

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 statute 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.

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## **TREATMENT OF WAR PRISONERS – RELATED ISSUES**

*By*

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### ***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,

and would not be accepted back by their birth families once they had borne children to those who had killed their brothers and fathers.

Likewise the distinction between POW and slave is not always clear. Some of the Native Americans captured Europeans and used them as both labourers and bargaining chips; for example *John R. Jewitt*, an Englishman who wrote a memoir about his years as a captive of the Nootka people on the Pacific Northwest Coast in 1802-1805.

### *Qualifications of Prisoners of War:*

To be entitled to prisoner-of-war status, captured service members must be lawful combatants entitled to combatant's privilege—which gives them immunity from punishment for crimes constituting lawful acts of war, e.g., killing enemy troops. To qualify under the Third Geneva Convention, a combatant must have conducted military operations according to the laws and customs of war, be part of a chain of command, wear a “fixed distinctive marking, visible from a distance” and bear arms openly. Thus, uniforms and/or badges are important in determining prisoner-of-war status; and *francs-tireurs*, “terrorists”, saboteurs, mercenaries and spies do not qualify. In practice, these criteria are not always interpreted strictly. Guerrillas, for example, do not necessarily wear an issued uniform nor carry arms openly, yet captured combatants of this type have sometimes been granted Prisoners of War (POW) status. The criteria are generally applicable to international armed conflicts. In civil wars, insurgents are often treated as traitors or criminals by Government forces, and are sometimes executed.

### *In Modern times:*

During the 1999 Kosovo War, Serb forces beat and tortured 3 US POWs. In 2001, there were reports that India had actually taken two prisoners during the Sino-Indian War, Yang Chen and Shih Liang. The

two were imprisoned as spies for three years before being interned in a mental asylum in Ranchi, where they spent the next 38 years under a special prisoner status. A Pakistan stamp depicting the 90,000 POWs in Indian camps captured after the 1971 Indo-Pakistani War. This stamp was issued with the political aim of raising global awareness to help secure their release. The last prisoners of Iran-Iraq War (1980-1988) were exchanged in 2003. About six months after the 2003 invasion of Iraq by the U.S Army incidents of Iraq prison abuse scandals started to occur. The best known abuse incidents occurred at the large Abu Ghraib Prison.

### *Conclusion:*

#### *The Hague and Geneva Conventions:*

Specifically, Chapter II of the Annex to the 1907 Hague Convention covered the treatment of prisoners of war in detail. These were further expanded in the Third Geneva Convention of 1929, and its revision of 1949. Article 4 of the Third Geneva Convention protects captured military personnel, some guerrilla fighters and certain civilians. It applies from the moment a prisoner is captured until he or she is released or repatriated. One of the main provisions of the convention makes it illegal to torture prisoners and States that a prisoner can only be required to give their name, date of birth, rank and service number (if applicable).

However, nations vary in their dedication to following these laws, and historically the treatment of POWs has varied greatly. During the 20th century, Imperial Japan and Nazi Germany were notorious for atrocities against prisoners during World War II. The German military used the Soviet Union's refusal to sign the Geneva Convention as a reason for not providing the necessities of life to Russian POWs. North Korean and North Vietnamese forces routinely killed or mistreated prisoners taken during those conflicts.