India–US Extradition Treaty Gains Attention Amid Cross-Border Organised Crime and Emerging Jurisdictional Challenges

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Recent Developments:

- The **United States Department of Justice (DoJ)** has indicted jailed gangster **Lawrence Bishnoi**, **Punjab Police SHO Gurinderjit Singh Nagra**, and others on charges including **racketeering conspiracy**, **murder**, **extortion**, **drug trafficking** and **transnational organised crime** allegedly spanning **India**, **Canada** and the **United States**.
- If the **United States** formally requests extradition, the process will be governed by the **India–US Extradition Treaty (1997)** and the **Extradition Act, 1962** of India.
- The case highlights the growing complexity of combating **transnational organised crime** while balancing **national sovereignty**, **criminal justice**, **due process** and **international legal obligations**.

Extradition:

Meaning of Extradition:

- **Extradition** is the formal legal process through which one sovereign State surrenders an accused or convicted person to another State for criminal prosecution or execution of a sentence.
- Extradition generally takes place under an **extradition treaty**, bilateral agreement or applicable domestic legislation.

Legal Framework in India:

- **Extradition Act, 1962** provides the statutory framework governing extradition between India and foreign States.
- India enters into extradition arrangements through **bilateral treaties** and **extradition agreements** with other countries.
- The **Ministry of External Affairs (MEA)** serves as the **Central Authority** for processing extradition requests in consultation with the **Ministry of Home Affairs (MHA)** and investigating agencies.

India–US Extradition Treaty (1997):

About the Treaty:

- The **India–US Extradition Treaty**, signed in **1997**, establishes the legal framework for extradition between the two countries.
- The treaty is based primarily on the principle of **Dual Criminality**, ensuring that extradition is available only for conduct recognised as a serious offence in both jurisdictions.

Major Features of the Treaty:

Dual Criminality Principle:

- Extradition is permitted only when the underlying conduct constitutes an offence punishable by imprisonment of **more than one year** under the laws of both countries.
- The focus remains on the criminal conduct rather than identical statutory provisions or legal terminology.

Political Offence Exception:

- Purely political offences are generally excluded from extradition.
- Serious offences such as **terrorism**, **murder**, **hostage-taking**, **drug trafficking** and other grave crimes do not qualify for protection under the political offence exception.

Nationality Not a Bar:

- Indian citizenship alone does not prevent the extradition of an accused person.
- Each request is decided according to the treaty and applicable domestic law.

Rule of Speciality:

- A person extradited under the treaty can ordinarily be prosecuted only for those offences for which extradition was granted.
- Fresh prosecution for unrelated offences generally requires the consent of the requested State.

Extradition Procedure in India:

Executive Stage:

- The **United States Department of Justice** forwards the extradition request through the **United States Department of State** to India's **Ministry of External Affairs**.
- The **Ministry of External Affairs**, in consultation with the **Ministry of Home Affairs**, **Central Bureaof Investigation (CBI)** and other agencies, examines compliance with the treaty and the **Extradition Act, 1962**.

Judicial Scrutiny:

- A competent Indian court examines whether treaty conditions have been satisfied.
- The court also determines whether the available evidence would justify prosecution had the offence been committed within India.
- Upon satisfaction, the court certifies the person as extraditable.

Final Executive Decision:

- The **Union Government** possesses the final authority to approve or refuse extradition.
- The Government may seek diplomatic assurances, impose conditions or postpone extradition where legally justified.
- Extradition decisions remain subject to judicial review before the **High Courts** and the **Supreme Court of India**, often making the process time-consuming.

Grounds for Refusal or Postponement of Extradition:

Pending Domestic Criminal Proceedings:

- **Section 31 of the Extradition Act, 1962** permits postponement of extradition when criminal proceedings are pending before Indian courts.
- A person may first face trial and complete any sentence imposed in India before being extradited.

Temporary Surrender:

- **Article 14** of the **India–US Extradition Treaty** allows temporary surrender under specified circumstances.
- The requested State retains discretion regarding the timing and conditions of surrender.

Domestic Prosecution Instead of Extradition:

- **Section 34** treats specified offences committed abroad as if committed within India for prosecutorial purposes.
- **Section 34A** empowers the **Central Government** to prosecute certain accused persons in India instead of extraditing them.

Application to the Present Case:

Lawrence Bishnoi Case:

- Alleged offences such as **murder**, **criminal conspiracy**, **extortion**, **firearms offences** and **drug trafficking** satisfy the treaty's **Dual Criminality** requirement.
- Since multiple criminal cases are already pending before Indian courts, India may lawfully postpone extradition under **Section 31 of the Extradition Act, 1962**.

Gurinderjit Singh Nagra Case:

- If comparable criminal proceedings are not pending in India, the Government may either consider extradition or initiate domestic prosecution under **Sections 34 and 34A** where legally applicable.

Important Judicial and Diplomatic Precedents:

Tahawwur Rana Extradition Case:

- The case reaffirmed the practical application of the **Dual Criminality** principle during extradition proceedings.
- Certain charges lacking corresponding offences under Indian law were excluded, while extradition proceeded for offences satisfying treaty requirements.
- The proceedings also illustrated the lengthy appellate process available under the **United States** legal system.

Vikash Yadav Case:

- Following criminal allegations in the **United States**, Indian authorities initiated domestic investigation and prosecution.
- The case demonstrated that India may prioritise domestic criminal proceedings before considering extradition.

David Coleman Headley Case:

- Extradition to India was declined because of a plea agreement concluded with **United States** authorities.

Warren Anderson Case:

- Extradition was declined owing to concerns regarding evidentiary sufficiency under applicable legal standards.

India–US Extradition Cooperation:

India to the United States:

- Slightly more than a dozen fugitives have been extradited from India to the **United States** since the treaty entered into force.
- **Yogesh Ratilal Shah (2002)** was the first extradited fugitive under the treaty.
- **Ganesh Shenoy (2025)** became one of the latest individuals extradited to the **United States**.

United States to India:

- The **United States** extradited **11 fugitives** to India between **2002** and **2018**.
- A significant number of Indian extradition requests have remained pending owing to lengthy judicial processes and legal challenges.

Challenges in Extradition:

Lengthy Judicial Proceedings:

- Multi-level judicial review often delays the execution of extradition requests.

Different Legal Systems:

- Variations in criminal procedure, evidentiary standards and constitutional safeguards frequently complicate extradition.

Human Rights Concerns:

- Requested States may refuse extradition if there are substantial concerns regarding torture, unfair trial or inhuman treatment.

Political and Diplomatic Sensitivities:

- High-profile extradition requests frequently involve broader diplomatic, strategic and bilateral considerations.

Way Forward:

Strengthen International Cooperation:

- Greater coordination between investigative agencies, prosecutors and diplomatic authorities can improve the efficiency of extradition proceedings.

Modernise Domestic Legal Framework:

- Periodic review of the **Extradition Act, 1962** can help address emerging forms of **transnational organised crime** and cyber-enabled offences.

Enhance Mutual Legal Assistance:

- Stronger **Mutual Legal Assistance Treaties (MLATs)** can facilitate timely collection of evidence and improve prosecution of cross-border crimes.

Promote Faster Judicial Coordination:

- Greater institutional cooperation between national courts can reduce procedural delays while safeguarding due process and individual rights.

Value Addition for UPSC:

Difference Between Extradition and Deportation:

- **Extradition** involves the formal surrender of an accused or convicted person under a treaty or domestic law for prosecution or punishment.
- **Deportation** is the administrative removal of a foreign national for violating immigration or residency laws and does not necessarily involve criminal prosecution.

Related International Concepts:

- **Mutual Legal Assistance Treaty (MLAT):** Facilitates cross-border investigation, evidence sharing and judicial cooperation without requiring extradition.
- **Universal Jurisdiction:** Permits prosecution of certain internationally recognised crimes irrespective of where they were committed.
- **Transnational Organised Crime:** Criminal activities operating across national borders through organised criminal networks