CHAPTER - IV

INDIAN EXTRADITION LAW AND PRACTICE – AN ANALYSIS

4.1 INTRODUCTION

Extradition being a very crucial legal tool for the administrative of criminal justice, India too like many other countries has put in place a statutory legal framework to facilitate the same. As examined in the previous chapter the statutory of law of India did undergo considerable change since the time of its genesis. Currently, the Indian Extradition Act, 1962 with its latest amendment in 1993 provides the Indian statutory regime of extradition. In this chapter, an analysis of the Indian Extradition Act as amended in 1993 is carried out. For this purpose few important issues which arise in the practical application of the statute are selected and analysis of the same is carried out taking into account various judicial pronouncements. In addition to this, the Indian Extradition Act in its present form is also contrasted with UN Model Law, 2004 to see how far the same is compatible with this initiative of UNO to promote a harmonized legal regime of extradition and which obviously reflects the contemporary perceptions of extradition law.

4.2 THE EXTRADITION ACT, 1962 AS AMENDED IN 1993- AN ANALYSIS OF ISSUES AND FEATURES

The Extradition Act, 1962 as amended in 1993 (here after referred to as the Extradition Act or simply the Act) is a small statute with a broad aim - to govern extradition, the most sought after tool in the administration of criminal justice across the world. It provides legal mechanism to facilitate extradition of fugitive criminals from India to the requesting foreign countries. It also contains the procedure for making requests for the extradition of fugitive criminal who fled from India to other countries. Indian extradition law is primarily modeled on the established principles and practices of extradition as evolved and generally approved by the international community. The judiciary through their judicial dicta is contributing its bit to further to render clarity to the legal framework of extradition. In this part of the thesis, an attempt is made to
examine in detail the principles and procedures of Indian law of extradition and illustrate the same with the help of case law.

The Extradition Act primarily seeks to meet two requirements that arise in the administration of criminal justice in India or in any other foreign state. These two requirements are:

1. Extradition of fugitive criminal from India to foreign states outside India
2. Extradition of fugitive criminals from foreign countries to India

4.2.1. Preliminary Issues
Few preliminary questions call for an explanation. They are,

a. Who is a fugitive criminal?
b. What is a foreign state?
c. What for the fugitive criminal is extradited and on what basis?

a. Who is a Fugitive Criminal?

Neither in the part of the definitions nor in the other provisions the term ‘fugitive’ as such is not individually explained anywhere in the statute. Going by the general understanding the term ‘fugitive’ is attributable to a person who flees elsewhere to avoid or escape from danger, enemy, justice etc. This Act being a special piece of legislation for serving the cause of administration of criminal justice under a specific circumstance, i.e., a person fleeing away to avoid being subject to criminal justice mechanism, the term ‘fugitive criminal’ has been defined\(^1\) as follows:

*Fugitive criminal means* “a person who is accused or convicted of an extradition offence within the jurisdiction of a foreign State and includes a person who, while in India conspires, attempts to commit or incites or participates as an accomplice in the commission of an extradition offence in a foreign state”.\(^2\)

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1. Section 2 (f) Indian Extradition Act 1962
2. Section 2(f) of Indian Extradition Act, 1962
From the definition it is clear that it is not necessary that the fleeing person is a person found guilty of the concerned offence. It is sufficient if he is a person accused of an offence. The definition includes both the accused as well as the convicted. The ambit of criminal action in question is widened in such a way that the amended version of ‘fugitive criminal’ includes even those persons who are accused of or convicted for abetting, attempting to commit or inciting or participating as an accomplice to the concerned offence while being in India.

b. What is a Foreign State?

The meaning of the term ‘foreign state’ underwent quite a lot of transformation in view of the changes in the political status of India since the passing of Indian Extradition Act, 1903. Now the term has acquired great simplicity in that the Act defined ‘foreign state’ as any country outside India and it includes every constituent part, colony or dependency of such a state. The use of the word ‘outside’ helps in removal of anomalous situation that prevailed earlier with regard to issue of extradition within the native states which were part of Union of India. With the merger of native states it has become easy to provide a simple definition of foreign state as a state which is outside India.

c. What for a fugitive criminal is extradited and on what basis?

The definition of fugitive criminal makes it clear that extradition process gets ushered in only with reference to those fugitive criminals who committed extradition offences and not otherwise. Therefore, a fugitive criminal would be extradited only for the purpose of facing the trial or serving the sentence imposed in relation to an extradition offence. Over all, two different methods are followed by the countries to determine whether the offense is an extraditable act. The generally adopted method is the "enumerated method"\(^3\) where the treaty "specifies by name the offenses for which extradition will be granted. The alternative development in treaty practice has been the

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\(^3\) The enumerative method has a limitative effect as it confines the application of treaty only to those offenses named. The main flaw of this method is that the list might omit certain offenses and later it might prove to be too bothersome to include them by supplemental treaty.
"eliminative method."\(^4\) Here, "extraditable offenses are defined by reference to their punishability according to the laws of the requesting and requested states by a minimum standard of severity." India adopted both enumerative as well as eliminative methods which is visible from the definition of ‘extradition offence’ as adopted in 1993.

The Act has provided the definition of extradition offence\(^5\) as follows:

Extradition offence -

(i) In relation to a foreign State, being a treaty State, an offence provided for in the extradition treaty with that State;

(ii) In relation to a foreign State other than a treaty State an offence punishable with imprisonment for a term which shall not be less than one year under the laws of India or of a foreign State and includes a composite offence.

Section 2(c) and (d)\(^6\) read together gives the picture that determination of ‘extradition offence’ depends basically upon the terms of extradition treaty or arrangements made with foreign states (referred to as treaty states) or the minimum quantum of punishment (which is set at one year) for the given offence (either under Indian law or foreign state) in the case of non treaty foreign states. The term ‘extradition treaty’ is defined to include agreements as well as arrangements which include even the agreements or arrangements made prior to independence of India. Also, where there is no extradition treaty, the Central Government may, by a notified order, treat any Convention to which India and a foreign state are parties as extradition treaty. Under section 3 of this Act, a notification could be issued by the Government of India extending the provisions of the Act to the country/countries notified.

\(^4\) The eliminative method is indicative rather than limitative, as it defines extraditable offenses by their punishment. It is a more convenient method because it avoids unnecessary detail in the treaty and avoids mistake of omitting crimes. The main flaw in this method is that it is impractical to implement with systems that have a notable disparity in penalties.

\(^5\) Section 2(c) of Indian Extradition Act, 1962

\(^6\) According to Section 2 (d) ‘Extradition Treaty’ includes both agreements as well as arrangements.
India has extradition treaties concluded with 28 countries. It also has extradition arrangements with 10 countries.\(^7\)

In addition to the basic criteria that determine the existence of extraditable offence, there are also some substantial principles and factors which come into play in deciding the extraditability of the fugitive offender like the principles of double criminality, rule of specialty, political offence. The principles which are adopted in the Indian policy and practice of extradition are discussed separately.

4.2.2 Procedure for Extradition of Fugitive Criminals to Foreign States:

Chapter II and Chapter III of the Act provide the procedure for extradition of fugitive criminals to foreign states. Whereas Chapter III applies to extradition to those countries with which India has extradition treaty or arrangement, Chapter II comes into operation with regard to extradition of fugitive criminals to foreign countries with which India has no extradition arrangements.

The process of extradition is activated with the request of foreign state for surrender of a fugitive. This is so as to enable each state to bring offenders to trial swiftly as possible in the state where the alleged offence was committed, and to preclude any state from becoming a sanctuary for fugitives from justice of another state.

The Act provides that the process of extradition is started on a formal request for the surrender of a fugitive criminal belonging to a foreign state by a diplomatic representative of the foreign state at Delhi to the Central Government. Alternatively, the

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\(^7\) India has bilateral extradition treaties in force with 28 countries, including 5 members of the ADB/OECD Initiative (Cook Islands; Hong Kong, China; Korea; Mongolia; and Nepal) and 14 Parties to the OECD Convention (Belgium; Bulgaria; Canada; France; Germany; Korea; Netherlands; Poland; South Africa; Spain; Switzerland; Turkey; United Kingdom; and United States). An extradition treaty has been signed but is not in force between India and the Philippines, a member of the Initiative. India has extradition relations under the London Scheme with 8 countries, including 6 members of the Initiative (Australia; Fiji; Papua New Guinea; Singapore; Sri Lanka; and Thailand) and 1 Party to the OECD Convention (Australia). It also has extradition arrangements with Portugal and Sweden, two Parties to the OECD Convention. India also has 13 bilateral MLA treaties that are in force, including with 4 members of the Initiative (Kazakhstan; Korea; Mongolia; and Thailand) and 7 Parties to the OECD Convention (Canada; France; Korea; Switzerland; Turkey; United Kingdom; and United States). MLA (Mutual Legal Assistance) treaties have also been signed – but not yet in force – with Kyrgyzstan (a member of the Initiative) and South Africa, a Party to the OECD Convention. India has signed but has not ratified the UNCAC and the UNTOC. The Extradition Act and the CCP only set out the basic procedure for MLA and extradition.
government of the foreign state seeking surrender of the fugitive criminal may communicate with the Central Government through its diplomatic representative in that state or country. The Act does not restrict the mode of initiation of the process of extradition to only these two modes. If these modes are not suitable then the request for surrender of the fugitive can also be made by any other mode as agreed between the government of the foreign state and the Central Government of India.  

The different stages of the process of extradition are:

(a) A request by a foreign state through its diplomatic representative to the Central Government of India through India’s diplomatic representative in that state;
(b) Order to a magistrate to issue warrants;
(c) Issue of warrants by a magistrate;
(d) Arrest of the fugitive; and
(e) Production of the fugitive before the magistrate to see if there is sufficient evidence against the fugitive or not.

4.2.2.1 Chapter III

To succinctly adumbrate the fascicules comprising sections 12 to 18 which constitute Chapter-III of the Extradition Act.

Section 12 deals with the applicability of Chapter-III and not Chapter-II, along with the other provisions of the Extradition Act.

Section 13 provides for the apprehension and return of a fugitive criminal to the requesting foreign state on the strength of an endorsed warrant or a provisional warrant (Section 14), respectively dealt under Sections 15 and 16.

Section 17 provides that if the magistrate is satisfied, on inquiry,

Firstly, that the endorsed warrant has been duly authenticated and

Secondly, that the offence of which the person is accused, or has been convicted is an extradition offence, he shall commit the fugitive criminal to prison to await his return.

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The Magistrate is also obligated to send a Certificate of Committal to the Central Government.

Section 18 empowers the Central Government to issue a warrant for custody and removal to the foreign state concerned of the fugitive criminal and for his delivery at a place and to a person to be named in the warrant. Briefly stated, the obligations cast on the magistrate under Chapter-III are not of a judicial nature *stricto sensu*, in that the scope of inquiry is clerical or secretarial in substance. The Magistrate has to ascertain whether the formalities pertaining to the authentication of the "endorsed Warrant" have been complied with and secondly that the offence for which the fugitive criminal has been accused or has been found guilty is punishable with imprisonment for a term not less than one year under the laws obtaining in both countries. The provisions of Chapter-II, it shall be seen, require a wider scrutiny and the exercise of judicial functions.

4.2.2.2. Chapter II

Chapter-II is a pandect comprising Sections 4 to 11.

This Chapter comes into play with regard to those requests for extradition from foreign states to which Chapter II will not apply. Chapter II is generally applicable to extradition requests. In other words Chapter II is general and Chapter III is exceptional. As already mentioned, Chapter III is applicable to treaty states as per the terms of the concerned treaty. In fact, the Delhi High Court has observed that “Our inquiry reveals that only two treaties, that is between India and Bhutan and India and Turkey, make Chapter III applicable. In all other cases of treaties or arrangements, it is Chapter II, along with the provisions other than Chapter III that are enforced.”

Section 5 prescribes that where a Requisition is received in the manner set-down in the preceding provision, the Central Government has the discretion to issue an order to any Magistrate who would have had jurisdiction to inquire into the offence if it had occurred within his jurisdiction directing him to inquire into the case.

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9 Ram K Madhubani v. UOI, CDJ 2008 DHC 1838
Section 5 of the Act says that the Central Government ‘may’ consider the request of the foreign state. The word ‘may’ used in this section clearly shows the discretionary powers of the Central Government. It may or may not act upon any requests for extradition. It is not obligatory for the Government to order the Magistrate to on the request of foreign state. Basically, the decision to extradite depends a lot on political will. The Act has endowed the Central government with unfettered right to turn down the request for extradition. Describing the discretionary powers of the Government, the Supreme Court in *Hans Muller Vs Superintendent, Presidency Jail*\(^{10}\) has maintained that “The law of Extradition is quite different. Because of treaty obligations it confers a right on certain countries (not all) to ask that persons who are alleged to have committed certain specified offences in their territories, or who have already been convicted of those offences by their courts, be handed over to them in custody for prosecution or punishment. But despite that the Government of India is not bound to comply with the request and has an absolute and unfettered discretion to refuse.”

Under Section 6 the Magistrate must simultaneously issue a warrant for the arrest of the fugitive.

Section 7 of the Act with its four sub sections deals with the procedure before the magistrate in inquiry. Sub section (1) governs the jurisdiction and powers of the magistrate. It is of great importance as it bestows on the magistrate powers of inquiry akin to that of the Court of Session or High Court. Sub section (2) provides about the need to consider evidence required for determination of the extraditability and non political character of the offence. Sub section (3) gives power to magistrate to discharge the fugitive criminal if no prima facie case is made out. In case a prima facie case is made out, Sub Sec(4) accords power to magistrate to commit the fugitive criminal to prison to await the orders of the Central Government. The report of his enquiry has to be sent to the government. If the fugitive criminal desires to make any submission to the Central Government, a written statement to that effect may be sent along with the report of the magistrate.

\(^{10}\) CDJ 1955 SC 107
Section 10 assumes importance in the context of application of sub section (2) of Sec 8 because it deals with the manner of receipt of evidence. It provides that the documents duly authenticated are to be taken in as evidence. The necessary documents to be in proceedings against the fugitive are the warrants issued by a court of foreign state in case of an accused and the certificate of conviction in case of convict and also the depositions of or statements on oath taken by any court of justice outside India or their photocopies. All these documents are to be duly authenticated before being taken as evidence in the inquiry. The letters of request received from the foreign state making out a short summary of the allegation should be available on the file of the magistrate. The law does not prescribe any particular form on which the letter of request should be but as it is a formal request received from the requesting state asking for extradition, it should in short give the particulars of the fugitive so that the identity of the fugitive can be established and it should also give the necessary particulars of offence with which the offence is charged or convicted for. It is not required at the time of sending the request to give the details of the evidence available with the requesting state and also the material particulars of the documents, which the prosecution wants to bring against the fugitive during trial of fugitive is an accused. In case of a convict the letter of request may simply contain the offence under which the fugitive has been convicted by the court of justice in a foreign state.

The section provides that the exhibits, depositions and copies of the depositions and copies of the depositions, the certificate issued by the competent authority stating the facts of the case if duly authenticated, can be taken in evidence by the magistrate. The magistrate either in the presence of the fugitive or in his absence can take such evidence.

Under Section 8, when the Central Government decides to surrender the fugitive criminal to the requesting state, it may issue warrant for the custody and removal of the offender for his delivery at a decided place and to a specified person.

Section 9 is about the power of magistrate to issue warrant for the arrest of a fugitive criminal if in his opinion on the basis of such information and evidence which he
received in that regard, it would have been justifiable to arrest him if the offence of which he is accused of or has been committed within the local limits of his jurisdiction.

4.2.3. Issues and Dilemmas relating to Procedural Aspects:

4.2.3.1. Relationship with Cr.P.C.

With regard to the arrest of fugitive criminal whose extradition is sought.

- Action can be taken under the Indian Extradition Act Article No. 34 (b) of 1962. This act provides procedure for the arrest and extradition of fugitive criminals under certain conditions, which includes receipt of the request through diplomatic channels ONLY and under the warrant issued by a Magistrate having a competent jurisdiction.
- Action can also be taken under the provisions of Section 41 (1) (g) of the Cr.P.C., 1973 which authorizes the police to arrest a fugitive criminal without a warrant, however, they must immediately refer the matter to Interpol Wing for onward transmission to the Government of India for taking a decision on extradition or otherwise.

Consequently, there could be intersections between the two statutes, namely, Indian Extradition Act and Cr.P.C. in some situations.

The Supreme Court of India has held in Rosalin George Vs Union of India,\textsuperscript{11} that Extradition Act being a special statute dealing with the extradition of fugitive criminals should exclude the application of the general provisions of the Code of Criminal Procedure. This position is reiterated by the Apex Court in 2007.\textsuperscript{12} It said that in any case, Section 5 of the Act gives overriding effect to the special jurisdiction created under any special or local laws. Thus, the Magistrate would be competent to inquire into a case of murder, in respect of which extradition has been requested for, despite the fact that ordinarily he would not be empowered by the Code of Criminal Procedure, 1973 (Cr.P.C.) to do so. Conceptually, this should not pose any problem since the magistrate is

\textsuperscript{11} (1994) 2 SCC 80
\textsuperscript{12} Sarbjit Rick Singh v. Union of India, CDJ 2007 SC 1349 para 41
to return a finding only of a prima facie character; he does not sentence or punish the fugitive criminal.

The over-riding effect of special statute namely, Indian Extradition Act over the general statute of Cr.P.C. which is confirmed by the Apex Court in Bhavesh Jayanti Lakshmi Vs State of Maharashtra\(^\text{13}\) case is followed in the latest case, Mhd Zubir Fauzal Alam Vs The Inspector of Police\(^\text{14}\) decided in 2011. The Apex Court in Bhavesh Jayanti case clearly held that “strictly construed in a case involving extradition, Section 41(1)(g) of Cr.P.C. may not have any application.”\(^\text{15}\) It maintained that “The (Extradition) Act was enacted to consolidate and amend the law relating to extradition of fugitive criminals and to provide for matters connected therewith or incidental thereto. It is a special statute…” Further it has observed that “it is sought to be clarified that Section 41(1)(g) of the Code of Criminal Procedure clearly contemplates the power of the police to arrest under “any law relating to extradition” thereby contemplating the exercise of powers subject to the provisions of the Extradition Act. Thus the provisions of Code of Criminal Procedure are subject to those in the Act.”\(^\text{16}\) Smt Jayasree Vs The Inspector of Police & ors,\(^\text{17}\) another judgment in 2011 also followed the same dictum in a matter which involved the application of VIIA of Cr.P.C. and held that if the offence is extraditable offence and the prosecution is pending trial and the warrant of arrest is also pending, the defacto complainant is entitled to invoke the provisions of the extradition Act and the magistrate has ample power to issue suitable orders for extradition.

4.2.3.2. Scope and Nature of Magisterial Enquiry under Section 7

In most states the final decision is in the hands of judiciary which will declare that the requested state is either authorized or not to extradite the required fugitive criminal. Such a declaration is conclusive. In India the procedure is set out in Indian Extradition Act. The scheme is that on receiving a request the matter is referred to a magistrate for inquiry to find out if there is a prima-facie case and this is done under Section 5. The

\(^{13}\) 2009 (9) SCC 551
\(^{14}\) 2011 (1) LW (Crl 635)
\(^{15}\) Ibid, Para 88
\(^{16}\) Ibid, Para 89
\(^{17}\) CDJ 2011 MHC2724
Magistrate conducts inquiry under Section 7(1) in the same manner and with similar jurisdiction and powers as that of Sessions judge.

Section 7 of the Extradition Act speaks of the manner, jurisdiction and powers of the magistrate and it reads as follows;

**Procedure before Magistrate**

(1) When the fugitive criminal appears or is brought before the Magistrate, the Magistrate shall inquire into the case in the same manner and shall have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by a Court of Session or High Court.

(2) Without prejudice to the generality of the foregoing provisions, the magistrate shall, in particular, take such evidence as may be produced in support of the requisition of the foreign State of commonwealth country and on behalf of the fugitive criminal, including any evidence to show that the offence of which the fugitive criminal is accused or has been convicted is an offence of political character or is not an extradition offence.

(3) If the Magistrate is of opinion that a prima facie case is not made out in support of the requisition of the foreign State or Commonwealth country. He shall discharge the fugitive criminal.

(4) If the magistrate is of opinion that a prima facie case is made out in support of the requisition of the foreign State of Commonwealth country, he may commit the fugitive criminal to prison to await the orders of the Central Government, and shall report the result of his inquiry to the Central Government, and shall forward together with such report, any written statement which the fugitive criminal may desire to submit for the consideration of the Central Government.

In conducting inquiry the magistrate takes evidence as may be led in including any evidence to show that the offence in question is an offence of political character or is not an extraditable offence. This would show that the fugitive criminal is entitled even at
this stage to show that the offence is political offence or the offence is not extraditable. Under sub sec 3 to Section 7 if the Magistrate is of the opinion that no prima facie case is made out he has the power to discharge. This is an exclusive power and cannot be interfered with by the state except in due course of law.\textsuperscript{18}

Here we may pause a little to state that the entire jurisdiction under the Act vested in magistrate is restricted to find out whether there is prima facie case. If the Magistrate finds none, he can discharge the fugitive criminal but if he finds a prima facie case, he has to commit the fugitive offender to prison and make a report. There is no further power vested in the Magistrate. He cannot go into the validity of extradition treaty or agreement as this is a matter within the exclusive domain of Central Government. The power under the act as to whether a fugitive offender should or should not be surrendered is entirely vested in the Central Government. The Magistrate has no role to play.\textsuperscript{19}

The object of the magisterial enquiry is mainly to find out if the if the request made by the foreign state for extradition of a fugitive criminal has a sound basis and material which would justify the extradition of the person sought to be extradited.\textsuperscript{20}

On a question about the nature and scope of magisterial inquiry under Section 7 raised in Nina Pillai case it is held that “it is now fairly well settled that the magisterial inquiry which is conducted pursuant to the request for extradition is not a trial. The said inquiry decides nothing about innocence or guilt of the fugitive criminal. The main purpose of the inquiry is to determine whether there is a prima facie case or reasonable grounds which warrant the fugitive criminal being sent to the demanding State. The jurisdiction is limited to the former part of the request and does not concern itself with the merits of the trial.\textsuperscript{21}.

The obligation of the Magistrate is only to ascertain whether a prima facie case against the fugitive criminal is made out or not. "prima facie" has a definite connotation in law. It is defined as "at first sight" or "accepted as so until proved otherwise" or "on

\textsuperscript{18} Charles Gurmukh Sobhraj v. Union of India, CDJ 1985 DHC 493 para 13
\textsuperscript{19} Ibid, para 14
\textsuperscript{20} Maninder Pal Singh Kohli v. The State and Another, (2006)129 DLT
\textsuperscript{21} Nina Pillai Case (65 (1997)DLT 487 in para 11
face of it", or "so far as it can be judged from the first disclosure. The prima facie case will prevail until contradicted and overcome by other evidence. The power of the Magistrate in conducting an inquiry under Section 7 of the Act is akin to framing of the charge under Section 228 of the Code of Criminal Procedure, 1973. At the stage of the framing of charge even a strong suspicion founded upon material and presumptive opinion would enable the court in framing a charge against the accused. At that stage, the court possess wider discretion in the exercise of which it can determine the question whether the material on record is such on the basis of which a conviction can be said reasonably to be possible. The requirement of Section 228 (of Cr.P.C.) also is of a prima facie case. Sufficiency of evidence resulting into conviction is not to be seen at that stage and which will be seen by the trial court.22

Section 7 of Extradition Act confers powers on the Magistrate as the case is not brought before it by the prosecution or the complainant. But an enquiry is entrusted to the designated court by the Central Government. A power was therefore required to be conferred under a statute to the Magistrate, so that, it may have the required jurisdiction to make an inquiry. Its functions are quasi judicial in nature, its report being not of definitive order. In the first instance, the report of the Magistrate is not in the nature of final order. Secondly, the report does not affect the fugitive criminal by its own force.

The magisterial inquiry cannot be converted into a trial. At the inquiry, the magistrate has only to find out if based on the evidence and material produced, a prima facie case is made out in support of the requisition, and nothing more. Any finding under Section 7 (4) of the Act necessarily has to be prima facie and could never be conclusive. Code of Criminal Procedure makes a clear distinction between an enquiry, investigation and trial. Authority of the Magistrate to make an enquiry would not lead to a final decision where for a report is to be prepared. Findings which can be rendered in the said enquiry may either lead to discharge of the fugitive criminal or his commitment to prison or make a report to the Central Government forwarding therewith a written statement which the fugitive criminal may desire to submit for consideration of the Central

22 Kamalesh Babulal v. Union of India, CDJ 2008 DHC 1090 at para15
Government. The Apex court in Sarbjit Singh case categorically held that the magistrate under Extradition Act is to make an enquiry and not to hold a trial.

Section 7 postulates that a finding has to be arrived at only for the purpose of discharge of an accused or his extradition upon formation of a prima facie view. The legal principle in this behalf has clearly been laid down in sub-sections (2), (3) and (4) of Section 7 of the Extradition Act. The said sub-sections cannot be ignored. Unlike Section 208 of the Code (old code of Cr.P.C.), no witnesses need be examined and cross-examined. If the State has been able to prima facie establish that a case has been made out for bringing an accused to trial, it will be for the accused to show that no such case is made out of the offences complained or for extradition.

The enquiry contemplated under the Extradition Act is to be conducted only by the designated magistrate. He cannot delegate this power to anybody else.

Has the Magistrate appointed under Indian Extradition Act jurisdiction to try even offences under a special statute, National Drugs and Psychotropic Substances (NDPS) Act, 1985?

This matter came up for consideration in Fleming Ludin Larsen Vs Union of India. In this case the counsel for the fugitive criminal whose extradition is sought put up an argument that the appointment of the Metropolitan Magistrate under Section 5 of the Act, is bad in law as he did not have any jurisdiction of enquire into the offence under the Narcotic Drugs and Psychotropic Substances Act, 1985, and consequently was not legally entitled to make an enquiry into the case and to make the impugned recommendation regarding extradition to the Central Government. It is contended that under the NDPS Act, it is the special Judge of the rank of Sessions Judge or Additional Sessions Judge who can try such offences there under. In support of his submission,

23 Ibid.
24 Ibid.
25 (1996) ILR 2 Cal 208
26 CDJ 1999 DHC 042
learned counsel relied upon clause (a) of sub-section (1) of Section 36-A of the NDPS Act.27

The court concluded that -

“Thus it is clear that a Magistrate who is appointed to enquire into the case of a fugitive criminal, will have the same jurisdiction and powers as if the case was triable by a Court of Session or High court. It is also significant to note that though Section 36-A of the NDPS Act starts with a non obstante clause, the overriding effect thereof is however, confined and limited to the Code of Criminal Procedure alone. It does not override the provisions of the Extradition Act, which is a special Act, dealing with extradition only. Therefore, by a deeming fiction contained in sub-section (1) of Section 7 of the Extradition Act, the Magistrate who is appointed by the Central Government to enquire into the matter is conferred with the same jurisdiction and powers, as nearly as may be, as if the case were one triable by the Court of Session or High Court. The provisions of sub-section (1) of Section 7 by a statutory device enhances the power and jurisdiction of the Magistrate to the level of power and jurisdiction enjoyed by a Session Judge or Additional Session Judge manning the Special Court appointed by the Government with concurrence of the Chief Justice of the High Court as envisaged by Section 36-A of the NDPS Act. In case the argument of the learned counsel for the petitioner is accepted, offence triable by an Additional Session Judge or a Session Judge will fall outside the purview of the Extradition Act. If the argument of the learned counsel for the petitioner is taken to its logical conclusion, it will lead to staring results. While a fugitive criminal accused of a petty offence triable by a Magistrate in India will be liable to be extradited to the requesting State, a fugitive criminal who is accused of a serious offence triable by an Additional Session Judge or a Session Judge, will not be liable to be extradited. This position cannot be countenanced in law. An interpretation which leads to absurdity must be shunned. Therefore, the submission of the learned counsel for the petitioner that the Metropolitan Magistrate was not legally competent to try the offence of which the

27 According to the said provision, any offence under the Narcotic Drugs and Psychotropic Substances Act 1985 is triable only by the Special Court constituted for the area in which the offence has been committed or where there are more special Courts than one for such area, by such one of them as may be specified in this behalf by the Government.
petitioner was accused of and consequently could not have been appointed under Section 5 of the Extradition Act to make an enquiry into the case, cannot be sustained."28

This judgment is particularly of particular significance in the present era where drug trafficking is rampant and extradition is the most facilitating tool in tackling this transnational offence.

**Whether proceedings under Section 7 can be stopped once reference under Section 5 is made?**

In a situation where the fugitive criminal contended that he was always ready to go to the requesting state and that he has already made some efforts in that direction and therefore, there is no need to continue with proceedings under Section 7, it is maintained that “since a reference under Section 5 has already been made, statement in this regard can be made by the petitioner before the Magistrate only because once a reference under Section 5 has been made, it cannot be withdrawn. It must culminate into a report by the Magistrate under Section 7 of the Act.

**4.2.3.3 Judicial Review of Magistrate Findings**

Much earlier in 1970, the High Court of Calcutta had the occasion to examine the objection that the order made by District Magistrate is not revisable by the High Court. The main question for consideration was whether the order made by the District Magistrate under Sections, 435, 439 or under 561a of Cr. P.C. The court supported the revision of the order of the Magistrate beginning with its well founded assertion about the basic judicial character of Magistrate. Thus, in its words,

“The word ‘magistrate’ has been defined in the Act as a Magistrate of First Class or a Presidency Magistrate. When the Extradition Act defines ‘magistrate’ as a Magistrate of the First Class or a Presidency Magistrate, the obvious reference is to Section 6 of the Code of Criminal Procedure and a reference to Section 6 will

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28 Fleming Luden Larsen v. Union of India, CDJ 1999 DHC 042 para 7
show that a Magistrate of a First Class or a Presidency Magistrate is a criminal court under the Code of Criminal Procedure.”29

The different approaches adopted by different courts regarding the nature (whether executive or judicial) of magisterial proceedings have been discussed in detail before it arrived at its final conclusion regarding revisableness of the order of Magistrate by High Court. Therefore, a full length presentation of the passage from the judgment rendered by Justice R.N. Dutt deserves to be quoted.

Since the definition of 'any Magistrate' has reference to the Code of Criminal Procedure obviously the Magistrate making the enquiry becomes a criminal court. Furthermore, the Magistrate who is to make the enquiry has to determine if a prima jade case has been made out in support of the requisition and if he is of opinion that a prima facie case has not been made out, he has the power to discharge the fugitive criminal. Clearly therefore, the Magistrate has to make this determination judicially. This can never be an executive act even though it can be said, as has been held in some cases that the order of the Magistrate to execute a warrant against a fugitive criminal may be an executive act but the determination by him on evidence as to whether there is a prima facie case in support of the requisition is a judicial determination by a criminal court. This question came up for consideration before different High Courts under the relevant provisions of the Extradition Act of 1903. When an extradition proceeding was pending against Rudolf Stallman, he moved this court for quashing the said proceedings but this court held in (1) Rudolf Stallman Vs The Emperor,30 that the Magistrate holding an enquiry under the Extradition Act, 1903 was not subject to the appellate jurisdiction of the High Court and so the High Court could not interfere under Section 15 of the Charter Act. When the extradition proceeding ended with an order for his surrender, Rudolf Stallman again came up before this court and this court held that it had powers under section 491 of the Code of Criminal Procedure and directed his release. The question whether Section 439 of the Code was attracted or not does not appear to have been

29 Hari Sankar Prasad v. District Magistrate Darjeeling, CDJ 1970 Cal HC 164
30 15 CWN 737
specifically raised or considered in those cases. But in (2) *Guli shahu Vs Emperor*\(^{31}\) this court discharged the fugitive criminal from custody under Section 439 of the Code and said "it is true that Section 15 of the Act ousts the jurisdiction of this court to enquire into the propriety of a warrant issued under Chapter 3 but where the order of the Magistrate is sought to be justified under an authority supposed to be derived from the law but is in fact without jurisdiction, not being sanctioned by it, we cannot but assume that the Magistrate has acted in his general jurisdiction, and as such his order is revisable by this Court and liable to be set aside at the instance of the party whose liberty is affected by it". True, in (3) *Guli Shahu Vs The Emperor*\(^{32}\) this court held that the Magistrate was, in executing a warrant of arrest, performing an executive act and so section 439 of the Code of Criminal Procedure was not attracted. It will thus appear that the effect of these two decisions is that though the High Court had no power to enquire into the propriety of the warrant, it could interfere with an order made by the Magistrate in the extradition proceeding for surrender of the fugitive criminal. The Bombay High Court in (4) *Bai Aisha*\(^{33}\) considered the previous decisions of the Calcutta High Court and found that even the execution of a warrant under Section 7 of the Extradition Act, 1903, was not an executive act because the Magistrate has judicially to consider the matter and decide whether the warrant can be executed according to law and so the order of the Magistrate is subject to the revisional powers of the High Court. Here, the Bombay High Court followed its previous decision in (5) *The Emperor Vs Hasim Ali*.\(^{34}\) The Allahabad High Court in (6) *H. K. Lodhi Vs Shyam Lal*\(^{35}\) on a consideration of the Calcutta and Bombay decisions, came to the conclusion that orders of a Magistrate in an extradition proceeding were judicial orders and as such were open to revision. This decision was arrived at disagreeing with the previous decision of the same High Court in (7) *Sundal Singh Vs District Magistrate, Dehra Dun*.\(^{36}\) The Madras High Court has in (8) *Re : Sankaranarayana Rengan Reddiar*\(^{37}\) on a consideration of the previous decisions of the different High Courts held that the Magistrate enquiring under the

\(^{31}\) 18 CWN 869  
\(^{32}\) 19 CWN 221  
\(^{33}\) AIR 1920 Bom. 81  
\(^{34}\) 1905 7 Bom. LR 463  
\(^{35}\) AIR 1960 All 100  
\(^{36}\) 1934 CLJ 1296  
\(^{37}\) 1962 CLJ 697
Extradition Act is a criminal court and his orders are revisable under Section 439 of the Code of Criminal Procedure. With respects I agree with this decision and for the reasons given therein. This conclusion gets support from the observations of the Supreme Court in (9) *State of West Bengal Vs Jugal Kishore More and another* 38, where it said "the law relating to extradition between independent states is based on treaties. But the law has operation national as well as international. It governs international relationship between sovereign states which is secured by treaty obligation. But whether an offender should be handed over pursuant to requisition is determined by the domestic law of the State on which the requisition is made. Though extradition is granted in implementation of the international commitments of the State, the procedure to be followed by the 'courts' in deciding whether extradition should be granted and on what terms is determined by the municipal law". Then again, "international commitment or treaty will be effective only in the 'court of a country' in which the offender should be surrendered." 39

Obviously therefore, the Supreme Courts considered the Magistrate's making this enquiry under Section 7 of the Extradition Act, 1962 as 'courts' of this country. I am, therefore, of opinion that Section 439 of the Code is attracted to the instant case. But even if I assume that Section 439 of the Code of Criminal Procedure is not attracted, there is no doubt that Article 227 of the Constitution is attracted. The petitioner's application is also under Article 227 of the Constitution. We have seen how the Magistrate making the enquiry under the Extradition Act functions judicially and acts judicially. There is no doubt, therefore, that such a Magistrate is a 'tribunal' within the meaning of Article 227 of the Constitution and so the order made by the Magistrate under Section 7 (4) of the Extradition Act is revisable under Article 227 of the Constitution of India." 40

However, Justice Sarma Sarkar who while concurred with the final finding that the order of Magistrate is revisable, differed with Justice R.N. Dutt in reasoning for the same. In his opinion the High Court has no jurisdiction under Sections 435, 439 and 561a of Cr.P.C. of the code to revise the order due to two reasons.

38 1969 SCC 441
39 Ibid para 2
40 Ibid para 3
First, the enquiry held by the District Magistrate under Section 7 of the Act cannot be said to be an enquiry by an inferior criminal court within the meaning of Secs. 435, 439 or Sec. 561a of the Code of Criminal Procedure. Secondly, under Section 7 (4) of the Act, the submission of the report does not amount to a final order or a definitive order on the basis of the enquiry and, if that is not a final or definitive order, then, it cannot be said that it is an order of a Court.41

In his opinion extradition is not merely an executive act but a political act depending on the final decision of the Central Government. According to him from the scheme of the Extradition Act itself it is clear that it was more or less a political action than a judicial act. Justice Sarma Sarkar refused to consider that the High Court has the power to revise the order of the Magistrate U/Ss 435, 439 and 561a of Cr.P.C. He took the stand that it will appear that merely because a statute lays down a particular mode of procedure under which the enquiry is to be made by reference to another Code it does not generally or necessarily follow that the Magistrate holding enquiry under the provisions of that Section was working as a court as contemplated in the Code of Criminal Procedure.42

So far as the judicial review of the order of the Magistrate under Article 227 of Indian Constitution he conceded that it is available. In his words,

Even though this Court may not have any power under the provisions of the Code of Criminal Procedure to revise the order of the District Magistrate made after an enquiry under the Extradition Act, the question remains whether the order can be challenged u/art. 227 of the Constitution. It has been held by a decision of this court in the case of Haripada Dutta Vs Anynta Mondat,43 that the word "tribunal" under Article 227 of the Constitution means a person or a body other than a Court set up by the State in deciding the rights between the contending parties in accordance with Rules having the force of law and doing so not of taking executive action but of determining a question. Judged by this standpoint, the District Magistrate though not an inferior criminal court, yet it was set

41 Ibid para 7
42 Ibid para 8
43 AIR 1952, Cal. 528
up by the Executive Bodies to decide disputes between the parties in accordance with Rules having the force of law. Accordingly, the enquiry held by the District Magistrate was by a Tribunal within the meaning of Article 227 of the Constitution. If so, then this Court has power to intervene in terms of that Article. It was laid down in the case cited above that every High Court has power of superintendence over all judicial or quasi-judicial bodies within its territorial limits in respect of both judicial and administrative matters. But, then, it was laid down that only when a grave injustice has occurred or is likely to occur by reason of some mistake committed by the inferior judicial or quasi-judicial body and the municipal law provides no adequate remedy, the High Courts are entitled to intervene under Article 227 and correct the mistake and provide appropriate relief.

Regarding the scrutiny of the findings of Magistrate by the higher courts through writ jurisdiction, it is held recently that the court exercising writ jurisdiction cannot substitute its opinion. It could only examine whether the view taken by the magistrate was a possible view or not. In a writ petition, the court is only concerned with the decision making process and as to whether the view formed by the Magistrate could not have been formed by any reasonable thinking person at all.

The Delhi High Court in a 2008 case maintained that “we must underscore that an Appeal against the Order of the learned ACMM has not been provided for in the Extradition Act and, therefore, while exercising the extraordinary powers of a Writ Court, we would interfere with the decision of the concerned Court only if it is perverse in the strict legal sense.”

4.2.3.4 Evidence in Magisterial Inquiry

Section 7[2] of the Extradition Act envisages taking of such evidence as may be produced in support of the requisition of the foreign state as also on behalf of the fugitive criminal. It is open to the fugitive criminal to show that the offence alleged to have been committed by him is of political character or the offence is not an extraditable offence. He may also

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44 Kamalesh Babulal v. Union of India, CDJ 2008 DHC 1090 at para 23
45 Ram K Madhubani v. UOI, CDJ 2008 DHC 1838 para 21

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show that no case of extradition has been made out even otherwise. The Magistrate, therefore, in both the situations is required to arrive at a prima facie finding either in favour of fugitive criminal or in support of the requesting state.46

Section 10 - Receipt in evidence of exhibit depositions and other documents and authentication thereof -

(1) In any proceedings against a fugitive criminal of a foreign State under this chapter, exhibits and depositions (whether received or taken in the presence of the person against whom they are used or not) and copies thereof and official certificates of facts and judicial documents stating facts may, if duly authenticated, be received as evidence.

(2) Warrants, depositions or statement on oath which purport to have been issued or taken by any Court of Justice outside India or copies thereof, certificates of, or judicial documents stating the facts of conviction before any such Court shall be deemed to be duly authenticated if ---

(a) the warrant purports to be signed by a Judge, Magistrate or officer of the State where the same was issued or acting in or of such State;

(b) the depositions of statements or copies thereof purport to be certified under the hand of a Judge, Magistrate or officer of the State where the same were taken or acting in or for such State, to be original depositions or statements or to be true copies thereof, as the case may require;

(c) the certificate of, or judicial document stating the fact of, a conviction purports to be certified by a Judge, Magistrate or officer of the State where the conviction took place or acting in or for such State;

(d) the warrants, depositions, statements, copies, certificates and judicial documents, as the case may be, are authenticated by the oath of some

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46 Sohan Lal Gupta (dead) through LRs. And others v. Asha Devi Gupta (Smt) and others : (2003)7 SCC 492
witness or by the official seal of a Minister of the State where the same were issued, taken or given

Section 10 of the Act provides that the exhibits and depositions (whether received or taken in the presence of the person, against whom they are used or not) as also the copies thereof and official certificates of facts and judicial documents standing facts may, if duly authenticated, be received as evidence.

The Supreme Court made an observation that Section 7 does not set out the standard of proof. What is necessary for passing a judicial order may not stricto sensu be necessary for making a report. According to it, the meaning of the word ‘evidence’ has to be considered keeping in view the tenor of the Act. Distinction must be borne in mind between the evidence which would be looked into for its appreciation or otherwise for a person guilty at the trial and the one which is required to make a report upon holding an enquiry in terms of the provisions of the Act. Whereas in the trial, the court may look into both oral and documentary evidence which would enable him to ask question in respect of which the accused may offer explanation, such a detailed procedure is not required to be adopted in an enquiry envisaged under the said Act. If evidence stricto sensu is required to be taken in an enquiry forming the basis of a prima facie opinion of the Court, the same would lead to a patent absurdity. Whereas in a trial the court for the purpose of appreciation of evidence may have to shift the burden from stage to stage, such a procedure is not required to be adopted in an enquiry. Even under the Code of Criminal Procedure existence of strong suspicion against the accused may be enough to take cognizance of an offence which would not meet the standard to hold him guilty at the trial.

Consistent view of the courts of India appears to be that an inquiry conducted pursuant to the order of central Government is only to find out whether there was a prima facie against the fugitive criminal for considering his extradition. Mode and manner of

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47 Supra note 24, para 40
48 Ibid, para 35
49 Ibid, para 37
enquiry under Sec.7 has nothing to do with the rule in regard to standard of proof\textsuperscript{50}. This has been reiterated in the dictum of Supreme Court in Sarbjit Rik Singh case\textsuperscript{51}. When it is contended that summary evidence without corroboration thereof in material particulars could not form evidence required for granting of extradition and it does not meet the statutory requirements of Sec.7 read with Sec.10. The contention is also to the effect that Sec. 7 read with Sec.10 would lead to a conclusion that the records of the criminal case in the requesting state were to be placed before the magistrate so as to enable him to apply his mind thereupon to form opinion that there existed a prima facie case for passing order of extradition. The argument went on that a document by reason of a statute, can be taken into evidence but so as to bring its contents within the meaning of the term ‘evidence’ its contents must be proved. However, disagreeing with this contention, the Apex Court maintained that “it may be true that a document does not prove itself. Its contents, unless admitted, should be proved in terms of the provisions of the Evidence Act, unless the contents of the documents are said to be admissible by reason of a provision of a statute, as for example Section 90 of the Evidence Act. But what misses the aforementioned submission/contention is that where as the contents of document is to be proved for the purpose of trial but not for the purpose of arriving at an opinion in regard to existence of a prima facie case in an enquiry. Strict formal proof of evidence in an extradition proceeding is not the requirement of law. While conducting an enquiry the Court may presume that the contents of the documents would be proved and if proved, the same would be admitted as evidence at the trial in favour of one party or the other”\textsuperscript{52}. Rajpal Singh and others Vs Jai Singh and another\textsuperscript{53} is relied upon by the Apex court for the proposition that for determining a prima facie case the Magistrate is not required to evaluate the evidence so as to arrive at a finding that the accused is or is not guilty.

While determining whether a prima facie case has been made out, the relevant consideration is whether on the evidence laid it was possible to arrive at the conclusion in question. At that stage meticulous consideration of materials is uncalled for. The persons

\textsuperscript{50} Charles Gurmukh Shobhraj v. Union of India and others, 1986 (29) DLT 410 and Nina Pillai v. Union of India, 1997 Cr.LJ 2359 Paras 9 and 11
\textsuperscript{51} Ibid
\textsuperscript{52} Ibid, para 38
\textsuperscript{53} (1970) 2 SCC 206
who are not examined by the original investigating agency may be examined by another investigating agency to make the investigation more effective. The materials so obtained could also be used at trial. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further, then a charge has to be framed. The sifting of evidence at this stage is permissible only for a limited purpose to find out a prima facie case but the court cannot decide at this stage that the witness, is reliable or not. At the stage of framing of charge, evidence is not to be weighed. The court is not to hold an elaborate inquiry at that stage.54

Regarding the question of additional evidence, it will be seen that sub-sec. 2 of Section 7 of the Act contains a clear mandate to the magistrate to take such evidence as may be produced in support of the requisition of the foreign state as well as the evidence produced on behalf on behalf of the fugitive criminal. The use of the word ‘shall’ in sub-sec. 2 indicates that the magistrate cannot refuse to admit any evidence produced by either side during the said inquiry, no matter whether it is the evidence it is the evidence originally tendered or any additional evidence tendered subsequently. From the wording of Section 7 of the Act, it does not appear that the magistrate can refuse to admit/consider the evidence subsequently tendered by either party. In Sec.311 of the Code of Criminal Procedure, which is invoked for adducing additional evidence during a criminal trial, the word used is ‘may’ which means it is the discretion of the court to admit or refuse to receive additional evidence. In contrast to this, the world used in Sec.7(2) of the Act is ‘shall’ which means that the magistrate will have to receive all such evidence as may be produced in support of the request of the foreign state or on behalf of the fugitive. There is no separate provision under the Act regarding reception of additional evidence. The word ‘shall’ used in Section 7(2) of the Act is comprehensive enough to include additional evidence also.55

54 Kamalesh Babulal v. Union of India, CDJ 2008 DHC 1090 at para15
55 Mohammed Hanif Haji Jusab v. Union of India Criminal Revision No.202/2002 Date of Decision 29 January 2003, OP Dwivedi J.
Thus in Maninder Pal Singh Kohli case\textsuperscript{56} when the Magistrate refused to the application of the government to place on record certain documents alleging that they are essential for establishing conclusively the complicity of fugitive criminal in the commission of alleged crime, the Delhi High Court held that he cannot refuse to take the evidence because Section 7 of the Act simply makes it clear that the Extradition Magistrate shall take all such evidence as may be produced in support of the requisition of foreign state and on behalf of the fugitive criminal. At the same time the basic tenor of magisterial inquiry indicates that it is important to bear in mind that the evidence which could be adduced by the requesting state as well as the fugitive criminal should be restricted only to the extent it is relevant for the inquiry and not to convert it to a full blown trial.

In a case of this nature the second part of Section 10 of the Act would apply which does not contemplate production of any oral evidence by the Central Government. No fact needs to be proved by evidence. What is necessary is to arrive at a prima facie case finding that a case has been made out for extradition from the depositions, statements, copies and other information’s which are to be gathered from the official certification of facts and judicial documents.

Regarding the question whether Affidavit can be accepted as evidence the Apex court has given a positive nod maintaining that law in India recognizes affidavit evidence\textsuperscript{57} and taking into consideration the use of the word ‘information’ in Sec.10 of the Act. The court took the stand that the term "information" contained therein has a positive meaning. It may in a sense be wider than the words "documents and the evidence", but when a document is not required to be strictly proved upon applying the provisions of the Indian Evidence Act or when an evidence is not required to be adduced strictly in terms thereof, the particular use of the word "information" in Sec.10 of the Extradition Act which provides as to what could be received as evidence assumes special significance. Since the statute speaks of information specified therein to be the evidence

\textsuperscript{56} Union of India v. Maninder Pal Singh Kohli, (2007) III AD 9Cr) 190
\textsuperscript{57} See order IXX of CPC
for the purpose of the provisions of the said Act, affidavit can fall under the ambit of information.

On a conjoint reading of Section 7 and Section 10 of the Act, the word "information" occurring Section 10 of the Act clearly provides that any exhibit or deposition which may be received in evidence need not be taken in the presence of the person against whom they are used or otherwise. It also contemplates the copies of such exhibits and depositions and official certificates of facts and judicial documents stating facts would, if duly authenticated, be received as evidence.

“The term "information" although is of wide import, must be read in the context of which it has been used. Information may include statement which falls short of confession as well as statement which amounts to confession.^[58] In Commissioner of Income Tax Vs A. Raman and Co^[59], the expression 'information' has been held to mean instruction or knowledge derived from an external concerning facts or particulars, or as to law relating to a matter bearing on the assessment. We may also notice that in Hirachand Kothari Vs State of Rajasthan^[60] this Court held that a statement by the referee as to the truth or otherwise regarding a question in a dispute, when the court needs information on such question, is information.”

The documents which can be taken in evidence are warrants, depositions or statements on oath taken by the court outside India, or the copies of statements and judicial documents containing the statement of facts or the conviction order. However, all these documents must be duly authenticated. According to s 10 the extradition magistrate shall admit the documents so authenticated to be received in evidence without further proof. The authentication is similar to that of warrants. It is not necessary that the statements or depositions be taken only for the purposes of the extradition proceedings. The depositions of witnesses already taken during trial or during investigation may be used. The witnesses need not be put to the test of cross examination before any reliance is placed on them in the enquiry, as the same is the function of the court which would

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^[58] R.V. Babulal ILR 6 All 509 at 537]  
^[59] AIR 1968 SC 49  
^[60] AIR 1985 SC 998
conduct the trial into the allegations if the fugitive is surrendered. The law does not require that the standard of evidence tendered should be as required in India.

Regarding the issue of requirement of personal presentation of evidence, Section 10 of the Act clearly provides that any exhibit or deposition which may be received in evidence need not be taken in the presence of the person against whom they are used or otherwise. It also contemplates the copies of such exhibits and depositions and official certificates of facts and judicial documents stating facts would, if duly authenticated, be received as evidence. Thus Section 10 is an exception to Sec. 273 of Cr.P.C. which provides that all evidence taken in the course of trial or other proceedings shall be taken in the presence of his pleader. But as can be seen from a reading of the section that any evidence which the court has received even in the absence of fugitive is admissible. Such evidence is recorded under Section 299.

4.2.3.5 Contrast in the Enquiry by Magistrate under Chapter II and Chapter III

Magisterial enquiry under Chapter II is governed by Sec.7 whereas the same is governed by Sec.17 so far as Chapter III is concerned. The nature of magisterial enquiry is differently envisaged under Chapter II and Chapter III. The difference lies in the fact that Chapter II and Chapter III govern different situations. Chapter II covers a situation where India is not bound by any obligation to extradite a fugitive by virtue of any treaty or arrangement. Chapter III deals with a situation where India has already taken up a basic obligation to extradite in accordance the terms of an extradition treaty or arrangement it entered into with a foreign state but of course subject to certain restrictions recognized by the statute.

Magistrate dealing with extradition requests under Chapter II enjoys greater judicial powers than the magistrate dealing with extradition requests falling under Chapter III.

The contrast is succintly brought out in judicial dictum in *Ram K Madhubani Vs Union of India*,61 “It will be at once obvious that the Magistrate has greater judicial powers and responsibilities under Section 7 than those contained in Section 17. The first

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61 CDJ 2008 DHC 1838
sub-section of Section 7 clarifies that when the Magistrate inquires into the case, he shall have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by a Court of Session or High Court. The second Sub-Section empowers the Magistrate to take evidence and consider the case as may be produced in support of the requisition of the foreign state as well as evidence on behalf of the fugitive criminal in order to dispel any doubt that the offence of which the fugitive criminal is accused or has been convicted is an offence of political character, or is not an extradition offence. Sub-section (3) thereafter clarifies that the Magistrate is to return the fugitive criminal only on a prima facie finding pertaining to the requisition of the foreign state, and if he arrives at the conclusion that a prima facie case is not made out, he shall discharge the fugitive criminal. Sub-section (4) thereafter spells out that if the Magistrate is of the opinion that a prima facie case is made out for the requisition of the foreign state, he may commit the fugitive criminal to prison to await the orders of the Central Government and shall report the result of his inquiry to the Central Government, and shall forward together with such report a written statement which the fugitive criminal may desire to submit for the consideration of the Central Government.

In contradistinction, Section 17 prescribes a simple procedure and lays down what is expected of the Magistrate. Sub-Section (1) of Section 17 restricts the magisterial inquiry to ascertainment of the existence of an endorsed warrant for the apprehension of the fugitive criminal is duly authenticated and secondly that the offences of which the person is accused or has been convicted is an Extradition offence. If the findings are in favour of the requisition, the Magistrate must commit the fugitive criminal to prison to await his return; the Magistrate should also forthwith send to the Central government a certificate of the committal. Sub-section (2) empowers the magistrate to detain or release such person, dependent on the outcome of his inquiry i.e, if on the enquiry the magistrate forms the opinion that either the endorsed warrant is not duly authenticated or the offence committed is not an extradition offence, magistrate can commit or release the fugitive on bail until he receives the orders of the Central Government. Sub-section (3) enjoins the Magistrate to report the result of his inquiry to the Central Government, and

62 It will be relevant to refer to the Schedule to the Extradition Act which enumerates the offences which are not to be regarded as offences of political character.
simultaneously to forward any written statement which the fugitive criminal may desire to submit for the consideration of the Government.

In case of extradition of fugitive criminal from treaty States, the Magistrate cannot make a roving inquiry into facts. He has to only see whether the warrant is endorsed properly and whether the fugitive criminal is involved in an extradition offence. He cannot assume the role of a trial judge Therefore, the obvious and substantial difference is that since the inquiry under Section 17 is of a secretarial nature, the Magistrate has not been vested with the powers of a Court of Session or of a High Court. He has also not been vested with any power of taking or recording evidence or of perusing the evidence produced in support of the requisition. Furthermore, discretion has been granted to the Magistrate under Section 7 (4) to commit the fugitive criminal to prison, whereas this discretion is missing under Section 17. He cannot discharge the fugitive criminal. He has to only see whether the warrant is duly authenticated and whether the fugitive criminal is concerned with an extradition offence. If these two conditions are satisfied, the Magistrate shall commit him to prison. The use of the word “shall” is significant. The Magistrate has then no option but to commit him to prison. He has to then submit the result of his inquiry to the Central Government together with written statement, which the fugitive criminal may desire to submit for the consideration of the Central Government. The reason for this is obvious. Section 29 gives power to the Central Government to discharge any fugitive criminal. It states 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 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 the Extradition Act to be cancelled and the person for whose arrest the warrant has been issued or endorsed to be discharged.

“This position is also obvious on a reading of Section 3 of the Extradition Act which is to the effect that the Central government may, by notified order, direct that the provisions of this Act, other than Chapter III, shall apply to such foreign States or part
thereof as may be specified in the order. Application of Chapter-III is, therefore, the exception and if it is to be applied, there must be an explicit indication to that effect. This is obviously for the reason that the countries across the world prefer to reserve the right to a Judicial Officer to come to at least a prima facie conclusion that the fugitive criminal, whose extradition is prayed for, deserves to be removed from that country to a foreign country to face prosecution at the place where the culpable act has taken place.”

4.2.3.6 Constitutional validity of Section 5 reads as follows:

Order for magisterial inquiry:

Where such requisition is made, the Central Government may, if it thinks fit, issue an order to any magistrate who would have had jurisdiction to inquire into the offence if it had been an offence committed within the local limits of his jurisdiction, directing him to enquire into the case.

A contention with regard to Sec.5 is that Sec.5 is ultra vires the Constitution because it gave the power to Central Government to issue an order to any Magistrate to inquire into the case. The argument is that this is contrary to Constitutional Scheme. It is contended that according to Art. 50 there has to be separation of the judiciary from the executive. Reference has also been made to Articles 234 and 235 of the Constitution. Art. 234 deals with appointment of persons other than District Judges to the judicial service. The appointment has to be made after consultation with State Public Service Commission and with the High Court exercising jurisdiction in relation to such state. Art. 235 vests the control over the District courts and subordinate courts in the high court including in respect of postings and promotions. But this argument is not accepted by the court. It held that “Sec.5 is a salutary provision which acts as a safeguard. it has to be noted that a Magisterial inquiry in pursuance of extradition request is not a trial and it decides only whether a prima facie case has been made out or not. The main purpose of the inquiry is only to determine whether there is a prima facie case or reasonable ground which warrants fugitive criminals being sent to the requesting state. This position has been significantly made clear in Nina Pillai case. Thus the inquiry has to be made within the four corners to arrive at a prima facie conclusion whether the case is made or not.”
Another aspect to be kept in mind is that no particular magistrate by name is appointed by the impugned order. The appointment is by designation. Thus judicial officer posted to the particular post will have to conduct the particular inquiry. As to which officer holding the post is determined by High Court.” In Nina Pillai case, the contention is that S5 of the Act in so far as it permits the passing of an order of enquiry without prior notice and hearing to the fugitive criminal is ultra vires the constitution. However, the same is not accepted by the court on the ground that Section 5 contains sufficient safeguards in the procedure to be followed in making the enquiry by the Magistrate to protect the fugitive criminal.

4.2.3.7 Arrest of the Fugitive Criminal

Arrest of a fugitive criminal must be affected in terms of the provisions of the Extradition Act.

As already discussed in the previous pages, an elaborate procedure has been provided in Chapters II and III of the Extradition Act. Chapter II regulates a case situation where there are no Extradition arrangements for the return of a fugitive criminal to foreign States and Chapter III deals with case where there are Extradition arrangements have been made.

Arrest of a fugitive criminal must be affected in terms of the provisions of the Extradition Act.

In a nut shell, it can be said that a fugitive criminal can be put under arrest under three circumstances: firstly, when an order is issued by the Central Government under S 4 of the Act to the Magistrate for making an enquiry into the offence, on receipt of such an order of the Central Government the Magistrate is empowered to issue warrants for the arrest of fugitive criminal and thereafter proceed to make enquiry as per the procedure laid down under Sec.7 of the Act; the second eventuality under which arrest of fugitive can be made is under Sec. 9 of the Act when it appears to any Magistrate that a person within the local limits of the jurisdiction is a fugitive criminal of a foreign state, he may

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63 CDJ 1996 DHC 463
64 Ibid, para 10
issue warrant for arrest; the third category is the provisional arrest as provided in Sec. 34B of the Act, which is made on the basis of an urgent request from foreign state for immediate arrest of fugitive criminal.

The relevant provisions are discussed in detail in the following paragraphs.

Section 6 of the Extradition Act, empowers the Magistrate who receives an order of the Central Government to make an inquiry under Sec. 5 to issue a warrant for the arrest of a fugitive criminal. The Magistrate if after holding enquiry is of the opinion that a prima facie case is made out, he is empowered under Sec.7(4) to commit the fugitive criminal to prison to await orders of the Central Government and shall report the result of his enquiry to the Central Government and shall forward together with such report any written statement which the fugitive Criminal may desire to submit for the consideration of the Central Government. Subsequently, if the Central Government forms an opinion that a fugitive criminal ought to be surrendered to the foreign State, it may issue a warrant for the custody and removal of a fugitive criminal and for his delivery at a place and to a person to be named in the warrant.65 All the above provisions apply with regard to a situation where there are no extradition arrangements made.

The procedure prescribed for a Magistrate for the issue of a warrant and holding an enquiry into the matter on receipt of a requisition of the Central Government is a very exhaustive procedure and it may be possible that this may entail an amount of delay which would enable a fugitive criminal to escape. For this, however, safeguard is provided in the Act itself. On receipt of the information from a foreign State for the surrender of a fugitive criminal, the Magistrate can directly be approached under Section 9 of the Extradition Act. Section 9 clearly provides that in such a case, the Magistrate may issue a warrant of arrest of a person on such information and on such evidence, as would in his opinion justify the issue of warrant.

While dealing with a fugitive criminal wanted in a State with which India has no treaty, the Magistrate can inquire into the case in the same manner as if the case was

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65 Sec. 8 of the Indian Extradition Act 1962.
triable by Court of Sessions or High Court, however, while dealing with a fugitive criminal wanted in a treaty State, such inquiry and such a trial is not open. There is no provision enabling the Magistrate to take evidence. He cannot discharge the fugitive criminal. He has to only see whether the warrant is duly authenticated and whether the fugitive criminal is concerned with an extradition offence. If these two conditions are satisfied, the Magistrate shall commit him to prison. The use of the word “shall” is significant. The Magistrate has then no option but to commit him to prison. He has to then submit the result of his inquiry to the Central Government together with written statement, which the fugitive criminal may desire to submit for the consideration of the Central Government. The reason for this is obvious. Section 29 gives power to the Central Government to discharge any fugitive criminal. It states 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 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 the Extradition Act to be cancelled and the person for whose arrest the warrant has been issued or endorsed to be discharged.

Where there are extradition arrangements made, the fugitive criminal may be apprehended in India under an endorsed warrant or a provisional warrant. Endorsed warrant is that which the Central Government endorses the warrant duly issued by a foreign state to apprehend a fugitive criminal who is or is suspected to be, in India. As already pointed out the warrant so endorsed shall be a sufficient authority to apprehend the person named in the warrant and to bring him before any Magistrate in India.

A Magistrate has even power to issue provisional warrant also for the apprehension of a fugitive criminal from any foreign State, who is or is suspected to be in or in his way of India, on such information and under such circumstances, as would in his opinion justify the issue of a warrant if the offences of which the fugitive criminal is

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66 Sec.14
67 Sec.16
accused or has been convicted had been committed within his jurisdiction and such warrant may be executed accordingly. By virtue of Sec.34 B which was introduced into the statute by the 1993 amendment, the Central Government may request the Magistrate to issue provisional warrant to arrest a fugitive criminal in case of any urgent request made by the foreign state.

Thus the settled position is that an arrest for extradition can be effected only pursuant to a warrant issued by a Magistrate in accordance with the Sections 6, 9,16 and 34B of the Extradition Act or an arrest warrant issued by a foreign country and endorsed by the Central Government under Section 15 of the Extradition Act.

A fugitive criminal apprehended on a provisional warrant may, from time to time, be remanded for such reasonable time, not exceeding seven days at one time, as under the circumstances seems requisite for the production of an endorsed warrant.68

4.2.3.8 Release or Discharge

Under Sec. 16, a Magistrate using a provisional warrant has an obligation to send a report of the issue of warrant together with the information or a certified copy thereof to the Central Government and the Central Government may if it thinks fit, discharge the person apprehended under such warrant.69

According to Sec. 24 if the fugitive criminal who is committed to prison to await his surrender or return to any foreign state is not conveyed out of India, unless sufficient cause is shown to the contrary, may be discharged within two months of his committal in case. In this context, it is appropriate to bring out the distinction ‘commit’ and ‘arrest’ because Sec.24 does not use the word arrest. Advanced Law Lexicon clarifies the position thus:– ‘arrest’ and ‘commit’. By arrest is to be understood to take the party into custody. To commit is the separate and distinct act of carrying the party to prison, after having taken him into custody by force of the execution ‘commit’ has been explained in Black’s Law Dictionary to connote the sending of a person to prison, and/or directing an

68 Sec.16(3)
69 Sec.16(2)
officer to take a person to a penal institution. The same Dictionary defines ‘arrest’ as: a seizure or forcible restraint; the taking or keeping of a person in custody by legal authority especially in response to a criminal charge; the apprehension of someone for the purpose of securing the administration of the law, especially for bringing that person before a Court. The words ‘commit’ and ‘arrest’ therefore, are not synonymous to each other.70

Section 24 comes into play only after the report under Sec. 7 is submitted to the Central Government.71

Section 25 of the Extradition Act, provides for the release on bail of a person arrested on bail. The provisions of the Code of Criminal Procedure relating to bail will be applied in such cases. When a fugitive criminal if brought before a Magistrate, for the purpose of bail, he shall have the same powers as a Court of Sessions.

Under Sec. 34(B)(2) the fugitive arrested by virtue of provisional warrant should be discharged upon the expiration of sixty days if no request is received from the concerned foreign state about the surrender or return of the fugitive criminal.

*Whether Arrest can be made u/ Sec.41(1)(g) Cr.P.C. on the basis of Red Corner Notice?*

Red Corner Notice is a notice from International Criminal Police Commission. The INTERPOL is the world’s largest international police organization with 187 countries as its members. It was created in 1923. The object of establishing the INTERPOL was ‘to ensure and promote the widest possible mutual assistance between all criminal police authorities’. It facilitates cross-border police cooperation and supports as well as assists all organizations, authorities and services whose mission is to prevent or combat international crime. They are primarily a means of facilitating communication between police agencies and the success of the Interpol system still depends entirely upon voluntary cooperation.

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70 Ram K. Madhubani v. UOI CDJ 2008 DHC 1838 para 29
71 Darshan Kumar v. State of Delhi CDJ1996 DHC 1006 para 6
The Indian Interpol wing works as an interface between the Interpol General Secretariat, France, Interpol Member Country and various law enforcement agencies of India. One of the functions of Indian Interpol is to circulate within India red corner notices and also yellow corner notices issued by the Interpol General Secretariat at the instance of any member country.

Red Corner Notice plays a vital role in tracking, tracing and extraditing internationally wanted fugitives. It is issued to seek the provisional arrest and extradition of the fugitive. The Red Corner Notice is issued to the Border control authorities and others so as to enable them to affect an arrest along with details and papers including a warrant from the originating country.

A Red Corner Notice has the following consequences:

(i) The requesting country may make a deportation request
(ii) The law enforcement agency in India is required to "take follow up action with regard to the arrest of a fugitive criminal"
(iii) The information emanating from the red corner notice is required to be distributed all over the Interpol web site
(iv) The requesting Embassy would instruct CBI to carry out its instructions for surveillance, arrest and detention
(v) The requesting Embassy can even contact the Indian police directly.
(vi) Thereafter extradition proceedings may follow.

About the question whether an arrest of fugitive criminal without warrant under Sec.41(1)(g) of Cr. PC can be pressed into service on the basis of a Red Corner Notice,

72 It may be of some interest also to notice that in the year 2008 alone the INTERPOL issued 3126 Red Corner Notices and around 385 Yellow Corner Notices.
73 A Yellow notice, however, is issued for finding a missing person or to identify people who are not capable of identifying themselves. It is an "International Missing Person Notice".
74 Sec. 41. When police may arrest without warrant:- Any police officer may without an order from a Magistrate and without a warrant, arrest any person who has concerned in, or against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is,
it is answered negatively by the Supreme Court. Prior to the clarification of Supreme Court, while some High Courts allowed such arrest some did not allow same. Thus in a case in which a contention is made that arrest by police of the fugitive criminal in the lounge of IGI Airport, Delhi amounts to abduction on the basis of INTERPOL notice Delhi High Court disregarded so. On the other hand, Madras High Court refused to attach blind importance to Red Corner Notice in allowing arrest.

But, the Apex Court hearing the appeal in a different case has held,

"We may, however, place on record that strictly construed in a case involving extradition. Section 41(1) (g) of the Code may not have any application."  

The notices issued by INTERPOL are not considered as administrative decisions on individual cases with transnational effect. They are not construed as an "international administrative act." They lack a character of regulation. They do not constitute an international arrest warrant and they are not in any other form binding the individuals concerned legally. It is true that Interpol's "red notices" often function as de facto international arrest warrants and countries issue warrants immediately upon receipt of such a notice. However, they do so with the understanding that a request for extradition with supporting evidence will follow the red notice, without delay. Despite the fact that consequence of the Red Corner Notice usually is that the requesting country may make deportation request or to take follow up action with regard to the arrest of fugitive criminals the main criteria is that the extradition proceedings has to follow. The suspect must then go through the standard extradition process. The bottom line is that "warrants to arrest suspects must have legal authority in the jurisdiction where the suspect is found" and Interpol red notices do not have such authority.

under any law relating to Extradition, or otherwise, liable to be apprehended or detained in custody in India.

76 For Example, Mohan Karnakar Chandra v. The Inspector of Police, CBCID, Metro Wing and Others, CDJ 2008 MHC 4214
77 CDJ 1999 DHC 042
78 Bhavesh Jayanti Lakshmi v. State of Maharashtra 2009(9) SCC 551 at para 88 & 89
According to the Supreme Court, “On receipt of a Red Corner Notice, it is not the invariable practice to arrest the person but efforts are made to trace him though the local police. The consideration of the question of arrest and extradition would be within the framework of domestic law including Indian Extradition Act and the Extradition Treaty with the Requesting Country. Extradition of a person would only arise after request for extradition is formally received from the country.”

The Supreme Court clarified that a red corner notice is issued to seek a provisional arrest of a wanted person and however, by itself does not have the effect of warrant of arrest.

Thus when CBI issued a Red Corner Notice seeking the arrest under Sec. 41 (1)(g) Cr.P.C. of the accused fleeing from Sri Lanka, the Madras High Court following the dictum of Supreme Court held in its judgment in 2011 that since a formal request is yet to be made by the requesting state for the extradition of the fugitive criminal registration of First Information Report under Sec.41(1)(g) of Cr.P.C. is not proper. Similarly when the Magistrate without conducting any inquiry to satisfy himself about the prima facie materials made out for extradition proceedings remanded the petitioner to judicial custody for 14 days simply based on Red Corner Notice even when it is not in known language, the blind importance given to Red Corner Notice is denounced the arrest in question is held to be an illegal arrest.

The Supreme Court made an observation that though in Malak Singh case it has clearly contemplated surveillance by the police in pursuance to the rules under which they are being done, no guideline, however, has been laid down in respect of surveillance conducted pursuant to a Red Corner or Yellow Corner Notice. It recommended that the Central Government and in particular the Ministry of External Affairs, in our opinion, should frame appropriate guidelines in this behalf.

Where the Red Corner Notice contained a request to treat it as request for provisional arrest

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79 Ibid.
80 Ibid.
81 Mhd Zabir Fauzal Awam v. The Inspector of Police CDJ 2011 MHC 625
82 Mohan Karnar Chandra v. The Inspector of Police, CDJ 2008 MHC 4214
In a latest case, *Amit Mohan Singh Vs Union of India*\textsuperscript{84} decided on 3\textsuperscript{rd} July 2012 the Delhi High Court dealt with a situation that involved the arrest of the fugitive criminal on the basis of Red Corner Notice which contained in it a request for provisional arrest of the fugitive criminal. The petitioner alleged that Red Corner Notice per se cannot be a ground for making provisional arrest. Since another formal request for making provisional arrest has not yet come from USA he must be released. since statutory limit of two months period is completed.

The petitioner relied on the judgment of *Bhavesh Jayanti* case where it was concluded that a Red Corner Notice by itself cannot be the basis of arrest or transfer of an Indian citizen to a foreign jurisdiction. For making a provisional arrest there must be a specific request; that such request from a foreign country must be accompanied by the requisite documents and not a communication alone.

So far as the present case is concerned, the Red Corner Notice contained a request for provisional arrest. It has provided the details of the petitioner’s characteristics marks, judicial information, conviction he was facing, arrest warrant and the action to be taken. The Red Corner Notice provided that the same be treated as a formal request for provisional arrest.

Taking these facts into consideration the court held

“A perusal of the documents accompanying the Red Corner Notice which have been received through diplomatic channel contained a request for provisional arrest. Thus, prima facie, the requirement of Section 34B(2) of the Act stood satisfied when the Petitioner was remanded to the judicial custody of the learned Metropolitan Magistrate. A further request for provisional arrest made by the Government of USA would not nullify an earlier request for provisional arrest.\textsuperscript{85} …..Thus the facts of the present case are not akin to that of Bhavesh Jayanti Lakhani.\textsuperscript{86}

\textsuperscript{84} Bail Application 1733/2011
\textsuperscript{85} Ibid at pgh 9
\textsuperscript{86} Ibid at pgh 14
So, the remand of the petitioner under Sec.34B(2) is held to be legal.

In the latest judgment in *Amit Mohan Singh Vs UOI* decided on 3rd July, 2012, the issue involving arrest on the basis of red corner notice has come before the Delhi High Court on the ground that it is violative of art 21 of Indian Constitution. The Petitioner was arrested under Section 41(1) G Cr.P.C. pursuant to a Look Out Circular (LOC) on the basis of the INTERPOL’s Red Corner Notice. It is argued that as has been held by Supreme Court in *Bhavesh Jayanti* case, Red Corner Notice does not amount to provisional arrest and in the absence of provisional arrest, the arrest amounts to illegal custody.

However, the court held that, Section 41(1)(G) Cr.P.C. gives power to Police to arrest, without an order or warrant from a Magistrate, any person against whom there is a credible information or reasonable complaint or reasonable suspicion that he has committed an act at any place out of India which if committed in India would have been punishable as an offence and for which he is liable to be apprehended/detained under custody in India under any law for extradition. Since there was Look Out Circular on the basis of Red Corner Notice which contained all the details, prima facie, there was a credible information of the Petitioner having committed an extraditable offence. A perusal of the documents accompanying the Red Corner Notice which have been received through diplomatic channel contained a request for provisional arrest. Thus, prima facie, the requirement of Section 34B(2) of the Act stood satisfied when the Petitioner was remanded to the judicial custody of the learned Metropolitan Magistrate. So, the arrest is held to be justified. The court distinguished that in Bhavesh Lakhani case, the accepted position was that no request for extradition of the Appellant therein was made to the Executive Government of India.

*Time Limit for discharge of person under Section 24*

According to Section 24 “if a fugitive criminal who, in pursuance of this Act has been committed to prison to await his surrender or return to any foreign state or commonwealth country is not conveyed out of India within two months after such committal, the High Court upon application made to it by or on behalf of the fugitive criminal and upon proof that reasonable notice of the intention to make such application has been given to Central Government may order such prisoner to be discharged unless sufficient cause is shown to the contrary.”
Therefore, if the person apprehended is not surrendered or returned within two months he must be discharged unless sufficient cause is shown to the contrary.

When an issue arisen regarding the starting point for commutation of the period of two months, it is maintained that the terms ‘committal’ and ‘arrest’ are not synonymous of each other and Sec.24 speaks only of committal and not of arrest. Thus in cases\textsuperscript{87} where the relevant point of discharge was in issue date of committal was taken into consideration. Sec. 24 comes into play only after report under Sec.7 is submitted to the Central Government by the Magistrate appointed under Sec.5 of the Act.\textsuperscript{88}

In \textit{George Kutty Kuncheria Vs Union of India and Another}\textsuperscript{89}, the High Court of Delhi had the occasion to examine the full import of Sec. 24. Learned counsel appearing for the Central Government submitted that the word "may" occurring in Section 24 of the Act shows that the provision is directory. It was contended that the Court has discretion to refuse the request of the fugitive criminal even if no sufficient cause is shown by the Central Government for failing to convey him out of India to the foreign State within two months of his committal to prison. This argument is refused and is rightly observed that -

“If the submission of the learned counsel for the respondent is accepted, then in that event the words "unless sufficient cause is shown to the contrary" would be unnecessary. In case it was to be held that the legislature had intended to confer complete discretion on the Court, in that event, the words "unless sufficient cause is shown to the contrary" would be rendered completely useless and otiose.”\textsuperscript{90}

Thus the court considered the language of Sec. 24 as mandatory. In this particular case, the court found out the unjustified and oppressive detention of the accused for eight and half years and so came to the conclusion that this delay in conveying the accused out of India does not fit within the exception of ‘sufficient cause to the contrary’.

\textsuperscript{87} Ram K Madhubani Vs UOI CDJ 2008 DHC 1838 para 29
\textsuperscript{88} Darshan Kumar Vs State of Delhi, CDJ 1996 DHC 1006 para 6
\textsuperscript{89} CDJ 1997 DHC 001
\textsuperscript{90} Ibid para 10
In contrast to the above case, where there is sufficient cause for the delay the detention of the fugitive even beyond stipulated two months is considered not to be illegal. Thus, in a case where the court felt convinced that the delay caused is unintentional on the part of Central Government and the requesting state is pursuing diligently the modalities for taking the physical control of the fugitive, the argument that the fugitive criminal must compulsorily be discharged by reading the word ‘may’ used in the section as ‘shall’ is rejected forthwith and instead permitted the detention even beyond two months because it felt convinced with the factual explanation given by the government for the delay as amounting to ‘sufficient cause’ justifying the prolonged detention.\(^91\)

Since there is an elaborate scheme under the Act providing for time limit within which the fugitive criminal has to be conveyed out of India, the High Court upon application made to it, is bound to discharge him from prison except when sufficient cause is shown to the contrary. Therefore, the overall position is that Section 24 is a section which does not permit the detention of fugitive criminal for more than two months unless ‘sufficient cause’ is shown to the contrary. What is a ‘sufficient cause’ depends upon the interpretation of the facts relating to the delay caused. Whether the word ‘may’ used in the section could mean ‘may’ or ‘shall’ depends only upon the sufficiency or insufficiency of the cause shown for the detention continued beyond the period of two months stipulated in Section 24.

Release of Fugitive Criminal subjected to Provisional Arrest under Sec.34B
Section 34 B is placed in the miscellaneous part of the Indian Extradition Act. Section 34B reads as follows:
"Provisional arrest: (1) On receipt of an urgent request from a foreign State arrest of a fugitive criminal, the Central Government may request the Magistrate having competent jurisdiction to issue a provisional warrant for the arrest of such fugitive criminal. (2) A fugitive criminal arrested under Sub-section (1) shall be discharged upon the expiration of sixty day from the date of his arrest if, no request for his surrender or return is received within the said period."

\(^{91}\) Darshan Kumar v. UOI, CDJ 1998 DHC 303
An important question in this regard is, whether it is mandatory to discharge the fugitive criminal on expiry of sixty days when no request for surrender or return is received from the foreign state? It is mandatory that he be discharged in the absence of request from foreign state.\footnote{Fleming Lunding Larsen v. Union of India, CDJ 1998 DHC 053 para 8} A related confusion in considering the issue of release within two months of the provisional arrest of the fugitive criminal was, whether the request from the foreign state for surrender or return should have been made subsequent to the arrest? Where a request has already been made by the foreign state for the provisional arrest of the fugitive criminal and on basis of the same he has been arrested, is it mandatory to release him on the ground that no fresh request came through from the foreign state for his return after his provisional arrest? This issue arose in \textit{Pragnesh Desai} case\footnote{Pragnesh Desai v. Union of India, CDJ 2004 DHC 185} wherein the court dealt with the contention of the fugitive criminal from USA that the magisterial enquiry u/s 5 and the order therefrom to place him in judicial custody is illegal because the requesting state (USA in this case) while made a request for provisional arrest did not make any fresh request for his return or surrender within 60 days after he is subjected to provisional arrest. Therefore, he appealed that his detention beyond sixty days is improper and he must be released henceforth. The Court responded to this contention as follows;

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"It is clear that the section does not postulate that a request for surrender or return of a fugitive criminal has to be only after fugitive's provisional arrest. In other words, provisional arrest of a fugitive under Sub-section (1) is not a condition precedent for a request for his surrender to the requesting country. It is equally not mandatory that a request for immediate arrest under Sub-section (1) must precede a requisition for surrender of a fugitive criminal either under Chapter II, which lays down the procedure for extradition of fugitive criminals to foreign State, with which there is no extradition arrangements or Chapter III of the Act, which sets out the procedure for return of fugitives to foreign States with extradition arrangements"\footnote{Ibid para 11}."
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Thus the time limit specified under Section 34B has no bearing upon Section 5.

“In the light of our interpretation of Section 34B of the Act, we are of the view that the said section has no bearing insofar the requisition /request for return of the fugitive criminals to foreign State is concerned. A request for return of a fugitive is made and processed in accordance with the procedure laid down in Chapters II and III of the Act and not under the miscellaneous Chapter V, in which Section 34B appears. These Chapters do not contain any provision fixing time limit for such a request. In our opinion, since in the present case a request for surrender and return of the petitioner had already been received from the United States before he was put under provisional arrest, there was no breach of Sub-section (2) of Section 34B of the Act and, therefore, his detention ….. pursuant to request for provisional arrest under Section 34B(1) or pursuant to the impugned order under Section 5 of the Act cannot be said to be illegal.” 95

Another question is whether the request for surrender or return of the fugitive criminal has to be received by the Magistrate from the Central Government or by the Central Government from a foreign state? This question was raised in *Fleming Lunding Larsen Vs Union of India*. 96 In this case, the contention of the petitioner that the request has to be made to the Magistrate by the Central Government and since such request did not come from the Central Government he must be released, was held to have no force. 97 It is said,

“The only purpose of putting a fugitive criminal under provisional arrest on the basis of provisional warrant under sub-section (1) of Section 34 B of the Act is to await a request for surrender or return. As noted above the only provision under the Act for making a request for surrender or return is Section 4 which provides for the manner of making request to the central Government for surrender by a foreign state. The Central Government is not to make a request for surrender or return of a fugitive criminal.

95 Ibid para 12
96 CDJ 1998 DHC 053
97 Ibid para 11
……Thus the petitioner’s contention that the request has to be made by the Central Government within sixty days has no force.”

Powers of Central Government to Discharge.
Section 29 reads;

*Power of Central Government to discharge any fugitive criminal:*

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 interest 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 accords very wide discretionary power to the Central Government to stay proceedings and discharge the fugitive criminal at any stage of inquiry or even before the arrest or after the arrest and also after the conclusion of inquiry i.e., when the Magistrate after inquiry committed the fugitive criminal to the prison awaiting orders of the Central Government conveying him out of India. If the case appears to be of trivial nature or when the government feels that the application for surrender or extradition is not made in good faith or in the interests of justice or the same is made for any political reasons, the request can be rejected and the fugitive can be discharged. If in the consideration of the request the government perceives that it would be unjust or is not expedient to concede the request the request can be rejected. Since the power can be exercised even after the fugitive is committed to prison after magistrate’s inquiry, the person can be discharged by the order of the Central Government.

Only the Central Government is to take into consideration the nature of a case whether it is trivial or not along with other factors. On consideration of those factors the request of the Foreign State may be allowed or declined by Central Government. In this

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98 Flemming Lunding Larsen v. Union of India, CDJ 1998 DHC 053 para 11
regard it is important to bear in mind that the Magisterial inquiry is confined to the extent of considering the question as to whether the offence alleged against the fugitive criminal is or is not an extradition offence or that the offence is not of a political nature.

Whether the wide discretionary power of Central Government allows it to even review its earlier decision refusing extradition? This question was addressed by Delhi High Court and firmly rejected the proposal that Central Government can review its earlier decision not to extradite the fugitive criminal. In *George Kutty Kuncheria case* 99 which dealt with a case where the Central Government took the decision at the first instance not to extradite the fugitive criminal and the same decision is communicated to USA but later after eight and half years of his custody it sought to review its decision regarding extradition, the court rejected, It observed;

“There is no provision in the Act which permits the Central Government to overturn its earlier decision declining to extradite a fugitive criminal and to convey him out in violation of Section 7 (4) of the Act. The Central Government has no right to change its mind in the absence of any express statutory power in this behalf. The policy of legislation appears to be to introduce certainty in the matter of extradition and to rule out uncertainty and vacillations. It is well settled that unless power review is conferred by a statute, the same cannot be exercised as it does not exist.” 100 The suggestion made that the power of the Central Government to extradite or not is a political and sovereign power and therefore such power permits the reviewing the decision of the government is rejected. 101

Sometimes the Central Government may receive requests from different countries seeking extradition of the same fugitive criminal. In such cases, the Central Government has the discretion u/s 30 to decide in favour of one of the requesting states. 102 However,

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99 *George Kutty Kuncheria v. Union of India and Another* CDJ 1997 DHC 001
100 Ibid para 19
101 Ibid para 20
102 Sec.30 reads, Simultaneous requisitions -
“If requisitions for the surrender of a fugitive criminal are received from more than one foreign 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.”
such decision has to arrive at only after taking into consideration the circumstances of the case. This is clear from the terms of Section 30.

The usual factors which have a bearing on such decision are, the seriousness of the crime in question, order of time in making extradition requests by the competing states, nationality of fugitive criminal, place of commission of offence etc.

4.2.3.9 Judicial Review of order of Central Government

Regarding the issue of judicial review under Art. 226 or 227 over the orders of the Central Government issued under the Indian extradition Act, Delhi High Court while it was responding to the allegation that the Central Government did not apply its mind while ordering for Magisterial inquiry and therefore the impugned order be subjected to judicial review under Art. 226 and 227 of Indian Constitution took the following stand.103

“As regards the plea of the petitioner that the impugned order suffers from the vice of non-application of mind to the relevant material touching upon the question whether the petitioner was a fugitive criminal, we are of the view that having regard to the Scheme of the Act, particularly the procedure prescribed for dealing with a request for Extradition, there is hardly any scope for the Central Government to enter upon a detailed inquiry in this behalf, before making an order for magisterial inquiry under Section 5 of the Act, What is required to be examined is whether there is prima facie evidence of the commission of the offence which is extraditable; the offence is not a political offence or that the requisition is not a subterfuge to secure custody for trial, for a political offence. When, on the basis of the material received, the Central Government has formed the view that the request for surrender does not fall within the ambit of Section 31 of the Act, enumerating restrictions on surrender and orders a magisterial inquiry, it would neither be prudent nor proper for this Court to interfere in exercise of powers under Article 226 or 227 of the Constitution.”104

103 Pragnesh Desai v. Union of India, CDJ 2004 DHC 185
104 Ibid para13
“The judicial review being a part of the basic structure of the Constitution of India, powers of this Court under Article 226 of the Constitution cannot be circumscribed in any way by, any law. But, the judicial decisions over the years have evolved some self-imposed restraints as a matter of propriety, policy and practice, which may be observed while dealing with cases under all laws. Some of these restrictions, illustrated by the Apex Court in Addl. Secretary to the Government of India & Ors. v. Smt. Alka Subhash Gadia & Anr.,\textsuperscript{105} are; (i) discretionary jurisdiction may not be exercised for correcting mere errors of law or of facts acting as a Court of appeal or revision; (ii) resort to this jurisdiction is not permitted as an alternative remedy for relief which may be obtained by other-mode prescribed by Statute; (iii) under this jurisdiction the Court does not enter upon the determination of questions which demand an elaborate examination of evidence to establish the right to enforce which, the writ is claimed; (iv) the Court does not interfere on the merits with the determination of the issues made by the authority invested with statutory power, particularly when they relate to matters calling for expertise, unless there are exceptional circumstances calling for judicial intervention, such as, where the determination is \textit{mala fide} or is prompted by the extraneous considerations or is made in contravention of the principles of natural justice or any Constitutional provision; (v) the Court may intervene where: (a) the authority acting under the concerned law does not have requisite authority or the order passed is in breach of the provisions of the concerned law or (b) when the authority has exceeded its power or jurisdiction or has failed to exercise jurisdiction vested in it and (c) where the authority has exercised its power dishonestly or for an improper purpose; and, (vi) where the satisfaction of the authority is subjective, the Court intervenes when the authority has acted under the dictates of another body or when the conclusion is arrived at by applying wrong test or misconstruction of Statute or by omitting to take into consideration the relevant material.”\textsuperscript{106}

Prof. Wade in his treatise ‘Administrative Law’ also said that the doctrine that powers must, be exercised reasonably as to be reconciled with no less important doctrine that the Court must not usurp the discretion of the public authority which Parliament

\textsuperscript{105} (1992) Supp (1) SCC 496  
\textsuperscript{106} Ibid para14
appointed to take decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes the bounds, it acts ultra vires. The Court must, therefore, resist the temptation to draw the bounds too tightly, merely according to its own opinion.

It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which Legislature is presumed to have intended. If the decision is within the confines of reasonableness, it is no part of Court’s function to look further into its merits.”\(^\text{107}\)

“In the instant case, we do not find any material to hold that the Central Government has acted with some ulterior motive or upon irrelevant considerations or has failed to take into, account the relevant considerations, in referring the matter to the Magistrate for inquiry, warranting our interference.”\(^\text{108}\)

4.2.3.10 Treaty or Arrangement as a basis for extradition

India has extradition treaties with 28 states, namely, Belgium, Bhutan, Canada, Hong Kong, Nepal, Netherlands, Russia, Switzerland, USA, UK, UAE, Uzbekistan, Spain, Mongolia, Turkey, Germany, Tunisia, Oman, France, Poland, Korea, Bahrain, Bulgaria, Ukraine, South Africa, Belarus, Kuwait, Mauritius.

It has extradition arrangements with 10 states, namely, Australia, Fiji, Italy, Papua New Guinea, Singapore, Sri Lanka, Sweden, Tanzania, Thailand and Portugal.

To be a basis the treaty must be in force:

Unless the concerned treaty is operational it cannot be a legal basis for the extradition. So, extradition would be rejected if the treaty is not ratified if it is required for bringing the treaty into force according to the terms of the treaty.\(^\text{109}\)

\(^{107}\) Ibid para 15
\(^{108}\) Ibid para 16
\(^{109}\) When the treaty between India and Kuwait which is signed by both on 25\(^{th}\) Aug 2004 was not ratified as is required by the treaty, the Madras High Course refused to consider the treaty as constituting as the basis
In case where the treaty provides the legal basis the terms of the treaty determine to a large extent the extraditability of the fugitive criminal. Every extradition treaty provides the list of extraditable offences or what are to be treated as extraditable offences. The treaties on one hand facilitate extradition and also on the other hand restrict extradition of certain fugitives (say for example on the consideration of nationality of the fugitive criminal) or certain offences (say for example, political offence, military offence etc).

**Applicability of pre-independence treaties**

According to Indian Extradition Act, India can extradite fugitive criminals to foreign states with which it has extradition treaties or extradition arrangements. Also India has to extradite by virtue of any multilateral convention requiring the same if the concerned foreign state and India are parties to such convention. Sec.3(d) particularly includes pre independence in the definition of ‘extradition treaty’.

A question arose regarding the enforcement of pre-independence treaties in *Rosiline George Kutty Vs Union of India.* The petitioner raised a contention that the extradition treaty entered into between USA and India in 1931 has no validity as according to him any treaty signed by India prior to Jan 26th of 1950 automatically ceased to exist in force by virtue of it becoming a new independent state. Apex Court rejected this argument and has concluded that:

“We have plenty of evidence to show that India, after achieving independence, has unequivocally committed itself to honor the international obligations arising out of the 1931 treaty. We have reproduced above the International Arrangements Order wherein India agreed to honour all the international agreements entered into before August 15, 1947 and agreed to fulfill the rights and obligations arising from the said agreements. The Parliament made its intention further clear when under Section 2(d) (quoted above) of the

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110 Sec.3(d) defines extradition treaty as “Where there is no extradition treaty made by India with any foreign State, the Central Government may, by notified order, treat any Covention to which India and a foreign State are parties, as an extradition treaty made by India with that foreign State providing for extradition in respect of the offences specified in that Convention.”

111 CDJ 1993 SC 702
Act it gave inclusive definition to the expression "Extradition Treaty" by including, the treaties made or entered into prior to August 15, 1947 in the said definition.  

*Surrender of the fugitive criminal beyond the terms of treaty*

Where the terms of treaty do not warrant the extradition of a fugitive criminal by virtue of the exhaustive enumeration of extraditable offences, can the person still be surrendered to the requesting state under Indian statute of extradition?

When the treaty is exhaustive by reason of its enumerated list of extraditable offences, the high contracting parties are not entitled, under the treaty, to claim Extradition of criminals in respect of other offences. But such enumeration does not imply a prohibition against either of those parties providing by its own municipal law for the surrender of criminals for other offences not covered by the treaty. It is difficult to imagine why the contracting States should place such a fetter on their respective Legislatures.

This statutory authority to surrender cannot of course enlarge the obligation of the other party where an Extradition Treaty has been entered into. But it is equally clear that the Act does not derogate from any such treaty when it authorises the Indian Government to grant extradition for some additional offences, thereby enlarging, not curtailing, the power of the other party to claim surrender of criminals.

*Undertaking can be considered as extradition arrangement:*

Diplomatic assurances are deemed to be extradition arrangement valid enough to allow extradition of fugitive criminal to requesting state by India. Therefore, the objection raised that there cannot be extradition merely on the basis of an undertaking given by the requesting state (Thailand in this case) that the fugitive criminal will not be tried for offence other than for which he is extradited, was refused by Delhi High. It responded that -

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112 Ibid para 20
113 Dr. Rambabu Saxena v. State, 1950 AIR (SC) 155 at pgh 8
114 Charles Gurmukh Sobhraj v. Union of India, CDJ 1985 DHC 493
“Indeed, there is no regular treaty between the Government of India and the Government of Thailand but we find no reason why the undertaking demanded by the Government of India and submitted by the Government of Thailand cannot be treated as an agreement pertaining to the case of the petition. Extradition Act has admittedly been made applicable to the State of Thailand by a notification dated 17th May, 1982. Extradition can be sought either in terms of the treaty or on reciprocity arrangement. These are essentially sovereign acts and the guarantee the reciprocity and the undertaking fetched by the requesting-State. There is no regular method of enforcement of international treaty obligations. The only guarantee is the solemn pledge by one sovereign state to another and the moral binding and the fear of loss of credibility. Under these circumstances, we are of the view that this undertaking can be deemed to be an agreement….”

We do not find any provision in the Extradition Act which renders it applicable only if a Treaty or Arrangement has been entered into between India and the said foreign countries. A requisition for extradition can always be made, but in the absence of a Treaty or an Arrangement, India has the unfettered right to not to accede to the request for extradition.115

4.2.3.11. Presence of accomplice in India at the time of commission of offence

When a person is charged with having been accessory in a crime committed in a foreign state which seeks his extradition, it is not necessary that the said person must be present in the said foreign state. This was held in Rex Vs Godfrey.116 The same view was taken by the Supreme Court in Mobarak Ali Ahmad Vs State of Bombay.117 In this case Mobarak Ali charged for forgery and fraud argued that he was out of India when the offence was alleged to have been committed. The Court held that Indian courts would have jurisdiction when a person committed an offence although not being present in India at the time of commission of offence.

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115 Ram K Madhubani v. Union of India, CDJ 2008 DHC 1838 para 15
116 (1923) 1 K.B.24
117 AIR 1957 S.C. 857 at p868
4.3 EXTRADITION PROCESS FOR GETTING FUGITIVES INTO INDIA

In India the extradition of a fugitive from India to a foreign country or vice-versa is governed by the provisions of Indian Extradition Act, 1962. The basis of extradition could be a treaty between India and a foreign country. Under section 3 of this Act, a notification could be issued by the Government of India extending the provisions of the Act to the country/countries notified.

Information regarding the fugitive criminals wanted in foreign countries is received directly from the concerned country or through the General Secretariat of the ICPO-Interpol in the form of red notices. The Interpol Wing of the Central Bureau of Investigation immediately passes it on to the concerned police organizations. The red notices received from the General Secretariat are circulated to all the State Police authorities and immigration authorities.

The question arises that what action, if any, can be taken by the Police on receipt of information regarding a fugitive criminal wanted in a foreign country. In this connection the following provisions of law are relevant:

- Action can be taken under the Indian Extradition Act Article No. 34 (b) of 1962. This act provides procedure for the arrest and extradition of fugitive criminals under certain conditions which includes receipt of the request through diplomatic channels ONLY and under the warrant issued by a Magistrate having a competent jurisdiction.
- Action can also be taken under the provisions of Section 41 (1) (g) of the Cr.P.C., 1973 which authorizes the police to arrest a fugitive criminal without a warrant, however, they must immediately refer the matter to Interpol Wing for onward transmission to the Government of India for taking a decision on extradition or otherwise.

In case the fugitive criminal is an Indian national, action can also be taken under Section 188 Cr.P.C., 1973 as if the offence has been committed at any place in India at
which he may be found. The trial of such a fugitive criminal can only take place with the previous sanction of the Central Government.

4.3.1 Chapter IV, Sec.19 deals with surrender or return of accused or convicted persons from foreign states.

A requisition for the surrender of a person accused or convicted of an extradition offence committed in India and who is, or is suspected to be, in any foreign State or a commonwealth country to which Chapter III does not apply, may be made by the Central Government

(a) to a diplomatic representative of that State or country at Delhi; or
(b) to the Government of that State or country through the diplomatic representative of India in that State or country:

and if neither of these modes is convenient, the requisition shall be made in such other mode as is settled by arrangement made by the Government of India with that State or country.

A warrant issued by a Magistrate in India for the apprehension of any person who is, or is suspected to be, in any Commonwealth country to which Chapter III applies shall be in such form as may be prescribed.

Whenever any person accused or convicted of an offence, which, if committed in India would be an extradition offence, is surrendered or returned by a foreign State, such person shall not, until he has been restored or has had an opportunity of returning to that State, be tried in India for an offence other than

(a) the extradition offence in relation to which he was surrendered or returned: or
(b) any lesser offence disclosed by the facts proved for the purposes of securing his surrender or return other than an offence in relation to which an order for his surrender or return could not be lawfully made; or
(c) the offence in respect of which the foreign state has given its consent.”

4.3.2 Guidelines of Ministry of External Affairs of India

Extradition request for an accused/ fugitive can be initiated after charge sheet has been filed before an appropriate Court and said court having taken cognizance of the case has issued orders/directions justifying accused/fugitive's committal for trial on the basis of evidence made available in the charge sheet and has sought presence of the accused/fugitive to face trial in the case. All extradition requests should be supported by documents and information enumerated below.

*Note: If an extradition treaty exists between India and the requested country, the extradition request and documents connected therewith should be prepared on the basis of provisions of Extradition Treaty.*

1. It should be in spiral bound and contain an index with page numbers.

2. The request should be supported by a self-contained affidavit executed by the Court by whom the fugitive is wanted or by a Senior Officer in charge of the case (not below the rank of Superintendent of Police of the concerned investigating agency) sworn before a judicial Magistrate (of the court by which the fugitive is wanted for prosecution). The affidavit should contain brief facts and history of the case, referring at the appropriate places the statements of witnesses and other documentary evidences. Criminal's description establishing his identity; provision of the law invoked etc. so that a prima facie case is made out against the fugitive criminal.

3. Paragraph 1 of the affidavit should indicate the basis/capacity in which the affidavit is executed.

4. The affidavit should indicate that the offences for which the accused is charged in India.

5. The affidavit should also indicate that the law in question was in force at the time of Commission of offences and it is still in force, including the penalty provisions.
6. The evidence made available should be admissible under Indian laws. Accordingly, the affidavit should indicate whether the statements of witness are admissible as evidence in India in a criminal trial/prosecution. Statements of witnesses should be sworn before the Court.

7. The affidavit should also indicate that if the accused were extradited to India, he would be tried in India only for those offences for which his/her extradition is sought.

8. Copy of First Information Report (FIR), duly countersigned by the competent judicial authority, should be enclosed with the request.

9. Competent authority should countersign copy of charge sheet, which is enclosed with the documents.

10. A letter/order from the concerned court justifying accused person's committal for trial on the basis of evidence made available in the Charge sheet, with a direction seeking accused person's presence in court to stand trial in said court from the country of present stay.

11. Warrant of arrest should be in original and open dated indicating clearly only those offences for which the accused is charged and Court has taken cognizance with relevant sections thereof.

12. Nationality, identity and address of the accused including his photograph should be made available with the request.

13. Copy of the relevant provisions under which the accused is charged along with the provisions of the relevant laws indicating that the maximum sentence prescribed for the offence for which the accused is charged or convicted.

14. The extradition request is to be made in quadruplet (four copies). All original and copies should be attested /authenticated by the concerned court.
15. All the documents should be very clear, legible and in presentable form as they are to be presented to the sovereign Governments of Foreign Countries.

16. Original documents in national languages should be sent along with certified English translation of each such document from authorized translators.

Extradition requests/documents to the country where English is not first language should be submitted along with duly translated copy in host country's local language. The Court issuing warrant should certify such translated copy. After completion of necessary formalities, the request for extradition should contain a letter/note from a Senior Official (not below the rank of Joint Secretary) or the concerned State Government indicating the correctness of the case/material with a request to the Central Executive to forward it to the Government of the concerned foreign country.

If the concerned court is requesting for extradition of a person, the request in the form of an affidavit should be in first person, i.e. by the Hon'ble Magistrate/ Judge himself/herself. (Such requests are usually received from Court Masters or other court officials writing in third person on behalf of the Court. Requested States object to it). The request for extradition and the documents thereof should be prepared as per the requirements of the extradition treaty between India and the country concerned from which the fugitive is to be extradited to India.

India has extradition treaties with several countries, including the US, UK, Russia, France, Germany, Spain, UAE, Switzerland, Mexico, Mauritius, Canada, Hong Kong, Belgium, Nepal, the Netherlands, Bhutan, Uzbekistan, Turkey, Mongolia, Tunisia, South Korea, Oman, South Africa, Bahrain, Poland, Ukraine, Kuwait.

Australia, Fiji, Italy, Singapore, Sri Lanka, Sweden, Thailand, Tanzania and Portugal are prominent nations India has extradition arrangements with.
4.3.3 Interpol: Letter of Request and Extradition

A complete understanding of Interpol Subject on Fugitive Criminals, one should understand the following 3 parts of subject of extradition process;

(a) Letter Rogatary or Letter of Request,
(b) Sending a team of Investigators abroad
(c) Process of Extradition.

The procedures of initiating an investigation abroad, to fulfil the obligations of Criminal Justice System – if the person has either committed an offence and absconded abroad and also he has done part of the offence there which necessitates the investigation in that country.

4.3.4 Foreign Investigation:

*Foreign investigation is requested in following situations:*

(1) A person has committed an offence in India but the evidence for motive or preparation and other circumstantial evidence lies in some other country. It has been seen in NRI marriages cases, where the bridegroom is NRI but marriage is performed in India, harassment of bride takes place on foreign soil. But the trial jurisdiction as per Indian law is in India. Number of cases registered under Sec.498 (A) fall into this category.

(2) In drug trafficking cases, where a person or group of persons bring the drugs or narcotics from a different country, sell it in India and again flee to another country to take shelter.

(3) Underworld offences – specially – extortions – where the main offender sits abroad, uses extensive telephone and other communications network to threaten the subject and collects the moolah either through an agent here in India, or through hawala or through overseas bank transactions. A number of such cases have come to notice during last 4-5 years.
(4) Terrorist Operations – where terrorists are recruited from different countries by masters of different countries, trained in another country, then they are sent to operate in India and after committing offences they flee to different countries for shelter. Al-Quida operations all over the world, Jaisha-Muhammad, LET operations, LTTE operations fall into this category.

(5) No less important are hawala and money laundering offences and its perpetrators who sabotage the economy directly and indirectly supplying money to criminal activities. Such offenders will have expert legal advisers to counsel them on how to avoid the legal dragnet of the country where they are operating. The prevalent modus operandi is to live away from the territorial jurisdiction of the country of operation.

One common aspect in all these categories is found in the utilization of vast communication network, which is again controlled by the principle of territorial jurisdiction, which facilitates the crime. In such circumstances, the investigation done within one territorial area may not be sufficient – as only partial evidence will be available. There will be missing links. Only fringe offenders will be tried whereas kingpins will remain free and they will recruit fresh and new hands to carry out their business of crime.

To meet the challenge of collecting evidence in other countries 2 steps are taken:

a) Sending letter of Request/letter Rogatory to other countries to cause further investigation

b) Send our team of investigators (Foreign Missions)

a. Letter Rogatory /Letter of Request (LRs)

In A.P, we find some major problems where an investigation abroad is required. During last couple of years the ISI related activities, dowry harassment cases, fraud and cheatings, circulation of fake currency notes, hawala and money laundering and other underworld related cases have come to light, which necessitate that the interlinked acts of Omission and Commission of an accused in a foreign land are probed, as a part of case
registered here in India. We have seen in past the Bofors Scam Case, the Abu Salem case etc.

The Code of Criminal Procedure (Cr.P.C.) has provisions in Sec.166-A and 166-B to make this request on any foreign country to help and assist in our investigation. But this is bound by very technical and legal procedure.

Sec.166-A – makes provisions for Indian investigator through our Court to make a request on foreign investigating agency through their count to cause investigation-by-examine persons orally or record statements who acquainted with the facts & circumstances of the case-and-also require such person to produce documents which may be in his/their possession-and-forward all the evidence so taken or collected or the authenticated copies thereof or the thing so collected to the court issuing such letter.

Sec.166-B – castes similar responsibility on Indian counts, if a proper request is made by foreign courts.

*Preparation of Letter of Request (LR)*

While preparing LRs, the agencies concerned to ensure the maximum details about the offence, accused, the witnesses, the documents and the legal ramification are well considered and gone through. I.Os and Supervisory officers while sending Letter of Request basically refer to the following checklist.

1. A minimum of 4 copies of LRs has to be prepared to facilitate quick processing in different concerned offices.

2. The corresponding law of the foreign country concerned regarding mutual assistance in criminal investigation (like our provisions under Sec.166-A & Sec.166-B of Cr.P.C, Sec.41 (1)(g), The Indian Extradition Act and the ramifications of provisions of Indian Penal Code under which the investigation is being carried out.) must be studied and its compliance may be mentioned in LR.

3. The L.R should be prefaced with a concise and self-explanatory request consisting the details of the case. With request to competent judicial authority of the
requested country (foreign country), supported by speaking order of execution of the jurisdictional court (of India).

(4) The copy of the FIR providing complete details like Case no., the facts of the case, the legal provisions violated, the details regarding the suspects and conspirators, shall be given.

(5) The details regarding the current status of the case should also be incorporated – like – whether the case has been charge sheeted or still under investigation
- the likely sentence to be awarded in case of conviction must be highlighted.
- wherever possible the documents should be supplemented with photos, graphics – depicting the prominent features of crime, modus operandi to bring out the severity of crime. This is normally done in heinous offences like murders, blasts and terrorist operations cases.

(6) The copy of the letter (with reference of point.3) for seeking the court permission – delineating – the complete details of the points on which investigation is to be carried out by foreign police
- the nature of evidence and the manner in which it needs to be recorded to suit our Evidence Act & court procedures
- how the material evidence or exhibits have to be collected or tabulated in conformity with our evidentiary requirements
- any other relevant legal points and other features must be attached with LR. This means that the I.O. should file the copy of letter, which he has filed before Indian Court, for issuing LR.

(7) The principle of dual criminality is relevant in most of the countries and this must be attended to while doing legal scrutiny of LR.

(8) While preparing the LR special care should be taken while writing numerals. They shall be mentioned in International Standard – i.e., millions and billions – for
example – in Indian numeral system – a sum – may be 2,38,52,48,327 – which in International numerals will be – 2,385,248,327. Another example – in Bofors case the total sum of purchase was Rs.1437.72 crores, but in Swedish Kroner, it was mentioned SEK 8,410,660,984. Therefore, in case where conversion of currency is required, it shall be done in international terms of numerals.

(9) Similarly the local indigenous terms like panchanama, benami, hawala shall be avoided and their equivalent international terminology may be used. Wherever, the police authorities fed that the international terms are not qualifying fully to explain the meaning – a description of it shall be given in LR along with such specific terms.

(10) The complete personal details of the witnesses and the suspects required to be examined abroad should be clearly mentioned in LR. Their foreign contract address, their Passport nos. (Indian or foreign), telephone numbers, e-mail addresses shall be mentioned, if they are available with us. The role of each of the accused and relevance of each witness requested to be examined should be well described in the LR.

(11) In case we have a treaty/agreement/MOU/any other arrangement with the requested country relating to mutual legal assistance the LR shall be prepared in accordance with it. An assurance of reciprocity also may be given as a good gesture.

(12) It should specifically be mentioned that evidence collected would be used only in that case and not in any other case. But it can be used for our database.

(13) In case LR is to be sent for its execution to the non-English Speaking Country authentic and certified translation in the relevant national language may be provided. This saves time and confusion.

(14) It would be advisable to divide and arrange the compilation of LRs in sub-parts-like – (a) Introduction (b) Brief facts (c) Brief of investigation conducted so far (d) Nature of Assistance sought for (e) Time-limits if any (g) Annexures (h) Index
etc. It is also advisable to clearly mark various documents, photographs and objects (if any) in LR to avoid mushiness & confusion and enable the Requested Judicial authority abroad to know clearly what is requested to be done.

(15) The formal approval of the Central Government for sending LR is a must. An affidavit from competent authority from Govt. should invariably be appended with LR.

(16) After LR is approved by legal authority in the state, it will be sent to CBI, which is National Liaison Authority on Interpol matters, for scrutiny and forwarding.

*Letter of Rogatory is a diplomatic Communication.*

LR is a means of communication between the judicial authorities of one nation to judicial authority of another nation – but it is routed through Home Department, External Affairs Department in our country, whereas Legal and Justice Department, State Department, or Interior Departments in other countries. Therefore, it necessarily acquires the status of a Diplomatic Communication.

In our country, after a LR is cleared by CBI (Interpol), it is forwarded to the Department of Personnel and Training (Home) and then Ministry of Law & Justice. Once, it gets cleared through these two agencies, it is forwarded to Ministry of External Affairs (Legal and Treaty Division) for its scrutiny and forwarding to the competent court for its formal issuance and permission for execution in a foreign country.

*What happens abroad?*

The local Jurisdiction Court, once it gets the LR transmitted through its Government issues direction(s) to concerned police authorities to carry out the business in toto or with its own directions conforming to the laws of the nation, as requested in LR, by fixing a time limit, if requested in LR.

On receipt of reports from the investigating agencies, the court will scrutinize such documents and ensure that they are in conformity with the request made and finally decide – what to send.
The International Scenario:

All the above-mentioned procedures are good and in consonance with the fairness of Criminal Justice System. But at times, overriding factors like the existing bilateral relations between the countries, the indirect hands of superpower politics, overstretched interpretation of dual criminality, the law of Secrecy governing various transactions, take precedence over Principles of Justice. It was blatantly seen in Bofors investigation, where it took very long time for CBI to get the documents from Sweden under lot of dramatic twists & turns. Finally CBI could lay its first charge sheet only after 9 years – thanks to action on Letter of Request.

b. Sending a team of Investigators abroad

Indian Investigation abroad: -

Sometimes it may be felt that investigation done by other country police through court may not be sufficient in the given offence, the authorities herein India after careful consideration may think to send an Indian team of investigators abroad. Indian Police Officers will have no powers under the law of any foreign country. Therefore, they need to be authorized. The due process followed is:

(a) The best thing would be to send a proper LR by mentioning in it that at the time of execution of LR, Indian team of investigators need to be associated. The LR should accompany a formal request for such visit and investigation details. Besides other details mentioned below also must be mentioned for facilitating the process.

(b) The detailed particulars of investigators with their official ranks and the nature of their association with ongoing investigation in our country must be described.

(c) The exact date and duration of mission should be clearly mentioned. The date of visit shall be fixed by taking due consideration that the other country will take time to process the request.

(d) The language used by investigators & known to them must be mentioned.
(e) Whether Investigators wish to carry firearms during the course of investigation. It must be elucidated clearly because most of the countries are sceptical in allowing investigators with firearms.

(f) The investigators wish to bring any suspect with them under arrest for fulfilling the criteria u/s 27 Indian Evidence Act. It should be thoroughly checked, whether such arrested person may have to be released under the law of requested country. This aspect should be thoroughly checked before making proposal.

Also such person or any other witness so taken, may be a subject of arrest warrant in the requested country-this may create complications during investigation. This aspect must be verified.

(g) The investigator wishes to bring with him items of evidence which may be custom banned in the requested country, or needed by that country as evidence for some ongoing proceedings there-must be verified and cross-checked.

(h) The details of legal definition of offence, identity, residence particulars of the alleged person, his nationality, family status, F.Ps (if available), must be furnished to enable the requested country to decide in conformity with their prevalent laws.

(i) Similarly the identities and addresses of the persons to be questioned, taking their statements, the nature of properties to be seized and also which places they are likely to be found, must be mentioned to enable the requested country to locate and keep them available for investigating team to complete the mission quickly within time.

(j) No team should start unless prior permission is obtained, otherwise it can cause lot of trouble to investigators in person as well as it will cause a lot of diplomatic hassle.

All such requests have to be routed through NCB-CBI (Interpol), processed by DP&T (MHA), MEA. After approval, NCB-CBI informs the concerned State with details to dispatch the Investigation Missions abroad.
On close scrutiny following 5 legal criteria emerge for an ideal Extradition proposal:

(a) Extradition applies only with respect to offences clearly stipulated as such in the treaty. (This does not mean that we should not make effort to extradite offenders staying in non-treaty countries. Proposals can be routed through diplomatic channel on Govt. to Govt. basis.)

But the following criterion must be fulfilled and checked before making proposal, because every country’s judiciary or law department will judge the proposal of extradition if they stand scrutiny on these points.

(b) There should be dual criminality

(c) The requested country must be satisfied that there is a prima-facie case made out against the accused or offender.

(d) The clear and guaranteed assurance, that such person will be proceeded against only those offence(s) for which he is extradited. More offences will not be mounted on this account.

(e) He must be accorded a fair trial – the principle of Natural Justice and Human Right requirement demand it.

While preparing the proposal of Extradition, the proposal shall consist all the details mentioned in Preparation of LR. The clarity shall be of the same order, only barring the names of the witnesses and proposal for investigation. Instead of it its preamble shall specifically mention about the extradition of an offender by adding the copy of warrant issued by competent court of law with time-limit in it, copy of charge sheet along with discussion of evidence in support of charge(s).

The procedure is same as approving an LR – means – it will go to NCB-CBI, then to MHA, Law Department and finally to MEA to be sent to the Govt. of Requested Country for processing. Whether a team of Indian Officers shall go or not shall be decided and procedure followed as mentioned earlier.
4.4. FEW EXAMPLES OF SUCCESSFUL CASES OF EXTRADITION TO INDIA

4.4.1 Savarkar Case:

Savarkar was an Indian revolutionary who was being brought to India for prosecution. When the ship was in the Port of Marcelese, Savarkar escaped. But later on he was apprehended by French police. But the captain of French ship returns savarkar to the captain of British Ship under the wrong impression that it was his duty to do so. Later on the the Government of France requested British Government to return Savarkar on the ground that the rules relating to his extradition were not strictly observed. This case was entrusted to Permanent Court of Arbitration, Hague. The Court decided that international law does not impose any obligation upon the state whereby on the above ground the criminal may be returned. That is once a person is extradited, even though it was done in irregular way, the country receiving the fugitive or the criminal is not bound under international law to return the person. This decision has been severely criticized. In their view the decision is not based on sound principles of justice.

4.4.2 Dharm Teja Case: Dharam Teja, who was the Managing Director of Jayanti shipping Corporation, committed embezzlement and bungling of crores of rupees and had fled away from India. He fled from one country to another to escape arrest. When he was in Ivory Coast, the Government of India requested the government of that country to extradite him. The Government of Coasta Rica refused on the ground that it has no extradition treaty with India. Later on, when Dharam Teja was in England, Government of India requested British Government to initiate extradition proceedings against him. British Government accepted the same and allowed his extradition to India after due procedure.

4.4.3 Naval Officer Extradition Case (1975): Commander Elijah Ebrahim Jhirhad of Indian Navy was charged with the offence of misappropriation of Rs. 13 Lakhs of the naval prize Fund while he was functioning as Judge Advocate- general of Indian Navy in the early 1960s. He had the responsibility of administering the Fund. An ex-sailor made a complaint that he had not received his prize money. On enquiry the naval Headquarters discovered that the fund was never subjected to audit and that he had destroyed all
records. Mr Jhirhad fled to New York. On request from India for his extradition, he was extradited from New York after the New York Judge passed the extradition orders.

4.4.4 Narang Brothers Extradition Case (1976): Manohar Lal Narang and his brother Om Prakash Narang were charged with the offence of cheating, forgery and smuggling of two stolen antique pillars known as Amia pillars in a village near Kurukshetra in Haryana. Manohar Lal Narang is financial advisor to Liberian Embassy in Paris. The pillars were recovered from a local warehouse in London. India made extradition request. London Magistrate turned down the plea of diplomatic immunity of Manohar Lal. He was extradited to India.

4.4.5 Sucha Singh Case: Sucha Singh was accused of murdering Pratap Singh Kairon, the former Chief Minister of Punjab and fled away to Nepal and on request of Government of India, Nepal extradited him.

So far in our country we have achieved mixed kind of successes in extraditing our offenders – In the recent past, we succeeded in extraditing Rajan Pillai, Babloo Srivastava like offenders – whereas – we had dithering experience in getting Anees Ibrahim Kaskar and we have to face failure in getting Ottario Quatrochchi extradited from Malaysia. In many cases the issue of extradition of fugitive criminals to India is governed more by politico-diplomatic considerations rather than considerations of tightening of World Criminal Justice System.

We are unsuccessfully seeking extradition of wanted terrorists taking shelter in Pakistan. They include, Maulana Masood Azhar, leader of Jaish-i-Mohammad, man behind the attack on India's parliament on December 13, 2001. He is also wanted for an attack on the J&K Assembly on Oct 1, 2001 in which 38 people were killed, Hafiz Mohammad Saeed, co-founder of Lashkar-e-Toiba, also blamed for the attack on Parliament in New Delhi. He operates from Muridke town, near Lahore in Pakistan. Dawood Ibrahim, an Indian underworld don, man behind the planning and financing 13 explosions in Mumbai in 1993 in which almost 300 people died. Ibrahim is wanted in connection with cases of arms supply, counterfeiting, drugs trade, funding alleged criminals, murder and smuggling, Chhota Shakeel, a key associate of Dawood Ibrahim.
Wanted for murder, extortion, kidnapping, blackmail of businessmen and film stars in India. He lives in and operates from Karachi, Pakistan, "Tiger" Ibrahim Memon, accused of executing the 1993 Mumbai blasts. He is wanted in cases of murder, extortion, kidnapping, terrorism and smuggling arms and explosives in India, Ayub Memon, accused of executing the 1993 Mumbai blasts. He is alleged to have helped his brother Ibrahim Memon carry out the blasts. He is wanted in cases of terrorism and smuggling, Abdul Razzak, accused of involvement in the Mumbai blasts. He is wanted in cases of terrorism and arms smuggling. He lives in and operates from Karachi, Pakistan, Syed Salahuddin, head of Hizbul Mujahideen, which has claimed responsibility for dozens of attacks on Indian forces in Kashmir, India, Shahid Akhtar Sayed, is wanted for the IC-814 hijacking and for kidnapping and murder, Abdul Karim, a Kashmiri terrorist blamed for more than 30 bomb blasts in Delhi and parts of northern India in 1996-97, Wadhwana Singh Babbar, chief of Sikh group Babbar Khalsa International, which was involved in an insurgency in East Punjab during the 1980s. He is wanted in over a dozen cases of sedition, murder and in connection with the assassination of East Punjab's then chief minister Beant Singh, Paramjit Singh Panjwar, leader of the Khalistan Commando Force. He is accused of trying to revive the Sikh insurgency in East Punjab and is wanted in more than a dozen cases of murder, treason, conspiracy and arms smuggling.

India has a pending request with the US for the extradition of former Union Carbide chief Warren Anderson In connection with the incident of Bhapal Gas tragedy, one of the world’s worst environmental tragedies in which thousands got killed and suffered extensive damage. The extradition of Anderson, who was proclaimed an absconder by the CJM court in Bhopal in 1992, has been the bone of contention between the two countries over the last two decades. The government of India examined the matter in1993 and reportedly did not act till May 2003, when it sent the first notice. Meanwhile, gas victims and their organisations here have expressed shock over the development saying India needs "political will" to extradite Anderson. But the US had told India on July 2, 2004 that the government would not consider extradition because the request "does not meet the requirements of their Extradition Treaty with India. In June
2010, the CBI along with the union ministry of law, ministry of external affairs and the Attorney General of India worked together for additional material in the case. A fresh notice attested by the court chief metropolitan magistrate Tis Hazari, New Delhi was sent to the US

**4.5 COMPARISON OF INDIAN LAW WITH UN MODEL LAW, 2004:**

1. According to Model law, the legal basis for extradition can be a treaty, agreement, comity, reciprocity, diplomatic assurance or the interests of justice.\(^\text{118}\) So far as Indian position is concerned a person can be extradited to a foreign state with which it has treaty or arrangement. Extradition can be allowed even to a foreign state which is not a treaty state (the term treaty includes agreement or arrangement) with regard to extradition offence defined as an offence punishable with a term which shall not be less than one year under the laws of India or of a foreign state and includes a compound offence. Nothing prevents India to grant extradition on considerations of comity, reciprocity, diplomatic assurance or in the interests of justice.

2. Model Law in defining extraditable offence takes into account the criteria of minimum sentence apart from what is contained in extradition treaty.\(^\text{119}\) India also adopted the same approach.\(^\text{120}\) In Model Law however, the term ‘extradition offence’ omits from its purview those offences the extradition of a person who has been sentenced to imprisonment or other deprivation of liberty imposed for such an offence, as defined in subsection (1), shall not be granted unless [may only be granted if] a period of at least [six] months of such sentence remains to be served or a more severe punishment remains to be carried out. Similar provisions are not found in Indian law.

3. According to Model Law, “Extradition treaty” includes a bilateral treaty concluded between [country adopting the law] and a foreign country, or a

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\(^{118}\) Sec 2 of Model Law, 2004  
\(^{119}\) Sec 3 of Model Law, 2004  
\(^{120}\) Sec 2 (3)(c) of Indian Extradition Act, 1962 as amended in 1993
multilateral treaty to which [country adopting the law] is a Party, which contains provisions governing extradition of persons who are present in the territory of [country adopting the law].121 Similar approach is adopted by India.122

4. According to Model law, grounds of refusal of extradition include political offences. At the same time keeping in view the necessity to reduce the impact of this exception tackling serious crimes like terrorism carrying political overtones, the law has provided exceptions to the exception of political offence.123 Thus the Model Law says where the requested state to any multilateral convention or bilateral treaty or arrangement according to which the offence in question is not to be considered as offences of a political nature for the purpose of extradition or to take prosecutorial action in lieu of extradition, the exception of political offence be not invoked. Political offence is a ground of refusal of extradition.124 The Model Law also provides a list of crimes which may not be considered as political offences.125 Indian law too follows the suit.126

5. According to the Discrimination Clause of UN Model law, extradition must be rejected if, in the view of the [competent authority of country adopting the law], there are substantial grounds to believe that the request for extradition has been made for the purpose of prosecuting or punishing the person sought on account of his Race, religion, nationality, ethnic origin, political opinions, sex [gender] or status.127 Under the Model Law, there is also restriction against extradition if, in the view of the [competent authority of country adopting the law], the person sought [has been or] would be subjected in the requesting State to torture or cruel, inhuman or degrading treatment or punishment128 or if, in the view of the [competent authority of country adopting the law], the person sought [has not received or] would not receive the minimum fair trial guarantees in criminal

121 Sec 1 of Model Law, 2004
122 Sec 3 (4)of Indian extradition Act, 1962 as amended in 1993
123 Sec 31 of Indian Extradition Act, 1962 as amended in 1993
124 Sec 31 read with S3 (4) of Indian Extradition Act, 1962 as amended in 1993
125 Sec 4 of Model Law, 2004
126 See the Schedule to the Indian Extradition Act,1962 as amended in 1993
127 Sec 5 UN Model Law, 2004
128 Sec 6 of UN Model Law, 2004
proceedings in the requesting State.\textsuperscript{129} Similar specific clauses are missing so far as Indian legislation is concerned. However, it contains a comprehensive clause\textsuperscript{130} which refers to the power of Central Government to discharge any fugitive criminal if it appears to it that the offence in question is trivial, or request for surrender is not made in good faith or in the interests of justice or for political reasons or otherwise. This can take care of all the situations referred above.

6. Military offences is exempted from extradition according to Model Law.\textsuperscript{131} But no such specific exemption is seen in Indian law.

7. Principle of prohibition against double jeopardy is contained in both UN Model Law (\textit{Ne Bis in idem})\textsuperscript{132} as well as Indian Law. The difference between the two being- prohibition against double jeopardy enjoys constitutional guarantee\textsuperscript{133} in India which is much higher to statutory guarantee, India also provides statutory protection to the principle under Cr.P.C\textsuperscript{134} and not under Indian Extradition Act which does not really matter.

8. Whereas the Model Law provided an option to refuse extradition on the ground that fugitive criminal is a national of requested state,\textsuperscript{135} India has adhered to the second option according to which nationality of the fugitive criminal is immaterial consideration in considering extradition request.

9. With regard to the death penalty the Model Law provides- If the offence for which extradition is requested carries the death penalty under the law of the requesting State and is not so punishable under the law of the [country adopting the law], extradition [shall not be granted] [may be refused], unless the competent authorities of the requesting State give assurances considered sufficient that the death penalty will not be imposed or, if imposed, will not be carried out. Indian

\textsuperscript{129} Sec 7 of Model Law, 2004
\textsuperscript{130} Sec 29 of Indian Extradition Act, 1993 as amended in 1993.
\textsuperscript{131} Sec 10 of Model Law, 2004
\textsuperscript{132} Sec 8 of UN Model Law, 2004
\textsuperscript{133} Art 20(2) of the Constitution of India
\textsuperscript{134} Sec 300(1) of Cr. P.C., 1973 of India
\textsuperscript{135} Sec 11 of Model Law, 2004
law is silent in this regard obviously because India retains capital punishment in its penal law. However, keeping in mind the problem of possible refusal by the requesting state to send the requested fugitive criminal to India because of the possibility of imposition of capital punishment to him, the Extradition Act provides that where a fugitive criminal, who has committed an extradition offence punishable with death penalty, is surrendered or returned by foreign state to India and such state being an abolitionist state, such fugitive criminal will be liable to meet only punishment for imprisonment for life and not death penalty. 136 Thus India provides a statutory guarantee in this regard.

9. Whatever grounds of refusal of extradition as are provided under the Model Law however do not apply in the case of a person who is the subject of a request for surrender by the International Criminal Court or Tribunals. 137 Obviously, similar provision would not find a place in Indian Extradition Act for the obvious reason that India is not a party to ICC statute.

10. Principle of Aut Dedere Aut Judicare (Extradite or Prosecute) principle is contained in Model Law Treaty 138 as well as Indian Extradition Act. 139

11. Both the UN Model Law 140 as well as Indian Extradition Act 141 contain the restriction on extradition in case the prosecution of or punishment to the concerned offence is barred by lapse of time, prescription or statute of limitation.

12. The principle of double criminality finds its place both in Model Law 142 as well as Indian Extradition Act. Whereas Model Law makes an explicit reference to the principle of double criminality, Indian law does not have such an explicit reference. Nevertheless, it

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136 Sec 34C of Indian Extradition Act, 1962 as amended in 1993
137 Sec 14 of Model Law, 2004
138 Sec 15
139 Sec 34A
140 Sec 9 of Model Law, 2004
141 Sec 31 of Indian Extradition Act as amended in 1993
142 Sec 3
is contained in the prescription of minimum sentence as the legal parameter of extradition offence.\textsuperscript{143}

13. With regard to concurrent requests for extradition by more than one foreign state, Indian Extradition Act leaves it to the discretion of the Central Government to decide its preference.\textsuperscript{144} No guidelines are provided in this regard. On the other hand, Model Law lists out few factors that might be taken into consideration while deciding the priority\textsuperscript{145}.

14. Under both the laws the surrender of the fugitive can be postponed in case the fugitive is subjected to trial or punishment with reference to an offense other than for which extradition is sought.\textsuperscript{146} However, Indian law does not contain a provision of restriction of extradition on humanitarian considerations like the fugitive is suffering from health problems.\textsuperscript{147}

15. Both laws provide for the rule of specialty.\textsuperscript{148}

16. Most of the procedural aspects relating to arrest, provisional warrant, release, evidential aspects, executive discretion, provision for judicial review etc are similar in both laws. An important similarity is requirement of establishment of prima facie case in support of requisition of the foreign state.\textsuperscript{149}

17. The provisions relating to transit\textsuperscript{150}, costs \textsuperscript{151} and simplified Procedure\textsuperscript{152} found under U.N. Model Law are not contained in Indian Extradition Act.

\textsuperscript{143} Sec 2 of Indian Extradition Act, 1962 as amended in 1993
\textsuperscript{144} Sec 30 of Indian Extradition Act, 2004
\textsuperscript{145} Sec 18 of UN Model Law
\textsuperscript{146} Sec 29 of Model Law and Sec 31 of Indian extradition Act, 1962 as amended in 1993
\textsuperscript{147} Sec 29 of Model Law, 2004
\textsuperscript{148} Sec 34 of Model Law and Sec 21 of Indian extradition Act, 1962 as amended in 1993
\textsuperscript{149} Sec 24 of Model Law and Sec 7 of Indian Extradition Act, 1962 as amended in 1993
\textsuperscript{150} S 37 of Model Law, 2004
\textsuperscript{151} Art 17 of Model Law, 2004
\textsuperscript{152} Art 6 of Model Law, 2004
4.6 SUMMARY

Indian Legal framework of extradition is not purely a matter of administrative action. It also lent judicial touch to extradition proceedings even if the same is limited in scope. The analysis of Indian case law depicts the existence of due procedural safeguards in the extradition proceedings. Various judicial pronouncements addressing different questions of law and facts raised in adjudicated cases have resulted in lending substantial clarity regarding various issues involved in the application of Indian Extradition Law.

An overall examination of Indian Law shows that due attention is paid by and large to adapt the Indian law to the contemporary developments in extradition law. On a comparative note it can be asserted that the Indian statutory regime of extradition is largely in tune with UN Model Law of 2004.