

UNDERSTANDING THE TECHNICALITIES OF MUTUAL LEGAL ASSISTANCE IN CRIMINAL JUSTICE ADMINISTRATION

Abstract

The modern era of criminal justice administration is characterized by the global nature of crime, necessitating extensive cross-border cooperation among nations. Mutual Legal Assistance (MLA) has emerged as a critical mechanism for facilitating this cooperation. This research attempts to offer an in-depth exploration of the intricate technical aspects involved in MLA, emphasizing its significance in the context of international criminal justice administration. Mutual Legal Assistance is a complex, multi-faceted process that enables one nation to seek and receive legal assistance from another concerning criminal matters. Such assistance encompasses a wide range of activities, including gathering evidence, locating and apprehending suspects, and exchanging vital information to support criminal investigations and prosecutions. To grasp the true essence of MLA, it is imperative to delve into the technical aspects ranging from legal framework, information exchange, digital evidence, and cybersecurity. Moreover, the aspect of translation and interpretation plays a vital role towards its role in criminal jurisprudence. In summation, this comprehensive exploration underscores the intricate technical dimensions inherent in Mutual Legal Assistance, which is pivotal to the global landscape of criminal justice administration. A profound comprehension of legal frameworks, data security protocols, extradition procedures, digital forensics, language facilitation, and operational efficiency is essential for nations seeking to bolster their capabilities in combatting transnational crimes and upholding the principles of justice on an international scale. By mastering these technicalities, nations can foster more robust collaboration in addressing

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the complex and interconnected challenges posed by modern-day criminal activities.

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I. INTRODUCTION

In an era characterized by the fluidity of global interactions, criminal activities have transcended national borders, necessitating a sophisticated and collaborative approach to the administration of justice. At the heart of this international cooperation lies Mutual Legal Assistance (MLA), an intricate mechanism designed to facilitate the seamless exchange of critical information, evidence, and legal support between nations. It stands as a cornerstone, ensuring that the arm of justice extends beyond geographic boundaries, leaving no sanctuary for criminals. In order to evade punishments and to undermine the criminal justice system of the nation, offenders quite often abscond to an unprecedented and different territory all altogether. For instance, there has been an escalation in the number of money laundering cases within the territory of Southeast Asia and the offenders have taken shelters in various different territories to avoid the aftermath of such violations. Such assistance can be initiated by any country that seeks assistance from other territories/countries in criminal matters; however, such assistance can fructify if the same is mutually felicitated. Though the domain of this present research is limited to the study of MLA in criminal matters, there have been numerous Mutual Legal Assistance Treaties (hereinafter referred to as 'MLAT') that have been signed, rectified, and agreed between countries with an objective to felicitate assistance as and when required.

As the fabric of our societies becomes increasingly interwoven on a global scale, law enforcement agencies face challenges that extend far beyond their traditional jurisdictions. Crimes such as terrorism, cybercrime, human trafficking, and money laundering recognize no borders, demanding a unified and coordinated response on an international stage. It is within this complex landscape that MLA emerges as an indispensable linchpin, weaving together the threads of global justice. This exploration into the technicalities of Mutual Legal Assistance is a journey through a multifaceted terrain of legal frameworks, procedural intricacies, and diplomatic nuances. This article seeks to illuminate the layers defining and governing the process, providing a comprehensive understanding of this critical international cooperation mechanism.

Recently, the Indian government has been witnessing several offenses of money laundering, corruption cases, and other economic violations wherein the culprits have absconded Indian territory in order to evade judicial procedure and prosecutions. The Indian government has invoked MLAT against several offenders whose evidence was needed for investigation/inquiry and other investigation procedures. Indian investigating agencies like the Enforcement Directorate (ED) for instance have initiated extradition and evidence collection processes under MLAT. In its annexure⁸⁷, the government depicted the efforts and progress made in regard to several offenders and provided information on steps that are being taken place in order to extract evidence and relevant information. Lately, in the controversial offense through platforms like Sulli Deals and Bulli Bai,⁸⁸ the Delhi police proceeded with the MLAT procedure in order to seek information about the foreign-based hosting platform.

⁸⁷ Lok Sabha, finally admitted question no.1551 (answered on 19.12.2018), Ministry of external affairs, Government of India. <http://164.100.24.220/loksabhaquestions/annex/16/AU1551.pdf>.

⁸⁸ The Indian Express, (January 2022), <https://www.newindianexpress.com/cities/delhi/2022/jan/05/delhi-police-sends-bulli-bai-case-to-ifso-unit-gets-nod-for-mlat-procedure-in-sulli-deals-case-2403295.html>.

On-going corruption cases in India have led to the amendments/ratification⁸⁹ of MLATs in order to come up with a more versatile version to deal with such loopholes. For instance, the Indian government has recently amended its guidelines in this regard and has initiated an attempt to make concerned guidelines more elaborative and relevant.⁹⁰

Yet, in the midst of this intricate system, Mutual Legal Assistance encounters challenges that demand astute navigation. Jurisdictional conflicts, cultural differences, and the dynamic landscape of technology pose hurdles that require innovative solutions. This article undertakes a thorough exploration of these challenges, shedding light on how nations navigate through them, ultimately fortifying the efficacy of cross-border criminal justice. Real-world case studies become beacons, illuminating instances where successful Mutual Legal Assistance efforts have resulted in significant breakthroughs in solving international crimes. By dissecting these successes, readers gain insights into valuable lessons and best practices that contribute to the ongoing refinement of the Mutual Legal Assistance process.

As we stand at the crossroads of a rapidly changing global landscape, this article concludes by peering into the future trends and developments within Mutual Legal Assistance. This research paper is an attempt to demarcate an understanding of various relevant aspects circumscribing the facet of mutual legal assistance in criminal matters. Embark on this journey with us through the nuanced technicalities of Mutual Legal Assistance, recognizing that understanding these complexities is not merely a scholarly pursuit but a crucial step towards forging a safer and more just global community.

Understanding the MLA and MLAT

It is the growing instance of international crime that has escalated the traffic of crime rate. There has also been an increase in the manipulation level of commercial and financial transactions which has affected the business scenario of the country in general and the internal security and stability of our country in particular. Offenses have become cross-border and transnational in their nature and have imposed an immense burden on law enforcement and investigation agencies. This situation raised the need for an international action that was more elaborate and more stringent in its approach. MLAT is basically an agreement carved between countries for the purpose of seeking and sharing information that could act as evidence in ongoing proceedings. These treaties are specifically designed inconspicuously with particular objectives. For instance, and in relation to the scope of this research there is mutual legal assistance in criminal matters with the objective to exchange evidence that are vital in criminal investigations. The basic concept of mutual legal assistance can be traced to the United National Convention against Transnational Organized Crime (UNTOC).⁹¹ Today, MLA in criminal matters is seen as a critical, effective and reliable tool in bolstering the deterrence principle and strengthening the investigation and prosecution scenario of a country

⁸⁹ International Enforcement Law Reporter, 2021, Vol. 37 Issue 7, p265-267. 3p. <https://web.s.ebscohost.com/ehost/detail/detail?vid=6&sid=6e905d6e-ca57-48f3-ae16-03bd261e508f%40redis&bdata=JnNpdGU9ZWwhvc3QtbGl2ZQ%3d%3d#db=i3h&AN=151614591>.

⁹⁰ Print Release, available at <<https://pib.gov.in/newsite/PrintRelease.aspx?relid=197333> ; https://www.mha.gov.in/sites/default/files/ISII_ComprehensiveGuidelines16032020.pdf> (last visited 8 November, 2023).

⁹¹ UNCTOC, 2000, a. 18.

and its cooperation globally.⁹²

Interestingly there arose a case of *Djibouti v. France*⁹³ at the International Court of Justice (ICJ) wherein France failed to adhere to the mutual assistance convention of 1986 and refused to respond to the request made by Djibouti through letters rogatory. When the matter approached the ICJ, France depicted the concept of sovereignty and elaborated that since the requested postulates tends to violate the notion of sovereignty of the country, it is not bound to respond on such request. Drawing an analogy from the same the aspect of sovereignty and security interest is seen as a defence mechanism if states want to preserve vital information. Though it is mandated by Article 18 paragraph 22 of the UNCTOC⁹⁴ that states shall not refuse to provide information about fiscal offences but if the state is of the opinion that it is of paramount importance to protect and preserve information in consonance with their bank secrecy, it may refuse to part with such information. Moreover, if the information is related to some political offence, then the concerned state can refuse to furnish the same. Also, while taking into consideration the request from a requesting state; the requested state ought to take note of the human rights considerations.

If one tries and grasp the legal basis and general principle behind MLA, one will come across concepts and elaborations revolving around treaty, domestic law and the principle of reciprocity. Therefore, in order to find the appropriate legal basis, it is vital to analyze all three above-mentioned options. Firstly, if treaty is taken into consideration, it signifies the essence of international cooperation. If countries enter into a treaty, they become party to it and are obliged to cooperate within them and perform towards the objective of the concerned treaty. A bilateral or multilateral treaty for instance depicts a sense of obligation and responsibility of the parties involved. Treaty is a vital tool when it comes to legal assistance for organised crimes that are transnational in nature. If we see the MLA in criminal matters, it is in itself an example of how a treaty can facilitate mutual understanding and cooperation.⁹⁵ Another basis of mutual legal assistance is the aspect of domestic law. There are various nations that recognize their own domestic laws as the foundation and genesis of international assistance in the form of mutual legal assistance. Sometimes, domestic laws and provisions are sufficient to carve out the procedures to be followed in situations when the country is

⁹² Faraz Alam Sagar, Sara Sundaram & Pragati Sharma, "Understanding Cross Border Legal Assistance" *Doing Justice in Post-Covid World*, Cyril Amarchand Mangaldas 19-21 (October 29, 2020) available at <https://corporate.cyrilamarchandblogs.com/2020/10/understanding-cross-border-legalassistance> (last visited on November 8, 2023).

⁹³ [2008] ICJ Rep 177; available at <https://www.icj-cij.org/en/case/136> (last visited on November 8, 2023).

⁹⁴ UNCTOC, 2000, a. 18. It states that-

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article 3 and shall reciprocally extend to one another similar assistance where the requesting State Party has reasonable grounds to suspect that the offence referred to in article 3, paragraph 1 (a) or (b), is transnational in nature, including that victims, witnesses, proceeds, instrumentalities or evidence of such offences are located in the requested State Party and that the offence involves an organized criminal group.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

⁹⁵ *Supra* note 12 at 25-27.

requested for some information or it has to request to other countries for evidence.⁹⁶ The third basis can be the principle of reciprocity. It is an established notion in the field of international law and incidental diplomacy that the states tend to respect the nuances of the principle of reciprocity in several related endeavours that they take. It is the paragraph 9 of Article 18 of the UNCTOC that elaborates on the aspect of dual criminality. By invoking this principle any state party can claim to refuse the request made if it proves that this principle is not in existence in the given matter at hand. For instance, it was Consultative Committee⁹⁷ that advocated for bilateral arrangements. Since letter rogatory was widely condemned, the domain of MLA came into being.

It was in the year 1989 when the government of India signed its first MLAT in criminal matters with the government of Switzerland⁹⁸. Since then India has signed MLAT in criminal matters with several other countries and the count is soon going to achieve half a century. Recently, the Indian cabinet approved the MLAT in Criminal Matters with Poland.⁹⁹ Following is the assembled table that depicts the list of countries that have signed MLAT in criminal matters with India. This table (Figure 1.1¹⁰⁰) provides the trajectory of how the government of India has been keen on expanding its MLA jurisdiction with several countries with an objective of facilitating investigation, prosecution, and criminal justice system of the entire nation.

⁹⁶ *Supra* note 12 at 28. It states that-

54. Normally, the domestic legislation lays down procedure for processing both incoming and outgoing requests. The domestic law sometimes is sufficient to depict the manner of procession and the transmission. Thus, the domestic law can provide clear scenario to the requesting or requested State.

⁹⁷ Asian-African Legal Consultative Committee of 1985. The 1985 draft bilateral arrangements cover element like taking of evidence, search, seizure, supply of information and other information rotating around aspect of prosecution.

⁹⁸ MLAT between India and Switzerland, available at <https://cbi.gov.in/assets/files/mlats/1447194758/Switzerland.pdf> (last visited on November 8, 2023). The objective of the mentioned MLAT states that- It came into being with an objective and desire to improve the effectiveness of both countries in the investigation, prosecution and suppression of crime, including crime related to terrorism and the tracing, restraint, forfeiture confiscation of the proceeds of crime, through cooperation and mutual assistance in criminal matters.

⁹⁹ Treaty between India-Poland, available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1781732> (last visited November 8, 2023).

¹⁰⁰ Ministry of External Affairs, Government of India, available at <https://www.mea.gov.in/mutual-legal-assistance-in-criminal-matters.htm> (last visited on November 8, 2023).

Switzerland(1989)	Turkey (1993)	United Kingdom (UK) (1995)	Canada (1998)
Kazakhstan (2000)	United Arab Emirates (2000)	Russia (2000)	Uzbekistan (2001)
Tajikistan (2003)	Ukraine (2003)	Mongolia (2004)	Thailand (2004)
Bahrain (2005)	France (2005)	South Korea (2005)	Singapore (2005)
South Africa (2005)	United States of America (USA) (2005)	Belarus (2006)	Mauritius (2006)
Kuwait (2007)	Spain (2007)	Bulgaria (2008)	Vietnam (2008)
Mexico (2009)	Egypt (2009)	Hong Kong (2009)	Bosnia& Herzegovina (2010)
Iran (2010)	Myanmar (2010)	Sri Lanka (2010)	Australia (2011)
Bangladesh (2011)	Indonesia (2011)	Malaysia (2012)	Azerbaijan (2013)
Kyrgyz Republic (2014)	Israel (2015)	Sultanate of Oman (2015)	Morocco (2018)
Cambodia (2018)	Maldives (2019)	Poland (2022)	

Figure 1: Entire List of countries that have signed MLAT with India

Moreover, the signing of MLAT with countries has various pertinent reasons behind it. For instance, when there was a terrorist attack in the US in 2001, it raised several questions and debates on increasing instances of terrorism, and voices were raised to come up with a cooperative mechanism. In light of the same, it was Home Affairs Minister Late Shri. L.K. Advani ji who back in 2001 was part of the talk and soon aspect of cooperation and counterterrorism was acknowledged as the need of the hour. This led to the signing of an MLAT between the US and Indian governments in 2001 which was later rectified in the year 2005.¹⁰¹ For quick understanding, if we analyze the India-US MLAT, the designated central authorities are explicitly mentioned in Article 2¹⁰² of the treaty. Such central authorities are vested with the responsibility to receive, examine, execute and cooperate in the entire procedure.

¹⁰¹ Treaty between the government of the republic of India and the government of the United States of America on Mutual Legal Assistance in Criminal Matters, (India-US MLAT) available at <https://www.mea.gov.in/Portal/LegalTreatiesDoc/US01B0634-1.pdf> (last visited on November 8, 2023). The mentioned treaty contains about twenty articles containing pertinent aspect likes scope of assistance, limitations, forms, contents of assistance and concerned requests. It also includes facets like consultation, ratification and termination of such treaties.

¹⁰² India-US MLAT, 2005, a. 2 reads as:

1. Each Contracting Party shall designate a Central Authority to make and receive requests pursuant -to this Treaty.
2. For the United States of America, the Central Authority shall be the Attorney General or a person designated by the Attorney General. For India, the Central Authority shall be the Ministry of Home Affairs or a person designated by the Ministry of Home Affairs.
3. The Central Authorities shall communicate directly with one another for the purposes of this Treaty.

Furthermore, it is worth elaborating on the following Figure 1.2¹⁰³ which depicts the Indian side of the MLAT request. It depicts various entities that are involved in the entire transaction. Firstly, it is the Investigating agency that reports to the Director of Prosecution and mentions the details of the request that is to be sought under MLA in criminal matters. Upon examination, the said director reverts back to the agency for further course of action. The concerned investigating agency then forwards the request with appropriate modalities to the Ministry of Home Affairs (MHA) (Internal Security- Division II). Since the ministry is the central nodal authority for the entire process, it is here that the maximum scrutiny takes place. The MHA then forwards the request to the existing Indian mission of the requested state. Upon receiving such a request, the Indian mission forwards the same to the designated central authority of the requested state. In addition to this, the executed investigation request follows the same path and retrieves back to the origin institution that has originally requested for the said information.

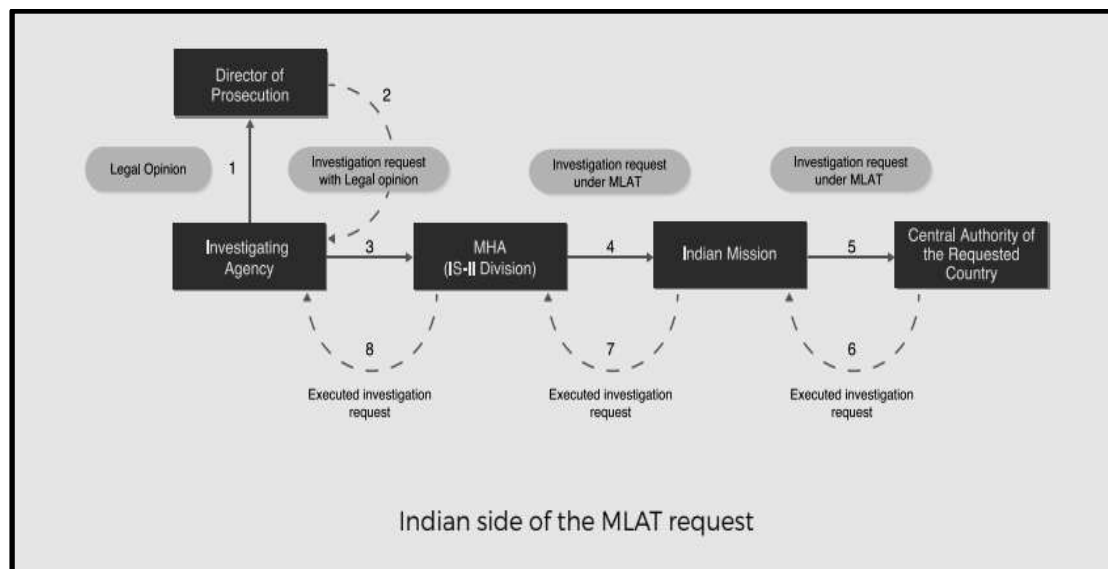


Figure 2

However, various countries advocate the fact that the MLAT process is quite lengthy and slow in its approach. Moreover, if the request is not accurate and is deficient, it adds to the delayed and elongated procedure.¹⁰⁴ In addition to this, there are various limits rather challenges to the aspect of mutual legal assistance that seeks attention and immediate redressal. Firstly, it is the nationality of an individual regarding whom the information is sought. It is often the case that the person against whom the information is requested belongs to the requested state itself then there lies a high probability that the request will not be fulfilled in its totality.¹⁰⁵ Secondly, elements like terrorism, piracy, and human trafficking pose humungous challenges to the execution of MLAT and MLA in criminal matters to be

¹⁰³ DeBrae Kennedy-Mayo, Peter Swire, Sreenidhi Srinivasan and Madhulika Srikumar, "India-US Data Sharing for Law Enforcement: Blueprint for Reforms," Observer Research Foundation, 42 (2019).

¹⁰⁴ *Id.* at 40.

¹⁰⁵ Tim Rene Salomon, "Max Planck Encyclopedias of International Law: Mutual Legal Assistance in Criminal Matters" *Oxford Public International Law (MPEPIL)* 7 (2013) available at <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e966> (last visited November 8, 2023).

precise. A growing instance of terrorism has raised questions on the futuristic approach of mutual assistance in criminal matters. The same goes for the surge in the instance of piracy. There is a tussle between states regarding the jurisdictional approach to disputes. They have challenged to capacity and capability of the MLA process in general because quite often the evidence is destroyed in its entirety creating a vacuum and hindering the MLA process from being performed in an appropriate manner.

The domain of Letter Rogatory: An explanation

Widely known as letters rogatory, these are basically mechanisms of formal requests. Both the countries that ask for such requests and the countries to which such requests are addressed are parties to the particular request at hand. Courts of both countries play a vital role in the facilitation and execution of such requests. However, it is a general notion that the exchange through letters rogatory takes much more time as compared to that of a process through MLAT.¹⁰⁶ If the process is analyzed, it is the investigating officer of one country that first obtained a concurrence from the Ministry of Home Affairs.¹⁰⁷ Concurrence basically means letting the entity have clear information about the request and its nature. In addition to this, the officer needs to support the request at hand with a declaration that the concerned request is not of military, political, or any other nature that is included in the limitation of such assistance. After fulfilling these prerequisites, the investigating officer makes an application to the concerned court with an objective to ask for evidence from a foreign territory. Upon scrutiny of the application, the concerned court may issue letters rogatory to the court or any competent authority of the concerned country. Moving on, upon receiving and examining such letters; the foreign court proceeds with the production of relevant documents. Eventually, it is worth depicting that, unlike MLATs, the countries or entities that are recipients of such requests under letters rogatory are not obliged under any treaty to process or review such requests.

Prevailing Ambiguity in Indian Scenario

To date, various investigating and law enforcement agencies of India are ambiguous in their understanding of provisions governing letters rogatory or the MLA process. It is the presence of such ambiguity that leads to instances wherein law enforcement agencies choose to proceed with requests under letter rogatory and not MLAT.¹⁰⁸ These agencies claim that since the issuance of letters rogatory is recognized by Section 166 A of CrPC, it is preferable to follow this procedure. Moreover, these agencies are of the view that MLAT cannot be

¹⁰⁶ The transactions involved in letters rogatory are either based on MLAT or a specific different Memorandum of Understanding between countries. The essence can be traced to the principle of reciprocity, "Comprehensive Guidelines for investigation abroad and issue of Letters Rogatory," 31 December 2007, available at <https://mha.gov.in/sites/default/files/LR-170709.pdf> (last visited November 8, 2023).

¹⁰⁷ Ministry of Home Affairs, Comprehensive Guidelines for investigation abroad and issue of Letters Rogatory, 31 December 2007, para (c), available at <https://mha.gov.in/sites/default/files/LR-170709.pdf> (last visited November 8, 2023).

¹⁰⁸ *Supra* note 33 at 41.

enforced until and unless a specific domestic law recognizes the same.¹⁰⁹ Thus, the agencies believe in plain and literal interpretation of the provisions and have developed the notion that letters rogatory is the sole legally valid way in this regard. However, there are kinds of literature that advocates that the procedures under letters rogatory are slower in comparison to MLAT.¹¹⁰ Nonetheless, there are investigating agencies like the National Investigation Agency (NIA) that use both letters rogatory and MLA in criminal matters to extract relevant information and evidence.¹¹¹ If the wording of Section 166A¹¹² is analysed it can be interpreted that letters rogatory were deemed to be the only legal medium to extract evidence from foreign territory. It was in the years 2007 and 2009, when the Ministry of Home Affairs (MHA) issued comprehensive guidelines that revolved around facets like investigations, and summons taking place in foreign territories. The government of India felt the need to streamline the entire process to maximise the productivity. In light of the same MHA issued revised guidelines for Mutual Legal Assistance in Criminal Matters on 4th December 2019¹¹³ with a holistic approach including legal and technical developments (national and international) that are the need of the hour considering the evolving society. Thus, these depictions advocate for the fact that attempts have been made by the government from time and again to evolve with time and come up with a better version with an objective to felicitate the jurisprudence of criminal justice delivery mechanism.

Mutual Legal Assistance: An essential technical tool for International Cooperation

The process of MLA and various MLATs that the Indian government enters into is a depiction of the fact that it is an attempt to expand and strengthen the criminal jurisprudence of India. It is true that the aspect of jurisprudence changes and evolves with time. In the trajectory of evolution, the global scenario and the changes taking place all around play a vital role. Drawing an analogy from the same, the fact that the Indian government has entered into MLA in criminal matters with more than forty countries¹¹⁴ depicts that the government is adamant is strengthening the criminal justice delivery mechanism in particular and the entire criminal jurisprudence in particular. A pertinent question arises as to how will entering into

¹⁰⁹ There are two facets attached to this issue. For instance, when an international covenant or treaty is presented before the government of India, the prime view is that such treaty cannot be automatically absorbed within the domestic parameter. There has to be a specific legislation that has to be passed in this regard. The secondary view is that the notion of such treaty can be interpreted even in the absence of any specific legislation to this effect. Analogy can be drawn from *Vishakha v. State of Rajasthan (1997) 6 SCC 241*, wherein relevant international conventions was directly taken into consideration in spite of the fact that there was no relevant provision in existence at that particular time in India.

For a discussion on a proposed law to give effect to MLATs, see Gaurav Vivek Bhatnagar, "Easy Extradition: Letters Rogatory May Become Thing of the Past," *The Quint*, 1 December 2015, <https://www.thequint.com/news/india/easyextradition-letters-rogatory-may-become-thing-of-the-past>.

¹¹⁰ DeBrae Kennedy-Mayo, Peter Swire, Sreenidhi Srinivasan and Madhulika Srikumar, "India-US Data Sharing for Law Enforcement: Blueprint for Reforms," *Observer Research Foundation*, 41 (2019).

¹¹¹ While executing investigation of the 26/11 terror attacks that took place in Mumbai, the NIA gave emphasis on the India-US MLAT to extract evidence related to the Headley-Rana case. The said evidence became a part of the filed charge sheet. In addition to this, the agency also requested for evidence from Pakistan by way of letters rogatory; Press Release, *available at* http://www.satp.org/satporgtp/countries/india/document/papers/2012/National_Investigation_Agency_Release.pdf (last visited on November 8, 2023).

¹¹² *Supra* note 33.

¹¹³ Ministry of External Affairs, Government of India, (F.No. 25016/52/2019-LC) *available at* <https://pib.gov.in/newsite/PrintRelease.aspx?relid=197333> (last visited on November 8, 2023).

¹¹⁴ *Supra* note 26.

mere treaties and agreements help in developing criminal jurisprudence in India. This in a way also highlights the aspect of international cooperation that is reflected by the ambit of mutual legal assistance.

Analyzing the Holistic Impact on Criminal Jurisprudence

The aspect of international cooperation can be of paramount importance when it comes to crime and criminal cases. Stages from crime detection, evidence collection, confiscation of proceeds, and investigation procedures to the culmination of prosecution can be smooth and well-structured through the ambit of international cooperation. It can help change and shape the scenario of a particular case at hand. Now any international cooperation does not operate in isolation, there has to be some reasonable and legal backing in order to execute it. The same assistance is provided by treaties or any domestic law for that matter. Treaties for instance provide a basic outline and even broader framework in some situations depicting the need and importance of international cooperation. Moreover, sometimes it is the domestic law itself that advocates for the need for the existence and adherence to the concept of international cooperation. In the Indian context, it is Article 51 (c) of the Constitution that advocates for the importance of treaty obligations and the ambit of international law. Thus, apart from treaties, domestic law can also be a solid basis for the existence of international cooperation.¹¹⁵ Mutual legal assistance is one such medium of international cooperation. Though this medium is recent and versatile in its approach, it has helped establish the notion of international cooperation in various situations. Exchange of relevant evidences through MLA in criminal matters can only be possible when countries are inclined to cooperate with each other. Moreover, if we see the legal doctrine, it is the element of flexibility that makes the difference. It is the UNTOC¹¹⁶ that provides for the usage and possibility of the element of flexibility. As stated in the above chapters, there are few legal bases and general principles behind MLA and the concept of international cooperation. Firstly, it is the treaty that signifies the essence of international cooperation. If countries enter into a treaty, they become party to it and are obliged to cooperate within them and perform towards the objective of the concerned treaty. A bilateral or multilateral treaty for instance depicts a sense of obligation and responsibility of the parties involved. If we see the MLA in criminal matters, it is in itself an example of how a treaty can felicitate mutual understanding and cooperation.¹¹⁷ Another basis is the aspect of domestic law. There are various nations that recognize their own domestic laws as the foundation and genesis of international assistance in the form of mutual legal assistance. Sometimes, domestic laws and provisions are sufficient to carve out the procedures to be followed in situations when the country is requested for some information or it has to request to other countries for evidence.¹¹⁸ The third basis can be the principle of reciprocity. It is an established notion in the field of international law and incidental diplomacy that the states tend to respect the nuances of the principle of reciprocity in several related endeavours that they take. This principle assists and strengthens the essence of

¹¹⁵ Bassiouni, M, C., International Criminal Law Series, Volume 1: Introduction to International Criminal Law, Brill Academic Publishers, 499-500 (2012).

¹¹⁶ UNTOC, 2000, a. 18.

¹¹⁷ *Supra* note 12 at 25-27.

¹¹⁸ *Supra* note 12 at 28. It states that-

54. Normally, the domestic legislation lays down procedure for processing both incoming and outgoing requests. The domestic law sometimes is sufficient to depict the manner of procession and the transmission. Thus, the domestic law can provide clear scenario to the requesting or requested State.

international cooperation and plays a vital role when it comes to the discussion of MLA. However, even if there are no treaties or domestic laws in existence, the principle of reciprocity is deemed to exist by default in the international arena.¹¹⁹

International Cooperation through Mutual Legal Assistance: A Beneficial Step

As already discussed, MLA is an established medium for the execution of concepts like international cooperation. It helps in the modus operandi of various incidental aspects that are related to the institutionalisation of cooperation at the international level. It helps in disseminating data, its collection, and processing which can be vital for countries in their investigating endeavours. When a request is made in this regard, there are various elements that can be adhered to in order to shape a request. Several prerequisites range from initiating the request from component entity, detailing the purpose of the request, elaborate information regarding the person for whom request is made, elaborate information on the offence to other proceeding details.¹²⁰ These expressions strengthen the point that international cooperation in any matter can simplify its course of action to many folds.

The law enforcement and investigation agencies work and carry on with their objective while considering these aspects. Internationally if one notices the Vienna Convention of 1988, it depicts the responsibilities of international communities towards mutual assistance.¹²¹ It also gives way to the fact that countries should expand the horizon of their domestic laws and cover various new versions of offenses. But as already stated the limitation of international cooperation depends on the political, economic, and social settings of a country.¹²² Moreover, it is worth depicting the fact that internationally there are various instruments that address the element of Mutual legal assistance.¹²³

The Way Forward

1. Liberalization of the Exchange of Information

Nation and its entities ought to liberalize the exchange of information; it will affect the digital transition that the entire world aspires for. Moreover, it is evident that MLATs in particular remove hurdles and ease out procedures with the domestic laws of the particular country. However, there are elements like procedural delays, data tussles, and issue of sovereignty that have acted as a growing challenge for MLA procedure.

¹¹⁹ *Supra* note 12 at 29.

¹²⁰ Annabelle Bolt, “Practical Problems in Mutual Assistance in Criminal Matters” 19 *Commonwealth Law Bulletin* 1911 (1993).

¹²¹ Article 2(1)(a) of the Vienna Convention defines ‘treaty’ as an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

¹²² *Id.* at 9.

¹²³ Manual on Mutual Legal Assistance, Council of Europe, Belgrade March 2013, available at <<https://rm.coe.int/mutual-legal-assistance-manual-eng/1680782927>> (last visited on November 8, 2023).

2. Not to Have too Narrow Interpretations

Nations should not be stuck to too narrow interpretations of terminologies. However, there are ways out and communication is one such major way that can make things better. Nations should explain the problems, and the loopholes rather than putting the entire MLA process aside and dealing with something else. Nations should not give up on old existing systems however on the same hand; they should not side away from adding new and recent dimensions to the already existing structure. There has to be a centralized and single point of contact so that things are not left unattended and scattered.¹²⁴ A single point of contact can ease out the entire procedure in an appropriate manner and accelerate the process enough to depict and learn where and what are the sticky points that call for negotiation.¹²⁵ Ultimately, there has to be cooperation and it is important to adhere to fundamental principles that are in place.¹²⁶

3. Training can be a Great Assistance

It is evident through this entire discussion that entities involved in the entire transaction of MLAT and its incidental procedures lack proper training in this regard. It is important to have a sound understanding of all the pre-requisites and other requirements. Thus, the officials and concerned personnel involved should undergo training or capacity building programs in order to enhance skills and other understanding of the subject so that they can manage and solve situation with more ease and in a better manner. Such capacity building programs can include postulates like courses, lectures, workshops, seminars and even exchange of personnel among the designated authorities of several jurisdictions or nations for that matter.

4. Analyzing the Reforms Options

There are basically three reform options available in the domain of MLA in criminal matters. The primary one being is to speed up the process of MLA by adding people and countries in the fold so the existing system can be changed in a holistic manner. This can also be done through capacity building and training the investigating and other concerned officials so that they can appreciate the entire MLA system in a better way.¹²⁷ The second option is to build in an alternative that is way better, faster and direct. For instance, UK and USA have already made proposals to bring in change in the structure of MLA and MLAT in order to cater and include the changes that the electronic and digital arena is bringing in. Eventually, the third option is a drastic step forward and calls for a global treaty or amendment to the Budapest convention itself so that the loopholes of MLA are directly addressed.¹²⁸ But it is worth

¹²⁴ Anna-Carin Svensson, Director-General for International Affairs, Ministry of Justice, Sweden at a panel discussion on MLAT-CyFy 2016, Indian Conference on Cyber Security & Internet Governance. The panel featured practitioners and scholars offering concrete policy recommendations to streamline and conceive information sharing channels to tackle major cyber-crimes.

¹²⁵ Devan Desai, Associate Professor, Scheller College of Business, Georgia Institute of Technology at a panel discussion on MLAT-CyFy 2016, Indian Conference on Cyber Security & Internet Governance. The panel featured practitioners and scholars offering concrete policy recommendations to streamline and conceive information sharing channels to tackle major cyber-crimes.

¹²⁶ *Supra* note 108.

¹²⁷ Faraz Alam Sagar, Sara Sundaram & Pragati Sharma, "Understanding Cross Border Legal Assistance" *Doing Justice in Post-Covid World*, Cyril Amarchand Mangaldas 21-22 (October 29, 2020).

¹²⁸ CyFy 2016, Mutual Legal Assistance Treaties: Panel Discussion.

depicting the India is to date not a signatory to the same Convention.¹²⁹ The government is of the view that such a convention will lead to data sharing with foreign countries and such transactions would violate the internal security of our country and pose a potential threat. Not being a party or signatory to the convention makes adherence to its standards impossible in the current scenario. Moreover, since the executive agreement within the CLOUD Act requires its parties to be signatories to the said convention; being party to the Act itself is not possible if the country has not signed the convention. There have already been debates on the issue of India not being a party to the Budapest Convention.¹³⁰

Generally, the first and second option is seen as viable because of the fact that soon the current process is going to scale up considering the increase in the volume of requests and revolving issues. The basic hurdle is that when a request under MLA comes to a particular territory (for instance, USA), the said request lacks details that are needed to felicitate the request to the concerned court in order to seek evidence.

5. Making the most out of Modern Technology

With the growing technological advancements, authorities should be up-to-date so that maximum productivity can be achieved. It is necessary to catch pace with the growing world so that relevant authorities are well-versed in the offenses and technicalities of cyber-crimes.

6. Optimizing the Capability of Language

Through various endeavors it has been noticed that the language plays a major role in strengthening the transactions under MLAT and MLA in criminal matters and since there lies a lot of hurdles because of the fact that there is no universal language and different states use their own language to deal with the exchange of information and evidence under a given MLAT. These piles up the tasks and one can imagine the work load of institutions that are involved in analysing those documents. Since, different language of the documents present a humongous task before the authorities, a step for uniformity and symmetric cooperation can help bringing in a change that is desired for a quick response and better productivity.

¹²⁹ Cherian Samuel, “Tanmay asked: Despite having brought its legal framework largely in consonance with the Budapest Convention on Cybercrime, why is it hesitant to accede to it?” *Manohar Parrikar Institute for Defence studies and Analyses*, (June 10, 2019), accessible at <https://idsa.in/askanexpert/despite-having-brought-its-legal-framework> (last visited on November 8, 2023).

¹³⁰ Karishma Mehrotra, “On global cybercrime, India votes in favour of Russia-led Resolution”, *The Indian Express*, (November 22, 2019), accessible at <https://indianexpress.com/article/india/on-global-cybercrime-india-votes-in-favour-of-russia-led-resolution-6130980/> (last visited on November 8, 2023).