



RESEARCH ARTICLE // DOUBLE-BLIND PEER REVIEWED

Between Asylum and Extradition: The Case for Regional Extradition Framework in South Asia

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ABSTRACT

The states of South Asia have found it unusually difficult to secure the surrender of fugitives, whether from one another or from the Western states in which many of their wanted persons reside. This article argues that the difficulty is rooted in the close relationship between extradition and asylum, and in particular in the political offence exception, which allows a requested state to refuse surrender where the offence or the request is regarded as political. Using a doctrinal method, the article first sets out the international principles governing extradition, namely the treaty basis of surrender, double criminality, the political offence exception, the rule of specialty, the non-extradition of nationals and the duty to extradite or prosecute, and explains their relationship with territorial and diplomatic asylum. It then examines the position in South Asia, where political instability, mutual distrust and the absence of a regional law enforcement framework have made the line between asylum and extradition particularly thin. Recent episodes, including the request of Bangladesh for the return of its former Prime Minister from India, are used to illustrate the problem. The article compares the South Asian position with the European framework of the European Arrest Warrant and with the instruments adopted by the South Asian Association for Regional Cooperation, which remain largely unimplemented. It concludes that South Asian states can improve their prospects only by reducing the appearance of political motivation in their requests, building regional institutions for police and judicial cooperation and adopting a shared, human rights-compliant model of extradition.

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1. Introduction

It is becoming increasingly difficult to prevent persons who are wanted for crime from crossing international borders. The volume of international air travel is enormous, and a person who has committed an offence in one state can be in another within hours. Many persons who are later the subject of extradition requests leave their country of origin before any proceedings are begun, and some begin to plan or direct criminal activity only after they have settled abroad. The response of the international community has been to develop a body of extradition law at both the national and the international levels. Yet the success of this law depends on the willingness of states to cooperate, and that willingness is limited by considerations of sovereignty, human rights and politics.

Nowhere is this limitation more evident than in South Asia. A significant number of the states in the region have experienced internal conflict and political unrest. Widespread poverty, social unrest and economic difficulty have made it hard for them to establish an atmosphere of mutual trust. As a result, the region has no unified body capable of facilitating police and judicial cooperation, and requests for the surrender of fugitives, whether made within the region or to the West, frequently fail. When they fail, the line between asylum and extradition becomes decisive. A person whom one state regards as a fugitive from justice may be regarded by another as a refugee from persecution.

This article examines that line. It asks three questions. What international principles govern extradition and how do they relate to asylum? Why has the boundary between asylum and extradition proved so problematic for South Asian states? And what kind of regional framework could reduce these difficulties? The article proceeds by setting out the international framework, then analysing the position in South Asia, comparing it with regional cooperation in Europe, and finally offering recommendations.

2. Research Methodology

The study is doctrinal and is based on a narrative review of the literature. The primary sources include multilateral instruments, such as the United Nations Model Treaty on Extradition, the Convention relating to the Status of Refugees and the conventions of the South Asian Association for Regional Cooperation; domestic extradition statutes of South Asian states; and leading judicial decisions from international and national courts. The secondary sources include the works of international jurists and reports of reputable news organisations on recent events. A limitation of the study should be noted at the outset: because extradition law involves the whole international community, its principles cannot be decided and applied by one region alone, and power inevitably exerts its influence in this field as it does in others. The study therefore considers the relationship between South Asia and the West, as well as cooperation within the region.

3. The International Framework of Extradition

3.1 A Treaty-Based System

There is no right to extradition in international law independently of a treaty. A government may have a moral reason to surrender a fugitive to the state from which he has fled, and it is free to do so, but the legal obligation to surrender arises only where a treaty imposes it (Shearer, 1971). This follows from the principle of sovereignty, under which every state has authority over persons within its territory. It has long been said that asylum ends where extradition begins: a state may continue to provide shelter to a fugitive until it has undertaken by treaty to surrender him. The classic statement of this position is found in the work of Moore (1891), who observed that the demand for surrender could be secured only by treaty, since the law of nations imposes no such obligation. Surrender in the absence of a treaty does sometimes occur as a matter of comity, but it is exceptional.

Most extradition today takes place on the basis of bilateral treaties, supplemented by multilateral conventions dealing with particular crimes, such as the United Nations Convention against Transnational Organized Crime (2000) and the United Nations Convention against Corruption (2003), both of which allow states to use the convention itself as a legal basis for extradition. The United Nations Model Treaty on Extradition, adopted by the General Assembly in 1990, provides a template which states may follow in negotiating bilateral treaties (United Nations General Assembly, 1990).

3.2 Double Criminality

The principle of double criminality requires that the conduct for which extradition is sought be an offence under the law of both the requesting and the requested state. For instance, since murder is a serious crime in both Bangladesh and India, a person who commits murder in Bangladesh and flees to India may be extradited to Bangladesh. The principle protects the requested state from being made to enforce a law that it does not share. Modern practice has moved away from requiring that the offences bear the same name or fall into the same category, and instead asks whether the conduct alleged would be criminal in the requested state (United Nations General Assembly, 1990, art. 2(2)). The English courts have emphasised in this regard that the request must describe the conduct with sufficient particularity to allow the court to make that assessment (*R (Castillo) v. Kingdom of Spain*, 2005).

3.3 The Political Offence Exception

It is a well-established principle of extradition law that a person shall not be surrendered for an offence of a political character. The principle is found in the great majority of extradition treaties and domestic statutes. The United Nations Model Treaty makes it a mandatory ground of refusal where the offence is regarded by the requested state as an offence of a political nature (art. 3(a)). Similar provisions appear in the European Convention on Extradition (1957, art. 3) and the Inter-American Convention on Extradition (1981, art. 4). In South Asia, section 31 of India's Extradition Act 1962 and section 5 of Pakistan's Extradition Act 1972 contain the same exception.

The difficulty is that there is no universally accepted definition of a political offence. The English courts developed two influential tests in the nineteenth century. In *Re Castioni* (1891), a Swiss citizen who had shot a member of a cantonal government during an uprising in Ticino fled to England, and his extradition was refused because the killing was incidental to and formed part of a political disturbance. In *Re Meunier* (1894), by contrast, the court ordered the surrender of an anarchist who had bombed a café and a barracks in Paris, holding that an offence directed against the general public rather than against the government was not political. These cases show that the exception was designed to protect participants in political struggles, not persons who attack civilians.

The scope of the exception has narrowed considerably over time. The "attentat" or Belgian clause, first adopted in the nineteenth century, excludes the murder of a head of state or a member of his family from the category of political offences. More recently, the rise of international terrorism has led states to exclude terrorist offences from the exception altogether, a trend reflected in the anti-terrorism conventions and in the regional convention adopted by the states of South Asia, discussed below. The exception nonetheless remains a central reason for refusal, particularly where the person sought is a politician or a former official.

3.4 The Rule of Specialty

The rule of specialty provides that a person who has been extradited may be tried or punished only for the offence for which extradition was granted. It was established in American law in *United States v. Rauscher* (1886), where the Supreme Court held that a person surrendered by the United Kingdom on a charge of murder could not be tried for a different offence. The rule protects the requested state against abuse of its cooperation and the individual against being surrendered on one charge and tried on another.

3.5 Non-Extradition of Nationals and the Duty to Extradite or Prosecute

Many states, particularly in continental Europe, refuse to extradite their own nationals and in some cases are prohibited from doing so by their constitutions. Those who support the surrender of nationals argue that the state in which the crime was committed is best placed to investigate and try it; those who oppose it argue that a state owes protection to its citizens and should not expose them to unfamiliar systems of justice. International law has sought to reconcile these positions through the principle *aut dedere aut judicare*, under which a state that does not extradite a person accused of a serious international crime must submit the case to its own authorities for prosecution (Bassiouni, 2014). The International Court of Justice confirmed the binding character of this obligation under the Convention against Torture in *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (2012).

3.6 Human Rights Limits on Extradition

Extradition is also limited by human rights. In *Soering v. United Kingdom* (1989), the European Court of Human Rights held that the surrender of a person to the United States to face a possible death sentence would violate the prohibition of inhuman or degrading treatment because of the “death row phenomenon”. In *Chahal v. United Kingdom* (1996), it held that the prohibition of return to a risk of torture is absolute and cannot be balanced against considerations of national security. The Model Treaty includes among its mandatory grounds of refusal the risk of torture and the absence of minimum guarantees of a fair trial (art. 3(f)), as well as the risk of persecution on account of race, religion, nationality, ethnic origin, political opinion, sex or status (art. 3(b)). Dugard and Van den Wyngaert (1998) have argued that the reconciliation of extradition with human rights is the central challenge for the law in the present age.

4. Asylum and Its Relationship with Extradition

4.1 Territorial Asylum

Asylum is the protection granted by a state to a person who is fleeing persecution, frequently at the hands of his own government. Article 14 of the Universal Declaration of Human Rights provides that everyone has the right to seek and to enjoy in other countries asylum from persecution, but it also provides that this right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations (United Nations General Assembly, 1948, art. 14). The right to seek asylum is therefore not a right to receive it. The Convention relating to the Status of Refugees (1951) excludes from protection persons who have committed a crime against peace, a war crime, a crime against humanity or a serious non-political crime outside the country of refuge (art. 1F), and permits the return of a refugee who is a danger to the security of the host state (art. 33(2)).

The connection with extradition is direct. A person who is the subject of an extradition request will frequently apply for asylum, arguing that the prosecution is a pretext for political persecution. The requested state must then decide whether the person is a fugitive from justice or a refugee from persecution. Wijayath (2018) has pointed out that this determination is one of the most difficult in extradition practice, and that developed states have a significant advantage over weaker states in having their version of events accepted.

4.2 Diplomatic Asylum

Diplomatic or extraterritorial asylum is protection given in places such as embassies, legations and warships, outside the territory of the state granting it. International law does not recognise a general right to diplomatic asylum. In the *Asylum Case (Colombia v. Peru)* (1950), the International Court of Justice held that Colombia had not established a regional custom entitling it to grant asylum in its embassy in Lima to a Peruvian political leader. Nonetheless, states have on occasion granted such protection. József Cardinal Mindszenty, the head of the Catholic Church in Hungary, took refuge in the United States legation in Budapest during the 1956 uprising against the communist government and remained there for fifteen

years. More recently, Julian Assange, the founder of WikiLeaks, lived in the Ecuadorian embassy in London from 2012 to 2019 to avoid extradition, first to Sweden and then to the United States.

4.3 Asylum as a Political Decision

The Assange case, together with that of Edward Snowden, a former contractor of the United States National Security Agency who disclosed classified material in 2013, illustrates how political the decisions on asylum and extradition can be. Snowden applied for asylum to some twenty states, including India, before he was granted asylum in Russia, where he later became a citizen. India, like most of the states to which he applied, declined his request. Yet India had decades earlier granted refuge to the Dalai Lama, a decision that continues to affect its relationship with China. Assange, after years of litigation in the English courts, was released in 2024 after reaching a plea agreement with the United States, without any final decision on his surrender (*Assange v. Government of the United States of America*, 2024). These cases show that asylum and extradition are both highly political processes, whose outcome depends to a large extent on the relative standing of the states involved and on the existing diplomatic relationship between them.

5. The Position in South Asia

5.1 A Thinner Line Between Asylum and Extradition

In South Asia, the line between asylum and extradition is particularly thin. The states of the region have generally avoided granting asylum to persons whose conduct would be objectionable to the West, and in that sense they have been compliant with Western extradition policies. Within the region, however, cooperation has been limited. Relations between several states, most obviously between India and Pakistan, have remained hostile, and each state has frequently accused the other of sheltering persons wanted for crimes on its territory. The absence of a centralised, cooperative law enforcement framework not only makes regional cooperation difficult but also reduces the likelihood that Western law enforcement institutions will cooperate with South Asian requests.

A recent illustration is the situation of Sheikh Hasina, the former Prime Minister of Bangladesh, who left the country in August 2024 after a student-led uprising and has since lived in India. In December 2024, Bangladesh's interim government sent a note verbale to India seeking her return to face proceedings before the International Crimes Tribunal, which had issued warrants for her arrest on charges of crimes against humanity (Deccan Herald, 2024). India acknowledged receipt of the note but offered no comment. The India-Bangladesh extradition treaty of 2013 permits refusal where the offence is of a political character, and the case shows how quickly a former head of government can move from being a partner in extradition to being its subject. It also shows how the political offence exception, whatever its legal content, functions in South Asia as a broad reservation of political discretion.

5.2 Domestic Laws and Their Limits

Each of the larger South Asian states has an extradition statute: India's Extradition Act 1962, Pakistan's Extradition Act 1972, Bangladesh's Extradition Act 1974, Sri Lanka's Extradition Law of 1977 and Nepal's Extradition Act of 2014. These statutes follow the same broad model, inherited in most cases from colonial law, and include the political offence exception and the rule of specialty. On paper, therefore, a comprehensive legal framework has been in place for some time. The difficulty has been one of implementation. Political instability can seriously impair a state's ability to secure the return of fugitives, and the inability to bring wanted persons to justice can in turn deepen political instability. In this way a destructive cycle is created. Powerful and influential offenders frequently use questions of jurisdiction as an escape route, and a weak extradition system becomes one of the reasons why the rule of law remains fragile.

5.3 The SAARC Instruments

The states of the region have not been entirely inactive. In 1987 the member states of the South Asian Association for Regional Cooperation adopted the Regional Convention on Suppression of Terrorism, which provides that certain offences, including those covered by the conventions on hijacking and on crimes against internationally protected persons, shall not be regarded as political offences for the purposes of extradition (SAARC, 1987, art. I). The Additional Protocol of 2004 extended the convention to the financing of terrorism. In 2008 the member states adopted the SAARC Convention on Mutual Assistance in Criminal Matters. These instruments show that the states of the region recognise the need for cooperation. However, their implementation has been limited, and the SAARC process itself has been largely stalled since 2016, when the summit scheduled to be held in Islamabad was postponed. The instruments therefore remain largely declaratory.

6. A Comparison with Regional Cooperation in Europe

In the West, cooperation in criminal matters is extensive and is supported by institutions. The International Criminal Police Organization (INTERPOL) facilitates the circulation of notices for wanted persons among its member states, although its constitution prohibits it from undertaking any intervention of a political, military, religious or racial character (INTERPOL, 1956, art. 3). Within Europe, the European Union has gone much further. The European Arrest Warrant, introduced by a framework decision of 2002, replaced traditional extradition between member states with a system of surrender based on mutual recognition of judicial decisions (Council of the European Union, 2002). Under this system, double criminality is not required for a list of thirty-two categories of serious offences, the political offence exception no longer applies, member states can no longer refuse to surrender their own nationals as a matter of principle, and the process is conducted between judicial authorities with strict time limits.

The European model rests on a high level of mutual trust, supported by common standards of human rights under the European Convention on Human Rights. South Asia is far from such a position. Yet the European experience is valuable because it shows that the traditional obstacles to extradition, including the political offence exception and the non-extradition of nationals, are not permanent features of the law. They can be reduced or removed when states develop sufficient confidence in each other's systems of justice (Costa, 2019). The task for South Asia is to begin building that confidence.

7. Discussion: Why South Asia Struggles

Several reasons for the difficulties of the region emerge from the foregoing analysis. The first is political instability. Frequent changes of government, and the prosecution of the leaders of one government by its successor, create the impression that extradition requests may be the product of political vendetta. As long as legal proceedings carry even the slightest suggestion of political victimisation, requested states, whether in the West or within the region, will be unwilling to cooperate.

The second reason is economic dependence. The states of the region have historically lacked the diplomatic and economic leverage needed to persuade more powerful states to surrender wanted persons. As long as their economies remain dependent on external financing, they will not enjoy the equal footing that is necessary for an extradition relationship to function under pressure.

The third reason is the absence of regional institutions. There is no South Asian equivalent of the European Arrest Warrant, no functioning regional police organisation and no regional court or commission capable of reassuring requested states about standards of justice. This absence is felt not only within the region but also in relations with the West, because a credible regional framework would itself be evidence of the reliability of the region's judicial systems.

The fourth reason concerns the conduct of Western states themselves. Western states have frequently pursued persons who threaten their own security with great energy, sometimes beyond the limits of ordinary extradition. At the same time, separatist leaders and economic offenders from South Asia have continued to live comfortably in the West. For the law of extradition to be seen as fair, the major powers must be willing to cooperate with legitimate requests from weaker states, particularly where the persons concerned are accused of serious human rights violations or of misappropriating public funds.

8. Recommendations

In light of the above discussion, the following recommendations are made:

1. **Reduce the appearance of political motivation.** Requests should explain in clear terms how the conduct of the person has affected the public, emphasising the humanitarian and economic harm caused rather than its political dimension. Requests founded on documented harm to victims are far more likely to succeed than those that appear to be part of a political contest.
2. **Involve independent institutions.** Requests supported by the judiciary, independent prosecution services and investigative agencies, rather than by the executive alone, are more likely to persuade foreign courts that the proceedings are not politically driven.
3. **Revive and implement the SAARC instruments.** The Regional Convention on Suppression of Terrorism, its Additional Protocol and the Convention on Mutual Assistance in Criminal Matters should be incorporated into domestic law and supported by a standing mechanism for cooperation among central authorities.
4. **Develop a regional model law.** The states of the region should agree on a model extradition law based on the United Nations Model Treaty, including a narrow and clearly defined political offence exception, express human rights safeguards and a commitment to *aut dedere aut judicare*.
5. **Build regional police cooperation.** A regional police cooperation body, working alongside INTERPOL, could facilitate the exchange of information and the tracing of fugitives.
6. **Engage public opinion responsibly.** Public opinion and civil society can play a legitimate role in drawing international attention to the harm caused by fugitives who escape justice, provided that such efforts are factual and do not prejudice fair trial rights.
7. **Strengthen economic and diplomatic standing.** Ultimately, the success of extradition depends on the standing of the requesting state. Economic self-reliance and consistent diplomacy are therefore part of any long-term strategy for effective extradition.

9. Conclusion

Extradition is a shared peril for the states of South Asia. Each has suffered from the flight of persons accused of corruption, terrorism and serious crime, and each has found that its requests for their return are frequently refused. The analysis presented in this article shows that the problem lies less in the text of domestic statutes, which largely follow the international model, than in the close relationship between extradition and asylum, and in the broad scope that the political offence exception gives to requested states. In a region marked by political instability and mutual distrust, the line between a fugitive and a refugee is easily blurred.

The experience of Europe shows that the obstacles to extradition can be reduced when states build institutions and mutual confidence. South Asia has taken some first steps through the SAARC conventions, but these remain largely unimplemented. Progress will require the states of the region to strengthen the independence and credibility of their institutions, to reduce the role of political considerations in their requests and to develop regional mechanisms for cooperation. Selective justice is itself a form of injustice. A world in which no one can evade the reach of justice because of wealth, influence or connections is not



merely an aspiration; it can become a reality if states, both in South Asia and beyond, are prepared to cooperate in good faith.

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