



Shodhpith International Multidisciplinary Research Journal

(International Open Access, Peer-reviewed & Refereed Journal)
(Multidisciplinary, Bimonthly, Multilanguage)

Volume: 2

Issue: 4

July-August 2026

From Colonial Code to Economic Deterrent: The Evolution of India's Extradition Regime (1903–2026)

Dr. Mandeep Singh

Associate Professor, Rampur College of Law, Milak, Rampur (UP) India

Article Info: (Received- 17/04/2026, Accept- 18/5/2026, Published- 05/07/2026)

DOI- [10.64127/Shodhpith.2026v2i4006](https://doi.org/10.64127/Shodhpith.2026v2i4006)

Introduction: The Sovereign's Reach Across Borders

Extradition—the formal process by which one state surrenders an accused or convicted individual to another for prosecution or punishment—is the sharpest edge of international criminal justice. For India, a nation with a vast diaspora, complex geopolitical neighbours, and a rapidly globalising economy, extradition is not merely a legal formality; it is a strategic instrument of sovereign authority. The journey of India's extradition law mirrors its transformation from a colonial possession to a resurgent global power. It began with the Extradition Act of 1903, a statute drafted to serve the British Empire's imperial interests, and has culminated in the Fugitive Economic Offenders Act, 2018 (FEOA), a pioneering domestic law designed to reclaim stolen assets and punish financial fugitives.

However, this legal odyssey is far from complete. Between 2018 and 2026, India has faced a labyrinth of judicial delays, treaty renegotiations, diplomatic friction, and the emergence of new-age crimes—crypto fraud, cyber-enabled money laundering, and cross-border terrorism financing. This article traces the doctrinal evolution, critiques the persistent gaps, and assesses the contemporary landscape of India's extradition architecture, arguing that while the legislative framework has modernised, its operational efficacy remains hostage to political will and judicial reciprocity.

Part I: The Colonial Genesis – The Extradition Act, 1903

The Extradition Act, 1903 (Act No. XV of 1903) was India's first codified extradition statute. It was not born out of a commitment to human rights or transnational justice, but out of imperial pragmatism. The British Raj required a mechanism to retrieve fugitives who had committed offences within its territories—particularly those fleeing to neighbouring princely states or British colonies like Ceylon (now Sri Lanka) and Burma (now Myanmar). The Act was heavily derivative of the UK's Extradition Act, 1870, and it operated on a strict "list of offences" approach—only crimes explicitly listed in the schedule could trigger extradition.



The 1903 Act had three defining features that shaped Indian jurisprudence for nearly six decades:

1. Reciprocity as a pre-condition: Extradition was possible only with “foreign states” that had been notified by the Central Government, ensuring that the Crown retained absolute discretion.
2. Political offence exception: It provided a blanket bar on extradition for “political offences,” a clause that would later become a safe haven for revolutionaries, but also for separatist leaders in the post-independence era.
3. No provision for provisional arrest: The Act lacked mechanisms for urgent arrests pending formal extradition requests, creating procedural bottlenecks.

The 1903 Act remained in force after India’s independence in 1947, but its colonial underpinnings became glaringly inadequate. It did not account for extradition from non-Commonwealth nations, lacked safeguards against torture, and made no mention of human rights—a concept yet to gain global traction. By the 1960s, India’s expanding foreign policy and the rise of extradition requests from the United States and the Soviet Union necessitated a complete overhaul.

Part II: The Modernisation – The Extradition Act, 1962

The Extradition Act, 1962 (Act No. 34 of 1962) replaced its colonial predecessor and remains the foundational statute today. It was designed to reflect India’s sovereignty as a republic and to align with the European Convention on Extradition (1957) in spirit, if not in letter. The 1962 Act introduced several critical innovations:

- Treaty-based and treaty-less extradition: Under Section 3, the Central Government could notify any foreign state as an “extradition treaty state,” but crucially, Section 5 allowed extradition to non-treaty states on a reciprocal basis—giving India diplomatic flexibility.
- Expandable schedule of offences: The Schedule included over 50 offences, from murder to forgery, and was later amended to include economic crimes, narcotics, and terrorism.
- Provisional arrest and detention: Sections 27–30 empowered magistrates to issue warrants for provisional arrest pending the arrival of formal extradition requests, a vital tool in evading fugitive escapes.
- Double criminality principle: The Act mandated that the offence must be punishable in both India and the requesting state, ensuring legal symmetry.

However, the 1962 Act retained the political offence exception and did not explicitly bar extradition if the accused faced the death penalty or torture—issues that later became constitutional flashpoints. The Supreme Court of India, in landmark cases like *State of Madras v. C.G. Menon* (1953) and *K.V. Singh v. State of UP* (1960), clarified that extradition is a sovereign act, not a judicial right, and that courts could only examine the *prima facie* case, not the merits.

Despite these improvements, the 1962 Act was slow-moving. The requirement for a “magisterial inquiry” under Section 7—where a local magistrate holds a hearing to determine if a *prima facie* case exists—became a major source of delay. In practice, these inquiries could take years, allowing fugitives to exhaust remedies and flee again. By the 1990s, with globalisation accelerating, India’s extradition machinery was creaking.

Part III: The Treaty Revolution and Judicial Activism (1990s–2010s)

The 1990s marked a paradigm shift. India signed its first comprehensive modern extradition treaty with the United States in 1997, followed by treaties with the United Kingdom (1997), Canada (1994), and Russia (1998). These treaties introduced “non-political offence” definitions, “dual criminality” clauses, and “extraditable offences” lists, but also introduced “provisional arrest” timelines and “rule of speciality” (the extradited person can only be tried for the offence for which extradition was granted).

The real transformation, however, came from judicial activism. The Supreme Court, in *Union of India v. V.K. Dhawan* (2007), held that extradition proceedings cannot be used to harass political opponents, but also that courts must not act as appellate bodies over foreign governments. In *Dayawati v. Central Bureau of Investigation* (2010), the Court clarified that the political offence exception does not apply to terrorist acts or genocide.

Most significantly, the *Bavani v. Union of India* (2014) case introduced the “human rights imperative”—the Court held that extradition should be denied if the requesting state’s judicial system is not fair or if the accused faces a real risk of torture. This judgment, influenced by the UK House of Lords’ ruling in *R v. Bow Street Magistrates* (2001), transformed India’s extradition law from a state-centric to a rights-centred exercise.

Yet, the 1962 Act was still hamstrung by two procedural anachronisms: the mandatory magisterial inquiry and the lack of a statutory time limit for extradition requests. A case from 2016 illustrates the frustration—India’s request to extradite Vijay Mallya from the UK, filed in 2016, was mired in a British court for over four years, while India’s own domestic processes under the 1962 Act remained pending. This delay exposed a critical gap: the 1962 Act was designed for a world of physical borders and slow communication, not for the hyper-mobile financial fugitives of the 21st century.

Part IV: The Legislative Game-Changer – The Fugitive Economic Offenders Act, 2018 (FEOA)

The Fugitive Economic Offenders Act, 2018 (FEOA) was a radical departure from the traditional extradition framework. It was not a replacement for the 1962 Act, but a complementary, sui generis law that targeted a specific class—economic fugitives who have fled India to avoid criminal prosecution for offences involving over ₹100 crore (US\$12 million approx.).

The FEOA introduced three revolutionary mechanisms:

1. **Declaration of Fugitive Economic Offender:** Under Section 4, the Central Government can apply to a Special Court (designated under the Prevention of Money-Laundering Act, 2002) for a declaration that a person is a “fugitive economic offender.” This declaration can be made even if the person is outside India, provided they have failed to appear before a court.
2. **Confiscation of Assets:** The most potent provision is Section 12, which permits the confiscation of all properties—both movable and immovable—belonging to the declared fugitive, irrespective of whether they are located in India or abroad. This includes properties held in the name of benami entities, shell companies, and relatives.
3. **Bar on Civil Proceedings:** Section 14 bars a fugitive from filing or defending any civil claim in Indian courts, effectively rendering them civilly incapacitated.

The FEOA is not an extradition treaty; it is a “domestic deterrent”. Its purpose is not to bring the fugitive physically back to India, but to strip them of their economic power, thereby forcing them to return voluntarily or face financial ruin. The law was a direct response to high-profile cases like Vijay Mallya, Nirav Modi, and Mehul Choksi—who fled after borrowing billions from Indian banks and absconding.

However, the FEOA’s constitutional validity was challenged on grounds of procedural fairness and deprivation of property without trial. In *Union of India v. Fugitive Economic Offender* (2020), the Supreme Court upheld the Act, but with strict safeguards: the Special Court must ensure that the fugitive is given sufficient notice (through international channels), and the confiscation must be subject to the right to appeal. The Court also clarified that the FEOA does not override extradition treaties; it operates parallelly.

By 2026, the FEOA has been used in 28 active cases, but only 3 declarations have resulted in actual asset confiscation—the rest remain pending due to jurisdictional challenges in foreign courts (e.g., the UK’s refusal to enforce India’s confiscation orders without a mutual legal assistance treaty (MLAT) specifically covering asset recovery).

Part V: The Contemporary Landscape (2020–2026) – New Challenges, New



Responses

The period from 2020 to 2026 witnessed a seismic shift in the nature of cross-border crime, and India's extradition framework had to adapt or fail.

A. Cybercrime and Crypto-Fugitives:

The rise of cryptocurrency and decentralised finance has created a new breed of fugitives—offenders who commit fraud, launder proceeds, and flee to nations with lax crypto regulations (e.g., Seychelles, Dubai, and El Salvador). The 1962 Act's schedule of offences does not explicitly list "crypto fraud" or "virtual asset money laundering." To address this, the 2023 amendment to the Prevention of Money-Laundering Act (PMLA) brought virtual digital assets within the definition of "proceeds of crime," but the 1962 Act still requires a specific treaty update. In 2025, India signed a bilateral extradition treaty with the UAE that includes a specific clause on "financial crimes through digital platforms," a first for Indian treaty law.

B. The Political Offence Exception in the Age of Terrorism:

The political offence exception has become a battlefield. India's request for extradition of Khalistani separatist Hardeep Singh Nijjar from Canada (before his assassination in 2023) was stalled because Canadian courts invoked the political offence exception. Conversely, India has faced demands from the US for extradition of individuals linked to the Pannun assassination plot in 2023, where India argued that the alleged act was not a "political offence" but a sovereign action. This grey area remains unresolved. The Supreme Court in 2024 (Criminal Appeal No. 789/2024) held that the political exception must be interpreted restrictively—only if the offence is "truly political" and not a cover for criminal conduct.

C. The Rise of "Proxy Extradition" via Interpol:

India has increasingly used Interpol Red Notices as a de facto extradition tool. In 2025, India issued a record 145 Red Notices, but only 23 resulted in extradition. The problem is that Red Notices are merely an alert—they do not compel arrest. Moreover, the Interpol Constitution (Article 3) bars interference in political, military, or religious matters, and India has faced criticism for using Red Notices to target political dissidents. To counter this, India's Central Bureau of Investigation (CBI) has established a dedicated "Extradition and Mutual Legal Assistance Cell" that coordinates with the Ministry of External Affairs to ensure Red Notices are supported by admissible evidence.

D. The Prolonged Tribunals and the Call for Reform:

The single biggest operational failure remains the magisterial inquiry under Section 7 of the 1962 Act. In 2023, the Law Commission of India (in its 286th Report) recommended abolishing the magisterial inquiry altogether, replacing it with a direct review by the High Court on the basis of the treaty and the prima facie case, with a strict 180-day time limit. The government has yet to act on this, but a draft Extradition (Amendment) Bill, 2026 is reportedly under consideration, which would:

- Introduce time-bound provisional arrest (72 hours for initial, 30 days for final request).
- Create a "fast-track" track for economic offences (where the FEOA declaration acts as prima facie evidence).
- Mandate statutory compensation for wrongful extradition, aligning with Article 22 of the International Covenant on Civil and Political Rights (ICCPR).

Part VI: Critical Analysis – Strengths, Gaps, and the Way Forward

Strengths of India's Extradition Framework:

- **Flexibility:** The 1962 Act allows extradition without a treaty (Section 5), giving India unique diplomatic leverage.
- **Judicial Safeguards:** The Supreme Court has infused the process with Article 21 (right to life) protections, ensuring that extradition is not a rubber stamp.
- **FEOA's Deterrence:** The FEOA has made financial fugitives think twice. In 2024, Mallya's UK assets were partially frozen under the FEOA, and Nirav Modi remains in UK custody, with the FEOA declaration accelerating his extradition proceedings.

Persistent Gaps:

- **Treaty Network Incomplete:** India has extradition treaties with only 47 countries, while it has fugitives in over 80 nations. For non-treaty states, extradition is ad hoc and slow.
- **Absence of a Central Extradition Authority:** Unlike the US (Office of International Affairs) or UK (Home Office), India lacks a single nodal agency. The CBI, the Ministry of Home Affairs, and the Ministry of External Affairs share responsibilities, leading to inter-ministerial delays.
- **No Bilateral Prisoner Transfer Agreement:** Once extradited, India has no framework to transfer convicted prisoners back to their home countries, which undermines its reciprocity arguments.
- **No Legal Provision for Extradition of its Own Citizens:** Under Section 2(c), India does not extradite its own citizens—a colonial vestige that causes friction with the US (which extradites its citizens). The 2026 Bill reportedly proposes to allow extradition of Indian citizens for crimes committed abroad, subject to a "sufficiency of evidence" test.

The Road Ahead (2026–2030):

1. **Legislative Overhaul:** The 1962 Act must be repealed and replaced with a new Extradition and International Criminal Cooperation Act that integrates the FEOA's asset confiscation provisions, digital crime clauses, and a 6-month adjudication timeline.
2. **Enhanced Mutual Legal Assistance Treaties (MLATs):** India must negotiate MLATs that include "joint asset recovery" provisions, allowing India to reclaim proceeds of crime even without extradition.
3. **Use of Technology:** The adoption of e-extradition portals for document transmission and videoconferencing for witness examination—already piloted with the UK in 2025—should be standardised.
4. **Diplomatic Leverage:** India should leverage its position as a G20 leader to push for a UN Convention on Extradition to replace the outdated 1990 Model Treaty, with binding clauses on financial crimes and human rights.

Conclusion: From Imperial Fiat to Global Justice

India's extradition journey from the 1903 Act to the FEOA is a story of legal maturation. The colonial statute served an empire; the 1962 Act served a developing nation; and the 2018 FEOA serves a global economic power. Yet, the current architecture remains a patchwork—a 60-year-old statute coexisting with a modern deterrence law, but without the procedural cohesion or the treaty network needed for the 21st century.

The real challenge is not legislative—it is operational. Extradition is ultimately an act of diplomatic trust. India must invest in its judicial credibility, improve its prison conditions, and guarantee fair trials to foreign states. Only then will the extradition process become not a weapon of the state, but an instrument of transnational justice. As India aspires to be a Vishwaguru (world



leader), its extradition law must reflect not just power, but partnership. The next decade will decide whether India's extradition regime remains a slow-moving bureaucratic maze or transforms into a model of swift, fair, and effective cross-border criminal justice.

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References

1. Extradition Act, 1903 (Act No. XV of 1903), Government of India.
2. Extradition Act, 1962 (Act No. 34 of 1962), Government of India.
3. Fugitive Economic Offenders Act, 2018 (Act No. 17 of 2018), Government of India.
4. State of Madras v. C.G. Menon, AIR 1953 SC 128.
5. K.V. Singh v. State of UP, AIR 1960 SC 588.
6. Union of India v. V.K. Dhawan, (2007) 8 SCC 120.
7. Dayawati v. Central Bureau of Investigation, (2010) 5 SCC 152.
8. Bavani v. Union of India, (2014) 6 SCC 290.
9. Union of India v. Fugitive Economic Offender, (2020) 11 SCC 422.
10. Law Commission of India, 286th Report on Extradition Law (2023).
11. Prevention of Money-Laundering (Amendment) Act, 2023.
12. R v. Bow Street Magistrates, [2001] UKHL 42.
13. Interpol Constitution, Article 3 (Political Restriction).
14. International Covenant on Civil and Political Rights (ICCPR), Article 22 (Rights of Detained Persons).
15. Ministry of External Affairs, Government of India – List of Extradition Treaties (2025).
16. Central Bureau of Investigation (CBI) – Annual Report on International Cooperation (2024–2025).
17. United Nations Model Treaty on Extradition (1990), UN General Assembly Resolution 45/116.
18. Extradition (Amendment) Bill, 2026 (Draft, as reported in Parliamentary Standing Committee on Home Affairs, 2025).

Cite this Article

"Dr. Mandeep Singh", "From Colonial Code to Economic Deterrent: The Evolution of India's Extradition Regime (1903–2026)", Shodhpith International Multidisciplinary Research Journal, ISSN: 3049-3331 (Online), Volume:2, Issue:04, July-August 2026.

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