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Interface of Extradition with International Cooperation

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ABSTRACT

It is quite possible for a person to escape to another State after committing a crime in his own State. Cases like these are on a rise with the increases of air traffic around the world. Few recent examples in India could be Vijay Mallya and Nirav Modi who are yet to be extradited, however, the procedure of extradition is not that simple. There are various treaties involved which can be complex and takes a lot of factors into consideration. In the following paper, we will be looking at the meaning, procedure, all the factors into play regarding extradition and would also see how the countries cooperate internationally to suppress the crimes globally and attempt to secure international peace.

Keywords: *Extradition, Criminals, Treaties, Human Rights.*

I. INTRODUCTION

Extradition essentially means a procedure by which one state or nation formally requests another state or nation to hand over a person convicted or charged with a certain crime and is seeking or attempting to seek asylum in another State. The term "extradition has been derived from two Latin words namely *"ex"* and *"traditum"* which ordinarily means 'delivery of criminals', 'surrender of fugitives' or 'handover of fugitives' Extradition may also be defined as surrender of an accused or a convicted person by the State on whose territory he is found to the state on whose territory he is alleged to have committed, or to have been convicted of a crime.[2] According to Oppenheim extradition is the delivery of an accused or a convicted individual to the state where he is accused of, or has been convicted of a crime, by the state on whose territory he happens for the time to be.[3]

From the abovementioned definitions it is clear that in extradition there are two states involved, namely, the territorial state in which an accused or convicted is found and secondly, the requestion state, i.e., where the crime has been committed. The request for extradition from the requesting state is normally made through a diplomatic channel. The request of extradition of

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[2] Brownlie 'Principles of Public International Law', Sixth Edition (2003).
[3] 'International Law' Vol. I, Ninth Edition (1992) p. 949.

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a person distinguishes extradition from other measures such as banishment, expulsion and deportation where an undesirable person is forcibly removed.

II. MOTIVE OF EXTRADITION

There can be many reasons for the State to request other states for extradition as follows: -

1. Normally, a person cannot and is not punished or prosecuted in a State where he has fled away because these territorial States have lack of jurisdiction imposed upon them by some technical rules of criminal law. Criminals are therefore extradited so that their crimes may not go unpunished and the nations get the justice which they have been seeking.

2. We know about the saying 'prevention is better than cure'. This saying applies to extradition as well. This is because extradition acts as a warning to the criminals that they cannot escape punishment by fleeing to another State and it therefore has a deterrent effect. If individuals know that there is not a chance of escaping even if they flee to another country then the number of cases of criminals fleeing and extradition will also reduce.

3. Extradition also follows the principles of reciprocity. This simply means that if a State requests surrender of a criminal to another State today, may have to request the extradition of a criminal on a future date.

4. Another important factor which takes place in a criminal trial is the evidence as it is a well-established fact that a person cannot be convicted for a crime unless the evidence is proven beyond reasonable down unlike a civil case where preponderance of probability matters. Also, the State on whose territory the crime has been committed is in a better position to try the offender because the evidence is more freely available in that State only.

5. If a territorial State refuses the requests of the requesting State, then it becomes clear that the certain State accepts criminals as its citizens and does not extradite them, hence, it can be harmful for the citizens as the specified State might get filled with criminals, eventually causing chaos. Furthermore, extradition is done as a step towards achieving international peace and co-operation which further fulfils the purposes of the United Nations as provided under Para 3 Article 1 of the charter.

III. EXTRADITION: LEGAL DUTY OR WILL OF THE STATES

In modern times, a fugitive criminal is not surrendered in the absence of extradition treaties[4] and thus the State does not have a legal duty to surrender the fugitive criminal in the absence

[4] See Oppenheim Op. cit. p. 950; Arnold McNair, 'Extradition and Ex-territorial asylum' Vol. XXVIII (1951) p. 174-177

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of the treaty. The Supreme Court of the United States of America in Factor v. Labubenheimer[5] stated that: *"International law recognizes no right to extradition apart from a 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 has fled, and it has been said that it is under a moral duty to do so…. The legal duty to demand his extradition and the correlative duty to surrender him to the demanding country exist only when created by a treaty."*

A legal duty to surrender a criminal thereof arises only when treaties are concluded by the States and after formalities have taken place which are stipulated in the extradition treaties. Only in exceptional cases a State may extradite a person on the basis of reciprocity. However, this is done not because of a legal duty on their part, but because of reciprocity of courtesy.[6] However, in order to suppress international crime, it is necessary to punish the fugitives. Punishment may be given either by the territorial State or the requesting State. If a criminal or an accused has fled to another State after committing a crime in his own country it is an obligation of the territorial State either to extradite him/her or submit his/her case to its competent authorities for the purpose of prosecution in case, it does not extradite. Thus, a State has an obligation to adopt two possible courses, it must either extradite if it does not prosecute or it must prosecute if it does not extradite. The principle of extradition or prosecution is known as *aut dedere aut judicare.*[7]

Furthermore, the obligation of a State either to extradite or punish is set forth in a number of international treaties.[8] The obligation exists also as a part of customary International Law at

[5] 290 U.S. 276 (1993) p. 287, Also see Rauscher v. United State 119 US (1886) p. 407
[6] Starke's International Law, Eleventh Edition (1994), p. 318
[7] The obligation to extradite or prosecute has been recognised since the time of Grotious who was of the view that a State of refuge has a duty either to punish the offender or to surrender him to the State seeking his return. He postulated the principle of *aut dedere aut puniare* (either extradite or punish). In modern times the word *puniare* (punishment) has been replaced by *judicare* (prosecution) (See H.O. Agarwal 'Application of *aut dedere aut puniare* in combating international terrorism.)
[8] Genocide Convention, 1948; the four Geneva Conventions on Humanitarian Law, 1949 and their protocols of 1977; the Tokyo Convention on Offences and Certain other Acts on Board Aircraft, 1963; the Hague Convention for the Suppression of Unlawful Seizure of Aircraft of 1970; the Montreal Convention for the suppression of Unlawful Acts against the Safety of Civil Aviation of 1971; Convention on the Prevention and Punishment of crimes against Internationally protected persons including Diplomatic Agents, 1973; Conventions Against Taking of Hostages, 1979; Single Convention on Narcotic Drugs, 1961; Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; Convention for the suppression of unlawful acts against the Safety of Maritime Navigation, 1988; Convention against Recruitment, Use, Financing, Training of Mercenaries, 1989 and the Convention of Psychotropic Substances, 1971.
The principle was invoked by Belgium in questions relating to the obligation to prosecute or extradite [Belgium v. Senegal ICJ Reports 2012 (11) p. 446, para 58 and 59.] in its application instituting proceedings against Senegal 2009 before the International Court of Justice (further referred to as ICJ) by stating Senegal's compliance with its obligation to prosecute or extradite the former president of Chad, Hissen Habre to Belgium for the purposes of criminal proceedings. Belgium contended that under International Custom, 'Senegal's failure to prosecute Habre or to extradite him to Belgium violates the general obligation to punish crimes against humanity.

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least in certain categories of crimes such as war crimes, crimes against humanity, genocide, torture and terrorism.

IV. COMPULSION OF EXTRADITION TREATIES

The first and the foremost important condition of extradition is the existence of an extradition treaty between the territorial State and the requesting State. Some States like Belgium, United States and the Netherlands, require treaties as an absolute precondition.[9] However, this strict requirement of a treaty also acts as an obstacle to international co-operation in the suppression of crimes. Usually, the States do not tend to form treaties as these are lengthy processes and the negotiations also take ample amount of time and hence the criminals easily find safe haven in other countries. Therefore, the States should, as much as required, get involved in making treaties with as many States as possible to suppress the crime and bring about an international co-operation.[10]

Model Treaty on Extradition, 1990

In order to provide assistance to the States interested in negotiating and concluding bilateral extradition agreements, the General Assembly on December 14, 1990 adopted a Model Treaty on Extradition by adopting a resolution.[11] The resolution invited a number of States to take into account the Model Treaty on Extradition at the time of concluding extradition treaties or when they wish to revise the existing extradition treaties.

V. EXTRADITION IN ABSENCE OF TREATIES

A person may be extradited in exceptional cases in the absence of treaties on the basis of reciprocity between States which may contain assurance that the requesting State will act in good faith and the fugitive will receive a fair trial in the courts of the requesting State. Although such assurances may, themselves be in such terms as to constitute an international agreement,

[9] Quattrocchi, an Italian businessman and an accused in Bofors Scam could not be extradited to India from Italy in the absence of a treaty between the two countries. Negotiations for a treaty were initiated between the two countries in 2001 but a conclusion regarding the treaties hasn't been reached as of yet.

[10] India in the recent past has concluded extradition treaties with many countries including Canada (1987), United Kingdom (1992), Russian Federation (1998) United Arab Emirates (1999), United States of America (1999), Spain (2002), France (2003), South Africa (2003), Kuwait (2004), South Korea (2004), Australia (2008), Bangladesh (2013) and Thailand (2013). India has also made a proposal to Pakistan during the Home-Secretary level talks held in Islamabad in 2004 for the Indo-Pak extradition treaty so that criminals could be handed over to face trial but Pakistan rejected the Indian proposal by saying that the time has not arrived for such a step.

[11] Model treaty on extradition was annexed to the General Assembly Resolution 45/116 dated December 4, 1990. The Model Treaty consisting of 18 Articles includes the established principles of extradition, for instance, non-extradition of a person committing a crime of political nature, or military nature or if a person would be subjected to a torture or cruel, inhuman or degrading treatment or punishment. The model treaty also laid down the principles of double criminality, the rule of speciality, surrender of nationals, prima facie case and time barred crimes. Asian African Legal Consultative Committee also adopted a Model Convention of Asian African States as its fourth session in Tokyo in 1961 which contains 30 Articles.

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they do not amount to a formal treaty.[12] Such reciprocal arrangements are based on the concept of reciprocity and comity. The procedure of extradition based on reciprocal arrangements is sometimes known as rendition.

VI. DISTINCTION BETWEEN EXTRADITION AND DEPORTATION

When an offender is returning to another State in absence of an extradition treaty or any reciprocal arrangement, normally the Act is called as deportation. Extradition and deportation both are methods by which an alien[13] is required to leave the territory. However, extradition and deportation differ from one another as the former is primarily performed in the interest of requesting the State, while the latter is performed in the exclusive interest of the expelling State. Secondly, extradition needs consensual co-operation of at least 2 States, whereas deportation is a unilateral action apart from the duty of receiving State to accept its own national. Thirdly, extradition applies to criminal prosecutions only however, expulsion order may be issued to any foreign national on a number of grounds. Lastly, while extradition of a person takes place only on the request of another State, expulsion is an order of a State which prohibits the person to live inside a territory of the ordering State.

In practice, a person is deported to the State from which he has arrived in the deporting State. If such State refuses to accept, a person is deported to the State of his nationality. The home State of such a person has the duty to receive them, since a State cannot refuse to receive such of its subjects as one deported from abroad. If the deported person expresses to go to a certain State, which is willing to receive him, there should, in principle be no reason for the deporting State not to allow him to go there.[14] A person is deported on the basis of reciprocity. To deport an alien to a specified State has pretty much the same effect as deporting him to a State from which he has arrived.

VII. EXTRADITION OF POLITICAL OFFENDERS: A CUSTOM ADOPTED SINCE THE FRENCH CONSTITUTION, 1793[15]

It is a customary rule of International Law that political offenders are not extradited.[16] In other

[12] Shearer, 'Extradition without treaty', AIJL Vol. 49 (1975) p. 116.
[13] The term 'aliens' refers to those persons who live in a State other than of which they are the nationals. Alien has been defined under Article 2(b) of the **Draft Articles on Expulsion of Aliens** prepared by the International Law Commission. As an individual who does not possess the nationality of the State in whose territory that individual is present.
[14] Oppenheim op. cit, p. 946
[15] See Franck Moderne, *"Les aspects constitutionnels du droit d'asile"* (The constitutional aspects of the right of asylum) in The minutes of the symposium held on 11th 13th June 1992**,** *Les réfugiés en France et en Europe, quarante ans d'application de la Convention de Genève 1952-1992* (Refugees in France and Europe, forty years of the application of the 1952-1992 Geneva Convention);
[16] Westlake 'International Law', Part I Second Edition, p. 14

words, they are granted asylum[17] by the territorial State. During the days of monarchs, extradition of political offenders was very common. They used to prefer extradition so as to avoid intervention in the affairs of another State. But the practice underwent a complete change with the beginning of French Revolution. Perhaps for the first time, the French Constitution, 1793 under Article 120[18] made a provision for granting asylum to those foreigners who exiled from their home country for the cause of liberty. Later on, other States eventually followed the principles of non-extradition of the political offenders gradually. Indian Extradition Act, 1962 also lays down a similar provision under Section 31(a).[19] At present, non-extradition of political offenders has become a general rule of International Law and therefore it is one of the exceptions of extradition.

Basis for the Non-extradition of Political Offenders

The rule of non-extradition of the political offenders is based on many considerations which are as follows: -

1. The rule is based on elementary consideration of humanity. No State would like to extradite a person if he is not a criminal. If it does, it will not be in compliance with the law of natural justice.
2. If political offenders are extradited, it is feared that they would not be treated fairly. It is the duty of the territorial State to ensure safeguards to the surrendered fugitives for a fair trial in the requesting State. Since it is a difficult task, they are not extradited.
3. The rule also protects the political offender from any measure of extra-legal character which the requesting State might attempt to take against them.
4. The object of political offenders to take shelter in another country is not the same as those of ordinary criminals.
5. Political offenders are not dangerous for the territorial State as may be in the case of ordinary criminals.

[17] The word 'asylum' is Latin and derives from the Greek word *"Asylia"* which means inviolable place. The term is referred to those cases where the territorial State declines to surrender a person to the requesting State, and provides shelter and protection in its own territory.

[18] After the 1946 amendment of the French Constitution, Article 120 of it reads as under *"Any man persecuted in virtue of his actions in favour of liberty has a right to asylum within the territories of the Republic."*

[19] Section 31(a) of the Indian Extradition Act, 1962 reads as under : *"A fugitive criminal shall not be surrendered or returned to a foreign State if the offence in respect of which his surrender is sought is of a political character or if he proves to the satisfaction of the magistrate or court before whom he may be produced or of the Central Government that the requisition or warrant for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character."*

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Extradition of Political Offenders: The Exception of an Exception

On some occasions, fugitives take undue advantage of the principle of non-extradition of political offenders by posting themselves as political offenders. In order to check the abuse, an attempt was made to restrict the principle in certain cases. In 1856 Belgium introduced the *attentat* clause[20] in extradition law. Article VI of the Act provides that an attempt on the life of the head of a foreign government or of members of his family shall not be considered to be a political offence, when it in fact constitutes murder, assassination or poisoning. Some other European nations followed this practice[21] but the *attentat* clause has not been accepted as a general rule of International Law because sometimes the Head of the State may be titular Head. He may not be the most powerful man in the State. For example, the Queen of England or the President of India may not be as powerful as the Prime Minister.

At present, the political offence exception is no longer accepted in a number of serious crimes which are as follows: -

1. It is expressly excluded by some multilateral treaties notably the Genocide Convention, 1948 (Article VII)[22] and the Convention of Apartheid, 1973.
2. Political offence is not recognized as an exception to extradition in case of customary International Law crimes such as war crimes and crimes against humanity.[23]
3. States have excluded the political offence exception in the case of some purely localised criminal offences by the means of either bilateral or multilateral treaties.[24]
4. It has been held not to protect former government officials guilty of human right abuses.[25]
5. Multilateral treaties relating to hijacking, hostage taking, war crimes, torture, injury to diplomats and grave breaches of Geneva Conventions on the laws of war and armed

[20] 2004, U.N. Gupta The Human Rights: Conventions and Indian Law; By the end of nineteenth century the attentat clause became a general exception in making of extradition treaties**.** The 1933 Montevideo Convention on Extradition by its Article 5 incorporated the exception in nature of attentat clause in the general protection against extradition, already made available to the political offenders under Article 3(2).
[21] Article 4(2) of the Extradition Treaty between Germany and Turkey, 1930; Article 4(2) of the Extradition Treaty between France and Czecoslovakia, 1928 and Article 6 of the Extradition Treaty between Belgium and Poland, 1931**.**
[22] Article VII of the Genocide Convention states: *"Genocide, Conspiracy to commit genocide, Direct and Public Incitement to commit genocide, Attempt to commit genocide and Complicity in genocide shall not be considered as political crimes for extradition. The contracting parties pledge themselves in such cases to grant extradition in accordance with their laws and treaties in force."*
[23] See General Assembly Resolution 3074 (XXVIII) on Principles of International Co-operation in the Detention, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity.
[24] European Convention on the Suppression of Terrorism
[25] In the Matter of Extradition of Suares Mason 694, F Supp. 676 (N.D. Cal 1988) at 705.

conflict have seriously undermined the exception by requiring States either to prosecute or extradite despite the fact that they will normally be politically motivated.

Re Castioni Case

One of the leading cases regarding the issue of political offenders was decided by the British Court in Re Castioni.[26] In this case, Castioni who had returned to Switzerland from abroad, joined the revolutionary movement in the Canton of Ticinio located in Switzerland, and in the course of it, he committed the murder of Rossi, a member of the government. It was pleaded on behalf of Castioni in a writ of *habeas corpus* that his offence was a political offence for which extradition was not available. He claimed protection under Section 3 of the Extradition Act, 1870[27].

Lord Denham J. laid down that in order to bring the case within the scope of the Act, and *"for the offence to be political, it must at least be shown that the act is done in the furtherance of, done with the intention of assistance, as a sort of overt act, in the course of acting in a political manner, a political rising, or a dispute between two parties in the State as to which have Government in its hands….The question really is, whether, upon the facts, it is clear that the man was acting as one of a number of persons engaged in the acts of violence of a political character with a political object, and as a part of political movement and rising in which he was taking part…."*[28]

His extradition was refused on the finding that his motive for the act was political. The deciding factor for an offence to be considered as political, according to the court was that the act should have been committed in the course of a political struggle or disturbance during which two or more parties in the State are contending and each party seeks to impose the Government of its choice on the other. In other words, the act should be done against the established regime, by the other party, seeking to establish its own regime.

Re Meunier Case

In the case of Re Meunier[29] which came before the Court three years after the case of Castioni, the principle laid down in the case of Castioni was repeated. In Re Meunier, the petitioner was

[26] (1891) IQB 149.
[27] Section 3(1) of the Extradition Act, 1870 states "*A fugitive criminal shall not be surrendered if the offence in respect to which his surrender is demanded is one of a political character, or if he prove to the satisfaction of the police magistrate or the court before whom he is brought in habeas corpus, or to the Secretary of State, that the requisition for his surrender has in fact been made with a view to try or punish him for an offence of a political character*."
[28] (1891) 1 QB at p. 156 and 159.
[29] (1894) 2 QB 415.

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a French anarchist who was charged with causing explosions at a café and also in certain barracks in France, one of which resulted in death of two individuals.

Cave J. upheld his extradition and held, *"in order to constitute an offence of a political character, there must be two or more parties in the State each seeking to impose the Government of their own choice on the other, and that, if the offence is committed by one side or the other in pursuance of that object, it is a political offence, otherwise not. In the present case, there are not two parties in the State, each seeking to impose the government of their own choice on the other, for the party with whom the accuse is identified… namely, the parties of anarchy, is the enemy of all governments. Their effort is directed primarily against the general body of citizens."*

The principle laid down in Re Castioni and Re Meunier was followed by a fairly long time by other States as well. The Federal Court of the United States in 1894 in Re Etza[30] held that *"in order to bring an offence within the meaning of the words 'political character' it must be incidental to and form part of political disturbance."*

The Federal Tribunal of Switzerland in Re Pawan[31] and the Supreme Court of Brazil in Re Benegas case[32] also applies the strict principle laid down in the Castioni case. According to these decisions, an offence is considered to be political if it is directed against the State or the Constitutional order, or be otherwise 'inextricably involved in conditions disturbing the constitutional life' of the country. It should be committed by an organised movement to secure power in the State against the established regime. Thus, the political purpose must be directed against the government of the requesting State and be linked to an existing or contemplated struggle.

Negative approach of Re Castioni and Re Meunier cases

The approach in the abovementioned cases, to many, has been appeared to be too narrow and rigid. Many acts of individuals such as terrorist acts of personal vengeance or for gain and acts having an entirely local impact are excluded from the category of political offence. The above approach stresses that the entire object of the crime should be to overthrow the Government or be against the Government. Furthermore, the above view does not take into account the motive of the crime. An individual may fear not getting a fair trial from the Government of his own state on social, economic, religious or cultural grounds which are inextricably woven with the

[30] (1894) 62 Federal Court p. 972 at p. 999
[31] Annual Digest (1927-28) Case No. 29 p. 347
[32] Annual Digest (1948) p. 800

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policies of the Government. Such persons are not treated as political offenders according to the approach taken in the Castioni and Meunier cases.

Ex parte Kolczynski Case

The criticisms faced by the Castioni and Meunier cases perhaps prompted the court in Ex parte Kolczynski case[33] to amplify the meaning and scope of the term 'political offender'. In the present case, Lord Goddard C.J. deviated himself from the well-established principle set in the case of Castioni as it was also necessary on considerations of humanity to give a wider meaning to the term 'political offence'.

Cassels J. in the above case observed that the offences for which extradition was requested, were committed in circumstances, in which, if surrendered, the accused would be tried and punished for an offence of political character. He therefore stated *"political offence must always be considered according to the circumstances existing at the time when they have to be considered."* He further, after making the observations, added, *"it is submitted on behalf of men that if they should be extradited, they may not only be tried for the offences for which the extradition is requested, but they will be punished as for an offence of the political character, and that offence is treason in going over to the capitalistic enemies…they committed an offence of a political character, and if they were surrendered there could be no doubt that, while they would be tried for the particular offence mentioned, they would be punished as for a political crime."*

According to the abovementioned approach in the present case, it is not necessary that a crime should be committed by an organised party to overthrow a government and every membership of a political party was not regarded as necessary. Furthermore, it is to be noted that it is a duty of the court to see that the criminals are not allowed to go unpunished, but at the same time the court should also take into consideration of the fact that they are protected from legal processes of the requesting State.[34] The court should also see that there are substantial grounds for believing that the offender once extradited shall not be prosecuted to or in substitution of offences mentioned in the warrant. It would also be desirable if the Courts in different countries, with their different ideas of public order, examine the question of political offenders in each case on merits in the light of its facts. Due regard should be given to the prevalent

[33] (1955) 1 ALL ER 31. Also see Re Peyre, ILR (1955); p. 525. Re De Bernoville, ILR (1955) p. 527.

[34] For instance, Vijay Mallya has not been extradited to India from England because the Indian procedures might not suit the standards of living that the Englishmen require to extradite a businessman at the stature of Vijay Mallya and hence, he is currently getting asylum in London, England.

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political conditions and circumstances under which the crime has been committed.[35]

VIII. DOCTRINE OF DOUBLE CRIMINALITY

Doctrine of double criminality is a requirement for extradition in many countries. It essentially means that a crime must be an offence recognized in the territorial State as well as the requesting State for extradition to take place. A person by custom is not extradited until this condition is fulfilled. The doctrine appears to be based on the consideration that it would offend the conscience of the territorial State if it has to extradite a person when its own law does not regard it as criminal. The requesting State on the other hand would also not ask for the surrender of a person for those crimes which are not recognised in its State. Generally, a list of crimes is embodied in the treaties for which extradition is done.

The rule of double criminality has put a State into a rather difficult situation when it has to request another State for extradition in respect of those offences which do not find a place in the list of crimes embodied in a treaty. Therefore, it would be feasible if a general criterion is used to mention the crimes rather than mentioning each crime in a treaty separately. The Model Treaty on Extradition has laid down the general criterion under Article 2 by stating extraditable offences that are punishable under the laws of both the parties by either imprisonment or other deprivation of liberty for a minimum period of one year. This criterion would enable the States to extradite the offenders even for those offences which are not laid down in the treaty. This principle has been applied by major countries like France to extradite a person.

Extradition treaty between India and Canada concluded in 1987 has also laid down the above principle under Article 3(1) by stating *"An extradition offence is committed when the conduct of a person whose extradition is sought constitutes an offence punishable by the laws of both contracting States by a term of imprisonment of more than one year."* The extradition treaty between India and Britain concluded in 1992 also provides that extradition may be made for those crimes which carry the sentence of imprisonment for a year or more in both the countries. Supporting this, the treaty between India and U.S.A. of 1999 also provides under its Article 2 that extradition may be made for an offence if it is punishable under the laws of both the contracting State by deprivation of liberty, including imprisonment, for a period of more than a year. Extradition treaty between India and U.A.E., 2000 also provides under Article 2 that *"(a) persons accused of an offence punishable under the laws of both the contracting States by imprisonment for a period of at least one year or more; (b) persons sentenced by the courts of the requesting State with imprisonment for at least six months in respect of an extraditable*

[35] H.O. Agarwal 'Nature of Political Offence', Supreme Court Journal (1979) at p. 21.

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offence." Another treaty which was concluded between India and Russian Federation in 2000 also provides under Article 2 that *"extradition offence for the purpose of this treaty is constituted by conduct which under the laws of each contracting party is punishable by a term of imprisonment of at least one year."*

Apart from this, another complication or difficulty may arise in criminal cases which are punishable by death in the requesting State. The territorial State may hesitate to extradite such a person as it would offend its conscious if it has to extradite a person to whom death sentence would be provided while its own laws do not provide for death sentence for that specific offence. To avoid these complications, generally, the extradition treaties provide for assurance that if a death penalty is imposed on the fugitive by the requesting State, then, he/she shall not be provided with a death penalty. The extradition treaty between India and Canada of 1987 laid down under Article 6 that *"extradition may be refused when an offence for which extradition is requested is punishable by death under the laws of requesting State and the laws of the requesting State do not provide such punishment for constituting the offence, unless the requesting State considers sufficient that the death penalty shall, if imposed, not be executed."*[36]

In the case of Soering v. United Kingdom,[37] Soering after commiting a murder in the U.S.A., for which the punishment was a death sentence, fled to the U.K. where he was found guilty of manslaughter and not for murder. Soering argued that he should not be extradited to the U.S.A. in view of Article IV of the U.S.A.-U.K. Extradition Treaty which stated *"if the offence for which extradition is requested is punishable by death under a relevant law of the requesting party, but the relevant law of the requesting party does not provide for the death penalty in a similar case, extradition may be refused unless the requesting party gives assurances satisfactory to the requested party that the death penalty will not be carried out."* The British Embassy, in Washington, thereupon, asked for an assurance given in the form of a sworn affidavit by the Commonwealth Attorney for Bedford Court. Later, he was given the order for the surrender to the U.S.A. authorities. Furthermore, this decision was endorsed by the U.N. Human Rights Committee in Chitat v. Canada[38], wherein Canada extradited a person to California where he might be executed by gas asphyxiation, which can cause prolonged suffering rather than immediate death. It was observed by the committee that Canada has violated its obligations as under the International Covenant on Civil and Political Rights.

[36] Also, Article 1(1) of the Extradition Treaty between India and U.S.A. concluded in 1997.
[37] 28 ILM 1063 (1989).
[38] CCPR/C/49/D/469/1991: Also see Kindler v. Canada CCPR/C/48/D/470/1990.

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India has also been involved in such treaties. Abu Salem, an accused in 1993 Mumbai blast and an underworld don fled to Portugal from India. Initially, his extradition was refused by Portugal because the law of Portugal provided that no one should be extradited if that person is about to face a death penalty in the requesting State. However, later on, Portugal agreed to extradite Abu Salem to India when India assured that Abu would not be given a death sentence. Similarly, in 2007, the Delhi High Court allowed the extradition of Manindra Pal Singh to the U.K. with the condition that no death penalty should be imposed on him. Manindra Pal Singh was accused for the offences of kidnapping, raping and murder of a girl named Hannah Foster.

Prima Facie Evidence

Prima facie essentially means 'based on first impression'. There should be prima facie evidence of the guilt of the accused as usually, before a person is extradited, the territorial State must satisfy itself that there is prima facie evidence against the accused for which extradition is demanded. In the C.G. Menon case[39] the Madras High Court held that *"the need for offering evidence to show that prima facie the offender is guilty of the crime for which he has been charged by the country asking for extradition has been well recognized."*

The purpose for laying down the rule of prima facie evidence is to check fraudulent extradition. The territorial State also has to check if the demand is not motivated by any political reasons. This requirement is laid down in the national legislation of the State. Section 7(4) of the Indian Extradition Act provides for this requirement and in addition to this, States in their treaties require the requesting State to produce sufficient evidence to establish a prima facie case against the accused.

Rule of Speciality

The requesting State is under a duty not to try or punish the fugitive criminal for any other offence for which he has been extradited. Therefore, using this principle, most of the extradition treaties therefore provide the rule of speciality and guarantees are usually required before the extradition is granted. This protects the fugitives against extraditions which are fraudulent in nature.

The rule of speciality has been applied in Indian treaties as well. Indian Extradition Act, 1962 has incorporated this principle under Section 21. Also, Article 14 of the treaty between India and United Kingdom and Article 17 of the extradition treaty between India and the United States of America provides for the rule of speciality.

[39] AIR (1953) Madras, p. 729 at p. 763

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In United States v. Puentes,[40] it was stated by the court that *"the rule of speciality reflects a fundamental concern of governments that persons who are surrendered should not be subject to indiscriminate prosecution by the receiving government…".*

Another landmark case on the rule of speciality is United States v. Rauscher[41], wherein the accused was extradited on the charge of murder, but he was tried and convicted in the United States on a minor charge of causing cruel and unusual punishment on a member of the crew. The appeal made by him before the Supreme Court of the United States was quashed on the ground that unless otherwise provided for by the treaty, the prisoner could only be charged with the offence for which he was extradited unless he was given a reasonable time to return to the country which surrendered him.

Similar principle was applied in the case of Tarasov.[42] An accused can raise this principle when a treaty or a national law provides for this principle. In their absence, his plea cannot be entertained.

Another case of Daya Singh Lahoria v. Union of India where the petitioner was extradited form the U.S. in a writ petition stated before the Supreme Court that the criminal courts in the country have no jurisdiction to try in respect of offences which do not form a part of the extradition judgement by which he has been brought to this country and he can be tried only for offences mentioned in the decree. Justice Pattanaik held that a fugitive had to be charged only for the offences which were mentioned in the treaty. Hence, even Abu Salem could not be tried for TADA charges as he wasn't extradited for them. The Supreme Court of India rightly observed that *"We have to respect the order of the court of appeal and the Supreme Court of Justice of Portugal".*[43]

IX. EXTRADITION AND HUMAN RIGHTS VIOLATION

The initial international law regarding to extradition did not provide safeguards to the human rights, however, in the recent times, the safeguards to the human rights have been taken into consideration at the time of extradition treaties.

Several European nations like Germany, Switzerland and Austria have adopted the fact that if any extradition treaty is contrary to European Convention of Human Rights then these countries won't be a part of such treaties.

[40] 50 F. 3d 1567, 1572
[41] (1886) 119 US 407
[42] Order of the First-Class Magistrate (New Delhi) of March 29, 1963.
[43] Hindustan Times, February 12, 2012.

Although presently, the refusal of extradition on the ground of alleged violation of all Human Rights is not accepted by the States extradition is refused, in case of certain violation of Human Rights where there are substantial grounds for believing that if a person is extradited, he will be tortured or treated cruelly and if the requested State has substantial grounds for believing that a request for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality or political opinion, or that persons position may be prejudiced for any of these reasons and where a person, if extradited, would not get a fair trial in the receiving State.[44]

X. EXTRADITION WITH REFERENCE TO INDIA

The first time an Extradition Act was enacted in India was way back in 1902 which was prior to the enactment of the Extradition Act of 1962[45]. Initially, the extradition law in India was regulated on the basis of United Kingdom Extradition Act of 1870 which was for the whole British Empire which extended to India.

The Indian Extradition Act of 1903[46] was enacted to provide for more convenient administration in British India and to supplement the Extradition Act of 1870 and the Fugitive Offenders Act of 1881. The Act of 1903 continued to be in force in India even after India's independence from the British rule.

India prepared a list of forty-five pre-independence extradition treaties in 1956 which were stated to be in force.[47] Germany and Portugal had expressed the view that extradition treaties are not operative with India, it was regarded by India that the pre-independence extradition treaties with these States are still operative. When Abu Salem fled to Portugal, when it was suspected that Dharam Teja fled to France and when Quattrocchi fled to Argentina, India realised that it doesn't have an extradition treaty with any of these countries. Extraditiob of pre-independence treaties was not pressed by India. It prima facie appears that India itself is not quite sure as to which pre-independence treaties are operative. Therefore, India has faced many problems regarding the Extradition of its fugitives.

Presently, India has extradition treaties with 47 countries and extradition arrangements with 9 countries and few of those treaties are pre-independence treaties. Since the 21st century, more

[44] Article 3 of the U.N. Model Treaty on Extradition lays down that extradition should not be granted *"if the person would not receive the minimum guarantees in criminal proceedings as contained under Article 14 of the International Covenant on Civil and Political Rights."*
[45] Act XXIV of 1962
[46] Act IV of 1903
[47] Lok Sabha Debates, 12th Session, 1956, Appendix 4, Annex No. 42, cited in H.O. Agarwal, 'Succession to Extradition Treaties, Supreme Court Journal, (1977) p. 53 at p. 59.'

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than 70 fugitives have been extradited from other countries for crimes of terrorism, murder, fraud, etc. India also extradited more than 50 persons to other States.

XI. CONCLUSION

The basis of any law is to follow morals and ethics, rules and regulation so that the society can be governed peacefully. The law of Extradition which came into place in at around the 18th century has gone through numerous changes and has been following different customs and even acknowledges the human rights of fugitives. Every law in the world looks to punish fugitives and criminals, however, the law of extradition and the extradition treaties among various States aim to punish the criminals in such a manner that their human rights should not be violated. Even the living conditions in prisons of different States is taken into consideration showing how important the human rights are to the international organizations such as the United Nations itself, yet, extradition has become a great step towards suppression of crime and does not allow any fugitive to just escape punishment and settle in another territorial State. The law of extradition is growing at a rapid pace and we can only hope that all the States form treaties with as many States as possible with regards to extradition and have smooth and fluent international cooperation for the benefit of the society at large.

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