

General Studies-2; Topic: Bilateral, regional and global groupings and agreements involving India and/or affecting India's interests

Extraditing Fugitives from Foreign Countries

1) Introduction

- With the advent of globalisation and increased interconnectivity, it has become less difficult for offenders in India to escape to foreign jurisdictions and avoid prosecution in the country.
- Extradition 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”.
- The process is governed by treaties and agreements which adopt internationally recognised legal principles for the surrender of fugitives.
- The recent extradition to India of British businessman Christian Michel, alleged to be the middleman in the AgustaWestland helicopters case, is a diplomatic success for India.

2) India's Experience with Extradition

- India has bilateral extradition treaties with 44 countries and extradition arrangements with 10 countries.
- Under treaty mechanisms, states are obligated to consider requests for extradition.
- “Extradition arrangements” are non-binding and do not impose any legal obligations on party states.
- India is also a party to several multilateral conventions that provide a binding extradition framework for curbing transnational crimes.
- India has a fewer number of bilateral extradition treaties compared to other countries.
- Since 2002, India has been able to secure the return of 66 fugitives.

3) Importance of Extraditing Fugitives

- It provides timely justice and grievance redressal.
- It serves as a deterrent against potential fugitives who consider escape as an easy way to subvert India's justice system.
- Delayed arrest and prosecution is a threat to India's peace, safety and security.

4) Concerns / Challenges

- India's success rate in extraditing fugitives is abysmally low.
- India's extradition success rate may stand at a percentage lower than 30 percent.
- Only one in every three fugitives are being successfully extradited to India.
- India does not have extradition treaties with several neighbouring states, such as China, Pakistan, Myanmar and Afghanistan.
- The CBI was created to deal with corruption cases, and is understaffed to take up larger cases involving extradition.

5) Challenges arising within and without Extradition Treaties

- 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.
- The challenge is, it is difficult to establish treaty principles for crimes peculiar to India's socio-cultural conditions, such as dowry harassment
- **Extradition is usually not granted for**
 - a. Political offences
 - b. Offences where death penalty may be imposed

- c. Where there will be “double jeopardy”
 - I. *The “double jeopardy” clause debars punishment for the same crime twice.*
 - II. *This is the primary reason why India has been unable to extradite David Headley from the US.*
 - III. *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.*
 - IV. *However, Headley is yet to be tried by Indian courts for the deaths of nearly 140 Indian nationals in the same attacks.*
- d. Where there could be actual or potential discrimination on account of religion, race and nationality.
- **Outside treaty terms**
 - a. These are generally based on concerns of human rights violations, such as torture or cruel, inhuman and degrading treatment.
 - b. European countries and the United Kingdom have been more amenable to rejecting extradition cases on human rights concerns.
 - c. 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.
- Of late, instances of high-profile fugitives involved in economic offences and financial irregularities have surfaced in India.
- India’s track record in securing the return of fugitive economic offenders raises concerns as to whether these cases will be resolved swiftly.

6) Way Forward

- Leveraging diplomacy and bilateral negotiations to persuade countries to process requests expeditiously, is an important step.
- Likewise, India should process extradition requests received from foreign states swiftly and efficiently.
- Indian government must conclude extradition treaties with as many countries as possible, and make efforts to enter into more bilateral extradition relations.
- Other mechanisms that can facilitate extradition, 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 signifies the government’s efforts to preventive mechanisms.
- India also needs to take steps to dispel concerns regarding poor prison conditions and potential human rights violations of the requested person.
- 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.
- India could adopt the good practices of the US’ Office of International Affairs (OIA), Washington’s primary body to handle extradition requests.

7) Facts for Prelims

- The Ministry of External Affairs (MEA), is India’s nodal government body for extradition matters.
- The largest number of fugitives have been extradited from the UAE (19), followed by the US (nine).