

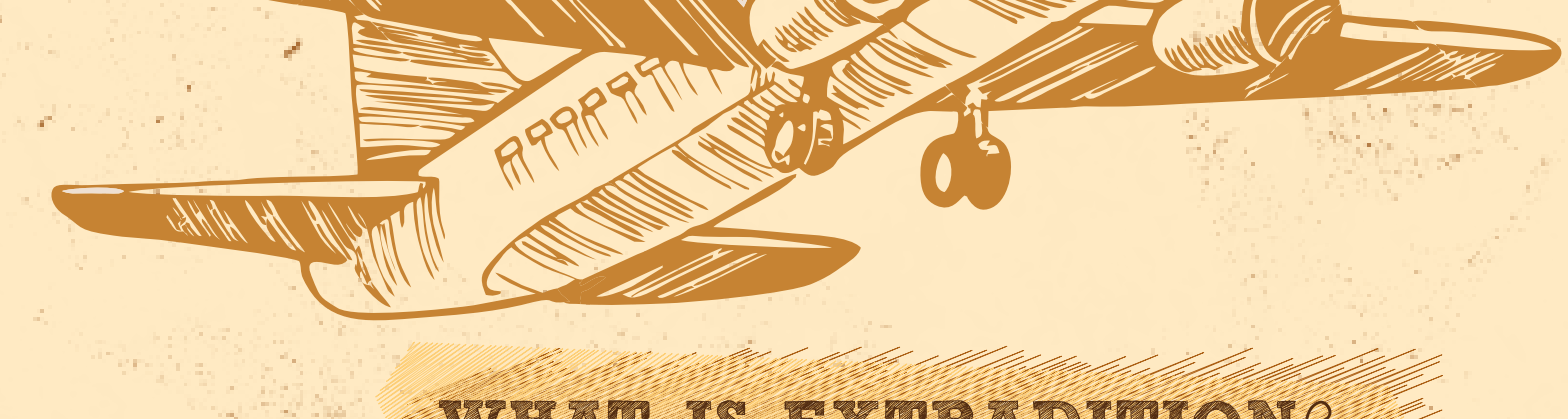


# EXTRADITION



## WHY IN NEWS?

Recently, UK has approved the extradition of fugitive Vijay Mallya to India to face fraud charges resulting from the collapse of his defunct Kingfisher Airlines.



## WHAT IS EXTRADITION?

Extradition is the delivery of a person by one state to the other on the basis of a crime of which he is accused or convicted in the other state and the crime is justified in its courts.

Extradition Act 1962 provides India's legislative basis for extradition.

## EXTRADITION TREATIES

Extradition treaties provide a defined legal framework for the return of fugitives between countries.

**Section 2(d) of Extradition Act 1962** defines an 'Extradition Treaty' as a Treaty, Agreement or Arrangement made by India with a Foreign State, relating to the Extradition of fugitive criminals and includes any treaty, agreement or arrangement relating to the Extradition of fugitive criminals.

## General Conditions of Extradition

**Principle of Extraditable Offences** lays down that extradition applies only to offences clearly stipulated in the treaty.

**Principle of Dual Criminality** requires that the offence for which the extradition is sought be an offence under the national laws of both the countries of the requested country.

**Rule of Specificity:** The extradited person must be tried only against the offence for which he was extradited.

**Free & Fair Trial:** He must be accorded a fair trial (part of international human rights law now), Judiciary and other legal authorities are likely to apply these principles equally to situations where no extradition treaty exists.

## Nodal authority for Extradition in India:

Ministry of External Affairs, Government of India is the Central/Nodal Authority that administers the Extradition Act and it processes incoming and outgoing Extradition Requests.



## EXTRADITION AND OTHER PROCESSES

In **deportation**, a person is ordered to leave a country and is not allowed to return to that country.

In **exclusion**, a person is prohibited from staying in a particular part of a sovereign state.

Deportation and Exclusion are non-consensual orders that do not require a treaty obligation. Deportation is governed by the Foreigners Act, 1946.

## SIGNIFICANCE OF EXTRADITION

For Serving Justice

Deterrence to Future Absconders

National Security and Safety in case of terrorists and other criminals

Bringing Economic fugitives back, could improve the health of financial institution of India and tackling NPA crisis.

## CHALLENGES FOR INDIA

India has a very less number of bilateral extradition treaties and does not have any treaties with several neighboring states, such as China, Pakistan, Myanmar and Afghanistan. E.g no treaty with Antigua has delayed extradition of Mehul Chouksi

Extradition is generally limited to crimes identified in the treaty which may vary from one State to another.

**Double Jeopardy Clause:** It debar punishment for the same crime twice. Reason why India couldn't extradite David Headley from the US.

UK and other European countries have often denied extradition requests on the possibility that the requested person will be subject to poor conditions or custodial violence in India's prisons.

There is a fear within the international community that the accused persons would be subjected to torture in India due to absence of anti torture legislations.



## WAY FORWARD

Enhancing Bilateral Relations to persuade countries to process requests expeditiously and also reciprocate when another country makes a similar request.

**Signing More Extradition Treaties:** India has extradition treaties with only 47 countries.

**Effective Preventive Law and Policy measures** like Fugitive Economic Offenders Bill, 2018, signifies the government's efforts to shift its focus to preventive, ex ante legal mechanisms.

**Expedite Prison Reform** to dispel concerns regarding poor prison conditions and potential human rights violations of the requested person.

India may ratify the UN Convention Against Torture (1984) (already signed by India) to establish India's zero tolerance towards torture and custodial violence.



Adopting Global best Practices.

Setting up a Separate Cell for processing such requests.

