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# Extradition: Procedure and Principles

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## ABSTRACT

*The Authors of the instant article seek to expound upon the law relating to extradition in India. The article also explains the doctrines which are the cornerstone of extradition recognized universally. The principles justifying the necessity to extradite a Fugitives to the Requesting State from the Requested State have been briefly elucidated. The Authors, being advocates within the territory of India, have had the opportunity to represent the concerned party(s) in certain cases pertaining to extradition of Fugitive Criminals outside India. India has entered into several Extradition treaties (47) and even Extradition Arrangements (11) with other States. A few common threads running through these treaties and arrangements have been examined in the instant Article. The article also demonstrates certain contemporary case laws to illustrate the legitimate difficulties qua the same.*

***Keyword:*** *Extradition, Procedure, Principles, Doctrines, Double Criminality, Speciality, Non-inquiry, Reciprocity, Extraditable Offence, Treaty, Arrangement.*

## I. INTRODUCTION

"***Vasudhaiva Kutumbakam***"[4]

The treaties of Extradition are one of the oldest forms of bilateral negotiation between sovereigns of the world.[5] It is based on the rule that no crime shall go unpunished. The Black's Law Dictionary defines "*Extradition*" in the following words "*The surrender by one state or country to another of an individual accused or convicted of an offence outside its own territory and within the territorial jurisdiction of the other, which, being competent to try and punish him, demands the surrender*"[6]. Simply put, extradition can be defined as request made from one Sovereign State to another Sovereign State in which a fugitive is seeking asylum after committing an offence in the former State, to surrender the said fugitive.

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[4] The World is one family.
[5] IVAN A. SHEARER, EXTRADITION IN INTERNATIONAL LAW 1971.
[6] BLACK'S LAW DICTIONARY 585 (6th ed. Thomson Reuters West 1990)

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The most basic principle backing the need for extradition is the "*territorial principle*"[7] according to which, if a crime is committed in a particular State by any person, whether an alien or a native citizen, then the said State shall have the power to punish such actus as per its own laws after following due process. Section 2 of The Indian Penal Code, for instance, prescribes for the same in following words "*Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within India*"[8] It is even incorporated by way of section 4(2) of the IPC, since the "*any person on any ship or aircraft registered in India wherever it may be*"[9] is considered to be under the territorial jurisdiction of India.

Another principle would be the "*Nationality Principle*"[10], as per which, if a Citizen of a particular State commits an offence within or even outside the territory of his Native State then that Native State shall have jurisdiction to try and punish such offence since the alleged offender is its subject. It is also known as "*Active Personality Principle*"[11]. This principle, too, finds place in the IPC under section 4 which provides as follows "*The provisions of this Code apply also to any offence committed by- (1) any citizen of India in any place without and beyond India*"[12]

Further, as per the "*Passive Personality Principle*"[13], any offence committed by an alien against the citizen of a particular State, the said State will have jurisdiction over the same since the crime has been committed against its citizen. It is one of the most controversial and the least justifiable principle.[14] The primary fallacy which arises due to the application of the impugned principle would be that it transgresses over the sovereignty of the State where the offence is, infact, committed.[15]

Even, as per the "*National Security Principle*" any actus committed outside the jurisdiction of the concerned State by an alien, which has the effect diluting or attacking the national security of the concerned State, then the said concerned State assumes jurisdiction to try such alien.[16]

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[7] C. Shachor-Landau *Extra-Territorial Penal Jurisdiction and Extradition,* 29 THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY V 274-295 (Apr. - Jul., 1980)
[8] The Indian Penal Code, 1860 §2, Act No. 45 Acts of Parliament, 1860 (India)
[9] The Indian Penal Code, 1860 §4(2), Act No. 45 Acts of Parliament, 1860 (India)
[10] Sharon A Williams, *Nationality, Double Jeopardy, Prescription and the Death Sentence as Bases for Refusing Extradition,* 62 INTERNATIONAL REVIEW ON PENAL LAWS 254- 70 (1999)
[11] 71 Yoram Dinstein *The Universality Principle and War Crimes The Law of Armed Conflict: Into the Next Millennium*, International Law Studies (ed. Michael N. Schmitt & Leslie C. Green)
[12] The Indian Penal Code, 1860 §4, Act No. 45 Acts of Parliament, 1860 (India)
[13] The Passive Personality Principle *Geoffrey R. Watson The Catholic University of America*, Columbus School of Law, 1993 28 TEX. INT'L L. J. 1 (1993).
[14] RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES S 402(2) (1986)
[15] H.F. VAN PANHUYS, THE ROLE OF NATIONALITY IN INTERNATIONAL LAW 132 (1959)
[16] Dinstein, *The Extra Territorial Jurisdiction of States: The Protective Principle*, 65(2) ANNUAIRE DE

This category circumscribes offences like counterfeit currency and cyberattacks from servers situated outside the State. The said principle is incorporated by section 3 of the IPC which provides that "*Any person liable, by any Indian law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India.*"[17] It is also covered by section 4 clause (3) of the IPC which provides as follows "*any person in any place without and beyond India committing offence targeting a computer resource located in India*"[18]

And, lastly, as per the "*Universality Principle*", certain serious criminal actions are regarded as wrong universally and by all States, for instance, Terrorism, Slavery, Piracy, genocide and Torture.[19] These offences are known as "*delicta juris gentium (i.e., acts defined as crimes by international law)*"[20].

## II. PROCEDURE OF EXTRADITION

In today's world people commit crime and bounce to other foreign states in order to escape the punishment which ought to be faced by them, then in that scenario extradition is the only tool which can be used in order to bring them 'home'. In India. the process of extradition by a Foreign State is categorically segregated into two sects, first one is Extradition with Foreign States with whom there is an 'Treaty' and Second, is with those Foreign States with which there is an 'Arrangement', the procedure of extradition is governed and guided under Chapter II, III and IV of Extradition Act, 1962 and the same is penned hereinbelow:

**(A) Extradition of fugitive criminals to foreign states with which there is no 'arrangement/treaty':**

- In consonance to Chapter II of Extradition Act, 1962, a request for *"surrender of the fugitive criminal may be made to the central government:*

  *(a) by a diplomatic representative of the foreign State at Delhi; or*

  *(b) by the Government of that foreign State communicating with the Central Government through its diplomatic representative in that State;*

  *and if neither of these modes is convenient, the requisition shall be made in such other mode as is settled by arrangement made by the Government of the foreign State with*

L'INSTITUT DE DROIT INTERNATIONAL 305-315 (1993).

[17] The Indian Penal Code, 1860 §3, Act No. 45 Acts of Parliament, 1860 (India)

[18] The Indian Penal Code, 1860 §4(3), Act No. 45 Acts of Parliament, 1860 (India)

[19] The Princeton Principles on Universal Jurisdiction PRINCETON UNIVERSITY PROGRAM IN LAW AND PUBLIC AFFAIRS 28 (2001).

[20] *Supra* note 8

*the Government of India"*[21]

- After filing the requisition, if the central government thinks fit then it may issue an order *"to any Magistrate who would have had jurisdiction to inquire into the offence if it had been an offence committed within the local limits of his jurisdiction directing him to inquire into the case"*[22] and as the warrant for arrest is issued on receival of an order of Central Government then the Magistrate shall be under the duty to issue warrant for arrest of the fugitive and at the time of production of fugitive before the magistrate shall conduct inquiry into the matter and while doing so, he shall exercise the powers and jurisdiction that of session or High Court which they exercise while trying a matter.

- In all fairness the said magistrate shall *"take such evidence as may be produced in support of the requisition of the foreign State and on behalf of the fugitive criminal, including any evidence to show that the offence of which the fugitive criminal accused or has been convicted is an offence of political character or is not an extradition offence"*[23] and after that hold his findings to the same, in which if the magistrate holds the opinion that no offence is made out the fugitive criminal shall be discharged with the alleged offences and set free but if the Magistrate concludes his inquiry with an antipodal finding then he shall report the same to Central Government with a written statement drawn by the Fugitive Criminal.

- Upon receiving the report and the statement, if the Central Government is of the opinion that fugitive criminal should be surrendered to the foreign State then a warrant qua *"the custody and removal of the fugitive criminal and for his delivery at a place and to a person to be named in the warrant."*[24]

- In addition to this the magistrate is empowered to *"issue warrant of arrest in certain cases"*[25], wherein it comes to his knowledge that there is presence of any fugitive criminal in his jurisdiction.

**(B) Extradition of fugitive criminals to foreign states with extradition arrangements**:

- In consonance to Chapter III of Extradition Act, 1962, the below-mentioned procedure shall be adopted with a Foreign State wherein an extradition arrangement has been entered with that state.

[21] Extradition Act, 1962, § 4, No. 34, Acts of Parliament, 1962 (India)
[22] Extradition Act, 1962, § 5, No. 34, Acts of Parliament, 1962 (India)
[23] Extradition Act, 1962, § 7(2), No. 34, Acts of Parliament, 1962 (India)
[24] Extradition Act, 1962, § 8, No. 34, Acts of Parliament, 1962 (India)
[25] Extradition Act, 1962, § 9, No. 34, Acts of Parliament, 1962 (India)

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- For apprehension of any Fugitive Criminal of any foreign state a warrant for apprehension is to be issued by that foreign state then the Central Government may, after satisfaction of the fact that the said warrant has been issued by a person in lawful authority and the issued warrant is a proper document which gives sufficient authority to apprehend the fugitive criminal and bring him before the magistrate in India.

- *"Any magistrate may issue a provisional warrant for the apprehension of a fugitive Criminal from any foreign State"*[26] and sent a report of issue of warrant or a certified copy thereof to the central government but the central government holds power to discharge the apprehended person if there are reasonable circumstances.

- On production of a Fugitive Criminal, if a magistrate is satisfied that the apprehension of that person is duly authenticated and the offence qua which such person has been apprehended is an extraditable offence, the magistrate shall forward the fugitive criminal to prison till the time he is deported back to his foreign state and parallelly a certificate of committal will be forwarded by the Magistrate to the Central Government.

- However, if magistrate is of opinion that the endorsed warrant is not authenticated or the offence for which the Fugitive Criminal is charged with or convicted with is not an extraditable offence then that person would be held in custody or released on bail. What so ever the case, the magistrate is obligated to forward his report alongwith 'written submission of Fugitive Criminal' to the Central Government for their consideration.

**(C) Surrender or return of accused or convicted persons from foreign states to India:**

- To any foreign state where Chapter III of Extradition Act, 1962 does not apply, a request for surrender of a person, who has been accused or convicted qua a extraditable offence committed in India and suspected to be in a foreign state, shall be and in such respective Form be *"made by the Central Government:*

  - *To a diplomatic representative of that State at Delhi; or*
  - *To the government of that State through the diplomatic representative of India in that state*

*And if neither of these modes is convenient, the requisition shall be made in such other mode as it is settled by arrangement made by the Government of India with that State."*[27]

[26] Extradition Act, 1962, § 16, No. 34, Acts of Parliament, 1962 (India)
[27] Extradition Act, 1962, § 19, No. 34, Acts of Parliament, 1962 (India)

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- When a person, accused or convicted of an extradition offence is deported, surrendered or returned back to India by foreign state then he shall be delivered to a proper authority, according to law of the land. However, the person who has surrendered or returned back to India shall not be tried other than the offence qua which he has been extradited/surrendered/returned; or any other which stands graver or attracts more punishment as compared to offence qua which he was shown to be charged/guilty before the foreign state.; or any other offence qua which the foreign state has given its consent.

## III. DOCTRINES OF EXTRADITION

Extradition in India is to be governed in light of the following 5 Doctrines[28]:

### (A) Doctrine of Dual Criminality

The principle of dual criminality or doble criminality implies that the crime/ offence for which the Requesting State is asking the extradition of the person concerned, must be crime in the Asylum State as well.[29] There have been instances where the accused person maybe guilty of a particular offence in the Requesting State but the same is not an offence in the state to which he fled. In such cases extradition can be refused unless the Treaty between the two nations permit the same, Earlier, as per Indian Extradition Act, 1903 the term *"offence"* was defined under section 2(e) of the Act to "*includes any act wheresoever committed which would, if committed in the States, constitute an offence.*"[30] The old Act therefore clearly and specifically codified the principle of double criminality. The new Act, however, omitted the said definition.

This does not imply that the said principle no longer applies to India, since the said principle is almost uniformly been incorporated in the bilateral and multilateral treaties[31] entered into by our Country. The Doctrine of Double Criminality has been duly recognized by the Hon'ble Supreme Court of India in the case of *Abu Salem Abdul Qayoom Ansari v. State of Maharashtra.*[32] It was recognized by the Hon'ble Court that the reason for recognizing the doctrine is to safeguard the Individuals right. Furthermore, the said doctrine has been impliedly incorporated within the ambit of section 21 of the New Act.

### (B) Doctrine of Speciality

As per the tenants of this doctrine "*the State to which a person has been extradited may not, without the consent of the requisitioned State, try a person extradited save for the offence for*

[28] Abu Salem Abdul Qayoom Ansari v. State of Maharashtra, (2011) 11 SCC 214
[29] J. N. Saxena, India-The Extradition Act, 1962, 13 INT'l & COMP. L.Q. 116 (1964).
[30] Indian Extradition Act, 1903, § 2(e) Act 015 of 1903 (Indian)
[31] *Supra* note 26
[32] *Supra* note 25

*which he was extradited. Many extradition treaties embody this rule, and the question arises whether it is one of international law or not.*"[33]. Thus, simply put, the Requesting State can try the extradited offender only for those offences, qua which extradition was requested from the request State. In case the Requesting State wishes to try the offender for any other offence (other than that for which extradition was sought) as well, which he had committed before the extradition, then the Requesting State must surrender the extradited offender back to the Requested State, and make a fresh request. The said doctrine has a colour of taking "*care of the Sovereign rights of the state.*"[34] The doctrine has a facet of preventing abusing of the grant of surrender to the requesting State.

The instant doctrine has been specifically laid down in the Indian Extradition Act under section 21 as well as section 31 clause (c). While section 21 lays down that India may not try the extradited offender, which it receives from a Foreign State, for an offence, other than, for which the surrender of such fugitive was sought; section 31(c) of the Act lays down that, the Requesting Foreign State, too, must not try the requested offender for any other offence, than which, the request was made. The exception qua the same have also been iterated in the Act, which are as follows:

i. <u>The extradited offender may be tried for lesser offence</u>:[35] "*There are two ways in which to describe a lesser crime. Either every single element of a lesser crime should be component of the greater crime on the basis of their statutory definitions; or the allegations of the larger crime in the indictment should include all the factual details of the lesser crime.*"[36] From the perusal of the aforementioned understanding of lesser crime/ offence it would be safe to conclude that a lesser crime is one, the characteristics and language of which are already embodied in the greater/ more severe crime. *For instance*, culpable homicide not amounting to murder will be a lesser crime of culpable homicide amounting to murder.

ii. <u>Consent of the Foreign State or Indian Central Government, as the case may be</u>: In case, the fugitive has been requested by India and is to be tried in India, then he may be tried for an offence other than that for which he was extradited then, unless the said crime is a lesser crime as has been explained in the foregoing paragraph, India will have to take consent from the said Foreign State from which the request was made, to try the Offender for the impugned offence.[37]

[33]2 D.P. O'CONNELL, INTERNATIONAL LAW 391 (Cambridge University Press 2009)
[34] *Supra* note 25
[35] Extradition Act, 1962, § 21 & 31, No. 34, Acts of Parliament, 1962 (India)
[36]"*Submission of Lesser Crimes*", 56(6) COLUMBIA LAW REVIEW 888-90, 1956
[37] Extradition Act, 1962, § 21, No. 34, Acts of Parliament, 1962 (India)

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Conversely, in case the Foreign requesting State wishes to do so, it can be done only after the due consent has been extended by the Central Government of India.[38]

**(C) Doctrine of reciprocity**

The instant doctrine/ principle is closely linked to the principle of Sovereignty of State.[39] A conjoint effort of dual criminality and principle of reciprocity ensures that a State does not request for extradition of an offender for any offence, which it itself would not extradite for, had the Requested State asked for the same.[40] One of the guiding principles backing reciprocity is to ensure corresponding receipt of fugitives/ offenders from other States, so as to ensure serving of justice for crimes committed against the Requesting State or its subjects and maintaining peaceful relations between the States, thereby steering clear of any tension which might otherwise arise on account of non-surrender of offenders.[41]

The reciprocal obligations also come into play even in the absence of treaties as well. This ensures that no guilty person is let of the hook scots-free. There have also been instances where the requested states have denied extradition on account of non-assurance of reciprocity, even if the same led to the presence of hardened criminals within the territory of their Nation.[42]

**(D) Extraditable offence**

Section 2(c) of the Extradition Act defines "*Extradition Offence*" in the following words: *"(i) in relation to a foreign State, being a treaty State, an offence provided for in the extradition treaty with that State; (ii) in relation to a foreign State other than a treaty State an offence punishable with imprisonment for a term which shall not be less than one year under the laws of India or of a foreign State and includes a composite offence*"[43]. Upon the perusal of the aforementioned section, it would be evident that, two situations have been enumerated:

a. Presence of a treaty: In this scenario, what amounts to an extraditable offence will be governed by the treaty entered into by the Sovereign States. The treaties have a legal backing to them and are more often than, upheld by the parties to the treaty. The

[38] Extradition Act, 1962, § 31, No. 34, Acts of Parliament, 1962 (India)
[39] Palmer, *The Austrian Law on Extradition and Mutual Assistance in Criminal Matters* (1983) 39 (2 ed. Stanbrook & Stanbrook, Extradition Law and Practice 2000) 21.
[40] SHEARER, EXTRADITION IN INTERNATIONAL LAW (1971) 138; GILBERT, TRANSNATIONAL FUGITIVE OFFENDERS IN INTERNATIONAL LAW (1998) 84.
[41] Henning, "*Extradition Controversies: How Enthusiastic Prosecutions Can Lead to International Incidents* 350 (Boston College Interntional and Comparative Law Review 1999).
[42] Schultz, *The Principles of the Traditional Law of Extradition, Legal Aspects of Extradition among European States* 10 (Council of Europe 1970)
[43] Extradition Act, 1962, § 2(c), No. 34, Acts of Parliament, 1962 (India)

contours of "extraditable offence" will depend upon the negotiations between the States.

b. Absence of a treaty: In this scenario, a "*minimum punishment*" test has been prescribed, wherein any offence which is punishable with a term of one year or more, whether in India or the other State, could be termed as an extraditable offence.

As a matter of customary international law[44] as well as, by way of incorporation into the Indian Jurisprudence[45] Political offenders or persons accused of offences having a political nature are not extradited. The reason behind the same being, that, there is a threat to impartiality of trial in the requesting state, under such conditions. The situation is further complicated in light of the fact that there is no particular universally accepted definition of what amounts to a "*Political Offence*"[46]. Whether an offence for which extradition is sought is a political one or not will depend on the factual matrix of the case.

Similarly, fugitives facing persecution on account of military offences are not extradited as a matter of principle. Though the same has not been specifically laid down in the legislation, however, the same forms part of multiple treaties entered into by India as well as Other States.[47]

Additionally, few treaties entered into by India also refusal Extradition if the fugitive faces persecution in the Requesting State "*on account of his race, religion, nationality or political opinion, or that persons position may be prejudiced for any of these reasons*"[48]

Upon perusal of section 31(b) bars the extradition of fugitive upon expiry of the time provided for such action under the law, either of the Requesting State or the Extraditing State. The reason for the same being that there is no uniformity in authorities available with respect to the whos' Statute of Limitation shall apply. Though, upon the perusal of the section it seems that the limitation of the Requesting State must apply[49].

As per section 31(d) of the Act[50], if the fugitive qua whom the surrender is sought by the Requesting State, has committed an offence in India, he will not be extradited till the completion of his/her sentence or his/her acquittal.

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[44] J. Menalco Solis R. *Private International Law-Extradition-Political Offences* 24 Tul.L.R. 847 848 (1960)
[45] Extradition Act, 1962, § 31(a), No. 34, Acts of Parliament, 1962 (India); in Re C. G. Menon, A.I.R. 1953 Madras 729, 735
[46] F. H. - *Some Problems of the Law of Extradition* 109 L.J. 198 (1959); 1 OPPENHEIM, INTERNATIONAL LAW 707 (8th ed. Oxford 2008)
[47] For instance: with States of Afghanistan; Australia; Azerbaijan; Bahrain; Bangladesh; Belarus; Brazil; Canada; USA
[48] For instance: with States of Australia; Azerbaijan; Brazil; Germany; Hong Kong; Indonesia; Israel.
[49] Extradition Act, 1962, § 31(b), No. 34, Acts of Parliament, 1962 (India)
[50] Extradition Act, 1962, § 31(d), No. 34, Acts of Parliament, 1962 (India)

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### (E) Doctrine of Non-inquiry.

Though, the Principle of Non-inquiry is not an absolute doctrine,[51] still it is one of the cornerstones of the extradition. The rule provides that the requested state must not inquire into the criminal justice system of the requesting state. The principle is majorly followed in the State of USA and Canada. However, it has been opined by experts in the sphere of International law that "*emergence of the individual as a recognized participant in the processes of extradition and the applicability of internationally protected human rights are likely to curtail if not eliminate the rule of non-inquiry*"[52]In India, too, the principle is not strictly followed in light of the factum that India is a signatory to certain International Convention and Treaties[53] which would preclude it from observing the principle to its absolute form.[54]

One of the issues pertaining to the non-application of this rule would be that, it would in turn hold the Extraditing State responsible for the actions of the Requesting State. Inquiry into the affairs of another State would also have an impact of stressing the relations between them, which otherwise might be amicable. In the landmark case of *Ihering Soering*[55], the European Court of Human Rights had inquired into the legal provisions in the state of Virginia (prescribing death penalty for manslaughter) in USA as well as the state of Judiciary (extreme delay in completion of trials) and inhuman conditions of jail. The ECHR had denied the extradition of the fugitive on account of Art. 3 of the European Convention on Human Rights[56].

## IV. CASE LAWS

### (A) The Government of India (Requesting State) v. Nirav Deepak Modi (Requested Person)[57]:

Also known as 'PNB Fraud Case', this is one of the very famous and highlighted case of today's time, wherein a fraud amounting to Rs. 11,256.84 crore (US$1.4 billion) was committed with Punjab National Bank at its Brady House Branch in Mumbai, Maharashtra. The modus operandi behind the whole scam was that Nirav Modi alongwith his wife, brother and uncle (all partners of various Firms like, M/s Diamond R US, M/s Stellar Diamonds and M/s Solar

[51] *Supra* note 25
[52] M. CHERIF BASSIOUNI, INTERNATIONAL EXTRADITION AND WORLD PUBLIC ORDER 466 (1974).
[53] Covenant on Civil and Political Rights, and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
[54] *Supra* note 25
[55] Soering v. United Kingdom 161 Eur. Ct. H.R. (ser. A) (1989)
[56] Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5 Art. 3 (Prohibition of Torture)
[57] Government of India v. Nirav Deepak Modi, decided on 25-02-2021, In The Westminster Magistrates' Court Before District Judge (MC) Sam Goozée

Exports) in conspiracy with the Bank officials of Punjab National Bank (Brady House Branch, Mumbai) credited letter of Undertaking worth Rs. 11,256.84 crore (US$1.4 billion).

The present case tinkered before the eyes of the investigating agencies in January, 2018 when the Deputy General Manager of Punjab National Bank reported to Central Bureau of Investigation (C.B.I.) about a large-scale fraud done by Nirav Modi in shadow of this multiple Firms, used the credit facility offered by Punjab National Bank. After investigation 'C.B.I.' charged him with offences under section 420, 409 of Indian Penal Code and Section 13 of the Prevention of Corruption Act, 1988 and in direction to the same Enforcement Directorate (E.D.) also initiated proceedings under section 3 of Money Laundering Act, 2002. It has also been revealed through sources that accused Nirav Modi had managed to remove the original documents qua Letter of Undertaking from Punjab National Bank and forwarded it to a Law Firm by misleading them to accept the documents, informing them that the documents which they are getting are not the original documents.

As soon as accused Nirav Modi got a hint of the silent investigation he absconded alongwith other accused persons and it was in July, 2018 that Government of India placed an extradition request in order to continue their prosecution. Later the request placed for extradition was certified by Home office in February, 2019 and the secretary of state issued a certificate as per Section 70 (1) of the Extradition Act, 2003[58]. Lastly, on 25.02.2021 in United Kingdom *"the District Judge gave judgment in the extradition case of Nirav Modi. The extradition order was signed on April 15"*[59] and absconder Nirav Modi was given opportunity to appeal before the High Court, however the High Court confirmed that the permission to appeal was rejected, *"which leaves the 50-year-old jeweller with a chance to make his case at a brief oral hearing in the High Court with a renewed 'leave to appeal' application for a judge to determine if it can proceed to a full appeal hearing"*[60]

**(B) Union of India v. Puneet[61]:**

The present matter is pending in the Court of Ld. CMM, Patiala House Courts, New Delhi at the stage of Judgement, the brief facts of this case are herein below:

Puneet herein referred as the fugitive criminal. The F.C. on 01.10.2008 allegedly caused an

[58] Extradition Act, 1962, § 70, No. 34, Acts of Parliament, 1962 (India)
[59] Devesh K. Pandey, *U.K. approves Nirav Modi's extradition in PNB fraud case*, THE HINDU (April 17, 2021 08:02 IST), https://www.thehindu.com/news/national/uk-home-department-clears-extradition-of-nirav-modi/article34336170.ece
[60] BUSINESS STANDARDS, https://www.business-standard.com/article/current-affairs/uk-high-court-rejects-nirav-modi-s-extradition-plea121062301118_1.html (Last visited 08 July 2021, 8 pm)
[61] Union of India v. Puneet Case No. 21216/2016

accident while driving car holden sedan with registration No. 'UUS 909' resulting into the death of a person namely Dean Byron Hofstee and seriously injured to Clancy Cooker at Southbank in the state of Victoria by his negligent and/or reckless driving of a motor vehicle in Commonwealth of Austraila. It is in allegation that on 17.04.2009 on appearing before the County Court of Melbourne, the FC pleaded guilty to culpable driving and negligently causing serious injury, On 12th June, 2009, the FC left Australia using Sukhcharanjit's Republic of India Passport.

Proceedings initiated against FC in India:

That upon the request of Extradition FC was arrested on 29.11.2013 by Punjab Police and was later released on bail by the Hon'ble High Court on 28.05.2013 i.e. almost 1 year 6 months in Judicial Custody.

Issues raised by the Counsel:

i. Whether the offences in question are extraditable offences or not?

ii. Whether the Extradition request should be refused or not on other counts?

iii. Whether the extradition request and accompanying documents are admissible?

Submissions made qua above issues:

The offence in question is not an extraditable offence in consideration of principle of Dual Criminality and secondly Section 304 A of the IPC (causing death by negligence) does not defines the minimum imprisonment for the alleged offence. It provides the imprisonment of either description for a term which may extend to two years, or with fine or with both. There is no minimum punishment for the said offence. Likewise, Section 279 IPC /Sec. 388 IPC do not provide any minimum sentence of one year. Section 12(1)(d) of passport act also provides that the accused shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to five thousand rupees or with both. Therefore, there is no minimum sentence of one year in the Passport Act.

Meaning thereby if the requesting state is considered in the light of the provisions of un-amended act, the offences are not covered within the meaning of the Extradition Act and even if the case of requesting state is considered as per Amended Act, the offences do not carry minimum sentence of one year. Therefore, they are not covered within the meaning of extradition offences. Thus, the extradition request is liable to be rejected only.

Other counts on which the extradition request was said to be refused were the "*The London*

*Scheme on Extradition within the Commonwealth*"[62] wherein it was contended by the Counsel of the F.C. that F.C. was subjected to racism as 'he was being targeted by the local media/Local persons of Australia on account of his race and nationality', 'it may be seen that Australia has shown keep interest in the extradition of FC on satisfy the local voice an not on account of any justified reason. The Melbourne Lord Mayor publicly called FC as maggot and made threatening remarks which also shows that the FC shall not be given justice rather, he would be persecuted.

Observations:

In the present case there are some observations which are to be made, so to determine that why did the accused Puneet came back to India, instead of facing the trial there. The very simple answer to the same is that he was not being enrooted through a fair trial, he was being treated as an insect *'maggot'* there, the local public in Australia wanted him to be executed. He was threatened by the Police officers and has faced discrimination. Media reports at that time are looked into, then it could be unequivocally held that the entire nation wanted FC Puneet to be hanged, without considering the facts and circumstances. At this junction it would be ought to say that the said instance could be an influencing factor for any person to push him to escape from the jurisdiction of enforcement agencies, in order to make his survival. It is the right of every accused to face a fair trial but in such circumstances as mentioned hereinabove, it is not likely that the Accused will be a part of unbiased trial and the same is vexatious for the survival of the society as a whole.

## V. CONCLUSION

The law relating to extradition in India has many impacts on the international relations between the States involved. In certain instances where the fugitive involved has committed a wrong, which is considered to be against the national interest of the State, can have devastating impacts on the relations between the Countries involved in case the Asylum State refuses the extradition. For instance, in the famous case pertaining to Edward Snowden, who leaked highly classified files of the United States National Security Agency for the world to see, is seeking asylum in Russia and infact has even been granted Permanent Residency there, despite the requests from USA to extradite him for the alleged crimes committed by him.

In India, the issue concerning the fleeing of economic offenders has been in spotlight recently and is being reprimanded by the citizens of the nation unanimously. A common ideology

[62] The London Scheme on Extradition within the Commonwealth, 1966

running through humans as a species would be that no wrong must be done against them and if it is done, then it must not go unpunished. The complexities relating to the extradition also arise in light of the discrepancies in the quantum of sentence different States attach to the same offence. For instance, "*theft*" in India is punishable with imprisonment upto a sentence of 3 years, whereas, as per the Criminal Code of Australia, the same is punishable with imprisonment upto 10 years. Thus, there is a varied degree of severity attached to the same actus by different States.

Similarly, an impugned Act may be an offence in one State and not in another. For instance, "*adultery*" is no longer an offence in India, however, it is an offence as per the law prevalent in Bangladesh. In such a situation, a person who committed the offence of adultery in Bangladesh would not be extradited in case he is seeking Asylum in India, since it is not an offence in India.

The International Law does not recognize the "*right*" to seek extradition nor the "*duty*" to extradite a fugitive. The same is governed only by way of a treaty or arrangement between the States. However, in exceptional cases, extradition can be done even in absence of treaties and arrangements.[63] As has been, rightly, iterated by the Supreme Court of United States of America in the case of *Factor v. Laubenheimer* that "*The principles of International Law recognize no right to extradition apart from treaty while a government may, if agreeable to its own constitution and laws. voluntarily exercise the power to surrender a fugitive from justice to the country from which he fled... the legal right to demand his extradition and the correlative duty to surrender him to the demanding State exist only when created by treaty*."[64]

Lastly, it ought to be mentioned that the principle of *Non bis ibis idem* i.e. Rule against double jeopardy, also finds space in the realm of extradition. Though the principle does not find an express mention in the Extradition Act, the same is incorporated in the Constitution of India (Art. 20(2)[65]) and the Code of Criminal Procedure (Section 300[66]). Simply put, the principle states that no person shall be tried and convicted for the same offence more than once.

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[63] State of Madras v. C.G. Menon AIR 1954 SC 517
[64] Factor v. Laubenheimer (1993) 2880 US 276
[65] INDIA. CONST. art. 20 clause (2)
[66] The Code of Criminal Procedure, 1973, § 300, No. 2, Acts of Parliament, 1974 (India)