US. Headley, an American terrorist involved in plotting the 26/11 Mumbai attacks, has already been sentenced to imprisonment by US courts, for killing six Americans. However, Headley is yet to be tried by Indian courts for the deaths of nearly 140 Indian nationals in the same attacks.

**Challenges From Outside The Treaty**

- Challenges to extradition orders can also be raised outside treaty terms. These are generally based on concerns of human rights violations, such as torture or cruel, inhuman and degrading treatment.
- The extent to which foreign courts will inquire into these concerns
depends on the judiciary’s role in domestic justice systems, and the strength of the human rights movement in that country.

| Poor Track Record Of Investigation Agencies | Delays in investigation retards the process of submitting extradition requests, or invoking Interpol mechanisms like the Red Corner Notice (RCN) that help in locating and provisionally arresting offenders.  
While denying a request for extradition for fraud against a British Indian couple, Jatinder and Asha Rani Angurala, the UK court heavily criticised the CBI for delays, which caused the case to remain pending for 25 years. |

| Delayed Justice In Indian Courts | India’s judiciary is already having more than 3 crore pending cases. It takes lots of time before arriving at the final judgement. |

| Poor Prison Conditions | Indeed, overcrowding, crumbling infrastructure, poor sanitary conditions and lack of basic amenities, among others, all contribute to making Indian prisons less of places for rehabilitation and mostly for punishment.  
Because of the strong inclination of UK and European courts to consider poor prison conditions as a form of human rights violation, fugitives often raise this as a challenge during extradition hearings.  
In 2017, British courts rejected the extradition of alleged bookie Sanjeev Kumar Chawla, stating that his human rights may be violated over severe conditions in Delhi’s Tihar jail.  
Similarly, Netherlands refused to extradite Neils Holck (alias Kim Davy), accused in the Purulia arms drops case, due to human rights concerns and prison conditions in India. |

| Diplomatic And Bilateral Relations | Diplomatic and Bilateral relations with the concerned foreign country also play a very important role in the success of extradition.  
When the MEA transmits a formal extradition request to its diplomatic counterparts abroad, the foreign government is required to act on the request by issuing an extradition order against the requested person and fight the case, on behalf of India, before their courts. The expeditious processing of requests and the commitment to prepare for and defend the case before Courts, depends on bilateral relations and the opportune use of diplomacy and negotiations to push for the process by the requested country.  
For Ex: Recent extradition of Christian Michel from UAE became possible only because of good bilateral relations of India with UAE and several trips of NSA to UAE with regards to extradition. |

| Role Of Domestic Politics | It is often argued that extradition is as much a political process as it is a judicial one. Domestic politics of India and the foreign country can also make or mar the chances of extradition of fugitive criminals.  
For Ex: Failure of extradition of Warren Anderson (Chairman and CEO of Union Carbide) with respect to Bhopal Gas tragedy could not happen due to the political support he enjoyed in USA. |

**WAY FORWARD:** In spite of binding treaty mechanisms, the process of extraditing fugitives is lengthy, complex and heavily depends on domestic law and politics of the requested state. This is not surprising as extradition is, after all, a sovereign decision. Nonetheless, there are factors involved in extradition over which India can exercise control. India could adopt a targeted approach to resolve these issues, and thereby improve its success rate.
Having good diplomatic and bilateral relations with foreign countries can drastically improve the extradition chances so India should leverage diplomacy and bilateral negotiations to persuade countries to process requests expeditiously.

India should, on the basis of reciprocity and comity process extradition requests received from foreign states swiftly and efficiently.

USA and UK have extradition treaties with more than 100 countries while India has treaties with only 44 countries. Indian government must make good on its policy “to conclude extradition treaties with as many countries” as possible, and make efforts to enter into more bilateral extradition relations. Other mechanisms that can facilitate arrest and extradition of offenders, viz. mutual legal assistance treaties, issuing letters rogatory and information exchange MoUs can be utilised where necessary.

Preventive law and policy measures that can deter the escape of offenders, may also be explored. The recently passed Fugitive Economic Offenders Bill, 2018 – though not without its own challenges – signifies the government’s efforts to shift its focus to preventive, ex ante legal mechanisms.

As a short-term measure, India could propose to detain fugitive offenders to prisons with better facilities. Fugitives who are not accused of violent crimes, such as economic offenders can be housed in well-maintained, minimum security facilities.

However, in the long run, it is prudent to take coordinated action to introduce systematic prison reforms and convert Indian prisons into a secure area for rehabilitation. Additionally, India could consider signing international instruments, such as the UN Convention Against Torture (1984) to establish India’s zero tolerance towards torture and custodial violence.

For addressing investigational delays, it is imperative to improve the capacity and organisational efficiencies of law enforcement agencies so that they may conduct speedy investigation in these cases.

These steps will allow India to act quickly and reduce the number of safe havens available for fugitives abroad.

CONCLUSION:

The old adage, “no one can outrun the long arm of the law”, illustrates the objective of legal systems: upon committing an offence, the offender- no matter where they are- will eventually be brought to justice.

However, with the advent of globalisation and internationalisation of crime, it is becoming very easy for criminal to escape India. Moreover, India’s poor track record in extradition fugitive criminals is harming the “Rule of Law”. With recent successes, Indian Govt should further take measures swiftly to improve extradition success ratio so that the offenders can be brought to book sooner than later.
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IMPORTANT DATES

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10th APRIL.

DATE OF EXAMINATION
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RESULT DECLARATION
20th APRIL.

BATCH COMMENCES
20th MAY.

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(Total Seats : 300)

Hindi Medium
(Total Seats : 100)

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Number of seats

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100%

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