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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

A STUDY ON NEW PROBLEMS OF EXTRADITION IN MODERN UNIVERSAL ERA

AUTHORED BY - DR. BOREGOWDA S.B¹.

Abstract:

Human being has peculiar features such as power of thought, speech and choice. These features are not seen in any other animals. But the ordinary person attributes these characteristics to God, angels, devils and so forth. In uncivilized society there was no criminal law. The person attacks either surrendered or over-powered his opponent. "A tooth for a tooth, an eye for an eye, a life for a life" is the indication of criminal justice. As time advanced, the injured person agreed to accept compensation, instead of killing his enemy. Such a system gave birth to ancient criminal law. In India criminal jurisprudence came into existence in the period of Manu. But modern criminal law was developed in India during the period of British administration rule. They enacted different types of criminal law including Indian Penal Code-1860. In modern era crime is treated as an evil in the society. Everyone has the right to enjoy his freedom and property in lawful manner, but no one has the right to violate the rights of another. Every state or authority has the right to restrict the rights and freedom of others. Crime caused damage not only to individual and affected to whole community. In case of crime, State or legal authority has the power to punish the criminals. Through by punishment only we can change the conduct or behaviour of people, and it will create fear in the minds of individuals. The aim of this article is to find out the new problems in universal era regarding extradition.

Generally, crime is an offence punishable by a State or other authority. In *Mohd. Shahabuddin v. State Bihar*², Supreme Court Judge Dalveer Bhandari has said, "Every criminal act is an offence against the society. The crime is a wrong done more to the society than to individual. It involves a serious invasion of rights and liberties of some other person or persons. It means crime is not only affected to particular person but it is against the whole society and also grave attack on rights and freedom of the people. Crime is an acute form of deviance which means digressing from what it is considered normal. Human behaviour in any society is determined

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² (2010)4 SCC 653

by four major external factors and these are culture, power, economy and the law”.

- 1) Fugitive offender is available for two or more States.
- 2) Discretionary power of the requested State.
- 3) Delay in extradition proceedings.
- 4) States do not have extradition treaty with all the States in the world;
- 5) No State can be prevented to give asylum to fugitive Criminal
- 6) The effects of War on extradition treaties.
- 7) Extradition treaties and State Succession;
- 8) Dilemma in bearing the expenses of extradition proceedings.
- 9) Property of fugitive criminal belongs to requesting State.
- 10) Lapse of Time.
- 11) Re-extradition to a third State.
- 12) Failure to produce sufficient evidence.

(1) **Fugitive offender is available for two or more States:** if fugitive criminal is available for two or more States, then what is the procedure to be followed by the requested State. This is one of the present contemporary problems of extradition, because which State received the criminal from demanded or requested State, whether that State has the right to transfer or surrender or extradite to another State or not. It means if fugitive criminal is available for two or more States, which State received the fugitive offender first, whether that State has the right to transfer or surrender or extradite the criminal to other States without prior permission or consent of which State surrendered the criminal (requested State). Section-30 of the Indian extradition Act, 1962 provides that if requests received from two or more States for the extradition of same fugitive offender for the same or different offence, Government will think extradite the fugitive for which State³. This provision gives complete power to Central Government to decide for which State fugitive offender is to be extradited or surrender because if requested State received more than one request from different States. Treaty between India and Russia Federation⁴, United Kingdom⁵ and United States of America⁶, contracting parties approved that requested State received more requests from Treaty State and other State for

³ Sect-30 of the Extradition Act, 1962 provides that —If requisitions for the surrender of a fugitive criminal are received from more than one foreign State, the Central Government may, having regard to the circumstances of the case, surrender the fugitive criminal to such State or country as that Government thinks fit.

⁴ Art-13 of the Extradition treaty between India and Russian Federation, 2000

⁵ Art-15 of the Extradition treaty between India and United Kingdom, 1993

⁶ Art-15 of the Extradition treaty between India and United States of America, 1999

extradition of same fugitive for either for the same offence or for different offences, requested State has the power to decide as to which State the fugitive offender is to be surrendered. But in other treaties like treaty between India and Bulgaria⁷, Poland⁸ and Ukraine⁹ contracting parties agreed that if requested State received more request from more States for extradition of same criminal, then requested State will decide on the basis of nature of crime, magnitude of offence, nationality offender, place of commission offence and sequential order of requests, etc. For example if 'A' committed a crime in 'X' and 'Y' States and he took shelter or asylum in 'Z' State. Then these two States request to 'Z' State to extradite 'A' for his crime. When request is received by 'Z' State, it will decide to extradite 'A' on the basis of nature of his crime. The above point show that this types of rule and practice gives full discretionary power to requested State, it can extradite the criminal to any State according to its wish. Therefore universal laws are essential for extradition of fugitive to remove the ambiguity. After receiving the fugitive criminal from abroad, then extradition requests made by third State for same fugitive offender, whether former requesting State has the power to extradite the criminal or not. Regarding this issue without the consent of the requested State (State extradited), at first which State extradited the fugitive offender it has to give its consent otherwise requesting State shall not be surrendered. For example, "A" committed a murder in India and took asylum in Canada. On the requests of Government of India, Canada State handed him to India. After, received the fugitive from Canada, State of Nepal requests the Government of India to surrender of "A" for offence of murder. But according to present rules and practice Government of India cannot extradite him to Nepal. Because without consent of State of Canada Government of India cannot surrender or extradite. Therefore, universal law is essential because if first State and third State did not have good relations with each other, then it's very difficult for third State to get the criminal from Second State. Otherwise fugitive criminal can get the chance to flee or escape from the punishment. Request from more than one State for extradition of criminal, criminal has no choice of selecting a nation of request States. But criminal can appeal to higher Court if he is not satisfy the decision of lower court. The Treaty between India and Tunisia, 2004 also provides certain factors which are to be taken into consideration by the requested State for determining as to which requesting State fugitive criminal is to be extradited to in case of concurrent requests. Clause 2 of Article 9 of the Extradition Treaty between India and Tunisia, 2004 provides the following factors:

⁷ Art-13 of the Extradition treaty between India and Bulgaria, 2008

⁸ Art-12 of the Extradition treaty between India and Poland, 2008

⁹ Art-15 of the Extradition treaty between India and United Kingdom, 2008

- (a) If the requests relate to different offences- the relative seriousness of the offences;
- (b) The time and place of commission of each offence;
- (c) The respective dates of the request; and
- (d) The nationality of the person.

The various treaties entered from time to time clearly show that the requested State considers the gravity of interest, the place and time of commission of offence, the territorial jurisdiction of requesting State, the effect of the offence on the security, defence, citizens and property of requesting State, etc.

(2) Discretionary power of the requested State: In the modern era one of the contemporary problems of extradition is discretionary power of the requested State. When there is no universal law for extradition, then there is no obligation on requested State to extradite the fugitive offender. Therefore, it is a discretionary power of the State to surrender or not. The Extradition Act, 1962 gives very wide powers to Central Government to stop the proceedings or release of the fugitive at any stage before arrest or after arrest or even after conclusion of inquiry. Section 29 of the Indian Extradition Act, 1962 confers discretionary power to Central Government to discharge any fugitive criminal. This section provides that If it appears to the Central Government that by reason of the trivial nature of the case or by reason of the application for the surrender or return of a fugitive criminal not being made in good faith or in the interests of justice or for political reasons or otherwise, it is unjust or inexpedient to surrender or return the fugitive criminal, it may, by order, at any time stay any proceedings under this Act and direct any warrant issued or endorsed under this Act to be cancelled and the person for whose arrest the warrant has been issued or endorsed to be discharged.

Section 29 of the Indian Extradition Act, 1962¹⁰ confers power on the Central Government to release the fugitive criminal in case it finds that it would be unjust or unfair to surrender or return a fugitive criminal to the requesting State. Central Government can discharge the fugitive criminal if the nature of offence has political character. Sec-5 of the Indian Extradition Act openly indicates that when a foreign State requested to Government of India for surrender of criminal, then Government of India order a Magistrate to enquire but it's not an obligatory on Government to orders Magistrate on the acceptance of such request. It means the whole discretionary power vested in central Government to act on such request or not. In modern era

¹⁰ Sec-29 of the Extradition Act, 1929 provides Power of Central Government to discharge any fugitive criminal.

the decision to extradite a person purely depends on political will. Therefore, even in good case against the person also the requested State refused to extradite because State has an unbound right. Extradition law is reasonably different. Because treaty confers a right on contracting States to ask that persons who alleged to have committed certain specified crimes in their territory or who have already been convicted of those offences by their Courts be handed over to them for trial or sentence. But despite this the Government of India is not bound to comply with the request and has an absolute and unfettered discretion to refuse.

3) Delay in extradition proceedings: delay in extradition proceedings is also one of the contemporary problems of extradition. In extradition matter there is no time duration for completion of extradition proceedings. For example Vijay Vital Malya, Nirav Deepak Modi cases are the classical examples for this matter. When there is no time limitation for completion of extradition proceedings, then it gives a chance for criminal to flee from the punishment or criminal can destroy the evidence or proof or document. Therefore, to remove this lacunae or difficulties or problem, universal law is essential. India has signed mutual extradition agreement with 44 countries and has extradition engagements with 11 countries.¹¹ Extradition agreement means a treaty [agreement) made by India with a foreign State relating to the extradition of fugitive criminals¹². As far as extradition arrangements concerned the States decide to help reciprocally in “legal procedures” without any required agreements. For example: if State with Ivory Coast, India has a treaty, the State of Ivory Coast will act according to the provisions enshrined in the treaty when a fugitive flees from India to State of Ivory Coast. If India has arrangements, the criminal may or may not arrest depending upon the municipal laws. If arrested, he may be surrendered as per the present international regulations only. Grant of extradition and procedure are generally matters of national law and therefore, there is no uniformity in them. From 20-02-2002 to as on 31-03-2019 more than 74 persons extradited from foreign country to India¹³. Overall 26 years United Kingdom has extradited to India the only person is Samirbhai vinubhai Patel. He was wanted in one of the 2002 Gujarat riots cases and Extradition has happened in October 2016. India and U.K. signed extradition treaty in 1992¹⁴. Since 2002 India requested State of United Kingdom to extradite 28 fugitives but UK

¹¹[http://www.mondaq.com/india/x/710482/Crime/Indian Extradition law process for seeking Extradition of persons from foreign States](http://www.mondaq.com/india/x/710482/Crime/Indian+Extradition+law+process+for+seeking+Extradition+of+persons+from+foreign+States) date on 28/12/2018 at 3.20 p.m.

¹² Sec-2(d) of the Indian Extradition Act, 1962

¹³ [https:// www.mea.gov.in/to India.htm](https://www.mea.gov.in/to+India.htm). date on 19/06/2019 at 11.45 am

¹⁴ [https:// www. Indiatoday.in /India/story/ vijay.malya-extradition-case-1301201-2018-07-31](https://www.Indiatoday.in/India/story/vijay.malya-extradition-case-1301201-2018-07-31). Date on 19/06/2019 at 11.55 am

extradited only one person in October 2016 is Samirbhai vinubhai Patel. In *Vijay Malya case*¹⁵ he was born on 18th December 1955. He is an Indian corporate person and also a former member of the State Council of the Parliament of India. He was elected two times as a member of State Council of the Parliament of India. His father was also a great businessmen & his name Vital Malya. In 1983 his father died. At the age of 28 he became the chairman of UB group (United Breweries Group). Since then, the UB group has developed into worldwide business of above sixty companies, with a yearly income which increased 64% within fifteen years in 1998-1999. He consolidated the various companies under an umbrella company, "UB Group". Then he focused on different business like alcoholic beverages, Berger paints, Best and Crompton, Mangalore Chemicals and Fertilizers, the Asian age newspapers, film magazine and Bollywood magazine in zool. Kingfisher beer has a more than 50% market share in India and it is available in more than 50 States. It is one of the leading bear company in international market. Under the chairman of Vijay Vital Malya United Spirits Ltd, (one of the leading company of UB group) attained the land mark in 2012 and becoming the second largest Spirit Company in the world. In Feb 2015 when he involved in Financial Scandal, forced him to resign as chairman of United Spirits Ltd.

In 2005 Vijay Malya established Kingfisher Airlines. But due to Kingfisher Airlines finally he became bankrupt and closed the KFA (Kingfisher Airlines). In October 2013, he did not pay the salaries to its employees more than 15 months. When he failed to repay the loan to bank, he was suspected of being an "intentional defaulter or non-payer" under Indian laws, including charges of money legalizing, misuse, etc. in this regard group of Banks move towards Supreme Court of India on march 2016 to prevent Vijay Malya from going foreign State because he or his companies have failed to repay the debt amount. But according report of Public media already he left the State of India. In 2016, 13th March High Court of Hyderabad issued or delivered a non-bailable warrant against Malya for his arrest, but his counsel appears before higher Court against such warrant because he was in London at the time. Even Mumbai Special Court also issued a non-bailable arrest warrant against the Vijay Malya. This was issued by the special Court on the request made by the ED (Enforcement Directorate) on 15th April, 2016

¹⁵ [https:// www. Indiatoday.in](https://www.indiatoday.in)> world on 09-10- 2019 at 4.10pm

under the provision of Sec-3¹⁶ and 4¹⁷ of the Prevention of Money laundering Act, 2002 (PMLA). There are several accusations against him that he transferred Rs 4,000/- Crore to tax havens. The ED (Enforcement Directorate) and Reserve Bank of India have hurled an enquiry into the handover of Rs.4000 crore from USL (United Spirits LTD) to the British Virgin Islands in early 2007 by the company before it was taken over by Diageo in 2012¹⁸. Ministry of External Affairs cancelled Malya's Passport on 24th April, 2016. The ED (Enforcement Directorate) temporarily attaches his assets and properties due to unpaid of loans totalling Rs 807 on June 2016.

On 3rd September 2016 again ED issued Second attachment order for Malya's assets because he failed to repay the loans (Rs 6,630/-Crore). Overall ED has attached a total of Rs 9661 crore worth of properties of him and Kingfisher. Till now it is the history of ED regarding asset attachment of assets made under the provisions of prevention of Money laundering Act, 2002. Even ED also requests to the State of US, UK and Europe to attachment of Malya's 10 properties in their States. The CBI (Central Bureau of Investigation) also has charged Vijay Malya under the provisions of Sec-120(B)¹⁹ and 420²⁰ of the Indian Penal Code and Sec13

¹⁶ Section 3 of the Prevention of Money Laundering Act-2002 provides Offence of money-laundering. It means Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering.

¹⁷ Sec-4 of the Prevention of Money Laundering Act-2002 provides Punishment for money-laundering. It means Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine which may extend to five lakh rupees:

¹⁸ <https://www.business-standard.com> dated on 28-03-2020 at 1.02pm.

¹⁹ Section 120(B) of The Indian Penal Code provides Punishment of criminal conspiracy.—

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]

²⁰ Section 420 of the Indian Penal Code provides Cheating and dishonestly inducing delivery of property. It means Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(1)(d)²¹ and 13(2)²² of the Prevention of Corruption Act 1988. Relation to such allegations, on behalf of the authorities of India UK Metropolitan Police Extradition Unit arrested Vijay Malya on 18th April 2017 and he was released on bail. Again he was arrested on October 3rd 2017 in London on Money laundering case and he was released on bail. When Government of India requests to London Government for extradition of him on the reason of money laundering, fraud, cheating, etc. then this case came before Westminster Magistrates Court. At last Court passed an order to UK Home Secretary to extradite Vijay Malya to India. Against the order Westminster Magistrates Court he appeals to UK High Court. But UK High Court rejected the plea filed by Vijay Malya against the order for extradition or surrender and however, the Court rejected the argument of Vijay Malya that he will not get fair trial in India. On 8th April, 2019 the UK home office spokesperson said UK High Court rejected his application against extradition order and he may renew his application to the Court. On July 2nd, 2019 Royal Court of Justice in London gives massive break to alcohol magnate Vijay Malya which admits his appeal against the order of extradition to India. In a main obstacle, liquor tycoon Vijay Malya on 14th May, 2020 lost his application seeking leave to appeal in the UK Supreme Court, setting a 28 day clock on extradition proceedings. It marks a big legal blow to High Court appeal against an extradition order to India on charges of fraud and money laundering related to unrecovered loans to his now-defunct Kingfisher Airlines. On 20th April, 2020 High Court dismissed appeal against West Minister Magistrates' court extradition order certified by the UK home secretary. It sets the 28-day, with in which the extradition must be carried out and Malya can also move to ECHR within six months from the date on which the final decision was taken to prevent his extradition criminals²³. But he lost his opportunity to appeal to European Commission on Human Rights.

In *Nirav Modi case*²⁴ is also one of the good examples for this contemporary problem. Nirav Modi was born in Palanpur, Gujarat on 27th February, 1971. He is an Indian entrepreneur. From

²¹ Section 13(1)(d) in The Prevention of Corruption Act, 1988 provides if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest;

²² Section 13(2) in The Prevention of Corruption Act, 1988 provides any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

²³ <https://www.news18.com/India-on-09-10-2019-at-4.22pm>.

²⁴ <https://www.outlookindia.com/magazine/story/Nirav-modi/299825> on 10-10-2019 at 12.45pm.

several years his ancestres (family) has been in the diamond business. At the age of 19, he and his father Deepak Modi went to Mumbai to work in his uncle's business Mehul Choksi, he is the head of the group of Gitanjali. It is a wholesale jewellery company with more than 4000 stores in India. After completion of his study in France, he came to India in 1989 and started diamond business in the name of Firestar in 1999. In 2002 on a contract basis his company started manufacturing Jewellery. In 2005 he encroached Fredrick Goldman and in 2007 he captured sand berg and sikorski and A. Jaffe in the USA. In 2010 he opened diamond store in New Delhi in his name and other 17 diamond Store opened in all over the world. His first flag ship store was opened by Nirav Modi in 2014 in New Delhi and again established another one Store in Mumbai. Nirav Modi launched university with Stores in USA, Hong Kong and MGM Macau. By 2025 his plan is to establish 100 boutiques wholesale stores throughout the world or universe. Therefore he did India's biggest banking fraud and he defrauding a bank of more than 13,600 crore (US\$ 1.8 billion). He took loan from Union Bank of India (UBI) and Punjab National Bank (PNB). In 26th September, 2018 UBI (Union Bank of India) has sued against economic Fugitive offender and billionaire jeweller Nirav Modi in a Hong Kong High Court. UBI (Union Bank of India) claimed that Nirav Modi did big financial Scam in India. At the time of taking financial loan, he assured two loans made on 21st October 2011 to Firestone trading private and 15th November 2011 to Firestar Diamond. The bank claimed that Nirav Deepak Modi wants to pay more than \$5.49 million with interest when his two firms fail to repay the loan. To develop his business in all over the world, he took loan 11,000 crore from Punjab National Bank (PNB). In this scandal two official of PNB (Punjab National Bank) were also alleged to be involved. Due to his fraudulent act Punjab National Bank suffered potential loss.

On complaint from PNB (Punjab National Bank) in February 2018 Central Bureau of Investigation (CBI) conducted investigation of Nirav Deepak Modi. In 2018, May the Enforcement Directorate (ED) and Central Bureau of Investigation have registered two FIRs (First Information Reports) each to probe the case. Before lodging criminal case against Nirav Deepak Modi and Mehul Choksi, both parties left India State. After this incident ED (Enforcement Directorate) attached the properties of Nirav Modi and Mehul Choksi. The ED (Enforcement Directorate) had registered a money laundering case against Nirav Modi and others on February 15, 2018 under the provisions of PMLA, 2002 (Prevention of Money

Laundering Act-2002) and CBI registered an FIR under Sections 120(B)²⁵ and 420²⁶ of IPC (Indian Penal Code) and Section-13(1)(d)²⁷ and 13(2)²⁸ of Prevention of Corruption Act, 1988. In June 2018 he applied to UK (United Kingdom) Government for political asylum, when this matter known by Government of India and when he was in London, Government of India requests to UK Government to extradite Nirav Modi for his wrongful or fraudulent act, on March 20th 2019, Nirav Deepak Modi was arrested in London after a warrant issued against him. On May 31st 2019, Nirav modi applied for bail but it was rejected and his custody was extended till June 27, 2019. Again he presented a second bail application before high Court of UK. But UK High Court rejected his six bail application and till today he is in prison²⁹. At present there is no limitation or duration for extradition proceedings. When delay happened for extradition matter, there is a chance for fugitives to destroy the proof, evidence and document and flee from the punishment. In case if Nirav Deepak Modi escaped or ran away from the UK and took asylum in another State, then again new extradition proceedings will start. Therefore to avoid all these contemporary problem universal extradition law is essential and it should be followed by all the States in the world. No state can compel to another State to extradition of fugitive because each State is Sovereign within its territory therefore to remove this ambiguity, universal law is necessary and it should be passed or enacted by United Nation.

²⁵ Section 120(B) of The Indian Penal Code provides Punishment of criminal conspiracy —

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

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²⁷ Section 13(1)(d) in The Prevention of Corruption Act, 1988 provides if he,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest;

²⁸ Section 13(2) in The Prevention of Corruption Act, 1988 provides any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

²⁹[https://economictimes.indiatimes.com/news/politics-and-nation/chronology-of-niravmodis-case/articlesshow/68636493.cms?from=order](https://economictimes.indiatimes.com/news/politics-and-nation/chronology-of-niravmodis-case/articleshow/68636493.cms?from=order) on 15-10-2019 at 12.50pm

(4) States not to have extradition treaty with all the States in the world: in modern era every State is a Sovereign within its territory and no State shall not intervene in the internal affairs of other State. It is discretionary powers of the State to have extradition treaty with other States. Therefore, now a days a State does not have extradition treaty with all the States in the world. One of the main essential conditions for extradition is States should have extradition treaty with each other, if States do not have extradition treaty with each other, then the question is how former State can bring back the fugitive criminal. Therefore, States should have extradition treaty with each other, and then only fugitive offender cannot flee from the punishment. At present numerous States accepted that without extradition treaty fugitive criminal cannot be extradited. For example, In Dharam Teja case³⁰ it was proved that in case of absence of Treaty, State will not extradite the criminal. He was a managing director of Jayanthi Shipping Corporation. It was under the control of Union of India. There were several allegations against him that he had committed misusing and bungling of cores of rupees. The Government of India started criminal proceedings against him. Smelling this, he fled from one country to another country. At one Stage, he was in State of Ivory Coast. Coming to know this, the Indian Government requested Government of Ivory coast to extradite him, but it refused to extradite him because there is no extradition treaty or bilateral treaty between India and Ivory Coast. Latter he fled to England. India requested England to extradite him. India and England have extradition treaty to surrender the criminal and the evidence produced by State of India and England conducts a trial with the help of Magistrate. On the basis of what the report submitted by Magistrate, then England transfer the Dharam Teja to India. Later in India, Dharam Teja was prosecuted and punished. Above the facts shown that treaty will create a right for State to demand for extradition. Therefore, State should have extradition treaty with other States. Regarding this universal law is necessary, and only through that universal law compel all the States should have extradition treaty. Otherwise it's very difficult to extradite and punish the criminal.

(4) No State can be prevented to give asylum to fugitive Criminal: Asylum, in international law, the protection granted by a State to a foreign national against his parental State. The person for whom asylum is established has no legal right to demand it, and the sheltering State has no obligation to grant it. Every State is independent, sovereign and supreme in its territory. It can exercise its sovereignty over its people and its territory. At the same time no State shall interfere

³⁰ 1972 CrLJ 127

in internal affairs of the other State. State can provide asylum or shelter or refuge to any person who comes from foreign State. It means it is a right of every State to provide asylum for national of other State. United Nation Organization initiated first declaration on Human Rights on December 10, 1948, it is popularly known as UDHR (Universal Declaration on Human Rights). Through this declaration UNO confirmed that asylum is shelter established by a State to a foreign national in contradiction of his home State. But the individual for whom refuge is established has no lawful right to request it, and which State granted the Asylum, it has no duty to grant it³¹. “Everyone has the right to seek and enjoy in other countries asylum from prosecution”³² is preserved in the United Nations Universal Declaration of Human Rights of 1948 and reinforced by agreement connecting to the Status of Refugees, 1951 and protocol relating to the Status of Refugees, 1967. At present States grants asylum to alien, who is reluctant to go back to his home State because he has grieved earlier harassment or has a well-created anxiety of upcoming oppression on account of race, religion, nationality, membership in particular social group. Even States also provide asylum for political criminals. For example *Dalai Lama*³³ got political asylum in India in 1959 because when State of China acquired the territory of Tibet and added to its territory. The 14th Dalai Lama was born in Taktser, Amdo, Tibet. He was appointed as successor of 13th Dalai Lama in 1937 and recognised as a religious leader of Tibet before the public in 1939. Many years war between Tibet and China, State of China declared that Tibet is a part of its territory in 1959. China acquired the territory of Tibet, and then Dalai Lama and its followers came to India and took Political Asylum. Even today he is enjoying asylum in India even though against the interest of China. Sometimes criminals took asylum in abroad, and then no State can raise the objection regarding this. Because it is an internal issue of India and it is a right of every State to grant shelter or asylum to anyone. At the time of granting asylum no State thinks that he is a political criminal or criminal or not. When requesting State requests to requested State to extradite the criminal then requested State is necessary to follow several procedure (extradition procedure has been discussed detail in chapter-5).

(5) Dilemma in bearing the expenses of extradition proceedings: dilemma in bearing the expense of extradition proceedings is also one of the contemporary problems in past and present because the expenses in connection with extradition proceedings are very expensive. When

³¹ <https://www.britannica.com>topic> on 16-09-2019 at 4.57pm

³² Art-14 of Universal Declaration of Human Rights of 1948

³³ <https://time.com/3742242/dalailama-1959> on 18-09-2019 at 5.50am

extradition proceedings are very expensive, then requesting State thinks thousand times before make a request to requested State or where fugitive offender physically presents. Because, in some types of treaties, expenses for extradition proceedings should be borne by requesting State and in another type of extradition treaty, expenses for extradition should be borne by both contracting parties (requested and requesting State). Regarding this there are several rules and contradictory issues on this matter at present. Opinion of many international reputed scholars and under the laws of many nations provide that all cost and expenses connected with extradition proceedings (witness fee, document translation, accused in prison and transportation, etc.) shall be borne by the requesting State. Related to expenses for extradition now a days States adopted their own municipal laws and makes a treaty. Related to expenses States have adopted different types of conditions and terms in extradition treaty. Sometimes contracting States may agree that all the expenses for extradition proceedings shall be borne by requesting States. But in some other type of treaty contracting parties agreed that expenses regarding extradition shall be borne by requested State except translation of document and transportation of fugitive. It means expenses regarding translation of document and transportation of fugitive shall be borne by requesting or demanding State. When States thought that cost or expenses of extradition proceedings are very high, then States are not interested in extradition of criminal. Before us one question is whether expenses for initiating procedure for asserting a criminal in a requested State borne request State or not. Generally expenses for initiating procedure for asserting a criminal in requested State shall be borne by requested State only, because in extradition treaty between India and Republic of Korea, both States agreed that requested State shall meet the cost of any proceedings in its jurisdiction arising out of a request for extradition³⁴. The requested State shall bear the cost incurred in its territory in connection with the arrest and detention of the person whose extradition is sought, or the seizure and surrender of property³⁵. In extradition treaty between India and Nepal, 1953 both States acknowledged that the expenses of apprehension, detention or surrender of accused person should be borne by the requesting State³⁶. Even in extradition treaty between France and Togolese Republic, 1963 both States agreed that the expenses related to extradition proceedings should be borne by demanding State³⁷. Treaty between India and Poland, 2008, both the contracting parties decided that demanding State shall bear the expenses of extradition

³⁴ Art-17(1) of the extradition treaty between India and Republic of Korea, 2005

³⁵ Art-17(2) of the extradition treaty between India and Republic of Korea, 2005.

³⁶ Art-10 of the extradition treaty between India and Nepal, 1953.

³⁷ Art-61 of the extradition treaty between France and Togolese Republic, 1963.

proceedings including translation of documents and transportation of fugitive³⁸. But in treaty between India and Russian Federation, 2000³⁹ both States approved that all expenses related to extradition proceedings shall be borne by the contracting party in whose place the same accrued. In extradition treaty between India and Republic of South Africa, 2007⁴⁰ both States agreed that the requested or demanded State shall meet the all expenses/cost of extradition proceedings and it bears the expenses regarding maintenance in custody of the person until extradite or surrender to the demanding State. But requesting State should bear all the expenses incurred in conveying the accused person from the area of demanded State. In treaty between India and Kingdom of Spain, 2003⁴¹ both States decided that expenses incurred in the area of the demanded State by reason of surrender shall be borne by that State and in case of transit shall be borne by demanding or requesting State. In treaty between India and USA, 1999⁴² both States acknowledged that requesting State should bare the expenses related to translation of documents the transportation of accused person from the territory of requested State and requested State should bear all the expenses regarding extradition proceedings. In a treaty between India and UAE, 2000⁴³ both States agreed that contracting parties shall mutually bear the expenses related to extradition proceedings but transportation documents should be borne by requesting State and both States approved that in case if requesting State fail to prove the offence of person, then requesting State should bear all expenses of the return of person to requested State. But in extradition treaty between India and Ukraine, 2008⁴⁴ both contracting States accepted that what the expenses are incurred by requested State related to extradition proceedings should bear by the requesting State. Extradition proceedings fee includes translation of documents, transit of a person, arrest of the person, judicial proceeding, and maintenance in custody of the person until surrender to the requesting State.

Above the points shows that when cost of extradition proceedings are high, then States are afraid from the extradition proceedings, because all States are not rich in the world, because of high cost of extradition proceedings several poor States are not interested and afraid of extradition proceedings. Therefore, universal law is essential for this and without cost or nominal cost extradition proceedings should be made. Then only all the States will get the

³⁸ Art-17 of the extradition treaty between India and the Republic of Poland, 2008.

³⁹ Art-18 of the extradition treaty between India and the Russian Federation, 2000.

⁴⁰ Art-20 of the extradition treaty between India and the Republic of South Africa, 2007.

⁴¹ Art-25 of the extradition treaty between India and the Kingdom of Spain, 2003.

⁴² Art-20 of the extradition treaty between India and USA, 1999,

⁴³ Art-20(1) & (2) of the extradition treaty between India and UAE, 2000.

⁴⁴ Art-21 of the extradition treaty between India and Ukraine, 2008.

justice.

(6) The effects of War on extradition treaties: war is a manifestation of violence and its gravity increases with inventions of more dreaded weapons⁴⁵. War means when differences between nations reach a point at which both parties resort to force or one of them does acts of violence which the other chooses to look upon as a breach of peace, the relation of war is setup, in which the combatants may use regulated violation against each other, until one of the two has been brought to accept such terms as his enemy is willing to grant. In modern era war takes place not only between the armed forces of the two States, but also affects the citizens of the State concerned. The most conspicuous example of this is the dropping of nuclear bombs at Nagasaki and Hiroshima, during II world war which caused damage unique in the histories of the world. According to traditional definition war is a contest between the armed forces of the belligerent States. War mainly affects the

- (i) Peaceful relations of the belligerent States.
- (ii) Diplomatic and Consular relations between the belligerent States are broken Immediately.
- (iii) Treaties are terminated between the belligerent States.
- (iv) All trading and intercourse between the belligerent States are prohibited during the war and
- (v) Property of enemy States may be seized.

Various international jurist classified on the problem of destruction of treaties as an effect of occurrence of war between the parties. Undoubtedly early writers said that war habitually repeals all treaties between the belligerent or aggressive States. But modern jurist have rejected this view. It is clear that war does quench definite kind of treaties such as those of alliance and friendship, because of their very nature, whereas treaties specifying perpetual privileges, rights and general arrangements, and admitting to aim at eternity and to deal with the case of war as well as of peace do not cease on the occurrence of war, but are merely suspended during the conflict. In *Karnuth v. United States ex rel Albero*⁴⁶, U.S Supreme Court held that what are the treaties are entered by the two States before declare by war, all are absolutely void because of war and after completion of war both States should be revived by an express or implied restoration on the return of peace. Above the points show that in case of war States can cancel

⁴⁵ K.C.joshi, "International law and Human rights", Eastern Book Company, Delhi, 3rd ed,2016, P.343

⁴⁶ (1929) 279 U.S. 231

their previous treaties and they can restoration of previous treaties after establishment of peace. One of the important contemporary problem of extradition is war exist between two States if they have extradition treaty, even after completion of war also both States did not have good relations with each other than the question is how injured State can bring back the fugitive before its judiciary what the extradition treaty between two States. Therefore to remove all these lacunas or problems universal law is essential.

(7) Extradition treaties and State Succession: the law of succession is seen in every jurisprudence, viz. Hindu jurisprudence, Roman jurisprudence, etc. it is an inherent interest in every human being. The law of State succession is a new concept or subject and still it is in developing position. It is incorporated from the Roman law. The seedlings are found in Grotius theory. The law of State succession is enclosed in the principles of “continuity of States”. The Governments may be changed, but the State remains unchanged and its rights and liabilities are also remained unchanged. It helps the international co-operation in business, relations, etc. in good faith. It serves international peace and security. State succession means a succession of international person takes place of another international person, in consequences of certain changes in the latter’s condition⁴⁷.

Succession can be divided into two types. They are;

- (1) Universal succession;
- (2) Partial succession;

(1) Universal succession: if the legal identity of a State or community is totally or completely destroyed or if any State completely merged with another sovereign State there is said to be a total or universal succession.

For example, Sikkim was an independent State. It merged in India in 1975 voluntarily. When Sikkim completely merged within India, then Sikkim lost its legal entity as a Sovereign State and its nationals also acquired the nationality of India.

Universal Succession takes place by way of subjugation or conquests, voluntarily merger and break-up, etc.

(2) Partial succession: if the territory lost while personality and legal responsibility remain unimpaired, the process is described as partial succession. It means a part of a State may achieve independence from the parent State by means of revolution or treaty.

For example, (i) before 1971, Pakistan was a union of two parts east and West Pakistan. In

⁴⁷ Article-2 of the Vienna convention on succession of States in respect of treaties, 1978

1971 Bangladesh was separated from Pakistan and declared its independence.

(ii) Aruba is a part of the State of Netherlands, having internal self-Government. Through by Treaty Aruba got its full independence on 1st January, 1996.

(iii) Before, 1999 East Timore was a part of the territory of State of Indonesia. Through by referendum or decree of the people East Timore got independence and emerged as a new State in November, 1999.

Partial Succession takes place by way of achieving independence, cession, war, purchase, treaty, federation and referendum, etc. if a person committed crime in territory of State, in which part of the territory he committed crime if it is acquired by another sovereign State, before us one question is which State (former State or succeeding State) has the jurisdiction to punish and if that criminal took shelter in foreign State, then which State has the right to request the foreign State for extradition of Criminal. According International law Succeeding State has the jurisdiction to punish the criminal and it has the right to request the foreign State for extradition of such criminal.

The traditional view was that the succeeding State was bound to oblige all the treaties of Predecessor State. It means in previous or olden period States adopted the practice that succeeding State was liable to accept all the obligations and follow all the treaties of Predecessor State. But modern trend changes this view. Vienna Convention on succession of States in respect of treaties, 1978 adopted two new rules. They are;

- Clean State Rule
- Moving treaty Frontiers rule

Clean State Rule: it means a rule by which a successor State generally does not inherit the prior treaty rights or obligations of a predecessor State. It is similar to the negative theory. The succeeding State is at liberty to comply the treaty or to reject it. It has full freedom to accept or reject the treaty. It means succeeding State has the discretionary power or liberty to accept or reject the treaty of Predecessor State.

Moving treaty Frontiers rule: this rule is based on the association of a territory with an already established State and on the basis of the prior legal nexus a newly independent State is entitled to claim its succession to multilateral treaties. Vienna Convention on succession of States in respect of treaties 1978 provides that the obligations or rights under treaties in force

in respect of a territory at the date of a succession of States that do not become the obligations or right of the successor State or of the other States parties to those treaties by reason only of the fact that the successor or State has made a unilateral declaration providing for the continuance in force of the treaties in respect of its territory. It means Successor State will not be liable for what are the treaties entered by the predecessor State. By declaration if successor States accepted the obligations and treaties of Predecessor State, then only succeeding State is held liable. Vienna Convention on Succession of States, 1978, through by bilateral treaty succeeding State expressly agreed or by its conduct accepted the obligations and treaties of predecessor State then only successor State is liable. In modern era through by treaty only States delivery of a criminal from justice by one State to other State on sufficient grounds shown; it is the right and social responsibility of every country to punish the culprits, criminal offenders and anti-social elements. Else the peaceful atmosphere of the country spoils. Therefore, through by extradition treaty only states can bring back the fugitive before its judiciary. Related to this one of the contemporary problems of extradition is if any State is totally or partially merged with another sovereign State and if that succeeding will not accept or approve the treaties and obligations of Predecessor State, then how injured State can bring back the fugitive and punish him. Therefore universal law is essential for extradition. Because, once a State is merged with another State, then laws of Predecessor State also changed and its people's nationality is also changed. Therefore, to remove all these lacunas and problems universal law should be facilitated by the United Nations.

(8) Property of fugitive criminal either belongs to requesting State or requested State: another one of the contemporary problems of extradition is property of an alleged criminal either belongs to requesting State or requested State. When requesting State requests to requested State for extradition of fugitive offender or when a fugitive offender is recommended for extradition, a plenty of questions arise with regard to the property found in his possession. Usually what are the properties found in the possession of the fugitive at the time of his arrest should hand over to requesting State. Because which may be useful as evidence in proving the extraditable crimes or offence. The provision of extradition Act, 1962⁴⁸ provides that at the time of detention of fugitive criminal if any property found in his possession, which may be

⁴⁸ Section-28 of the extradition Act, 1962 provides property found on fugitive criminal.—Everything found in the possession of a fugitive criminal at the time of his arrest which may be material as evidence in proving the extradition offence may be delivered up with the fugitive criminal on his surrender or return, subject to the rights, if any, of third parties with respect thereto

helpful or evidence in proving the offence for his extradition, it may be delivered to demanding or requesting State at the time of surrender of fugitive. In extradition treaty between India and French Republic, 2007⁴⁹ both parties approved that at the time of arrest of fugitive criminal, what are the properties are found in his possession should be handed over to requesting State. Because both States acknowledged that it may help to requesting State to proving his offence or crime. But in extradition treaty between India and Bhutan, 1997 both contracting States acknowledged that at the time of arrest of fugitive if any articles or goods or property found in the possession of fugitive, it should not be surrendered to requesting State.

Such surrender of articles or goods or property is always subject to the municipal law of the demanded or requested State. If laws of the requested State permits for surrender of property of fugitive, then only fugitive property will be surrendered to requesting State otherwise it's very difficult. Therefore, universal law is essential for extradition. In case if fugitive is essential for two or more States, then the question is at the time of his arrest, what are the properties are found in his possession, such properties belong to which State. To remove all these lacunas and ambiguity universal law is necessary for extradition. The Fugitive Economic Offenders Act, 2018 provides that if any person to be declared as fugitive economic offender for any definite offence detention warrant has been issued against him where the value offence involved more than 100 crores and he left the state and rejects to coming back to face the trail.

(9) Lapse of Time: prosecution barred by limitation is also one of the mandatory grounds for refusal of extradition and also contemporary problems of extradition. The law of limitation is also one of the important law which protects the fugitive offender from the prosecution or punishment, if he gets immunity from prosecution or punishment because of time barred or laps of time. It means in any Statute prescribed the time for prosecution for particular crime, if it is not done within that period then he may be free from the prosecution or he can get the immunity from the prosecution or punishment because time is barred or of laps of time. Why this type of stipulations is mentioned in the statute because to complete the proceedings or prosecution within that period and will not drag the trail even after the completion of period. At present several States incorporated the laps of time in its treaty arrangements and in its domestic laws. In majority of the treaties all the contracting parties approved that lapse of time should be decided accordance with requested State. Lapse of time not only create a bar to

⁴⁹ Article-19 of the extradition treaty between India and French Republic, 2007

punishment or trial and also it gives liberty to fugitive offender. In extradition treaty between Austria and Belgium⁵⁰, both States agreed that extradition of fugitive offender shall not be extradited, if proceedings or punishment barred because of laps of time. Provisions of South American Convention on Extradition, 1911⁵¹ provides that shall not surrender the accused person trial is barred because of laps of duration under laws of requested State. International law association adopted the Draft Convention in 1928; it provides that if fugitive offender got the immunity from the prosecution and punishment because of laps of time then it is left to discretion of requested State to surrender of criminal or not. The Arab Convention of 1953⁵² provides that extradition shall not be granted or fugitive offender should not be surrender on the laws of requesting State and if requesting State does not accept the principle of prescription, then requesting State should not extradite or surrender the fugitive. In some treaties for example, extradition treaty between Austria and Finland⁵³, Belgium and Brazil⁵⁴, Belgium and Finland⁵⁵, all the treaty parties have agreed that immunity should have been acquired by the fugitive criminal at the time of surrender. In other type of treaties for example, treaty between Argentina and Brazil⁵⁶, Belgium and Algeria⁵⁷, and Belgium and Germany⁵⁸, all the contracting parties agreed that fugitive offender must be exempted before the request for extradition is made received. But in other types of treaties protection must have been acquired earlier to the detention or commitment of the fugitive for examinations. On 12th May, 1870 France and Italy enter into extradition treaty⁵⁹, in that treaty both States agreed that requested State can refuse to extradite the fugitive offender if the trial or sentence time barred according to its law. Trial barred by limitation is also one of the obligatory grounds for denial of extradition. If competent Court fails to take the case within prescribed period mentioned under law, then the fugitive cannot try for that offence. Indian law provide for limitation for facing cognizance of the offences under Sec-468 of Criminal Procedure Code⁶⁰. When these types of practices or

⁵⁰ Article-11(3) of the extradition treaty between Austria and Belgium

⁵¹ Article-5(b) of the South American Convention, 1911

⁵² Article-6 of the Arab Convention, 1953

⁵³ Article-4(1) of the extradition treaty between Austria and Finland

⁵⁴ Article-5(b) of the extradition treaty between Belgium and Brazil

⁵⁵ Article-3(1) of the extradition treaty between Belgium and Finland

⁵⁶ Article-3(c) of the extradition treaty between Argentina and Brazil

⁵⁷ Article-4(f) of the extradition treaty between Belgium and Algeria

⁵⁸ Article-8 of the extradition treaty between Belgium and Germany

⁵⁹ Article-10 of the extradition treaty between France and Italy, 1870

⁶⁰ Section-468 of Crpc, 1973 provides Bar to taking cognizance after lapse of the period of limitation Section-468(1) provides except as otherwise provides elsewhere in this code, no court shall take cognizance of an offence of the category specified in Sub-section (2), after the expiry of the period of limitation Section-468(2) provides the period of limitation shall be-

(a) six months, if the offence is punishable with fine only

(b) one year, if the offence is punishable with imprisonment for a term exceeding one year

conditions are adopted by the States for extradition of criminals, sometimes it helps to fugitive to flee from the punishment. To remove all these lacunas or problems universal law is essential and should be enacted by the UNO.

(10) Failure to produce sufficient evidence: proof is also one of the essential conditions for extradition. There must be suitable and adequate proof showing that the fugitive criminal to be extradited committed that crime. If any state wants to deport a person it should rely on sufficient evidence for requested State to extradite the criminal because without evidence or proof how court will not come to the conclusion as like in extradition also evidence is essential otherwise it's very difficult to bring back the criminal before judiciary. Even if requesting State fails to produce sufficient or adequate evidence, then it is not possible to bring back the fugitive, because, no State shall extradite the fugitive to demanding State without sufficient proof shown. In *Nadeem Saifee Case*⁶¹ (this case has been briefly discussed in chapter-4) House of Lords refused to extradite Nadeem because Indian police fails to produce genuine document. The police authority suspects that Famous Bollywood Music director Saifi Nadeem Akhtar has been connection of murder of music magnate Gulsan Kumar in 1997. Smell the arrest Nadeem ran to England. Then Government of India requested for his extradition. But State of England refused to surrender Nadeem because Indian Government fails to produce adequate and sufficient proof. In 1987 Government of India and Government of Canada enter into extradition treaty, in this treaty both contracting States acknowledged that if any one of the State made a requests for extradition of fugitive, it should produce the adequate evidence. If requested State is not satisfied related to proof then demanding State should submit additional evidence otherwise fugitive will not be surrendered and he shall be set at liberty⁶². In 1963 India and Nepal enter into extradition treaty. In that treaty both treaty parties accepted that one of the important function of requesting State should produce the evidence or proof within two months from the date of requests made by the requesting State. In case if requesting State fails to produce suitable proof to requested State then fugitive will be the innocent person and enjoy

(c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

Section-468(3) provides for the purpose of this Section, the period of limitation in relation to offences which may

be tried together, shall be determined with reference to the offence which is punishable with the more severe Punishment or, as the case may be, the most severe punishment.

⁶¹ [https://www.India today-in/magazine/crime story/20011112-music director-Nadeem Saifee-extradition-case-big-](https://www.India today-in/magazine/crime story/20011112-music director-Nadeem Saifee-extradition-case-big-embarrassment-for india-in London-trail-774621-date on 09-05-2019 at 1.30pm)

[embarrassment-for india-in London-trail-774621-date on 09-05-2019 at 1.30pm](https://www.India today-in/magazine/crime story/20011112-music director-Nadeem Saifee-extradition-case-big-embarrassment-for india-in London-trail-774621-date on 09-05-2019 at 1.30pm)

⁶² Art-9 and 10 of the Extradition treaty between India and Canada,1987

the liberty as like common man. Therefore, universal law is essential for extradition because when State adopted the different types of practice and conditions in treaty or in domestic law, then it's very difficult to follow. Therefore, to remove all these ambiguity and difficulties universal law is essential.

(11) Re-extradition to a third State: before extradite a criminal requested State can impose conditions on requesting State that without its consent should not surrender the fugitive offender to third State. Another stipulation which the requested States may impose upon the requesting State before surrendering the delinquent is, that having obtained the extradition of the person sought, the requesting State may not re-extradite the person concerned to a third State without the consent of the surrendering State or unless the accused has consented freely and voluntarily that he may be delivered to the third State, or has been at liberty to leave the State within fixed period after trial and acquittal for the offence which gave rise to the extradition, or after having fully served the sentence imposed upon him or having obtained a pardon. A considerable number of treaties draft Conventions and several national statutes do not contain provision prohibiting re-extradition without consent of the surrendering State. But the tendency is growing towards the inclusion of such a stipulation in the treaty provision. For example, if State of India extradited criminal 'A' to State of Switzerland. At the time of extradition of criminal 'A', it imposes one condition on State of Switzerland that without its consent do not extradite 'A' to third State or any other State. Even today this type of stipulations has inserted in treaty provisions. The extradition treaty between India and Republic of South Africa, 2007⁶³ provides that if the fugitive criminal has been surrendered to requesting State, shall not surrender the criminal to third State without consent of requested State. But in *Vinayak Damodar Savarkar*⁶⁴ case Permanent Court of Arbitration held that international law does not inflict any responsibility to return the convicts or offenders after receiving them fruitfully extradited or surrendered. But this decision has been criticised by several international jurist. It means once requested State extradited or surrendered the criminal to requesting State, again requesting State shall not surrender the criminal to which State extradited him earlier, because there is no rule in international law regarding this. Savarkar was a famous Indian freedom fighter. He had revolutionary thoughts. He wanted to free India from British clutches. While he was in London, he was arrested by British Government under the fugitive offenders Act,

⁶³ Article-18 of the extradition treaty between India and Republic of South Africa, 2007

⁶⁴ Legal.un.org/reaa/cases/vol_XI at 11.20AM on 01-10-2019.

1881. While he was being brought from London to British India for trial, he escaped from the ship and reached Marseilles port or Harbour on July 8, 1910, escaped to the coast from the Morea, a British commercial vessel, which was carrying him. Later on he was detained by French police man and handed over to a British police man under the wrong interpretation to do so. It means he thought that Savarkar did wrongful act in the British ship and it's my duty to return him to Captain of the British ship. Later when this matter known by French Government, then it requested the British Government to return him on the ground that both States will not follow the rules of extradition. When British States refused to extradite the Veer Savarkar to France, then compromise between two States and signed on 25th October, 1910 and submitted to Permanent Court of Arbitration. The sessions began 14th February, 1911, and ended 17th February, 1911, the judgment being delivered February 24th, 1911. Permanent Court of Arbitration delivered the award not in favour of France and gave award in favour of British. It held that international law does not inflict any responsibility to return the convicts or offenders after receiving them fruitfully extradited or surrendered. But regarding this States enacted their own laws and treaty rules. Therefore, at present it is also one of the contemporary problems of extradition. Therefore, to remove all these lacunas universal law is essential.

Conclusion: In 1990 United Nation adopted the model treaty on extradition. Through this model treaty it directed to all the States at the time of making of municipal or domestic law and treaty on extradition should consider or adopt its rule. In its model treaty it provides that on what grounds State can extradite the criminal and what grounds State can denial of extradition. Unfortunately what the model treaty adopted by UNO in 1990, it's not a law. In model treaty what grounds are mentioned for surrender or refuse to surrender the criminal, other than such grounds also States adopted their own grounds in their domestic law and treaties. For example, political offender, military criminality, double jeopardy, fail to produce sufficient evidence, religious criminality, rule of speciality, etc. but in modern era numerous States adopted different types of grounds for extradition of fugitive offender and denial of extradition. For example, requested State can refuse to extradite the fugitive offender, if requesting State will not accept the conditions of requested State or if requesting States fail to give assurance for what are the conditions is imposed by requested State. In modern era numerous States shall not extradite or surrender the fugitive on the basis of death penalty. It means death penalty is also one of the grounds for denial of extradition. In Abu Salem issue also State of Portugal imposed one condition that doesn't impose death or capital punishment on Abu Salem. When Government of India accepted that condition or when it gives the assurance then only State of

Portugal surrendered Abu Salem to India. Now a days States will not extradite its own citizens. It means numerous States enacted their own laws for extradition. In that municipal law States adopted one rule is that State will not extradite its own nationals and it is also one of the provision in extradition treaty. But one of the main problem or lacuna in extradition is discretionary power of the State. It means the whole discretionary power in the hands of requested State; it can extradite or reject it. Originally extradition is a good principle and it is a weapon to bring back the fugitive before the judiciary who runs to another country after he committed crime. Extradition is the surrender of a fugitive offender or sentenced criminal who has abscond from one State to another before finishing his custodial period. International law does not impose any obligation on State to punish the criminal where he has taken refuge. Because he has not committed a crime in which State he physically presents and even in which State provides a shelter for accused person it cannot punish him because evidences are available in abroad. To solve these difficulties international law has evolved the principle “extradition”. But in modern era the principle extradition will not achieve 100% success, because of contemporary problems. Therefore to remove all these lacunas and problems in international level universal law is essential and it should be followed by all the States uniformly. Related to extradition what are the domestic law is enacted by States it should be abolished and International Court of Justice should have the jurisdiction in case if any disputes arise between two States related to extradition.

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