

International Law's Influence and Application in Indian Legal Terminologies

Dr. Nanda Pardhey

Assistant Professor (SG), School of Law, University of Petroleum and Energy Studies, Dehradun and PhD Scholar of Dept. of Law, Savitribai Phule Pune University (SPPU), Pune, Maharashtra, India

Abstract: *Humanity and customary rules has paved its ways in the State legislations into domestic law through International Conventions, treaties and International Customary practices. This is based on principles followed in civilized society for harmonizing the conflict between two or more Sovereign pertaining certain transborder crimes. International law principles are incorporated and domestic laws have embodied them in their domestic laws wherever those enactment brought into force for restricting and protecting happening of such events nationally or internationally. International law through conventions and treaties has brought equity and justice through common law application so that violators are punished even if they cross the jurisdiction of national laws. Indian Constitutional law has being pivotal in incorporating those international law principles in fundamental rights which are human rights of every individual and through directive principle laid obligation on State to make provisions and ensure implementation of the same by framing the laws in domestically. A person when commits particular crime he can be punished through domestic law that has application in their own jurisdiction within their territorial limits. But there may be situation where the offender abscond to some other country wherein domestic law not applicable. In such situation international laws helps to bring justice to the victims. These paper will highlights major issues dealing with human rights, extradition, asylum and human trafficking, etc and application of the same nationally and internationally.*

Keywords: International law, human rights, extradition, asylum, human trafficking, legal system

1. Introduction

"The destiny of world civilization depends upon providing a decent standard of living for all mankind"

- Norman Borlaug,

International law plays important role while governing the countries across the transborder that has their own legal system for the governance within its jurisdiction various subject matter. International law lays down a system through the treaties and agreement between nation on various subject matter how each nations or its citizen are bound to follows those in various areas like business, trade, human rights, civil rights, environmental issue etc. International is further divided into two broader category of 'Private international law' and 'Public international law'. As these two categories deals with varied areas that deals with disputes between private entities that involves peoples and entities between two nation or corporations, whereas the later deals with what kind of relationship between the nation is concern between them pertaining to laws involving trade, environmental laws, human rights. Humanitarian laws plays vital significance in public international law which embodied some principles in written or codified form in various series of treaties and agreement between the nation and rest are in form of customary laws which are being followed by them over period of time or between nations nowhere written. Private International law, in Jurisdictions like Admiralty/Maritime, that international conventions are enforced based on customary usage and practice¹. International law places an obligations and rights on the States dealing with its public and private subject matters under international law. These rights and obligation are like coins with two sides imposed on States to abide by them through treaties or customary

practices. It is almost accepted proposition of law that the rule of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the Courts of Law².

Indian Constitution also recognize this under Article 51 that deals with promotion of International peace and security across the world. Further, it lays down obligation on the State under directive principles of state policy to promote international peace and security amongst countries across globe by maintaining just and honorable relationships between the countries by fostering respect for international law, treaties between them and settle disputes through arbitration. Article 253 that deals and provide that States that Parliamentis empowered to make any law for implementing any treaty, Convention or agreement to which India is signatory it can be done throughout India or can also be for any part of the territory of India. 'Me effect of Art.253 is that if a treaty, agreement or convention with a foreign State deals with a subject within the competence of the State legislature, the Parliament alone has notwithstanding Art.246 (3), the power to make laws to implement the treaty, agreement or convention or any decision made at any international conference, association or other body³. The international treatises, covenants and conventions although may not be a part of our municipal law, the same can be referred to and followed by the courts having regard to the fact that India is a party to the said treatises⁴. In international human rights law, equality is founded upon two

¹Mr. SurupsinghHrya Naik vs State Of Maharashtra, AIR 2007 Bom 121

²Vellore Citizens Welfare Forum vs Union Of India & Ors on 28 August, 1996

³MaganbhaiIshwarbhai Patel vs Union Of India And Anr, 1969 AIR 783

⁴Pratap Singh vs State Of Jharkhand & Anr on 2 February, 2005

complementary principles: non - discrimination and reasonable differentiation⁵.

Modern jurisprudence, and not just international law or international ethics, does not support the view that legislative commands that are devoid of justice can be given the status of being 'law'⁶. The remedy for breaches of International Law in general is not to be found in the law courts of the State because International Law per se or proprio vigore has not the force or authority of civil law, till under its inspirational impact actual legislation is undertaken⁷. The comity of Nations requires that Rules of International law may be accommodated in the Municipal Law even without express legislative sanction provided they do not run into conflict with Acts of Parliament⁸. International law is not just an assemblage of rules governing the conduct of states and their relations with each other, but rather the end product of a legal harmonization process having little to do with legal rules regarding conduct among states⁹. Wherever, there is conflict of laws the 'Doctrine of Harmonization' is applied by the courts while interpreting the domestic law keeping in mind the international law into consideration. Harmonization of conflicting laws is being followed by the comity of nations when conflict arises. There are certain rules that are recognised in a common in world through conventions, treaties and customary practices when conflict arises in civilized jurisdictions for harmonizing. Through part of the judicial system of each State these common rules have been adopted to adjudicate upon disputes involving a foreign element and to effectuate judgments of foreign courts in certain matters, or as a result of international conventions¹⁰.

Human Rights Applicability Nationally and Internationally

Human rights are recognised as "inalienable fundamental rights" of all citizen and non - citizen as being a human being. Human rights is universal and egalitarian in nature covering a person's natural rights that acquired prior to birth through the natural law and legal rights that person acquire through laws nationally and internationally. When human rights are guaranteed by a written Constitution, they are called 'Fundamental Rights' because a written Constitution is the fundamental law of a State¹¹. The doctrine of human rights in international practice, within international law, global and regional institutions, in the policies of states and in the activities of non - governmental organizations, has been a cornerstone of public policy around the world¹².

⁵Rajive Raturi vs Union Of India on 15 December, 2017

⁶GvkInds. Ltd & Anr vs The Income Tax Officer & Anr on 1 March, 2011

⁷Jolly George Verghese & Anr vs The Bank Of Cochin, 1980 AIR 470

⁸Gramophone Company Of India Ltd vs Birendra Bahadur Pandey & Ors, 1984 AIR 667

⁹James D. Wilets, 'A Unified Theory Of International Law, The State, And The Individual: Transnational Legal Harmonization In The Context Of Economic And Legal Globalization', Published by Penn Law: Legal Scholarship Repository, 2014. Available at <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1127&context=jil>

¹⁰R. Viswanathan vs Rukn-UI-Mulk Syed Abdul Wajid, 1963 AIR

¹¹Rajib Kumar Behera vs State Of Odisha And Others on 13 January, 2021

¹²M. Gopalan vs State Of Kerala on 10 April, 2002

International Covenant on Civil and Political Rights (ICCPR), which is constructive with the Universal Declaration of Human Rights (UDHR). Article 8 UDHR provides that:

"Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights guaranteed him by the Constitution or by law"¹³. Justice V. R. Krishna Iyer describes the width and sweep of human rights in his matchless words and which are worth quoting:

*"Human rights are writ on a large canvas, as large as the sky. The law makers, lawyers and particularly, the judges, must make the printed text vibrant with human values, not be scared of consequences on the status quo order. The militant challenges of today need a mobilization of revolutionary consciousness sans which civilized systems cease to exist. Remember, we are all active navigators, not idle passengers, on spaceship earth as it ascends to celestial levels of the glorious human future"*¹⁴.

The Yogyakarta Principles address a broad range of human rights standards and their application to issues of sexual orientation and gender identity¹⁵. The Principles confirm the primary obligation on the States to implement human rights based on the recommendation provided within their territory for protection of Human Rights.

International human rights documents broadly fall into two categories: those which legally bind States that have ratified such conventions, and those referred to as international human rights "standards", which are considered guidelines enshrined in international declarations, resolutions or recommendations, issued mainly by international bodies¹⁶. International Commission of Jurists and the International Service for Human Rights on behalf of a coalition of human rights organizations, took a project to develop a set of international legal principles on the application of international law to human rights violations based on sexual orientation and sexual identity to bring greater clarity and coherence to State's human rights obligations¹⁷. The rules of humanitarian law in armed conflicts are to be observed by all States whether or not they have ratified the Conventions that contain them because they constitute intransgressible principles of international customary law¹⁸. Resolution 60/147 adopted by General Assembly of United Nations titled as "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law" that States are responsible to take appropriate legislative, administrative and other

¹³ UDHR Article 8, available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

¹⁴Ramdeo Chauhan @ Rajnath Chauhan vs Bani Kant Das & Ors on 19 November, 2010

¹⁵ THE YOGYAKARTA PRINCIPLES. 'Principles on the application of international human rights law in relation to sexual orientation and gender identity', available at <https://www.refworld.org/pdfid/48244e602.pdf>

¹⁶Dr. Vijay Verma vs UOI And Others on 1 June, 2018

¹⁷National Legal Service Authority vs UOI & Ors on 15 April, 2014

¹⁸Noor Aga vs State Of Punjab & Anr on 9 July, 2008

appropriate measures to prevent violations and to provide effective remedies to victims¹⁹.

The ICCPR is being incorporated in India through 'The Protection of Human Rights Act, (PHRA) 1994' under the section 2 (d)²⁰ and 2 (f)²¹. The PHRA recognizes all the conventions as part of human rights laws, therefore international human rights norms, as contained in the Conventions which have been ratified by India, are binding on India to the extent they are not inconsistent with the domestic law norms²². National Human Rights Commission (NHRC) was setup to deal with cases of human rights violations. Section 21 of the Act that was amended in 2006, stipulates that there should be constitution of State Human Rights Commissions (SHRCs) in all the States to work efficiently and justice reach to people whose human rights were violated. Setting up of SHRCs by each state would facilitate in promotion and protection of human right of people. Section 30 deals with Human rights courts that will be special courts to dealing with matters of human rights violation to provide with speedy trial to the victims. In case of *Shri Dilip K. Basu*, the court held that, "The State Governments shall take steps to install CCTV cameras in all the prisons in their respective States, within a period of one year from today but not later than two years"²³. The State Governments shall consider deployment of at least two women constables in each police station wherever such deployment is considered necessary having regard to the number of women taken for custodial interrogation or interrogation for other purposes over the past two years"²⁴.

Human Trafficking and Transborder Issues

Human trafficking is a heinous crime that is done women and of minor girls for the purpose of forced prostitution that is dehumanizing and shameful in our civilized society. Human trafficking is not just crime that violates any legal provision but violation of all forms of human rights covered nationally and internationally that directly affects right of an individual who is being trafficked and human dignity crushed and traumatized. Sex trafficking and prostitution are the worst form of violence against women²⁵. Trafficking of women and children for the purpose of sexual exploitation has increased in alarming proportions in recent years, and that exploitation of women and children takes place in various forms including brothel based prostitution, sex tourism entertainment industry and pornography in print and electronic media²⁶. Various constitution provisions provides

for the safeguard for protection of women and children but despite dictums laid in Indian Constitution and legislative enactments we are struggling to combat and stop human trafficking nationally and internationally. The international policy frameworks have also been in place since long, especially, since 1904, the international community has been working together to understand and put together the pieces of the human trafficking puzzle²⁷. Article 23 (1) of Indian Constitution prohibits trafficking of human being in any form and forced labour through trafficking and whosoever contravene this prohibition then they are punishable in law. Immoral Trafficking (Prevention) Act, 1956 governs immoral trafficking of women and children in India. The principle object of the Act is to prevent commercialisation of the vice of trafficking in women and girls²⁸.

Internationally we have conventions that covers human trafficking under Forced Labour Convention of 1930, Article 2 (1)²⁹, UDHR Article 4³⁰, and International Labour Organization (ILO) Report on Stopping Forced Labour, 2001 highlight the conditions of women and children trafficking for various purposes like bonded labour, human trafficking for slavery, domestic work and forced prostitution. According to a report of the ILO, the human trafficking industry generates an estimated seven to twelve billion US dollars annually³¹. The trafficked women are usually forced into prostitution, sex tourism, commercial marriage, and other occupations such as domestic work³². India is a signatory to Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) under Article 6 States Parties shall take all appropriate measures, including legislation, to suppress all forms of trafficing women and exploitation of prostitution of women³³. In case of *C. Muthupandian (A) Muthupandi*³⁴, the court observed that "it is well settled that International Instruments, ratified by India, can be looked into and followed by courts, so long as the municipal law is not in conflict with the mandate contained therein. There is no municipal law in India, which is in conflict with the object and purpose of Article 6 of the CEDAW"³⁵. In November 2000, the General Assembly adopted the United Nations Convention against Transnational Organized Crime, supplemented by the Protocol to Prevent, Suppress and Punish Trafficking in

¹⁹ Lawyers Beyond Borders (Lbb) vs UOI on 25 August, 2020

²⁰ "Human rights" means the rights relating to life, liberty, equality and dignity of individual guaranteed by Constitution or embodied in International Covenants and enforceable by courts in India.

²¹ "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by General Assembly of United Nations on 16th December, 1966.

²² The State Of Madhya Pradesh vs Prajwal Shrikhande on 27 January, 2021

²³ Shri Dilip K. Basu vs State Of West Bengal & Ors on 24 July, 2015

²⁴ Ibid

²⁵ ApneAap Women Worldwide Trust vs The State Of Bihar & Ors on 20 November, 2014

²⁶ DalithBahujannaVyavasaya ... vs The Government Of Andhra Pradesh, on 5 August, 2019

²⁷ Panchanan Padhi vs State Of Odisha on 29 June, 2020

²⁸ The Superintending Engineer vs The Presiding Officer, Labour on 17 June, 2004

²⁹ For the purposes of this Convention the term forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

³⁰ No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

³¹ Lok Sabha Debates on 'Trafficking Of Women And Girls In The Country', dated 6 August, 2009

³² Ibid

³³ Convention on the Elimination of All Forms of Discrimination against Women, available at <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf>

³⁴ C.Muthupandian (A) Muthupandi vs The Secretary To Government on 28 February, 2014

³⁵ Ibid

Persons, especially Women and Children³⁶. Prostitution is sometimes voluntary but overwhelmingly forced, and always so when minors are concerned; surveys reveal widespread regional and international trafficking for this industry, often involving criminal organizations and sometimes conducted through family and community networks³⁷.

Criminalization and detention of victims of trafficking are important issues because they are often tied to a concurrent or subsequent failure on the part of the State to afford victims the rights to which they are legally entitled under national and international law³⁸. In 2018, the Bill was passed in the Lok Sabha the Trafficking of Persons (Prevention, Protection And Rehabilitation) but could not take form of the enactment. In The Trafficking In Persons (Prevention, Care And Rehabilitation) Bill, 2021 but was table for the winter session of parliament for passing it but still not being done. The Bill provides for the establishment of investigation and rehabilitation authorities at the district, state and national level³⁹. Anti - Trafficking Units will be established to rescue victims and investigate cases of trafficking. Rehabilitation Committees will provide care and rehabilitation to the rescued victims⁴⁰. Even though draft bill is being prepared but this draft has the concerns for curbing human trafficking issues, care and rehabilitation⁴¹. Concerns about absence of community - based rehabilitation, missing definition of reintegration and also about the funds related to rehabilitation of survivors in the bill⁴². Some experts working in the area have pointed out that in absence of rescue protocol there is always the fear of forced rescue of adult persons who may have been trafficked but do not wish to get rescued.

Non - refoulement/ Asylum Regulatory Framework and Terms Global Implications

The principle of “non - refoulement”, which prohibits expulsion of a refugee, who apprehends threat in his native country on account of his race, religion and political opinion, is required to be taken as part of the guarantee under Article 21 of the Constitution of India, as “non - refoulement” affects/protects the life and liberty of a human being, irrespective of his nationality⁴³. As per Article 14 of UDHR, that provides that everyone has the right to seek and to enjoy in other countries asylum from persecution and this

right may not be invoked in the case of prosecutions genuinely arising from non - political crimes or from acts contrary to the purposes and principles of the United Nations⁴⁴. India has acceded to all major international human rights instruments and respects international law and human rights norms including the principle of non-refoulement⁴⁵. Right to life is fundamental human rights that is guarantee under Article 21 to citizen and non - citizen as well but when it comes to protection that need to be provided to refugee precautions are taken wherein refugee gets protection but if it's going to affects national security than denied. Right to life includes right against refoulement which considered as an important facet of human right wherein a person convicted is given right against non - refoulement as being a human. India being signatory to various conventions and treaties but when it comes to asylum we are more relying on customary law? Whereas the major question arises is that, whether it is bound by customary international law of non-refoulement? Does our municipal law provides such provisions? And if yes, than to what extent? We have to look into the constitutional provisions for the answer, and yes it do provide for the same under Article 51 (c) casts a duty on the State to endeavour to “foster respect for international law and treaty obligations in the dealing of organised people with one another”⁴⁶.

The right of protection over citizens abroad, which is held by every State according to customary International Law, a State cannot treat foreign citizens passing through or residing on its territory arbitrarily according to discretion as it might treat its own subjects⁴⁷. In case *Of Nurenborg*⁴⁸ a person named Chandra Kumar was convict who was a Sri Lankan Tamil refugee, was staying in India from 1990 in refugee Camp, but in search for better life he plan to go out to Italy. While leaving India by immigration authorities he was apprehended as per rules he did not had valid travel documents and he was charged under Indian Penal Code provision of sections 419⁴⁹/420⁵⁰/468⁵¹/471⁵² /120B⁵³&

⁴⁴ UDHR Article 14, available at <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

⁴⁵ *Of Nurenborg vs Superintendent, Presidency Jail, Calcutta & Others* on 20 September, 2011

⁴⁶ *Ibid*

⁴⁷ *Bernardo SteenholfUltrich vs Assistant Collector Of Customs*, AIR 1960 Ker 335, 1960 CriLJ 1455

⁴⁸ *Supra* note 45

⁴⁹ Whoever cheats by personation shall be punished with imprisonment of either de-scription for a term which may extend to three years, or with fine, or with both.

⁵⁰ Whoever cheats and thereby dishonestly induces person deceived to deliver any property to any person, or to make, alter or destroy whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

⁵¹ Whoever commits forgery, intending that [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

⁵² Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic record], shall be punished in the same manner as if he had forged such [document or electronic record].

³⁶ Available at https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_publ_9221119483_en.pdf

³⁷ *Ibid*

³⁸ United Nations Human Rights, Human Rights and Human Trafficking, Fact sheet No. 36. Available at https://www.ohchr.org/documents/publications/fs36_en.pdf

³⁹ Available at <https://prsindia.org/billtrack/the-trafficking-of-persons-prevention-protection-and-rehabilitation-bill-2018> accessed in February 2022

⁴⁰ *Ibid*

⁴¹ *Ibid*

⁴² Shiv Sahay Singh, ‘Concerns remain over anti-trafficking bill’, *The Hindu*, reported on JULY 18, 2021. Available at <https://www.thehindu.com/news/national/concerns-remain-over-anti-trafficking-bill/article35388874.ece> accessed in February, 2022

⁴³ *Dongh Lian Kham & Anr. vs Union Of India & Anr.* on 21 December, 2015

section 14⁵⁴ Foreigner's Act. The court held in this case that as the convict from last 20 years was living in refugee camp and was dependent Government for the grants for his survival and he did not had any source of income as such. Whatever the government grants given it only subsisted that was just sufficient enough by which he made two ends meets of his life and taking his circumstances into consideration under the provisions of law he cannot be levied any fine that would be very harsh for him and further cannot be imprisoned as he already gone that incarcerated. The convict had a family that included his wife and two young sons and this will further tantamount to irreversible fragmentation of refugee family. Indian law does not follow contemplated breaking a family unit in our laws and we adopt a preservation and protective approach towards family units and keeping all the factors into account Chandra Kumar shall not be deported and was directed to report back to Sri Lankan refugee Camp. Non - refoulement is accepted by the customary International Law and municipal law of nations and by now it has attained widespread international recognition⁵⁵.

Extradition Norms and Incidence in Different Sovereign States

The term 'extradition' denotes the process whereby under a concluded treaty one State surrenders to any other State at its request, a person accused or convicted of a criminal offence committed against the laws of the requesting State, such requesting State being competent to try the alleged offender⁵⁶. When it comes to extradition it is based on treaties between independent states who are signatory and comes into operation nationally and internationally based of that treaty. This treaties govern the relationship between those sovereign States who are bound by treaty and becomes

obligatory to extradition treaty. Herein, it's upon the State to decide whether they want an offender should be handed over as per the requisition that is determined based on domestic law of the Country which has asked for requisition. The weight of authority and sound principle are in favour of the proposition that a person who has been brought within the jurisdiction of the court by virtue of proceedings under an extradition treaty can only be tried for one of the offenses described in that treaty and for the offense with which he is charged in the proceedings for his extradition⁵⁷. Doctrine of "Speciality" is yet another established rule of international law relating to extradition⁵⁸. Supreme Court made it clear that the doctrine of "Speciality" is, in fact, a corollary to the principles of double criminality, and the aforesaid doctrine is premised on the assumption that whenever a State uses its formal process to surrender a person to another State for a specific charge, the Requesting State shall carry out its intended purpose of prosecuting or punishing the offender for the offence charged in its request for extradition and none other⁵⁹.

Doctrine of speciality is recognized in Extradition Act under section 21⁶⁰. In *Daya Singh Lahoria case*, the court held that, position of law, nationally and internationally and as per the relevant statute of India, makes it clear and court concluded that a fugitive brought into India under an Extradition Decree can only be tried for those offences that were mentioned in his/her Extradition Decree and for no other offences in the Criminal Courts of India that shall have no jurisdiction to try such fugitive for any other offences. When a person is extradited for a particular crime, he can be tried for only that crime. In case of *State Of Nct Of Delhi*⁶¹, Abu Salem who was detained at Lisbon in Portugal, because he was found possessing false identity/travel documents. There was an Interpol Notice and Red Corner Notice that existed that was issued against him on request of Govt. of India in connection with his involvement in Bombay blast cases and investigating agencies initiated request extradition proceeding against him. Whatever necessary required was done by India with respect to nine cases, to Portugal Govt. He was charge under the provisions of IPC and Maharashtra Control of Organised Crime Act (MCOCA). In the case extradition of Abu Salem had to fulfill all requirements of Portuguese law and as such there was no Extradition Treaty between the two countries as per section 21 of Extradition Act of India, a Notification was there through which they

⁵³ Punishment of criminal conspiracy.—(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for punishment of such a conspiracy, be punished in same manner as if he had abetted such offence.

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

⁵⁴ Penalty for contravention of provisions of Act, etc.—Whoever- (a) remains in any area in India for a period exceeding period for which the visa was issued to him;

(b) does any act in violation of conditions of valid visa issued to him for his entry and stay in India or any part thereunder;

(c) contravenes provisions of this Act or of any order made thereunder or any direction given in pursuance of this Act or such order for which no specific punishment is provided under this Act, shall be punished with imprisonment for a term which may extend to five years and shall also be liable to fine; and if he has entered into a bond in pursuance of clause (f) of sub-section (2) of section 3, his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid by him.

Explanation.—For purposes of this section, expression "visa" shall have same meaning as assigned to it under Passport (Entry into India) Rules, 1950 made under the Passport (Entry into India) Act, 1920

⁵⁵Supra note 43

⁵⁶Rosiline George vs UOI on 11 October, 1994 SCC (2) 80, JT 1993 (6) 51

⁵⁷Daya Singh Lahoria vs UOI And Ors on 17 April, 2001

⁵⁸Avtar Singh Grewal vs UOI on 15 July, 2011

⁵⁹Ibid

⁶⁰ 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 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.]

⁶¹State Of Nct Of Delhi vs Abu Salem Abdul Qayoom Ansari on 11 May, 2012

extended the applicability of Act to the Republic of Portuguese that was issued by Govt of India on 13th December 2002. Thereafter, on 17th December 2002, the Hon'ble Deputy Prime Minister of India had wrote a letter to then Portuguese Hon'ble Minister of Foreign Affairs assuring that Abu Salem case when he will be extradited in by Portugal Govt for his trial in India he would not get death penalty of imprisonment for a term of 25 years beyond. On 28th March 2003, Ministry of External Affairs, Govt of Portugal based on the solemn assurance that was given by Govt of India granted extradition in respect of eight cases and only in respect of specific offences those were mentioned in Extradition Order. In that extradition order all the charges against Abu Salem was mentioned in detail when request was made how he was involved in those nine cases. If the requesting State deems it desirable to try the extradited fugitive for some other crime committed before his extradition, the fugitive has to be brought to the status quo ante, in the sense that he has to be returned first to the State which granted the extradition and a fresh extradition has to be requested for the latter crime⁶².

The doctrine of speciality is in fact a corollary to the principles of double criminality, and the aforesaid doctrine is premised on the assumption that whenever a State uses its formal process to surrender a person to another State for a specific charge, the requesting State shall carry out its intended purpose of prosecuting or punishing the offender for the offence charged in its request for extradition and none other⁶³. In case of *Verhoeven, Marie - Emmanuelle*⁶⁴, principal question that was before the Supreme court was 'whether there is a binding extradition treaty' as Section 2 (d)⁶⁵ of the Extradition Act, 1962 between India and Chile and whether a requisition by Chile invoking the principle of reciprocity and the general principles of international law for extraditing the petitioner from India is maintainable⁶⁶? The court gave the answer in affirmative and held that there was binding extradition treaty between India and Chile and the provisions in question of the sections of Extradition Act, 1962, are applicable to Republic of Chile as per offences stated in Extradition Treaty. Supreme Court in *Marie Emmanuelle* has held that even if there is no binding extradition Treaty between India and a foreign State, the requisition for extradition made by the said foreign State would be maintainable under the general principles of reciprocity and the general principles of international law for extradition⁶⁷.

The common refrain in all statutes and treaties thus appears to be that if the person, sought to be extradited, is accused of

an offence in the requested state, or has been convicted in the requested state, then either the extradition proceedings itself are postponed/ adjourned, or the surrender is postponed until the conviction is undergone, or the criminal proceedings have resulted in a final conclusion/ termination⁶⁸. Therefore, it's clear that the general principle of administration of criminal justice applicable and all throughout applied to Domestic or Municipal Law has also been extended to International Law or Law of Nations and to cases covered by Extradition - Treaties⁶⁹. Bilateral treaties between the States at the international level works as supplementary to national laws of respective State legislature at municipal level which regulate with the jurisdiction of State. Extradition treaties when signed between States ore conventions and national laws who practice them over a period of time has discovered that through practice customary rules of international law are come into existence and over period of time has developed in the process.

2. Conclusion

International law in present context is not just confined to regulating and recommending the relations on various national and international concern between the States dealing with various aspects of life, but over the period of time it has expanded its horizons covering various arena in its ambit. It is almost accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law⁷⁰. It just not restricted to matters of human rights, but interpretation has got egalitarian approach dealing with matters of social concern affecting the right to life which includes health, education and economics but also cover environmental concerns, war and war crimes etc that are part of human rights that are covered and falling within the realm of International Regulations. International law through the conventions and treaties had brought a common rules of governance that are being assimilated in the domestic laws. If they are not, principles of international laws paves way by ways of customary practices those are being followed by sovereign states.

⁶²Abu Salem Abdul Qayoom Ansari vs State Of Maharashtra & Anr on 10 September, 2010

⁶³Ibid

⁶⁴Verhoeven, Marie-Emmanuelle vs UOI And Ors on 28 April, 2016

⁶⁵ Section 2 (d)- "extradition treaty" means a treaty [agreement or arrangement) made by India with a foreign State relating to extradition of fugitive criminals, and includes any treaty [agreement or arrangement] relating to extradition of fugitive criminals made before 15th day of August, 1947, which extends to, and is binding on, India

⁶⁶Supra note 64

⁶⁷Lennox James Ellis vs Union Of India on 8 January, 2019

⁶⁸Milen Ivanov Davranski vs Union Of India on 7 April, 2021

⁶⁹Suman Sood @ Kamal Jeet Kaur vs State Of Rajasthan on 14 May, 2007

⁷⁰ People's Union For civil liberties (PUCL) vs UOI And Another on 18 December, 1996