CHAPTER 4
EXTRADITION- ANALYSIS OF NATIONAL LEGAL REGIME AND CASES

5.1. OVERVIEW

The earlier chapters have focused on very different aspects of extradition laws in the light of international law developments. The chapters have further inquired into the phenomenon of global terrorism, its scope, players, and the challenges that exist in extraditing the perpetrators of such crime. While studying the challenges put forward by the existing laws and legal mechanisms, the researcher has also made efforts to show the positive attitude of the judicial organs, both international and domestic, in interpreting the governing legal documents in a manner which would uphold the basic objective of ICL, i.e., ending impunity. The researcher has also highlighted the existing challenges and issues in extraditing individuals, with the help of state practices and judicial decisions.

The purpose of this chapter would be to solely focus on India’s laws with respect to facilitating extradition. The researcher would also trace the major developments in counter-terrorism laws in the light of it being a victim of international terrorism for many decades. This chapter would discuss and analyse the said laws and judicial decisions in the following pattern that includes referring to both pre and post independence laws; terrorism and the Indian experience; counter-terrorism laws and other related developments; landmark judicial decisions and their impact in developing the jurisprudence; and India’s international obligations under the UN treaties and the regional agreements under the aegis of SAARC.

5.2. INDIAN EXTRADITION LAW

India like any other nation has had experiences of struggles for self-determination, separatist movements fuelled and carried out by external actors, hostage crisis situations,
terrorist bombings, etc. in the backdrop of such events, extradition of individuals who have conspired in doing such acts is considered vital for the country’s security interests. However the process of extradition has been much difficult to execute on account of lack of political will and non-consensus to work towards eradicating terrorism, among the concerned nations. Even in the face of all adversities, the law relating to extradition has had a steady growth keeping in touch with the recent developments internationally. Extradition laws being dual laws, is both governed by municipal law and international law as well. Therefore the development of extradition laws in India can be traced under different stages of history, particularly pre independence and post independence era.

5.3. ANCIENT INDIA

In ancient India too there has been sparring reference to extradition laws, keeping up with other civilizations, like Egypt and Syria, where the former entered into detailed extradition treaties for the protection of their national interests; while ancient Greece had rules relating to hospitality, asylum, extradition, diplomatic agents and intervention; Romans too had variety of rules relating to naturalisation, extradition, immunity of ambassadors, procedure and formalities in the conclusion of treaties, right of asylum, treatment of enemy person and enemy property. In ancient India rules of international law existed in various forms though they were not considered perfect as they did not cover rules of private International Law relating to such important topics as extradition, and naturalisation. In ancient Indian history, wars had played an important role in shaping history, and causes for which a king may be allowed to go to war also has been discussed in detail. Under ancient Indian literature war has always been advised as last resort by Manusamhita, Arthashatra, Kamandaka, Sukracharya, and Dharmastra. Their writings has extensively laid down kinds of war and how it is fought, but however Kamandaka in his list of causes of war does not mention about (i) wars for the refusal of

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578 Pramathanath Bandyopadhyay, International Law and Custom in Ancient India, Calcutta University Press 4-5 (1920).
579 Id. at p. 12; Arthashastra by Chanakya, the prime minister of Chandragupta Maurya does not deal with subjects of vital interest such as naturalisation and extradition.
extradition, (ii) wars of religion and (iii) wars for offences against diplomatic agents. However during the Magadha dynasty rule, Ajatasatru commenced war with Chetaka as Ajatasatru failed to peacefully obtain the extradition of the fugitive.

5.4. PRE-INDEPENDENCE

The extradition laws of India have been vastly influenced by the political situations it’s gone through as a British colony and thereafter an independent State. Therefore the trajectory of its development can be traced from 1870 onwards. The United Kingdom Extradition Act, 1870 as enacted by the Parliament of the United Kingdom) was made applicable to India by virtue of India being a British possession under section 17. It primarily dealt with extradition of fugitive criminals from and to other countries outside the British dominions. Its application depended on existence of treaty between England and foreign states, for rendition of criminals. Within a decade’s time the Fugitive Offenders Act, 1881 was brought into effect which extradition of fugitive offenders within the commonwealth countries. It also applied to British possessions by virtue of section 32.

With respect to native states, not falling into any of the above-mentioned categories, treaties were entered; governing surrender of criminals after prima facie case was established, to the jurisdiction of the locus delicti. In absence of such treaties, resort was had to principle of reciprocity. The native states were bound to transfer to the British

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580 Id. 96.
582 Act No. IX of 1895.
583 s. 17: “This Act, when applied by Order in Council, shall. Unless it is otherwise provided by such Order, extend to every British possession in the same manner as if throughout this Act the British possession were substituted by the united kingdom or England, as the case may require...”
585 Act No. XV of 1903.
586 AITCHISON, A COLLECTION OF TREATIES, ETC. RELATING TO INDIA (1932). Some of these States were: Alwar (Treaty No. XXVI, 1867); Bikaner (Treaty No.III, 1869); Jaipur (Treaty No.V. 1868); Jodhpur (Treaty No. X. 1868), etc.
587 CHITTELLA VENKATARAMANA, CHANGING DIMENSIONS OF EXTRADITION: A STUDY WITH SPECIAL REFERENCE TO LAW, PRACTICE AND EXPERIENCES OF INDIA, Andhra University 98 (2013). [Available at http://hdl.handle.net/10603/8652]
government of India, as the obligation flowed from the junction of the royal prerogative and Acts of Parliament. Under Part I of the Fugitive Offenders Act 1881, a warrant issued in one part of the Crown’s Dominion for apprehension of a fugitive of offender could be endorsed for execution in another dominion. There were also provisions for inter colonial backing of warrants within groups of British possessions, as applied by the Order in Council. The procedure as referred under this statute remained prior to 26th January 1950. Therefore the right to demand extradition by the United Kingdom or any British possession was governed by the British statutes; and the Indian Extradition Act (1903) was put into effect on the assumption that those statutes applied to India.

These earlier legislations, in their application to India were not repealed by the Indian Parliament to the extent they were consistent with the constitutional scheme. To maintain the continued application of the laws of the British Parliament notwithstanding India becoming a Republic, the British Parliament enacted the India (Consequential Provision) Act 1949.

There have been a few relevant decisions with regard to the applicability of these laws post 26th January, 1950. In Mubarak Ali Ahmed case the Queen’s Bench of the High Court held that the Fugitive Offenders Act 1881 was in force between India and Great Britain on 26th January 1950, when India became a republic and it continued to apply by virtue of section 1 of the India (Consequential Provision) Act 1949. In Jhirad v. Ferrandina case, the United States District Court New York supported the view that new nations inherit the treaty obligations of the former colonies, thereby effectively stating that the 1931

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588 K. R. R. SASTRY, INDIAN STATES, 82-83 (year).
590 Supra Note. 584
591 Section 1 - Operation of existing law in relation to India in view of India’s becoming a Republic: (1)On and after the date of India’s becoming a Republic, all existing law, that is to say, all law which, whether being a rule of law or a provision of an Act of Parliament or of any other enactment or instrument whatsoever, is in force on that date or has been passed or made before that date and comes into force thereafter, shall, until provision to the contrary is made by the authority having power to alter that law, have the same operation in relation to India, and to person and things in any way belonging to or connected with India, as it would have had if India had not become a Republic. [http://www.legislation.gov.uk/ukpga/Geo6/12-13-14/92/section/1]
treaty applicable to British India since 1942, under which extradition was sought was still surviving. In *C G Menon case* the Supreme Court held that the provisions of the Fugitive Offenders Act 1881 could only be made applicable to India by incorporating them with appropriate changes into an Act of the Indian parliament and by enacting an Indian Fugitive Offenders Act. It found sections 12 and 14 of the Act inapplicable even under the provisions of Article 372 of the Constitution, as India was no longer a British Possession and no Order in Council could be made to group it with other British Possessions.

5.5. POST-INDEPENDENCE

Post independence there has been major developments as India became an independent dominion of the British Commonwealth by virtue of the Indian Independence Act593. The Indian dominion in spite of being capable to enact laws did not enact any regulating extradition measures. On the other hand after the Indian Independence Act, all the existing treaties and agreements in force then lapsed594. Thereafter on 26th January 1950, India became a sovereign democratic republic, and by the Adaption Order of 1950, the penal laws and Indian extradition act 1903 applied even to the native states. In such a situation the cases of C G Menon; Mubarak Ali arose with their outcomes, which led to a further vacuum.

Presently there are number of legislations which enable investigative agencies to seek surrender of individuals as well as there is a primary legislation like The Extradition Act, 1962595. The Extradition Act, 1962 [hereafter 1962 Act] consolidates and amends the law relating to extradition of fugitive criminals as well deals with matters incidental thereto, has repealed the earlier laws regulating matters related to extradition under Section 37.596 Due to limitations of scope and space the researcher would only touch upon the salient features of the 1962 Act.

593 LAW REPORTS, STATUTES, 1 (1947)
594 See Dr. Ram Babu Saksena v The State, AIR 1950 SC 155. [It was held that the extradition treaty between Government of India and State of Tonk was no longer effective.]
595 Act No. 34 of 1962 [15th September 1962]
596 Indian Extradition Act, 1903 (15 of 1903); North East Frontier Agency and Tuensang District (Extradition) Regulation, 1961 (3 of 1961); The Extradition Acts, 1870 to 1932; Fugitive Offenders Act, 1881.
a. **THE EXTRADITION ACT, 1962**

The 1962 Act, has retained all the basic principles of law of extradition, like dual criminality; RoS; ADAJ; humanitarian safeguards; mandatory grounds of refusal and others. The Act has been distributed under five chapters and one Schedule, which lists out the acts which shall be never be given political status under s. 31 (2) of the Act. Several important amendments have been made in the Act in the year 1993, to make it simpler in implementation. The five chapters of the Act deal with the following matters:

- **Chapter I-- Preliminary matters like definitions; and applications of the Act [Ss 1-3]:**

  Chapter I of the Act has defined certain key terms like “composite offence”; “extradition offence”; “extradition treaty”; “foreign State”; “fugitive criminal”; and others. Composite offence establishes the authority over offences which are inter-territorial in nature and the effects can be felt in more than one jurisdiction. Extradition offences basically refer to offences as identified in the governing extradition treaty; as well as offences carrying a punishment for at least 1 year as per Indian laws or foreign laws, including composite crimes in relation to non treaty States. Extradition treaty includes the bi-lateral extradition treaties and even the extradition treaties which were entered before 15th August 1947, and are still obligatory for India. “Foreign state” includes any country other than India, thereby removing the concept of commonwealth nations.

- **CHAPTER II-- EXTRADITION OF CRIMINALS TO OTHER NATIONS WITH WHICH INDIA HAS NO EXTRADITION TREATY OR ARRANGEMENT [SS 4-11]:**

  Section 4 to 11 outlines the procedure to be followed in surrendering or extraditing fugitive criminals to countries with which India does not have any extradition treaty or arrangement in place. The procedure follows the well accepted norms like making a formal \[597\] Section 31, lays down the restriction on surrender of fugitive criminals to a foreign State.
\[598\] Supra Note. 589
\[599\] The Extradition Act of 1962, See S. 2 (a), (c), (d), (e) and (f).
request to GoI, via diplomats of the concerned foreign country. On receiving the formal request the Central Government may use its discretionary power to order for a magisterial inquiry and the magistrate is compelled to issue an arrest warrant to the fugitive criminal. The Central Government only has to form a view based on material received from requesting country that it is not hitting S. 31 of the Act. The enhancement of the power and jurisdiction of the Magistrate to the level as enjoyed by a Sessions judge or high court, does not make him legally incompetent to try the offence of which a fugitive criminal is accused. The Magistrate is also empowered to issue arrest warrants in case he believes on the basis on the information and evidence furnished, that a fugitive criminal is within his local limits. The use of the terminology ‘evidence’ in Section 7 of the Act must be read in the context of Section 10. It was also held that the Act being a special Act, will prevail over the provisions of a general statute like the Code of Criminal Procedure, therefore information need not be documentary evidence or an oral evidence as is understood under the Indian Evidence Act.

- CHAPTER III-- EXTRADITION OF FUGITIVE CRIMINALS TO FOREIGN COUNTRIES WITH WHICH INDIA HAS ENTERED EXTRADITION TREATIES OR ARRANGEMENTS [SS 12-18]: This chapter puts a general liability on India to apprehend and return the fugitive criminal to the foreign State with which treaty exists. Such apprehension can be done either on the basis of endorsed warrants, which empowers the Central Government to apprehended and bring the person before the Magistrate once it is verified to have been issued by lawful authority; or provisional warrants which empower the Magistrate on receiving such information and if concerned crime been carried out within the magistrates jurisdiction. The fugitive criminal may be can discharged or released on bail by the Magistrate, after having reporting the matters to GoI. GoI is empowered to take concerned fugitive criminal into

601 FlemmingLudin Larsen v.Union of India (1999) 105 CrLJ 526 (Del).
603 Id.
604 Supra Note. 599, at Section 15
605 Supra Note. 599, at Section 16
custody from prison and deliver him to specific location or individual, as specified in warrant.

- **CHAPTER IV—SURRENDER/ RETURN OF ACCUSED OR CONVICTED INDIVIDUAL FROM FOREIGN COUNTRY [SS 19-21]:**
  The Act specifies the channels to be used for returning accused or convicted persons from foreign States to India, by Central Government where chapter III does not apply; and in case of treaty states by warrant issued by a Magistrate.  
  
  Section 21 of the Act incorporates the well established principle of ‘rule of specialty’, which has been emphasized in *Abu Salem case*.  

- **CHAPTER V—MISCELLANEOUS MATTERS [SS 22-37]:**
  The miscellaneous matters cover a range of important issues related to establishing jurisdiction; discharge of a fugitive criminal; bail; Central Governments power to release fugitive offender; simultaneous requisitions; restrictions on surrender; extra-territorial jurisdiction; prosecution on refusal to extradite; provisional arrests; and provision of life imprisonment for death penalty. This Act enables individuals to be surrendered or returned irrespective of the offence being committed before the Act has come into force or Indian courts having the jurisdiction to look into it. Section 24, 25, 29 and 31 offer a range of protections to a fugitive criminal by empowering the high court on application filed before it to discharge the fugitive if detained for two months after the committal, unless the Central Government sows sufficient cause for such detention; the provisions related to bail matters would be made available to fugitive criminals in same manner even if they are arrested or detained under the mechanisms of this Act. The central government can cancel any warrant issued or endorsed on grounds like trivial nature of the case; requests for surrender not made in good faith or for political reasons.  

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606 *Supra* Note. 599, at Section 19 (1) & (2)  
607 *Supra* Note. 599, at Section 21.  
609 *Supra* Note. 599, at Ss 22-34 C  
610 *Supra* Note. 599, at Section 29.
prosecution in the requesting country; not until the fugitive has been discharged or acquitted after expiration of the sentence that is being served in India. It further lists out the offences as included in Schedule which is not considered as offences of political character. Under the Act the Indian court can exercise jurisdiction over crimes (extradition offences) irrespective of the location, as if it has been committed in India and therefore can be prosecuted too. The core principle of extradition, i.e., ADAJ is established through Section 34 A of the Act.

b. THE ANTI-HIJACKING ACT, 1982:


c. THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF CIVIL AVIATION ACT, 1982:

Act incorporates provision related to extradition under section 6. The offences mentioned in the statute are deemed to be included in the extradition treaties as entered with the convention countries. It adopts the basic provisions of extradition as laid down in the “Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation” signed 23.09.1971.

611 Offences under the Anti-Hijacking Act, 1982 (65 of 1982); Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 (66 of 1982); Convention on the Punishment Of Crimes Against Internationally Protected Persons Including Diplomatic Agents, opened for signature at New York on 14 December, 1973; International Convention Against The Taking Of Hostages opened for signature at New York on 18 December, 1979; Culpable homicide, murder Sections 299 to 304; Voluntarily causing hurt or grievous hurt by a dangerous weapon or means (Sections 321 to 333); Offences under the Explosive Substances Act, 1908 (6 of 1908); Possession of a fire-arm or ammunition with intention to endanger life [Sec.27 of the Arms Act, 1959 (54 of 1959)]; The use of a fire-arm with intention to resist or prevent the arrest or detention [Sec.28 of the Arms Act, 1959 (54 of 1959)]; Ss339-348; 425; 440 of Indian Penal Code; Offences related to terrorism and terrorist acts [Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987)]; Abetting, conspiring or attempting to commit, inciting, participating as an accomplice in the commission of any of the offences listed above.

612 Supra Note. 599, at Section 34A.

613 The Anti-Hijacking Act, 1982 (65 of 1982)

614 Id. Section 7

615 Id.
d. **SAARC CONVENTION (SUPPRESSION OF TERRORISM) ACT, 1993**:  
The Government of India had enacted the SAARC Convention (Suppression of Terrorism) Act [hereafter the ‘Act’] to give effect to its legal obligation after it had ratified the convention. The provisions of the Convention, Articles I to VIII are in force in India.  

The Act makes a reference to the Extradition Act, 1962, saying that the offences as specified in Article I of the Convention and section 4 (1) of the Act will never attain the status of political nature. Such provision supplements S. 31 of extradition act 1962. However prosecution for the crimes committed under this Act can be initiated only by the prior sanction by the central government, which is deemed to have been granted under section 188 of Cr PC.

**e. THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF MARITIME NAVIGATION AND FIXED PLATFORMS ON CONTINENTAL SHELF ACT, 2002**

Act finds mention like the other above-mentioned statutes in the Schedule of other laws NIA, 2008; and The Unlawful Activities (Prevention) Amendment Act, 2012. However with respect to extradition matters the Statute, any person within the territory of India suspected of committing the statutory crimes and not being extradited, to be dealt under the provisions of this Act. The law related to extradition, under this Act is dealt in detail under miscellaneous provisions.

**f. OTHER MECHANISMS:**

Apart from the laws directly regulating extradition mechanisms, the investigative agencies are empowered by other legal sources as well. The most prevalent basis for extradition between India and foreign nation is by treaties. Pursuant to which a notification is promulgated by GoI applying the statute provisions to the countries so

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616. The SAARC Convention (Suppression of Terrorism) Act, 1993(36 of 1993)
617. Id. Section 3.
618. Id. Art. I
619. Sec 4
620. Section 5 of 1993 SAARC Act.
621. Section 7 of 1993 SAARC Act.
622. Act No. 69 OF 2002 [20th December, 2002.]
623. Section 9.:
Interpol Wing, CBI disseminates information regarding fugitive criminals received either directly or as Interpol notice. Thereafter these notices are transferred to immigration; and State Police authorities. A police on receiving information with respect to a wanted fugitive criminal is assisted by the following provisions of law: (a) arrest and extradition of fugitive criminals under section 34 (b) of Extradition Act and receiving of demands via diplomats, and warrants so issued by magistrate within his competency; (b) police has the power to apprehend in absence of warrant, by rest a fugitive criminal without a warrant, by forwarding it to Interpol which will be then transmitted to GoI, for reaching a decision under Sec 41 (1) (g) Cr.P.C., 1973. In case of an Indian fugitive criminal, Sec 188 Cr.P.C., 1973 can be applied. However such trial can only be initiated after receiving sanction from the central government.

The Ministry of External Affairs has also laid down detailed guidelines related to the procedure to be followed before the court hears the extradition related matter pertaining to a fugitive criminal. In the presence of extradition treaty between India and the requesting State, the procedure for extraditing should be based on the treaty requirement. After fulfilling all formalities, the extradition request must be accompanied by note from senior official/St Govt implying the authenticity of the case, accompanied with the demand made to central government to advance it to government of the requested country.

5.6. TERRORISM IN INDIA- THE MAGNITUDE

Throughout South Asia many civilians and security forces personnel have fallen prey to terrorist attacks, since the past two decades. India has seen a drop in total insurgency- and terrorism-linked fatalities, from a peak of 5,839 in 2001, to 885 killed in 2013; with the most dramatic plunge was registered in Jammu & Kashmir (J&K), from 4,507 in 2001, to

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624 See http://cbi.nic.in/interpol/extradition.php
625 Id.
626 Id.
627 Supra Note 624.
628 Id.
629 Supra Note 624
181 in 2013. Maoist violence, which peaked in 2010, with 1,080 fatalities, also registered a sharp contraction, with a total of 421 killed in 2013.\textsuperscript{631} In the multiple insurgencies across India’s northeast, fatalities collapsed from a peak of 1,317 in 2001, to a total of 251 in 2013.\textsuperscript{632} Developments through 2013 indicates that J&K registered a rise in fatalities, from 117 in 2012, to 181 in 2013, compounded by an escalating campaign of cease fire violations by Pakistan’s Army with at least 195 violations recorded through 2013, resulting in 10 SF fatalities, as against 93 such violations in 2012, resulting in three SF fatalities.\textsuperscript{633}

In the Northeast, two States registered an increase in total fatalities between 2012 and 2013: Assam, from 91 to 101; and Meghalaya, from 48 to 60. Moreover, 205 of the country’s 640 Districts continued to be afflicted by varying intensities of chronic subversive, insurgent and terrorist activity in 2013, including 120 Districts where the Maoists remained active; 20 Districts in J&K afflicted by Pakistan-backed Islamist separatist terrorism; and 65 Districts in six Northeastern States where numerous ethnicity based terrorist and insurgent formations operate.\textsuperscript{634} In the light above mentioned magnitude of the acts of terrorism, a total of 36 terrorist organizations have been banned under Section 35 of Unlawful Activities (Prevention) Act, 1967\textsuperscript{635}, as on 27\textsuperscript{th} January, 2014.\textsuperscript{636} The government of India has also created special divisions to deal with Left Wing Extremism since 19\textsuperscript{th} October 2006, to effectively address the Left Wing extremist insurgency in a holistic manner, across nine States.\textsuperscript{637}

There exists a strong link between the growing spread of militancy and terrorism in South Asia to the Afghan war in the 1980s, which saw an upsurge in U.S. aid and Saudi funnelling of arms to the anti-Soviet guerrillas through Pakistan’s Inter-Services

\textsuperscript{631} \url{http://www.satp.org/satporgtp/southasia/index.html}; also see ‘India Fatalities: 1994-2014 [available at \url{http://www.satp.org/satporgtp/countries/india/database/indiafatalities.htm}] accessed on 15.06.2014

\textsuperscript{632} \textit{Id.}

\textsuperscript{633} \textit{Id.}

\textsuperscript{634} \textit{Id.}

\textsuperscript{635} (37 of 1967) [30 December, 1967]

\textsuperscript{636} \textit{Banned Organisations [available at \url{http://www.mha.nic.in/BO}] accessed on 15.06.2014 ; 65 terror groups active in India: Govt. New Delhi, August 27, 2013 [available at \url{http://www.thehindu.com/news/65-terror-groups-active-in-india-govt/art.5064769.ece ] accessed on 15.06.2014}

\textsuperscript{637} \url{http://mha.nic.in/naxal_new} accessed on 15.06.2014
Intelligence [ISI] agency.\textsuperscript{638} Large portions of military aid given to Afghan rebels by the U.S. Central Intelligence Agency was siphoned off by the conduit ISI to ignite a insurgency in Indian Kashmir after the ISI failed to trigger an uprising in India’s Punjab state, despite arming Sikh dissidents in the early 1980s.\textsuperscript{639} Groups like the Lashkar-e-Taiba are known for their attacking Indian Parliament in 2001, 2006 Mumbai train bombings, the February 2007 blast of a train between India and Pakistan, and the orchestration of the November 26, 2008 Mumbai attacks.\textsuperscript{640} The other groups that operate in the region and alleged to have carried out attacks against India are Jaish-e-Muhammad, Harkatul Mujahideen, Harakat-ul Jihad-al-Islami, Jamat-ul Mujahideen, and Hizbul Mujahideen.\textsuperscript{641} India also faces terrorist threats from its eastern border with Bangladesh. Attacks by Harakat-ul Jihad-al-Islami (HUII) have been attributed to Bangladeshi soil.\textsuperscript{642}

The government has been consistent in framing policies to tackle issues like transnational crime, terrorism, and other serious offences, such as drug trafficking, money laundering, counterfeit currency, smuggling of arms and explosives etc, through their Policy Planning Division.\textsuperscript{643} The legal framework for combating Crime including International terrorism includes treaties on MLA in criminal matters, Memorandum of Understandings/Bilateral Agreements to counter Organized Crimes, Joint Working Groups on Counter Terrorism/International Terrorism which are signed between India and other countries on bi-lateral basis.\textsuperscript{644} Ministry of External Affairs [MEA] acts as the nodal authority for setting up of Joint Working Group on Counter Terrorism to exchange information and strengthen international cooperation to combat terrorism and transnational organized crime, while the Policy Planning Division acts as an interface with MEA on

\textsuperscript{638}Vandana Asthana, \textit{Cross-Border Terrorism in India: Counterterrorism Strategies and Challenges}, ACDIS 3 (2010). [https://ideals.illinois.edu/handle/2142/27703] accessed on\textsuperscript{639} \textit{Id.}\textsuperscript{640} \textit{Id.}, at p.4.\textsuperscript{641} See The Indian Ministry of Home Affairs lists these groups as terrorist organizations under the Unlawful Activities (Prevention) Amendment Ordinance, 2004, as an amendment to the Unlawful Activities (Prevention) Act, 1967.\textsuperscript{642} \textit{Supra} Note. 638\textsuperscript{643} http://mha.nic.in/Policy_Planing_Division (accessed on 15.06.2014)\textsuperscript{644} \textit{Id.}
issues concerning Joint Working Groups on Counter Terrorism set up between India and other countries to discuss bilateral security issues.  

5.7. COUNTER-TERRORISM LAWS- SPECIAL FOCUS ON EXTRADITION MECHANISMS

With the swell in the terrorist attacks in the last few decades, the Government of India has enacted stringent laws and also simultaneously put in place agencies with enormous powers to tackle the menace of terrorism. However, to have a fully successful mechanism at place, the cooperation of the South Asian region is required in rooting out terrorist networks and deterring regimes there from encouraging or harbouring terrorists. The quasi-federal structure of the Indian Constitution clearly lays the responsibility to maintain law and order on the State Governments, while the Central Government provides the states with financial support, training, professional help, and shared collected intelligence. There are multiple agencies engaged in counter-terrorism activities, like Research and Analysis Wing, Intelligence Bureau, Intelligence Director General of the Armed Forces, Defence Intelligence Agency (interacts with all important ministries dealing with national security, the IB, and RAW.), specially trained National Security Guards, Central Reserve Police Force, Central Industrial Security Force and the Border Security Force. Post Mumbai attacks in 2008, the Central Government established National Investigation Agency (NIA) empowered to deal with terror across states without special permission from the states; and investigate terrorist crimes and offensives. The existing institutions make a large and complex bureaucratic setup to manage its counterterrorism efforts.

With the aforementioned agencies in place, India has always been active to enact new laws and amend the existing laws to counter unlawful activities including terrorist attacks. The legislations that follow with matters related to internal security are the Cr.P.C 1973; Arms Act, 1959; the Explosive Substances Act, 1908; the National Security Act, 1980; the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990; the Armed Forces Special Powers Act, 1958; The Prevention of Money Laundering Act, 2002 and Religious Institution (Prevention Of Misuse) Act, 1988. India has had its brush with anti-terrorism

\[ Id. \]

India’s current legislative framework for dealing with terrorist organizations and activities is the Unlawful Activities (Prevention) Act, 1967, which allows the government to ban unlawful associations, and defines and provides punishments for terrorism related offenses. This legislation has been amended several times in 2004, 2008 and 2012. Keeping in mind the constraints of limited scope and space, the researcher would highlight only the salient features of only limited number of previous laws and the laws in effect, dealing with anti-terrorism.

a. NATIONAL SECURITY ACT, 1980

Prior to this law there has been The Preventive Detention Act, 1950 and Maintenance of Internal Security Act, which were repealed and made way for the National Security Act. It enables the Central Government and State Governments as well to preventatively hold any individual to do anything detrimental for security of State, public order, continuation of essentials. Advisory board has to endorse such detentions.

b. THE TERRORIST AND DISRUPTIVE ACTIVITIES (PREVENTION) ACT

This statute was the first counter terrorism law in India and was primarily brought into existence to counter the insurgent and disruptive activities which were taking place in Punjab. Among other things this law was significant as it had for the first time attempted to define “terrorist act”, “disruptive activity”, and “property”. It created a distinction between terrorist and disruptive acts, and the statute nowhere referred any international legal norms related to terrorist acts. The extradition Act, 1962, was made applicable only to

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646 National Security Act, 1980
647 The Preventive Detention Act 1950
648 Maintenance of Internal Security Act 1971
649 Terrorist and Disruptive Activities (Prevention) Act, Act. No. 28 of 1987
650 Id. S. 2 (h); S. 3.
651 Id. S 2 (d); S 4.
652 Id. S 2 (gg)
the Terrorist and Disruptive Activities (Prevention) Act, 1987\textsuperscript{653}. Therefore the terrorist acts were precluded from being considered as offences of political character. Due to complaints on misuse, TADA lapsed in 1995. Even after that country fell victim to multiple terrorist attacks like hijacking of civil aircraft in 1999, and Parliament attack in 2001, this encouraged central government to enact the Prevention of Terrorism Act, 2002.

c. PREVENTION OF TERRORISM ACT, 2002\textsuperscript{654}

This was the first law in India which referred to the globalised nature of terrorism and how technology plays a major role in carrying out such attacks. The Act defined ‘terrorist act’\textsuperscript{655} by amending the \textit{mens rea} compared to the previous law, and it also included fund raising for terrorist activities. It also had mechanisms related to terrorist organizations under Ss 18-22.

d. THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967\textsuperscript{656}

This statute is heavily influenced by the international law as developed by various Security Council resolutions\textsuperscript{657} to prevent and combat the menace of international terrorism. The Unlawful Activities (Prevention) Act, 1967 (UAPA), now inter alia, deals with matters relating to combating of terrorism, even its financing.\textsuperscript{658} This statute has successfully incorporated the laws as laid in the previously repealed legislations, as evident from the definition of ‘terrorist act’\textsuperscript{659}, while making it international in nature by including

\textsuperscript{653}(28 of 1987).
\textsuperscript{654}The Prevention Of Terrorism Act, 2002 [Act No. 15 of 2002]
\textsuperscript{655}Id.S. 3.
\textsuperscript{656}The Unlawful Activities (Prevention) Act, 1967(37 OF 1967) [30 December, 1967].
\textsuperscript{659}Supra Note. 656 Section 15. Terrorist act: (1) Whoever does any act with intent to threaten or likely to threaten the unity, integrity, security, economic security or sovereignty of India or with intent to strike terror or likely to strike terror in the people or any section of the people in India or in any foreign country,
(a) by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisonous or noxious gases or other chemicals or by any other substances (whether biological radioactive, nuclear or otherwise) of a hazardous nature or by any other means of whatever nature to cause or likely \textit{to cause}--
(i) death of, or injuries to, any person or persons; or
(ii) loss of, or damage to, or destruction of, property; or
such acts affecting any foreign country; explaining the ambit of the term ‘public functionary’; and also including criminal acts like kidnapping or abduction done with the purpose of compelling foreign country to do or abstain from doing something. It further criminalises acts like raising funds for terrorist act\textsuperscript{660}, conspiring to carry out terrorist act\textsuperscript{661}, organizing terrorist camps\textsuperscript{662}, recruiting person or persons for terrorist act\textsuperscript{663}, harboring, or being a member of terrorist gang, etc, which is an evidently influenced by POTA. It also allows method to forfeit any enrichment from terrorist activities.\textsuperscript{664} It is the only central legislation which deals specifically with terrorism and it has been significantly amended in 2012\textsuperscript{665}. This amendment has brought into existence concept like “economic security”;

\textsuperscript{660}Section 17(amended in 2012); The Unlawful Activities (Prevention) Act, 1967(37 OF 1967) [30 December, 1967].
\textsuperscript{661}Id.
\textsuperscript{662}Id. At Section 18 A
\textsuperscript{663}Id. At Section 18 B

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bringing an inclusive definition of “persons”; “offences committed by companies”\(^666\); “offences committed by societies or trusts”\(^667\); extensive amendments have been done under Chapter V\(^668\). A very significant amendment which has brought the Act very close to the well established norms of international law on terrorism, has been section 15 (2) and the incidental Schedule II\(^669\) which has listed most of the major international conventions on combating kinds of terrorism.

e. NATIONAL INVESTIGATION AGENCY ACT, 2008\(^670\)

This Act establishes an agency solely dedicated to investigate and prosecute offences affecting security and sovereignty of India and even offences under statutes enacted to give effect to all related international instruments.\(^671\) However the Agency is empowered only to investigate the “schedule offences” relayed to the Acts\(^672\) mentioned in the Schedule. Questions related to the jurisdiction of the special court established under the Act are settled by the central government and it would be final.

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\(^666\) Supra Note. 661 at Section 22 A  
\(^667\) Supra Note. 661 at Section 22 B  
\(^668\) See The Gazette Of India Extraordinary- No 4-Part II- Section 1,p 4-6 { The Unlawful Activities (Prevention) Amendment Act, 2012 (No. 3 of 2012) [3\(^{rd}\) January 2013].}  
\(^670\) National Investigation Agency Act, 2008[No. 34 of 2008]  
\(^671\) Id. at preamble.  
f. THE GENEVA CONVENTIONS ACT, 1960

This particular legislation is the only piece of law which enables India to exercise universal jurisdiction in respect of grave breaches as defined under all the four Geneva Conventions. Section 3 of the Act is further strengthened by the contents of section 4 which intends to punish any person accused of committing offence under chapter II. However the legislation has no express mention of extradition proceedings. The central government has till date not started any prosecution against any individual, as required under section 17 of the Act.

5.8. INDIA & ITS INTERNATIONAL OBLIGATIONS FOR EXTRADITION

To deal with terrorism in a truly co-operative manner, India has over the years engaged in international and regional efforts to create an effective system to counter terrorism and facilitate smoother extradition of fugitive criminals. In the light of such circumstances India has signed and ratified such terrorism related treaties and also given them effect by enacting laws to that extent. Adding to such efforts India has also tried to develop consensus among the South Asian nations on issues of terrorism and mutual legal assistance by using SAARC as the forum for realizing such endeavors.

5.9. UN TREATIES

673 Geneva Conventions Act, 1960 [No. 6 of 1960].
674 Id., sec 3 Punishment of grave breaches of Conventions.-
   (1) If any person within or without India commits or attempts to commit, or abets or procures the commission by any other person of, a grave breach of any of the Conventions he shall be punished--
      (a) where the offence involves the wilful killing of a person protected by any of the Conventions, with death or with imprisonment for life; and
      (b) in any other case, with imprisonment for a term which may extend to fourteen years.
   (2) Sub- section (1) applies to persons regardless of their nationality or citizenship.
   (3) For the purposes of this section,--
      (a) a grave breach of the First Convention is a breach of that Convention involving an act referred to in art. 50 of that Convention committed against persons or property protected by that Convention;
      (b) a grave breach of the Second Convention is a breach of that Convention involving an act referred to in Art. 51 of that Convention committed against persons or property protected by that Convention;
      (c) a grave breach of the Third Convention is a breach of that Convention involving an act referred to in art. 130 of that Convention committed against persons or property protected by that Convention; and
      (d) a grave breach of the fourth Convention is a breach of that Convention involving an act referred to in art. 147 of that Convention committed against persons or property protected by that Convention.
675 Supra Note. 673 Section 17: Cognizance of offences.- No court shall take cognizance of any offence under this Act except on complaint by the Government or of such officer of the Government as the Central Government may, by notification in the Official Gazette, specify.
India entered its signature for accession to the treaty on 11th April 1978. India is not obligated as per Art 13 (1), establishing compulsory arbitration or adjudication by the ICJ concerning disputes among member states relating interpretation or application.

INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES

India signed its accession to the treaty on 7th Sep 1994 and made reservation by declaring it not being obligated by Art 16 (1) which establishes compulsory arbitration or adjudication by the ICJ concerning disputes among member states relating interpretation/application, at the request of one of them.

INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF TERRORIST BOMBINGS

India signed as well as ratified it on 17th and 22nd September, 1999 respectively. It expressed its reservation to article 20 (1) of the said convention. India objected to the reservation put across by Pakistan, saying that the latter sought to reduce scope of Convention on an one-sided approach and opposing Art 5, thereby making it incompatible with object and purpose of Convention which is the suppression of terrorist bombings, without putting any importance to who carried out the attack and where. GoI recalled that, according to Article 19 (c) of the VCLT, any reservation not compatible with object or purpose of Convention is not permissible.

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677 https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-7&chapter=18&lang=en#EndDec
681 Declaration: “The Government of the Islamic Republic of Pakistan declares that nothing in this Convention shall be applicable to struggles, including armed struggle, for the realization of right of self-determination launched against any alien or foreign occupation or domination, in accordance with the rules of international law. This interpretation is consistent with Art. 53 of the Vienna Convention on the Law of Treaties 1969 which provides that an agreement or treaty concluded in conflict with an existing jus cogens or peremptory norm of international law is void and, the right of self-determination is universally recognized as a jus cogens.” [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-9&chapter=18&lang=en#EndDec]
INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE FINANCING OF TERRORISM  

India signed and ratified the treaty in the year 2000 and 2003 respectively. It made no declaration or reservation to the said treaty. However Pakistan and Bangladesh have both entered reservations as Article 24 (1), while the former has also entered its reservation in relation to Article 14, which has been objected by Japan; Netherlands; U.K, cause such rider effectively gives precedence to its domestic law without specifying its contents.

INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF ACTS OF NUCLEAR TERRORISM

India had signed and ratified the convention in the year 2006, recording the only reservation with the application of Article 23 (1). It is worth noting here that while Bangladesh and Sri Lanka have ratified the treaty but Pakistan and Nepal are not party to the said treaty.

CONVENTION ON OFFENCES AND CERTAIN OTHER ACTS COMMITTED ON BOARD AIRCRAFT, 1963

India ratified it in 1975 while reserving the application of Art 24 (1).

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL SEIZURE OF AIRCRAFT, THE HAGUE, 1970

The treaty was into effect in India in 1982, with neither any declaration nor reservation.

CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF CIVIL AVIATION, SIGNED AT MONTREAL ON 23 SEPTEMBER 1971

The treaty was into effect for India in 1982, with neither any declaration nor reservation.

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL, 1980

India acceded the treaty in 2002 while putting in record its reservation in relation to Article 17 (2), by which it is not obligated as per the dispute settlement mechanism. On the other
hand, Pakistan’s reservation to the application of Article 2 (2) of the convention has drawn maximum number of objections from the other convention parties, saying that such reservation is against the very object and purpose of the convention. The declaration made by Pakistan refers to an area considered to be beyond the scope of the said Convention and the purpose of that declaration could be interpreted as if it is related to obligations within the framework of that Convention, such as obligations to make the offences described in article 7 of the Convention punishable under its national law or to cooperate with other States Parties in the field of criminal prosecution. Such interpretation will go against the spirit of the treaty.\textsuperscript{688}


India became party to both the treaties in 1999.

CONVENTION ON THE MARKING OF PLASTIC EXPLOSIVES FOR THE PURPOSE OF DETECTION, 1991

India acceded and brought it to effect in 2000. It declared itself as a producer State, as per requirement under Art XIII (2).\textsuperscript{689} India also made reservation of not being bound in respect of Article XI, paragraph 1, of the Convention.\textsuperscript{690}

5.10. SAARC

India with the other SAARC nations has addressed the issue of developing counter-terrorism mechanisms. In the third summit itself the heads of Governments also signed the SAARCRCST (which was later ratified and came into effect on 22 August 1988).\textsuperscript{691} However, much was not done on the domestic front to bring it into effect which was reiterated in the seventh SAARC summit in 1993. With the objective of strengthening the efforts the SAARC Terrorist Offences Monitoring Desk (STOMD) was established in

\textsuperscript{688}http://www.iaea.org/Publications/Documents/Conventions/cppnm_reserv.pdf accessed on
\textsuperscript{689}http://www.icao.int/secretariat/legal/List%20of%20Parties/MEX_EN.pdf accessed on 20.10.2014
\textsuperscript{691}Smruti S. Pattanaik, MedhaBisht & Kartik Bommakanti , \textit{Fact Sheet SAARC: A Journey through History},[http://www.idsa.in/system/files/SAARC-factsheet.pdf] accessed on
Colombo. Keeping its pace up with the development by the UN, in 2002, the SAARC heads of states reiterated the need to take measures to prevent terrorist financing by criminalizing collection of funds and prevent terrorists from organizing any activities directed against other states and it led to the adoption of SAARC Additional Protocol on Terrorism and ratified in thirteenth SAARC summit in 2005. All these developments are also in fulfilment of the requirements under UNSC Resolution 1373.

SAARCRCST and APRCST provide a comprehensive body of counter-terrorism law regulating the SAARC countries. The APRCST of Terrorism signed in 2002, came in effect from 2006 after it was ratified by all Member States. The Convention has framed its extradition provisions at par with the international terror related treaties, giving due emphasis to the extradition laws of the Contracting State as well as supplementing the domestic laws if already not meeting the standards of the Convention, while also allowing them to include any other offence which shall not be deemed as political offence for extradition between the Convention States.

5.11. LANDMARK CASES:
Both High Courts and Supreme Court of India has delivered a number of judicial decisions in respect to issues of terrorism and extradition in the recent times. Some of the most important cases will be hereafter briefly summarized to highlight certain aspects related to both terrorism and extradition.

a. RAJENDER KUMAR JAIN AND OTHERS V STATE THROUGH SPECIAL POLICE ESTABLISHMENT AND OTHERS

In the said case, the Supreme Court of India looked into the duties of the public prosecutor and scope of jurisdiction of court, in the light of the Prosecutor’s withdrawal from prosecution. While holding that the Committing Magistrate was competent to give such consent and it shall be the duty of the Public Prosecutor to inform the Court which will thereafter appraise itself of the reasons which prompt the Public Prosecutor to withdraw

692 Signed on 4th November 1987 came into force on 22nd August 1988
694 Supra Note. 315, Art. I; II and III
695 Cr.A. No. 287 of 1979, Criminal Miscellaneous Petition No. 3890 of 1979 and S.L.P. (Criminal) No. 3115 of 197
from the prosecution. The court while dismissing the special leave petition, also made a few comments on the fact that the concept of ‘political offence’ though not expressly recognized under the IPC or CrPC, however it did find mention in the Indian Extradition Act, and found it sufficient to say that politics are about Government and therefore, a political offence is one committed with the object of transforming the nature of government or to coerce to revolutionize its policy.

b. DAYA SINGH LAHORIA v UNION OF INDIA AND OTHERS

The Supreme Court in this particular case had the opportunity to examine Sec 21 Indian extradition law in consonance with the extradition arrangement under which appellant was surrendered to India from U.S.A. The issue was if prosecution could proceed against for offences not specified in the arrangement without the consent of the requested country. The division bench looked into the 1993 amended Sec 21 of Indian statute before maintaining petitioners claim, by referring to the plain language of section 21; Article 7 of the extradition Treaty; juristic writings referring to the fundamental principles of extradition; and U.S.A Supreme Court Decision. It made a finding saying that section 21 of the Act was in consonance with Article 7 of the extradition Treaty.

c. SUMAN SOOD @ KAMAL JEET KAUR AND OTHERS v STATE OF RAJASTHAN

In the above-mentioned cases two issues specifically related to extradition laws were raised by the counsels of the Mr. Daya Singh Lahoria and Ms. Suman Sood. Both the counsels had suggested that in the absence of mention of the exact provisions of Indian Penal Code, under which they were convicted, in the 1931 Extradition Treaty between U.S.A &U.K, their punishment to be illegal. The other additional prayer was to quash and set aside her

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697 The United States District of Texas Fort Worth Division issued the judgment of certification of extraditability and the said decree certifies to sustain under Extradition Treaty between the United States and the United Kingdom and Northern Ireland with India and specifies the offences for which the accused, mentioned in the extradition order could be tried (see Para 2).
698 Art. 7
699 Supra Note.696 Para 27
700 United States v. Rauscher 1019 US 407 (1886)
702 Id., Para 18.
conviction which was a lesser offence while she was extradited was a higher offence, based on the same set of evidence.\textsuperscript{703} The court held the Extradition Treaty between U.S.A and India to be subsisting and operative, as entered in the year 1931, based on the proposition of international law that a change in the form of Government of a contracting State would not put an end to its treaties.\textsuperscript{704} On the other issue the court held that it was already established that an accused on being acquitted of higher crimes could still be prosecuted for committing lesser offences if substantiated by evidence.\textsuperscript{705} The court concluded that general principles of administration of criminal justice as applicable throughout Municipal Law also extends to International Law and to cases covered by Extradition-Treaties.

d. SARABJIT RICK SINGH v UNION OF INDIA\textsuperscript{706}

In the present case the appellant had challenged the Additional Chief Metropolitan Magistrates recommendation to extradite the appellant to U.S.A, on the ground that such order was made in violation of Article 9 of the Extradition Treaty and Section 7 of the Indian Extradition Act, 1962. The kind and purpose of the evidence so placed before the Magistrate was examined by the court at length by referring to the provisions; judicial decisions; and by interpreting the provisions in the light of the nature and purpose of the Statute.\textsuperscript{707} It held that the Magistrate is required to arrive at a prima facie finding either in favour of fugitive criminal or in support of the requesting state. The term “evidence” was interpreted in the light of the responsibility of the Magistrate to just prepare a Report for making an order of commitment under the Act, the documents submitted as evidence is not required to be evaluated or appreciated \textit{strictosensu}.

e. ABU SALEM ABDUL QAYYUM ANSARI v CENTRAL BUREAU OF INVESTIGATION AND ANOTHER\textsuperscript{708}

\footnotesize{\textsuperscript{703} Id., Para 19.  
\textsuperscript{704} Id., Para 27. ; see Rosiline George v. Union of India, 1993 INDLAW SC 1535 : 1993 INDLAW SC 1535 
\textsuperscript{705} Id., Para 33. 
\textsuperscript{706} Supra Note, 602 
\textsuperscript{707} See Para 30; see SohanLal Gupta (dead) through LRs. And others vs. Asha Devi Gupta (Smt) and others : (2003)7 SCC 492; Charles GurmukhShobhraj vs. Union of India and others :1986 RLR 7 : 1986 (29) DLT 410 and Nina Pillai vs. Union of India : 1997 Crl. L.J. 2359 
\textsuperscript{708} JT 2013 (11) SC 14}
The said case is a continuation from the judgment which was rendered by the Supreme Court in 2011. The appellant applied to appeal court complaining about his trail in India in violation of RoS under Art. 16 of Law 144 of 99. The Portuguese Court of Appeal adjourned the hearing pending the Supreme Court of India judgment on the Writ Petition No. 171 of 2006, where in the latter held that there has been no violation of RoS as he was tried for offences less serious than the ones, based on which he was extradited, thereby finding it to be included in framework of extradition principle of RoS. However the Court of Appeals of Lisbon, by judgment dated 14.09.2011 took a contrary view and held that the authorization granted for the extradition of Abu Salem ought to be terminated as Art. 16 (2) of the Portuguese Law No. 144/99 provides that a person cannot be tried for an offence other than the one that gives rise to request for cooperation by way of extradition. The Union of India further appealed to the Supreme Court of Justice, Portugal, which while refusing to entertain the appeal on constitutional basis, held that the judicial decision does not impose by itself the devolution of the extradited person. It held that any legal decision that terminates the authorization extradition, namely for violation of the Principle of Speciality, must be considered only as one element among others that the requested State takes into consideration when it politically ponders on the attitude to take in the plan of its relations with the requesting State. The court was of the opinion that whether the individual has to be returned or not has to be settled through diplomatic routes. Pursuant to such decision the appellant filed petition and representations in Portugal and India respectively for cancellation of his extradition. The Supreme Court of India in its decision as given on 27.11.2013, made the following observations on the two issues that, it considered the verdict by the Constitutional Court of Portugal of possessing only

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709 Abu Salem Abdul Qayyum Ansari v State of Maharashtra and Anr, (2011) 11 SCC 214; JT2010(10)SC202
711 The Court of Appeals of Lisbon has concluded that ".....In the light of the Portuguese legal system, the Indian Union were not considering the limitsimposed by the Portuguese Republic to the extradition of Abu Salem of which it was perfectlyaware.....violated the principle of Speciality."[Para (xxv) of 2013 judgment].
712 Para (xxvi) of 2013 judgment.
713 Firstly, whether this Court can modify the judgment rendered in Abu Salem 2010 Indlaw SC 727 (Supra) dated 10.09.2010 reported in (2011) 11 SCC 214 2010 Indlaw SC 727 under the grounds raised by the respondent, and; secondly, whether the order of Extradition dated 28.03.2003 stands annulled/cancelled as alleged by the appellant.
persuasive value and not of binding nature; in absence of extradition arrangements or treaties between nations, extradition is largely regulated by reciprocity and comity as a matter of courtesy and goodwill between sovereigns or the theme of ‘world public order’; endorsed the decision taken by the respondent to withdraw the impugned charges to avoid endless deferral of the trial of the appellants; the interpretation upheld by the court in 2011 in respect of RoS still holds good as per Article 141 of the Constitution of India. On the second issue the court stated that in absence of any specific direction given to the Union of India by the courts of Portugal, the Supreme Court of Justice’s decision can at best be used as a legal basis for Government of Portugal to seek the appellants return. Therefore the order of extradition dated 28.03.2003 continues to be valid and effective in the eyes of law.

The researcher believes that the C.B.I in this particular case had taken a very pragmatic approach, by deciding to continue prosecuting Abu Salem for the sanctioned offences, as the lesser offences would not have allowed the judiciary to punish him more than for which he was brought.

f. NAVNEET KAUR v. STATE OF NCT OF DELHI & ANR.714

This decision was given on 31st march, 2014 and it’s a follow up of the earlier decision given in the Devinder Pal Singh Bhullar v State of N.C.T. of Delhi715, wherein it was held that delay in deciding mercy or clemency petition under Articles 72/161 cannot be invoked as a ground for commutation of death sentence and the principle was certainly not applicable to persons convicted for acts of terrorism and similar offences. Mr. Devinder Pal Singh Bhullar on the fear of being arrested and being tortured had fled to Germany where he was refused political asylum and thereafter deported back to India. The decision to deport him was declared illegal by a Frankfurt court two years later. Once back in India, the trial went on and he was found guilty and awarded death penalty which raised quite a furor among the NGO’s and the Sikh community. However till the 2014 decision all his pleas for commutation of his death penalty were rejected. Meanwhile the family members have in touch with the German embassy for creating more pressure on the government of India to

rescind death penalty. The government of India always maintained that Germany did not
have any *locus standi* to press for clemency as the accused was not extradited but
deported.\textsuperscript{716} However in *Navneet Kaur v. State of NCT of Delhi &Anr*, the Supreme Court
held conclusively, basing on the constitutional bench decision as rendered in *Triveniben vs. State of Gujarat*\textsuperscript{717}, that there was no good reason to disqualify all TADA cases as a class
from relief on account of delay in execution of death sentence as each case requires
consideration on its own facts.\textsuperscript{718} The court applied the ratio as laid down in *Shatrughan
Chauhan & Anr. vs. Union of India & Ors*\textsuperscript{719} wherein it was held that insanity/mental
ilness/schizophrenia is also one of the supervening circumstances for commutation of
death sentence to life imprisonment, as the accused was found to be in an unfit state of
mind as per the report of the medical board.\textsuperscript{720}

5.12. A SUM –UP

In continuation of the previous chapters, wherein the practice of extradition has been
studied primarily from international perspective, this chapter has focused only in the Indian
perspective, by studying how the existing legislative framework; added with the nations
commitment under the existing international treaty law; and few landmark cases in the
backdrop of extradition and terrorism.

a. INDIAN EXTRADITION LAW

Extradition laws in India in codified form have developed only in the nineteenth century
under the British influence. The extradition related laws which were applied prior
independence were primarily done away with post-independence and eventually the Indian

\textsuperscript{716} ‘EU opposes death to Bhullar, writes to Chidambaram’, New Delhi, June 17
[http://www.deccanherald.com/content/169588/eu-opposes-death-bhullar-writes.html]; ‘Germany has no
locus standi to seek clemency for Devinder Pal Singh Bhullar: India’, Friday, May 10, 2013
[http://zeenews.india.com/news/nation/germany-has-no-locus-standi-to-seek-clemency-for-devinder-pal-
singh-bhullar-india_847769.html] accessed on?

\textsuperscript{717} (1988) 4 SCC 574

\textsuperscript{718} Supra Note. 714

\textsuperscript{719} 2014 (1) SCALE 437

\textsuperscript{720} Supra Note. 714
Extradition Act, 1962 came into effect which effectively repealed all other existing extradition laws then applicable. The Act maintains a fair balance between the judiciary and the power of central government, although the later is more empowered. The fundamental principles of laws of extradition and the safeguards for the fugitive criminals is also adequately protected, by chalking out the mandatory grounds of refusal, making detention time-bound, applying the same bail procedures, among other things. It also lays more emphasis on carrying the obligations as undertaken with the treaty States, in respected to extradition treaties, thereby bringing more flexibility into the matters. However, it remains a fact that the only Schedule, in the Act which lays out the crimes not to be given political colour, is not exhaustive in nature and has been unable to keep up its pace with international development of extradition norms/ offences established through treaties. It is heartening to see that the courts in India have mostly taken the path of purposive interpretation of the provisions of the Act, which has helped the nation in bringing fugitive criminals to justice. It is suggested that the Schedule is updated with the obligations that India has taken upon itself internationally. The Act also fails to bring forth any provision related to universal jurisdiction with respect to offences other than treaty offences like, grave breaches of GC.

Special legislations, for e.g., The Anti-Hijacking Act, 1982\textsuperscript{721}; The Suppression of Unlawful Acts Against Safety of Civil Aviation Act, 1982\textsuperscript{722}; The SAARC Convention (Suppression Of Terrorism) Act, 1993\textsuperscript{723}; The Suppression Of Unlawful Acts Against Safety Of Maritime Navigation and Fixed Platforms On Continental Shelf Act, 2002\textsuperscript{724} have, incorporated the provisions in the corresponding international conventions, including the provisions regulating extradition. Therefore it as overall been compliant with the global standards as set down by these respective international conventions.

b. TERRORISM IN INDIA- THE MAGNITUDE

\begin{itemize}
\item \textsuperscript{721}Supra Note. 611
\item \textsuperscript{722}The Suppression Of Unlawful Acts Against Safety Of Civil Aviation Act, 1982 (66 of 1982)
\item \textsuperscript{723}Supra Note. 616
\item \textsuperscript{724}Supra Note. 722
\end{itemize}
From the available data it is clear that India has been a consistent victim of terrorism from foreign sources right from the time it gained independence and the challenges have increased by several manifold given the mushrooming number of terrorist organizations in India and other nations. The terrorism related attacks have been often for two purposes, i.e. either for separatist causes as in Punjab, Jammu & Kashmir, Assam, and Arunachal Pradesh; or for religious causes backed with anti–India sentiments as evident from attacks carried out by Islamic fundamentalist groups. These attacks are carried out mostly to destabilize peace in specific regions; or to cause setback to the economy of the country, as seen in the Bombay bomb blasts; or to cause direct assault to the core of India democracy as witnessed in the Parliament attacks; or to carry out distorted religious motives, as seen in Mumbai attacks in 2008 in the name of jihad\(^725\). Terrorism in India had cost till date life of many civilians, armed personnel as well as two Prime Ministers, Smt Indira Gandhi and Shri Rajiv Gandhi, carried out by Punjab separatist forces and LTTE respectively. The threat of terrorist attacks are further aggravated by the fact that India has still not been able to secure the custody of many such terrorists who are not being surrendered by Pakistan, U.K. and U.S.A. the reasons behind the failure to secure surrender of these fugitives vary from causes like, the sheltering nations being under indirect influence of such individuals, as seen the case of late Osama Bin Laden and Hafız Saeed in Pakistan with the help of ISI; sheltering nations refusing to surrender on the ground of fear of torture anticipated on behalf of the law enforcing agencies, as seen in Chahal Singh case\(^726\). In *Chahal* case the ECHR established, that diplomatic assurances are an inadequate guarantee where torture is “endemic,” or a “recalcitrant and enduring problem” that results, in some cases, in fatalities.\(^727\) On the other hand there are issues when terrorist organizations, like Khalistan Commando Force are not recognized so in the countries where the fugitive criminals often

\(^725\) *Jihad* is an Arabic term meaning effort. It is understood in Muslim thought as a struggle on behalf of God and Islam. 

\(^726\) In *Chahal v. United Kingdom 22414/93 - Grand Chamber Judgment [1996] ECHR 54 (15 November 1996) [http://www.bailii.org/ew/cases/ECHR/1996/54.html], the court ruled that the return to India of a Sikh activist would violate the U.K.’s obligations under art. 3, despite diplomatic assurances proffered by the Indian government that Chahal would not suffer mistreatment at the hands of the Indian authorities.

\(^727\) *Diplomatic Assurances and Their Use in Europe* [available at http://www.hrw.org/reports/2004/un0404/5.htm]
take shelter, making extradition of such fugitives more difficult. This problem is further aggravated when terrorist harboring countries while not heeding to extradition requests, fail even to prosecute such individuals before their domestic courts, even with large volume of evidence being put to their disposal, as noted in the case of Hafiz Saeed who is accused of being one of the masterminds of 26/11 attacks. Such delay in prosecution is deliberate in nature as it is amply clear in the case Hafiz Saeed, with the objective of facilitating the individual to hide for a while and then rebuild his brand through new organization.728 The terrorism threat in India looms even further with the recent unrest in Iraq between Shia and Sunni Muslims, where ISIS729 has been in the news asking for attacks to be carried out in India too.730

c. COUNTER-TERRORISM LAWS- SPECIAL FOCUS ON EXTRADITION MECHANISMS

India has over decades framed many special laws to counter issues like national security, terrorism in several forms. All the laws have primarily empowered the Central Government to deal with setting up of special courts; and conduct prosecution, in co-operation with the respective State governments. Law and order is a state subject in India, but over decades it has been felt that in the light of new technology and the sophistication with which the terrorist acts are carried out the efforts to counter terrorism needs to be centralised. This centralization can be criticised saying that it’s an over-reach of the central government, but the objective is basically to strengthen the efforts as taken up by the respective State Governments. The ambit of ‘terrorist act’ has been expanded over the years keeping in mind the security challenges faced by India as well as the contemporaneous development that has taken place through international terrorism specific treaties and Security Council Resolutions. In fact the amendments in the Unlawful Activities Act, 1967; Money

729Islamic State in Iraq and Levant [ISIS] is a self-proclaimed descendant of Prophet Muhammad Abu Bakr al-Baghdadi. It is known to have taken over from the Al Qaida organization, as the most powerful and effective extreme jihadi group in the world [www.independent.co.uk.] accessed on
730ISIS poses threat to Indian lives and interests, [available at m.economictimes.com/opinion/editorial] accessed on 5July, 2014 at 04:00 IST.
Laundering Act, has been done in a relatively short span of time keeping up the international obligations under taken by India. Adding to this legislation we also locate special laws, like Air Hijacking Act, and etc. India being a party to the majority of the international conventions related to terrorism has been adding on special laws within the domestic legal system, which in turn have the effect of increasing expenses and expectation to create more special courts, with the additional pressure of dispensing quick justice, as these are usually high profile cases. The conventions allow the treaty members to prosecute individuals within their jurisdiction under the treaty offences as incorporated under these municipal special laws in addition to other municipal laws that may be applicable in a said circumstance. Therefore we have seen in India securing extradition of individual’s at times citing international law through the route of special laws as well as ordinary provisions under the Indian Penal Code.

Such vast amounts of legislations do have the possibility of making the task of prosecutor more complex and more than often the trials gets stretched spanning decades, which further delays justice.

The researcher feels that the law related to terrorism needs to be further streamlined instead of having separate laws enabling the incorporation of the ratified international convention related to terrorism. The researcher suggests the following recommendations:

I. To incorporate a separate chapter on ‘terrorism related offences’ within the Indian penal code.

II. This chapter could define the specific terror related offences taking cue on the elements as laid down in the international conventions in addition to referring to the Indian Penal Code offences as well.

III. The criminal procedure code can be amended to the extent of enabling speedy hearing by special courts, assigned only with the task of disposing terror terrorism related cases. The procedure to make appeals and other ancillary things can be made uniform with respect to such offences.
The benefit of having a separate chapter of terrorism related offences is going to make the Indian penal code a comprehensive code and mainstream the terrorism related laws, which otherwise spread across special legislations.

The researcher would suggest that the existing Geneva Convention Act, 1960 be amended in the light of the developments in IHL and be active in ending impunity. India being one of the strongest nations among the SAARC countries should put in efforts to exercise universal jurisdiction as it would send across a strong message to other countries.

d. INDIA & ITS INTERNATIONAL OBLIGATIONS FOR EXTRADITION

India’s participation in the international efforts to curb international terrorism has been quite substantial. Apart from being involved in the drafting of these UN terrorism specific conventions, India has also accepted most of these significant conventions without any major reservation or declaration which would run against the objective of these treaties. Leaving a handful of these conventions, India has generally registered its reservation only with respect to submitting to the jurisdiction of the ICJ or to arbitration. In fact, after ratifying these treaties, it has without any delay enacted or amended laws to make them effective through its municipal laws.

Under SAARC regime, in spite of these two important documents on terrorism there has not been much enthusiasm to cooperate on issues of terrorist violence and funding between the member countries except some bilateral initiatives. To enhance effective prosecution of criminal cases, in 2008 the States in the region signed the SAARCMACM.731 Despite these initiatives, regional efforts to counter terrorism continue to face significant challenges as caused by gaps in institutional capacities and limited resources; shortage of counter-terrorism legislation conforming to international standards; and lack of regional cooperation at the operational level. Despite the existence of the regional instruments and mechanisms, the mutual distrust and suspicion among states in the region and the ongoing processes of consolidating relatively new, independent political identities, have influenced States’ reluctance to seek

731 Supra Note. 14
counterterrorism assistance from their neighbours.\textsuperscript{732} Widely held suspicions that the intelligence agencies of various South Asian states have designs on their neighbours’ territories, or facilitate insurgent movements to entrench political rivals in asymmetric warfare, has further fuelled the reluctance to share information and resources.\textsuperscript{733} As a result of these tensions, few of the counterterrorism instruments and commitments adopted by SAARC in its more-than-twenty-year history have been translated into action by its members.\textsuperscript{734} It is disheartening to know that the last summit was held in the year 2011, after which none has taken place till date\textsuperscript{735}. The SAARC conventions on terrorism are yet to include the Protocols to the respective terror specific convention as drafted by the UN, partly because some members of the SAARC have not yet ratified these Protocols. Moreover some reservations made by SAARC members like Pakistan while ratifying the UN Conventions on Terrorism, for e.g. in respect of Convention on the Physical Protection of Nuclear Material; and International Convention for the Suppression of the Financing of Terrorism, also hinder the proper application of the SAARC terror related Conventions. Even after years of signing these conventions, there has been little coordinated action, intelligence-sharing or any other form of meaningful cooperation.\textsuperscript{736} Adding to it, issues like rise of international terrorism within the region; presence of non-state armed actors and their ongoing operations; and little or no action on behalf of the countries harboring such elements have caused severe no-confidence on the existing regional mechanisms. It will not be superfluous to say that SAARC as a regional organization to tackle terrorism and other kinds of trans-national crimes would take many generations unlike its European counterpart; unless the trust deficit between the nations is addressed in true spirit and speedy and visible efforts are taken.

The failure of the SAARC region in matters of co-operation in respect to internal security is also patent in the fact that India has extradition treaties only with three members of

\begin{thebibliography}{9}
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\item \textsuperscript{732} Supra note. 13
\item \textsuperscript{733} Id
\item \textsuperscript{734} Id
\item \textsuperscript{735} SAARC Summit [http://www.saarc-sec.org/SAARC-Summit/7/] accessed on ?
\item \textsuperscript{736} Countering Terrorism: Building a Common Approach in SAARC [http://www.ipcs.org/project/countering-terrorism-building-a-common-approach-in-saarc-25.html] accessed on ?
\end{thebibliography}
SAARC\textsuperscript{737} and one extradition arrangement with Sri Lanka which came into effect back in 1978. India is yet to have extradition treaty with Pakistan, Afghanistan and Maldives.

e. LANDMARK CASES

The exposure of Indian courts with matters related to extradition law has not been that extensive in the light of terrorist activities. The judicial decisions have been primarily concerning situations where the fugitive criminal is either required to be surrendered; have already been surrendered to India; or where a fugitive criminal is required to be surrendered to a requesting nation. In the first situation, the courts can only frame charges; issue arrest warrants; and wait for the extradition process to start and end in successful handing of the individual to the government. While in the second situation the courts, might have to probe in to issues where there is any alleged breach of the conditions of extradition on behalf of the judicial and executive institution of the government, by the fugitive criminal so surrendered. The third situation is where the court has to make a prima facie finding either in favour of fugitive criminal or in support of the requesting state, based on the evidence submitted before it. Both High Courts and Supreme Court of India have played it role in shaping extradition law in India, as discussed in this chapter, since independence. However, judgments in respect of both elements of extradition and terrorism have been significantly less.

The cases as discussed above leads us to the following conclusions, like:

i. The courts have always looked upon Indian Extradition Act, 1962 as a special law and interpreted the provisions with a wish to fulfill the objective of the Statute. In other words, the courts have adopted purposive interpretation with respect to the statute. Such purposive interpretation has been given while evaluating the evidence placed before it for making a prima facie opinion.

\textsuperscript{737} The Treaty Of Extradition Between Government Of India And Government Of Nepal, 1953, New Delhi, 22\textsuperscript{nd} February, 1963 ;Extradition Agreement Between Republic Of India And Kingdom Of Bhutan, 21\textsuperscript{st} May 1997; Treaty Between The Republic Of India And People’s Republic Of Bangladesh Related To Extradition, 2013 [Available in http://cbi.nic.in/interpol/extradition.php#ea]; Also see answer given by the Minister of State in the Ministry of External Affairs on 25\textsuperscript{th} April, 2012 [available in http://164.100.47.132/LssNew/psearch/QResult15.aspx?ref=119898].
ii. The relationship between Indian municipal law and international law is fundamentally dualistic in nature, i.e., in times of conflict the municipal law prevails. It is more visible whenever the Supreme Court of India has dealt with matters related to interpreting the scope of RoS. The courts have taken an inclusive approach and referred to the prevalent international law and state practices as related to extradition and in the light of its findings interpreted Extradition Acts provisions, as witnessed in the 2011 Abu Salem decision. The 2013 Abu Salem judgment has further settled the line of approach the court shall take in future too.

iii. However there have been disappointments too, in the sense that the government has not been able to secure the extradition of Chahal Singh; Hafeez Sayeed; David Headley; Dawood Ibrahim; and many more terrorists. Very often the efforts of extradition are scuttled by the strict human rights norms that are made available to the fugitive criminals, in European countries. In such cases the Government of India as well as the requested country must be firm to abide by the most fundamental principle of ‘extradite or prosecute’.

iv. However, the judiciary has often been faced with issue of executing death penalty; and the component of political offence exception. With respect to the former, the court has finally in the 2014 Navneet Kaur decision, upheld that acts of terrorism does not deny the convicted from getting clemency in cases of deteriorating health conditions. However, the courts have lamented about the unavailability of any precise definition or understanding of application of political offence exception, in relation to Indian laws, making it difficult to apply.