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Mutual Legal Assistance as a Pathway to Access to Justice

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Abstract

In this Technological era crime poses significant challenges to the global justice system necessitating the need for global cooperation. Mutual Legal Assistance (MLA) Serves as a vital mechanism for facilitating access to justice across borders. This paper proposes a 3A's framework accessibility accountability and adaptability to evaluate and enhance the effectiveness of Mutual legal assistance in access to justice. This paper explores the legal and procedural foundations of MLA through 3A's framework, this paper identifies key gaps and proposes solutions to strengthen transnational judicial cooperation. Drawing on case studies and international treaties, this study singles out the importance of harmonized legal framework, technological integration and accountability mechanisms to ensure equitable access to justice in this interconnected world.

Key Words. – Justice, Mutual Legal Assistance, transnational crimes

Introduction

Access to justice is recognized as both a cornerstone of rule of law and fundamental human right. It means every individual regardless of background or location should be able to seek and obtain legal remedies through justice systems across the globe. However the nature of crime has changed, many offences now transcend national borders from human trafficking to cybercrimes, financial frauds to drug trafficking, requires international cooperation for effective legal response. This is where Mutual legal Assistance (MLA) Plays a vital role. However, the provisions of Mutual Legal assistance is different from extradition in that the request making state i.e. state seeking assistance must also consider whether accepting and using evidence from another country would conflict with its own human rights obligations. These concerns along with related challenges.[1] MLA operated through official legal channels and structured agreement unlike informal police cooperation and is based on bilateral or multilateral treaties. In Asia, the ASEAN member states have been working actively working to counter transnational crimes. Some of the key steps reflecting this commitment includes the ASEAN Declaration on Transnational Crime signed by the Ministers of Interior/Home Affairs in 1997, the adoption of the "ASEAN Plan of Action to Combat Transnational Crime" by the AMMTC in 1999, and various high-level ministerial meetings. These developments in ASEAN highlight the region's strong political will to tackle and resolve transnational crime. Initially, ASEANs focused on combating illicit drug trafficking. However, its scope has since expanded to include other serious offenses, such as money laundering (ML). Today, nearly all ASEAN nations are signatories to major international conventions, including the 1988 UN Drug Convention, the United Nations Convention against Transnational Organized Crime (UNTOC), and the United Nations Convention against Corruption (UNCAC). These treaties contain crucial provisions on the criminalization of money laundering, anti-money laundering (AML) strategies, and mechanisms for international cooperation.[2] Section 2 of this paper examines concept of mutual legal assistance. Section 3 outlines accessibility to MLA procedures. Section 4 assesses availability of legal framework. Section 5 analyse accountability. Section 6 provide recommendation to enhance MLA.

Mutual Legal Assistance (MLA)

Mutual legal assistance (MLA) is a formal framework that enables countries to cooperate with each other by providing legal assistance across borders. It allows nations to request and provide evidence, facilitate witness testimony for proceedings in

[1] Currie, R. J. (2000). Human rights and international mutual legal assistance: Resolving the tension. *Schulich Law Scholars*. https://digitalcommons.schulichlaw.dal.ca/scholarly_works (accessed on 01 July 2025)

[2] Nguyen, C. L. (2012). Towards the effective ASEAN mutual legal assistance in combating money laundering. *Journal of Money Laundering Control*, *15*(4), 383–395. https://doi.org/10.1108/13685201211265971 (accessed on 02 July 2025)

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foreign jurisdictions. The process typically involves government-to-government requests through authorised central authorities rather than direct court-to-court communication. This system is essential for combating transnational crimes, recovering stolen assets, and ensuring justice in cases with international elements.

Accessibility

Accessibility in context of Mutual Legal Assistance (MLA) refers to how effectively states can initiate and manage legal cooperation from other nations. Practically MLA requests face significant obstacles like bureaucratic procedures, language differences, disparities in legal systems and lack of resources to navigate and intricate MLA requests- these challenges are especially pronounced in developing nations. These challenges can cause considerable delays particularly in time sensitive investigations like corruption, cybercrime, human trafficking, money laundering. Although Article 7[3] provides ground for non-recognition and non-execution.

1. The competent authorities in the executing State may refuse to recognise and execute the decision if the certificate provided for in Article 4 is not produced, is incomplete or manifestly does not correspond to the decision.

2. The competent authority in the executing State may also refuse to recognise and execute the decision if it is established that:

(a) decision against the sentenced person in respect of the same acts has been delivered in the executing State or in any State other than the issuing or the executing State, and, in the latter case, that decision has been executed;

(b) in one of the cases referred to in Article 5(3), the decision relates to acts which would not constitute an offence under the law of the executing State;

(c) the execution of the decision is statute-barred according to the law of the executing State and the decision relates to acts which fall within the jurisdiction of that State under its own law.

[3] COUNCIL OF THE EUROPEAN UNION. (2005). COUNCIL FRAMEWORK DECISION 2005/214/JHA. In *Official Journal of the European Union*. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005F0214 (accessed on 02 July 2025)

(d) the decision relates to acts which:

(i) are regarded by the law of the executing State as having been committed in whole or in part in the territory of the executing State or in a place treated as such, or

(ii) have been committed outside the territory of the issuing State and the law of the executing State does not allow prosecution for the same offences when committed outside its territory;

(e) there is immunity under the law of the executing State, which makes it impossible to execute the decision;

(f) the decision has been imposed on a natural person who under the law of the executing State due to his or her age could not yet have been held criminally liable for the acts in respect of which the decision was passed;

(g) according to the certificate provided for in Article 4, the person concerned

(i) in case of a written procedure was not, in accordance with the law of the issuing State, informed personally or via a representative, competent according to national law, of his right to contest the case and of time limits of such a legal remedy, or

(ii) did not appear personally, unless the certificate states: — that the person was informed personally, or via a representative, competent according to national law, of the proceedings in accordance with the law of the issuing State, or— that the person has indicated that he or she does not contest the case;

(h) the financial penalty is below EUR 70 or the equivalent to that amount.

3. In cases referred to in paragraphs 1 and 2(c) and (g), before deciding not to recognise and to execute a decision, either totally or in part, the competent authority in the executing State shall consult the competent authority in the issuing State, by any appropriate means, and shall, where appropriate, ask it to supply any necessary information without delay.

However, while examining the challenges to effective MLA reform, it became evident that a significant yet often overlooked issues is the stricter privacy protection upheld by both European Union and United states of America. These developed nations are hesitant to adopt any new framework that might diminish the specific privacy safeguards currently embedded within their legal systems[4]. The complexity of language and different legal system often results in delay of MLA requests. Article 4[5] somehow tackles the complexity of language, it states that-

A Letter of Request shall be in the language of the authority requested to execute it or be accompanied by a translation into that language. Nevertheless, a Contracting State shall accept a Letter in either English or French, or a translation into one of these languages, unless it has made the reservation authorised by Article 33.

A Contracting State which has more than one official language and cannot, for reasons of internal law, accept Letters in one of these languages for the whole of its territory, shall, by declaration, specify the language in which the Letter or translation thereof shall be expressed for execution in the specified parts of its territory. In case of failure to comply with this declaration, without justifiable excuse, the costs of translation into the required language shall be borne by the State of origin.

A Contracting State may, by declaration, specify the language or languages other than those referred to in the preceding paragraphs, in which a Letter may be sent to its Central Authority. Any translation accompanying a Letter shall be certified as correct, either by a diplomatic officer or consular agent or by a sworn translator or by any other person so authorised in either State.

Case Study

- During India's G20 presidency, anti- corruption working group revealed that 229 of India's mutual legal assistance requests to other G20 nations remained unanswered over the past five years, despite the fact that India responded to all 24 requests it received. India was leading in all G20 countries in sending

[4] Swire, P., Hemmings, J. D., & Suzanne Vergnolle. (2017). A MUTUAL LEGAL ASSISTANCE CASE STUDY: THE UNITED STATES AND FRANCE. *Wisconsin International Law Journal*, 102–142. https://wilj.law.wisc.edu/wp-content/uploads/sites/1270/2017/12/Final_Proof2.3.15.17.pdf (accessed on 02July 2025)

[5] Hague Conference on Private International Law. (1970). *CONVENTION ON THE TAKING OF EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS*. https://assets.hcch.net/docs/dfed98c0-6749-42d2-a9be-3d41597734f1.pdf (accessed on 04 July 2025)

requests followed by France with 125 between 2018-2022. These formal requests were made under MLA treaties, seeking help with criminal investigations, prosecutions or identifying proceeds of crime and are typically used by agencies like ED or CBI. These delays have significantly impacted investigations. To address these issues, India has recommended direct agency to agency cooperation and regular consultation among central authorities to bring criminals to justice[6].

Availability

The availability of Mutual Legal assistance (MLA) depends on country participation in bilateral or multilateral treaty/convention such as UN Convention against Corruption (UNCAC) and the UN Convention against Transnational Organized Crime (UNTOC). However, some countries facilitate MLA through designated central authorities to provide assistance even without treaties. Practical availability often varies due to legal incompatibilities, political sensitivities, banking secrecy and capacity constraints in some jurisdictions. Global cooperation has improved especially among treaty bound nations.

Case study

Karnataka police from 2022-2024 submitted 27 Mutual legal assistance treaty requests to foreign countries seeking information for criminal investigations, but received only seven responses—none of which provided actionable evidence. All replies were either rejections or requests for clarification, reflecting the difficulty, which law enforcement faces in navigating complex international legal frameworks. Officials from the Karnataka CID, which handles MLAT requests via the Ministry of Home Affairs, attributed the low success rate to the need for country-specific legal alignment. The frequent rejection of requests is even due to minor discrepancies.

[6] Chauhan, N. (2023, September 5). 229 legal assistance requests from India pending with other G20 nations: Report | Latest News India - Hindustan Times. *Hindustan Times*. https://www.hindustantimes.com/india-news/229-legal-assistance-requests-from-india-still-pending-with-other-g20-nations-report-101693939378778.html (accessed on 04 July 2025)

Strict privacy laws in many countries poses significant barriers in providing justice. In some cases, if investigators have attempted to obtain information through informal channels, such as approaching the local offices of foreign-based cryptocurrency firms, they were redirected to come through formal MLAT procedures. While some officers argue that courts focus on the admissibility of evidence rather than the method of collection, the overall effectiveness of MLAT in securing timely cooperation remains limited[7].

Accountability

Accountability is the principle that obligates states to adhere to international agreements and ensures that the MLA processes are transparent and fair. Lack of accountability mechanisms can undermine the effectiveness of MLA; certain oversight bodies and regular reporting are essential to maintain trust in MLA system. International MLA agreements typically lack binding enforcement measures. Article 8[8] states that, a witness or expert who has failed to answer a summons to appear, service of which has been requested, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the requesting Party and is there again duly summoned. These international agreements even lack power to summon witnesses or expert, making these agreements a paper tiger.

Case study

- Vijay Mallaya extradition case is one of the prime examples of how political motives can override legal delaying extradition of this high-profile Indian fugitive from UK to India. Despite the fact that India filed multiple MLA request

[7] Chetan B C, & Chetan B C. (2024, November 28). *Karnataka's legal assistance request to foreign countries: 27 pleas, 7 replies, 0 breakthroughs*. Deccan Herald. https://www.deccanherald.com/amp/story/india/karnataka/k-taka-s-legal-assistance-request-to-foreign-countries-27-pleas-7-replies-0-breakthroughs-3296465?utm_sourcem (accessed on 01 July 2025)

[8] Council of Europe. (1959). European Convention on Mutual Assistance in Criminal Matters. In *European Treaty Series* (No. 30). https://rm.coe.int/16800656ce (accessed on 04 July 2025)

to bring Vijay Mallaya to justice.

- Operation Car Wash demonstrated accountability of states in Mutual Legal Assistance in tackling global corruption, Brazil issued over 650 MLA requests to 41 countries. Authorities from UK, USA and Switzerland cooperated with Brazilian authorities to trace and seize illegal assets. Swiss prosecutors used MLA channels to investigated financial intermediaries and banks linked to Petrobras. This case highlight MLA as a cornerstone in sustaining transnational enforcement.

Policy recommendations

Based on the 3As framework, the following recommendations aims to enhance MLA as a pathway to access to justice

- Through enhancing accessibility development of global MLA guidelines to standardize procedures reducing bureaucratic hurdles.
- Providing technical assistance to developing nations to build capacity for MLA requests.
- Integrating technology into MLA frameworks promote adaptability, by securing digital platforms for evidence sharing and A.I driven tools for analysing complex data. Also updating international treaties to address emerging crimes like cryptocurrency fraud.
- Establishing independent oversight institutions to strengthen accountability to monitor MLA compliance and ensure adherence to standards.
- Providing training for law enforcement and judicial officials on MLA processes, by emphasizing on technological advancement.
- Through a foster regional cooperation regional hubs can be created to facilitate coordination, particularly in highly sensitive area like central America, south east asia and eastern Europe.

Conclusion

Mutual legal assistance is one of the cornerstones of international cooperation in combating transnational crime. The 3As framework provides a structured approach to

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address these challenges, offering a pathway to enhance access to justice. European arrest warrant is one of the most effective processes in complex global criminal landscape. By streamlining procedures through integrating technology and ensuring transparency, states can strengthen MLA systems to counter the growing criminal nexus. Future research should explore the role of emerging technologies, such as A.I, cryptocurrency and blockchain in further optimizing MLA processes.