

CLAT PG 2026 Set C Question Paper with Solution (Memory Based)

1.

Given facts: Country A requests the surrender of X for murder; Country B's offence list doesn't include an identical offence. Is extradition possible? (Discuss dual criminality and prima facie test.)

Solution:

Yes, extradition **may still be possible** even if Country B's domestic statute does not list an *identical* offence, **as long as the conduct constitutes a crime in both countries**.

This flows from the doctrine of dual criminality, which is central to extradition law under the Extradition Act, 1962, and international practice.

1. Dual Criminality – the core requirement Dual criminality means:

The conduct for which extradition is requested must be an offence in both the requesting and requested States, though the name, definition, or classification of the offence need not be identical.

Thus: - If the conduct = intentional killing of a human being, - And murder / culpable homicide / homicide is a crime in both jurisdictions, then dual criminality is satisfied.

The requesting country's specific terminology ("murder") does not matter. What matters is the **substance of the conduct**.

2. Prima Facie Evidence Test Before extradition, the Magistrate in Country B must determine whether:

There exists **prima facie evidence** that X committed conduct that would amount to a criminal offence if committed in Country B.

Thus: - If Country A produces evidence like motive, weapon recovery, witness statements, CCTV, etc. - And such evidence, if committed in Country B, would constitute a homicide offence → extradition can proceed.

3. Conclusion The absence of an **identical statutory label** ("murder" vs "homicide") does not bar extradition.

Extradition is possible if dual criminality (conduct-based) and prima facie proof are satisfied.

Quick Tip

Dual criminality is about the **conduct**, not the **name** of the offence. Prima facie test ensures the request is not frivolous or politically motivated.

2.

What is the Extradition Act, 1962 — name a key procedure?

Solution:

The **Extradition Act, 1962** is the principal legislation governing India's obligations regarding arrest, surrender, and transfer of fugitives to foreign States. It operationalises India's extradition treaties and provides uniform procedures.

A central procedural step under the Act is the Magisterial Inquiry under Sections 5–7.

1. Magisterial Inquiry – Core Procedure

When a foreign State requests extradition:

1. The Central Government forwards the case to a **Judicial Magistrate**.
2. The Magistrate holds an inquiry similar to a committal proceeding.
3. The purpose is to determine:

- whether the offence is extraditable,
- whether dual criminality is satisfied,
- whether the evidence establishes a **prima facie case**,
- whether any bars apply (political offence, discrimination, torture risk, etc.).

4. If satisfied, the Magistrate commits the fugitive to custody and reports to the Central Government.

5. The Central Government makes the final decision on surrender.

Thus, extradition is a **two-stage process**: judicial scrutiny + executive decision.

2. Importance of the Magisterial Inquiry It ensures:

- fairness to the accused,
- compliance with treaty obligations,
- protection from political misuse,
- adherence to human rights standards.

Quick Tip

Always remember: Extradition Act = dual criminality + magisterial inquiry + Central Government's final surrender decision.

3.

Define dual criminality and speciality.

Solution:

1. Dual Criminality

Dual criminality is a foundational principle of extradition law. It means:

The conduct for which extradition is sought must constitute a criminal offence in both the requesting and the requested State.

Key features:

- The name or statutory classification of the offence need not be identical.
- What matters is the **substance of the conduct** (e.g., intentional killing, fraud, bribery).
- Ensures fairness and prevents surrender for conduct that is not criminal domestically.

It protects individuals from being extradited for acts that are lawful or morally neutral under the domestic law of the requested State.

2. Principle of Speciality

The specialty rule provides that:

A person extradited for one offence can be tried, punished, or detained only for that specific offence, unless: (1) the requested State consents to additional charges, or (2) the accused voluntarily stays in the requesting State beyond a certain period.

Purpose:

- Prevents misuse of extradition as a pretext for unrelated prosecution.
- Protects diplomatic trust and individual fairness.
- Ensures the requesting State honours the limits of the extradition grant.

Dual criminality = what conduct must match.

Speciality = how the requesting State may use the fugitive after surrender.

Quick Tip

Dual criminality protects the **decision to extradite**. Speciality protects the **treatment after extradition**. Both prevent abuse and preserve sovereignty.

4.

Which sections create a presumption of sexual intent?

Solution:

In the context of sexual offences involving children, the statutory presumption of **sexual intent** arises primarily under Section 30 of the POCSO Act.

Section 30 (POCSO Act): Presumption of culpable mental state This provision states that when the prosecution proves the actus reus (the act), the court shall **presume the mental element**, including:

- sexual intent,
- knowledge,
- motive,
- any state of mind necessary to constitute the offence.

Additionally, some POCSO provisions expressly refer to the inference of sexual intent:

- **Section 11 Explanation** — clarifies that “sexual intent shall be inferred from the circumstances.”
- **Section 29** — raises a presumption of guilt once foundational facts (identity + act) are established.

Thus, the legal framework presumes sexual intent through:

Section 30 (culpable mental state) + Section 11 Explanation + Section 29 (presumption of guilt)

Quick Tip

Whenever “sexual intent” must be inferred, combine: Act proved → Section 30 presumes intent → Section 11 helps interpret → Section 29 shifts burden to the accused.

5.

If someone views child sexual material on their phone (no evidence of distribution), is POCSO attracted after Sept 2024?

Solution:

Yes. After the 2024 amendment (effective September 2024), POCSO explicitly criminalises the **mere viewing / accessing** of Child Sexual Abuse Material (CSAM), even without distribution or transmission.

Under the amended framework:

- Mere **viewing, accessing, browsing, or possessing** child sexual material constitutes an offence.
- Distribution or sharing is a separate, more serious offence — but not a prerequisite for liability.

This is consistent with global standards (e.g., US, UK, EU) where **possession and accessing alone** are criminal offences.

Key point: Earlier case law sometimes required evidence of:

- downloading,
- storage,
- circulation.

Post-Sept 2024, these requirements are no longer necessary. Mere viewing — even temporary — is sufficient for POCSO liability.

Thus:

Yes — viewing CSAM alone attracts POCSO after Sept 2024.

Quick Tip

After 2024: Possession → offence Accessing/viewing → offence Distribution → aggravated offence No requirement of “permanency” or “storage.”

6.

Explain how Sections 29–30 shift the burden of proof and what an accused must prove to rebut the presumption.

Solution:

Sections 29 and 30 of the POCSO Act create one of the strongest reverse-onus frameworks in Indian criminal law.

1. Section 29 – Presumption of guilt Once the prosecution proves basic foundational facts:

1. identity of the accused, and
2. that the child was subjected to the act (the actus reus),

the court shall presume that:

the accused committed the offence

under Sections 3, 5, 7, 9, 11 or 13 of POCSO.

This reverses the usual presumption of innocence.

2. Section 30 – Presumption of culpable mental state This includes:

- intention,
- motive,
- knowledge,
- sexual intent,
- any mental element required for guilt.

Thus, once the act is established, the court presumes:

mental state + guilt

3. What must the accused prove to rebut these presumptions?

The burden shifts to the accused to prove the absence of:

- sexual intent,
- guilty mind,

- participation in the alleged act,
- or show that circumstances make guilt impossible or improbable.

Standard of Proof for the Accused: Not “beyond reasonable doubt,” but “preponderance of probabilities.”

This means the accused must show:

His version is more probable than not.

Examples of rebuttal:

- CCTV evidence contradicting the child’s account.
- Alibi placing the accused elsewhere.
- Evidence proving accidental, non-sexual contact.
- Proof of mistaken identity.
- Medical/legal reports inconsistent with sexual assault.

4. Interplay between Sections 29 30

Together, they create:

A double presumption: (1) The act was committed by the accused; (2) It was committed with sexual intent.

The accused must rebut both.

Quick Tip

Prosecution → prove basic facts. Court → presumes guilt + intent. Accused → must disprove by **preponderance of probabilities**. This makes defence strategy crucial in POCSO cases.