this ruling the Supreme Court has endorsed the UNCITRAL model law principle that the law of the seat of the arbitration governs the conduct of the arbitration, and annulment actions are generally not brought outside the arbitral seat.

This ruling also means that other Part I powers such as to issue interim relief and interim injunctions to preserve assets will also no longer apply to foreign – seated arbitrations.

The doctrine of 'Public policy of India 'regulates the applicability of the Indian Courts' interference in the realm of foreign awards with respect to arbitration in the Indian jurisdiction.

The Supreme Court of India made a distinction between the ambit of expression "Public policy" when used in context of enforcement of a domestic award and a foreign award, holding that in case of a foreign award a restricted meaning must be applied.

In the case of *Renusagar Power Plant Co. Ltd. v. General Electrical Co.*, AIR 1994 SC 860, the Supreme Court had construed the term "Public Policy" in Section 7(1)(b)(ii) of Foreign Awards (Recognition and Enforcement) Act, 1961, applying the principles of private international law and held that an award would be contrary to public policy if such enforcement would be contrary to:

(i) Fundamental policy of Indian law; or

(ii) The interests of India; or

(iii) Justice or morality and cannot be set aside on merits.

The Supreme Court had expanded the concept of public policy, to add that the award would be contrary to public policy if it was "patently illegal".

It is also observed by the Apex Court the with reference to Section 7(1)(b)(ii) of the Foreign awards act must equally apply to the ambit and scope of Section 48(2)(b) of the Arbitration and Conciliation Act, 1996.

The Court further noted that the application of 'Public Policy of India' doctrine for the purposes of Section 44(2)(b) is more limited than the application of the same in respect of the domestic arbitral award.

The Supreme Court of India handed down a judgment recently that restates Indian position on the enforcement of foreign arbitral awards in consonance with the international standards. In the case of *Shri Lal Mahak Ltd. v. Progetto Grano Spa*, a three Judge Bench of the Apex Court held that review of a foreign arbitral award on its merits is untenable as it is not permitted under the New York Convention. The judgment clearly exposes the difference in the scope of inquiry during the annulment of a domestic award and the enforcement of a foreign award. It stated that the expression 'Public Policy of India' under Section 48 of the Arbitration and Conciliation Act, 1996, should be construed narrowly; whereas the same could be given a wider meaning under Section 34 of the A&C Act, 1996.

THE EXTRADITION LAW – POSITION IN INDIA

By

–Y. RAJEEV, Advocate

Introduction:

The right to demand extradition and the duty to surrender an alleged criminal to the demanding State is created by a treaty. Each State exercises complete jurisdiction over all the citizens within its territory, but a difficult problem arises when a person after committing crime steps out to another State and to punish the wrong doer the extradition bilateral

treaties are must between the States. The purpose of extradition is to bring the individual within the requesting country's boundaries in order to make a determination of guilt or innocence, or to impose punishment.

Extradition may be described briefly as, the surrender of an alleged or convicted criminal by one State to another State. Extradition may be defined as the process by which one State upon the request of another State surrenders to the latter State a person found within its jurisdiction for trial and punishment, or if he has been already convicted only for punishment, on account of a crime punishable by the laws of the requesting State and committed outside the territory the requested State.

Extradition plays an import role in the international battle against crime. It owes its existence to the principle of territoriality of criminal law, according to which, a State will not apply its penal statues to act committed outside its own boundaries except where the protection of special national interests is at stake.

Traditionally, extradition law is based on treaties, two States typically agreed in a bilateral treaty to surrender to each other fugitives charges with any offences considered extraditable under the agreement. It was early 19th centuries that sovereigns began to concentrate on extradition treaties for common crimes because of the development of new, better, and quicker forms of transportation, which allowed criminals greater ability to commit crimes over a larger region.

Extradition has been defined by *Oppenheim*, "*the delivery of an accused or a convicted individual to the State on whose territory he is alleged to have committed, or to have been convicted of, a crime by the State on whose territory the alleged criminal happens to be for the time being*".

Position in India:

The Extradition Act, 1962, govern the extradition of a fugitive from India to a foreign country or *vice-versa*. Generally, the basis of extradition could be a treaty between India and a foreign country. Under Section 3 of Act, a notification could be issued by the Government of India extending the provisions of the Act to the foreign country notified.

Action can be initiated under Article 34(b) of the Indian Extradition Act, the section will deals with the procedure for the arrest and extradition of fugitive criminals under certain conditions, which includes receipt of the request through DIPLOMATIC CHANNELS ONLY and the warrant issued by a Magistrate having competent jurisdiction.

A criminal is in India, action can be initiated under the provisions of Section 41(1)(g) of 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 onwards transmission to the Government of India for taking a decision on extraction or otherwise.

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

As far as concern this issue is always in light because of number of cases such as; (a). *Savarkar's* case, (b) *Dr. Ram Babu Saxena v. State*, (c) *Such Singh's* case, (d) *Dharam Teja's* case, (e) *Tarasov Extradition* case and (f) *Abu Salem's* Extradition case (recent one), the *Abu Salem's* Extradition as follows:

The recent *Abu Salem's Extradition* case. The Underworld Don and prime accused in the Mumbai blasts *Abu Salem*, who has been extradited from Portugal along with his wife *Monica Bedi* is also a land mark in this regard. Actually there is no bilateral treaty between Indian and Portugal States.

When *Abu Salem* entered the US, they tipped off the Federal Bureau of Investigation (FBI), which tailed him. Abu managed to get out of the US and entered Portugal through Lisbon after rigging up his papers. They went on to tip the Lisbon authorities that immediately seized the Indian gangster, *Abu Salem* found himself on the receiving end and, the Mumbai Police, on their part had approached Portugal authorities to settle with the gangster, whose extradition from Portugal is shrouded with as much controversy as his role in the Mumbai blasts.

Indian Government sought *Abu's* extradition under the UN Convention on suppression of Terrorism, 2000 under which all member Nations have to help each other in the war against terrorism and the Portugal and India are the members to the said Convention.

Conclusion:

Therefore, in view of the above, it is clear that both on international law as well as the relevant statue in this country entail that a fugitive brought into this country under an Extradition Decree can be tried only for the offences mentioned in the Extradition Decree and for no other offence and the criminal Courts of this Country will have no jurisdiction to try such fugitive for any other offences.

Section 34(c) of the Indian Extradition Act, 1962, will be applicable which States that – notwithstanding anything contained in any other law for the time being in force, where a fugitive criminal, who has committed an extradition offence punishable with death in India, is surrendered or returned by a foreign State on the request of the Central Government.

And therefore, the laws of that foreign State do not provide the death penalty for such offence, such fugitive criminal shall be liable for punishment for life only for that offences.

TREATMENT OF WAR PRISIONERS – RELATED ISSUES

By

–Y. RAJEEV, Advocate

Introduction:

According to *John Hickman*, captor States hold captured combatants and non-combatants in continuing custody for a range of legitimate and illegitimate reasons. They are held to isolate them from combatants still in the field, to release and repatriate them in an orderly manner after hostilities, to demonstrate military victory, to punish them, to prosecute them for war crimes, to exploit them for their labour, to recruit or even conscript them as their own combatants, to collect military and political intelligence from them, and to indoctrinate them in new political or religious beliefs.

Ancient times:

For most of human history, depending on the culture of the victors, combatants on the losing side in a battle could expect to be either slaughtered, to eliminate them as a future threat, or enslaved, bringing economic and social benefits to the victorious side and its soldiers. Typically, little distinction was made between combatants and civilians, although women and children were more likely to be spared. Sometimes the purpose of a battle, if not a war, was to capture women, a practice known as raptio; the Rape of the sabines was a notable mass capture by the founders of Rome. Typically women had no rights, were held legally as chattel,