

Extradition Law of Pakistan - Rights of Fugitive Offenders v. Pakistan's Goal to Attain Honoured Place Amongst the Nations of the World

*By Faisal K. Daudpota**

'Extradition in its dictionary sense means, "the giving up or the delivery of a person to somebody else." In its technical or legal sense it means, "handing over of a person to the authorities of a foreign state, especially in which the crime was committed for trial or punishment." Historically, extradition was mainly sought or granted for political purposes in respect of persons who having incurred the displeasure of their own Government left the country and sought asylum in another country, the grant or refusal of a request for extradition depended on the whims of the sovereigns who passed arbitrary orders. With the development of democratic institutions and responsible forms of Governments, extradition gradually acquired a legal basis. With the growing consciousness of international co-operation in the different sphere(s) of state activity extradition came to be used as a measure for prevention of crime and to deal with criminals for whom international frontiers offered no difficult barriers to be crossed. In short it is one of the most important means of combating international crime. National legislation, extradition treaties, bilateral or multilateral, accession to international conventions and international courtesy now form the usual base of extradition, governing the grant or refusal of a request by the asylum country. Extradition may be requested in respect of foreigners or nationals of the requesting country, itself or even national of the asylum country. Normally the asylum country would decline to grant extradition in case of political refugees seeking asylum. With the universal recognition and acceptance of fundamental human rights, the relevant legislation or treaty obligations are expected on the one hand to safeguard individual liberty and the right of asylum of a person, and on the other to offer fullest co-operation on reciprocal basis to a foreign State to deal with criminals.'¹

The first national legislation on the subject of extradition that became applicable to Pakistan was the Extradition Act, 1870, which was subsequently amended by the Extradition Act, 1873. Thereafter, came the Extradition Act, 1903, which stands replaced by the presently in force law called, the Extradition Act, 1972, (EA '72). This article focuses on the legal and constitutional issues involved in international extradition, as regulated under EA '72 of Pakistan. The first part of this article identifies the important legal concepts necessary to understand extradition law in Pakistan; the second part explains the procedure that is followed for surrender, non-surrender, arrest and bail of the fugitive offender; the third part mentions the important adjudications on the constitutional rights of the fugitive offenders in Pakistan; the fourth part highlights the effect of 'Objectives Resolution' on the Pakistan's outlook towards international extradition; the fifth part summarises the domestic law provisions affecting extradition of fugitive offenders to Pakistan; and finally the sixth part constitutes the conclusion of this article.

Part – I: Extradition Concepts

A. Fugitive Offender

* Mr. Faisal K. Daudpota is a lawyer based in Dubai. He can be reached at daudpota@hotmail.com

¹ *Jose Gonzalo De Garcia De Balseras v. The State* [PLD 1969 Lahore 129] (where PLD stands for 'All Pakistan Legal Decisions', a law digest Published by PLD Publishers, Lahore, Pakistan)

A fugitive offender, as defined by EA '72, is a person who is accused or convicted for committing extradition offence; and is or suspected to be in Pakistan.² Even if the Courts in Pakistan do not have jurisdiction to try the extradition offence a fugitive offender can be apprehended and surrendered in accordance with EA '72.³ However, the procedural requirements under the extradition statutes of Pakistan have to be complied, because, 'even a criminal and a fugitive from justice is not an out-law, devoid of any right whatsoever. An order passed even against such a fugitive requires the sanction of law.'⁴

B. Treaty State & Foreign State

A treaty state is a foreign state with which an extradition treaty is in operation.⁵ The expression 'extradition treaty' stands for a treaty or agreement between Pakistan and a foreign state for the extradition to and from such state of persons accused of or convicted for an extradition offence.⁶ According to the Supreme Court of Pakistan the legal requirement of treaty obligation stands satisfied if it is proved that the treaty stands ratified by Pakistan and the treaty state. The ruling to this effect came in the case of *Muhammad Azim Malik v. Government of Pakistan & Others*⁷ whereby it was held by the Supreme Court that, 'There is no material placed on the record by the Government to indicate that the (Extradition) treaty has been notified in the Gazette as required by subsection (1) of section 3 of the Act. However, a copy of the treaty being on the record with all necessary particulars about ratification being available and it also being formally incorporated in the United States Code Annotated, the requirement of law is sufficiently met and even if there be no publication of it in the Gazette of our country, the existence and efficacy of the treaty as such, would not in any manner get impaired'.

The EA '72 also empowers the Federal Government of Pakistan to extradite fugitive offenders to foreign states that are not treaty states.⁸ Of course, a foreign state is the one with which no extradition treaty is in operation, and according to EA '72, such foreign state includes every constituent part, colony or dependency of such state.⁹

C. Extradition Offences

An 'extradition offence', according to EA '72, means an offence (constituting an act or omission) that falls within any of the following descriptions:

1. Culpable homicide.
2. Maliciously or wilfully wounding or inflicting grievous bodily harm.
3. Rape.
4. Procuring or trafficking in women or young persons for immoral purposes.
5. Kidnapping, abduction or false imprisonment or dealing in slaves.
6. Stealing, abandoning, exposing or unlawfully detaining a child.
7. Bribery.

² Section 2(1)(d) EA '72

³ Section 5(1) EA '72

⁴ *Chandra Sekhar Shome v. The Province of East Pakistan and Others* [1962 PLD Dacca 119]

⁵ Section 2(1)(f) EA '72

⁶ Section 2(1)(b) EA '72

⁷ PLD 1989 Supreme Court 519

⁸ Section 4 EA '72

⁹ Section 2(1)(b) EA '72

8. Perjury or subornation of perjury or conspiring to defeat the course of justice.
9. Arson.
10. An offence concerning counterfeit currency.
11. An offence against the law relating to forgery.
12. Stealing, embezzlement, fraudulent conversion, fraudulent false accounting, obtaining property or credit by false pretences, receiving stolen property or any other offence in respect of property involving fraud.
13. Burglary, house-breaking or any similar offence.
14. Robbery.
15. Blackmail or extortion by means of threats or by abuse of authority.
16. An offence against bankruptcy law or company law.
17. Malicious or wilful/damage to property.
18. Acts done with the intention of endangering vehicles, vessels or aircraft.
19. An offence against the law relating to dangerous drugs or narcotics.
20. Piracy.
21. Revolt against the authority of the master of a ship or the commander of an aircraft.
22. Contravention of import or export prohibitions relating to precious stones, gold and other precious metals.
23. Aiding and abetting, or counselling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit, any of the aforesaid offences.

Provided that if such extradition offence took place within the jurisdiction of Pakistan, then, it must constitute an offence against the law of Pakistan and the accused thereof is to be returned to or from a treaty state¹⁰ or to a foreign state after due notification by the Federal Government of Pakistan.¹¹

Part – II: Procedure

A. Requisition to the Government of Pakistan & Inquiry Procedure

A foreign state or a treaty state may submit a formal requisition to the Federal Government of Pakistan for the surrender of a fugitive offender through its diplomatic representative in Pakistan, through Pakistan's diplomatic representative in such foreign state or treaty state, or through any arrangement mutually agreed to in between Pakistan and such foreign state or treaty state.¹²

Once a formal requisition is received from any state then the Federal Government of Pakistan, if it thinks fit, may order an inquiry into such matter that is to be conducted by a First Class Magistrate.¹³ 'The Federal Government has the unfettered right to select any First Class Magistrate for the purpose of holding an inquiry and that not only the nomination of

¹⁰ Section 2(1)(a) read with 'The Schedule' of EA '72

¹¹ Section 2(1)(a) read with Section 4 and 'The Schedule' of EA '72

¹² Section 6 EA '72

¹³ Section 7 EA '72; A 'First Class Magistrate' is the Presiding Officer of a Criminal Court included in the classes of Criminal Courts established under Section 6 of Criminal Procedure Code, 1898. Amongst other things, such First Class Magistrate is delegated ordinary powers of issuing warrants, authorising detention, taking evidence, etc. as per Schedule III read with Section 36 of Pakistan's Criminal Procedure Code, 1898

such a Magistrate has to be made by the Federal Government but the order has to be addressed to him for compliance. This makes the Magistrate First Class a *persona designata*. None else except the Federal Government has the power to designate or nominate the Magistrates for the purpose.¹⁴ Therefore, proceedings conducted by any other Magistrate who is not a *persona designata* are without lawful authority and of no legal effect. The Karachi High Court has held 'that the Magistrate inquiring into extradition offence, exercises jurisdiction and power as the Court of Session.'¹⁵ Such 'inquiry proceedings shall be deemed to be trial within the meaning of section 4(m) Cr.P.C. for all intents and purposes inasmuch, as evidence is led both in favour and against Extradition.'¹⁶

The scope of this First Class Magistrate inquiry is to take evidence in support of the requisition for surrender and on behalf of the fugitive offender.¹⁷ The evidence received by the inquiry Magistrate may include duly authenticated exhibits, depositions, and official certificates of facts, judicial documents stating facts. However, documents such warrants, depositions or statements on oath need not be authenticated provided they have been issued by a foreign court and comply certain requirements under the EA '72.¹⁸ Personal appearance of the deposing witnesses before the inquiry Magistrate is not necessary.¹⁹ The manner of receipt of evidence in such an inquiry is an exception to the general procedure laid down in the Criminal Procedure Code²⁰ of Pakistan and the evidence law²¹ of Pakistan.²² Therefore, 'The Magistrate conducts an inquiry and not a trial and an inquiry, according to the Criminal Procedure Code, is also different from the trial. The jurisdiction has been conferred on the Magistrate 1st Class and is co-extensive with his power to hold an inquiry into an offence whether triable by himself or not.'²³ 'It is an established proposition of law that the forums which are not *stricto sensu*, Courts can hold their proceedings in accordance with any judicious mode and the respondents before such forums have no vested right to claim a particular mode for holding of the inquiry.'²⁴ Also that it has been held by the Lahore High Court in the case of *Nargis Shaheen v. Federation of Pakistan & Others*²⁵ that it is within the discretion of the inquiry Magistrate if he refuses, for cogent reasons, to summon witnesses on the move of the fugitive offender. The Supreme Court upheld this ruling maintaining that such 'request was not granted by the Court as it was found that it was aimed at to delay the proceedings.'²⁶

Subsequent to inquiry proceedings as described above, the Magistrate submits his opinion in the form of formal report together with any written statement, if submitted by the fugitive offender, to the Government of Pakistan. Such opinion, must relate to whether or not a *prima facie* case has been made out in support of the requisition for surrender of the fugitive

¹⁴ *Muhammad Azim Malik v. A.C. & S.D.M. Preedy (South) Karachi & Others* [PLD 1989 Supreme Court 266]

¹⁵ *Federation of Pakistan v Muhammad Haris Hassan & Others* [PLD 2004 Karachi 119]

¹⁶ *op. cit.*, 15

¹⁷ Section 8(2) EA '72

¹⁸ Section 9 EA '72

¹⁹ *Abdul Ghaffar v. Federation of Pakistan & Others* [2000 SCMR 1536] (where SCMR stands for 'Supreme Court Monthly Review', a law digest Published by PLD Publishers, Lahore, Pakistan)

²⁰ Criminal Procedure Code, 1898

²¹ *Qanoon-e-Shahadat* Order, 1984

²² *Muhammad Asim Malik v. Anwar Jalil & Others* [PLD 1989 Lahore 279]

²³ *Supra* Note 7.

²⁴ *Mst. Akhtar Malik v. Federation of Pakistan & Others* [1994 PCrLJ 229] (where PCrLJ stands for 'Pakistan Criminal Law Journal', a law digest Published by PLD Publishers, Lahore, Pakistan)

²⁵ *Nargis Shaheen v. Federation of Pakistan & Others* [PLD 1993 Lahore 732]

²⁶ *Nargis Shaheen v. Federation of Pakistan & Others* [1994 SCMR 1706]

offender.²⁷ 'Revision under section 439, Cr.P.C. is maintainable against the opinion expressed in the Extradition Inquiry by the Enquiry Magistrate, before the High Court.'²⁸ The Lahore High Court has determined that, 'The phrase 'prima facie case' is not a term of art and, in law, signifies adequate to establish a fact or raise a presumption of fact unless rebutted.'²⁹

B. *Final Decision to Extradite*

Upon receipt of the Magistrate's report together with the statement as aforesaid, the Federal Government of Pakistan comes to an opinion that the fugitive offender ought to be surrendered then it may issue a warrant for delivery of the fugitive offender to the requisitioning treaty state or foreign state.³⁰ However, if the Federal Government of Pakistan is of the opinion that: it would be unjust or inexpedient to surrender the fugitive offender; or the case being inquired is of trivial nature; or that the requisition for surrender has not been made in good faith or in the interest of justice, then it may discharge such fugitive offender and abort the extradition proceedings under EA '72.³¹

According to Lahore High Court, the purpose of 'Inquiry is merely to assist the Federal Government to form an opinion as to whether the extradition of the offender should take place because even where the requisite conditions for extradition are satisfied, the federal government is under no obligation to surrender the offender to a treaty state.'³² The Supreme Court supplements that, 'such opinion is not to be formed necessarily after affording personal hearing to the detenu or by obtaining his participation at that stage before the Federal Government nor is the order of expressing the opinion has to be a reasoned order like the report of the Enquiry Magistrate or adjudication at the trial.'³³ This is because the fugitive offender's 'written statement spoken of in ... the Act can safely be taken as a proper and valid substitute for a right of hearing claimed by the offender'.³⁴

C. *When a Fugitive Offender Cannot be Surrendered*

A fugitive offender cannot be surrendered³⁵ if the Federal Government of Pakistan concludes that such fugitive offender is accused of or has been convicted for:

- (1) An offence of a political character,
- (2) An offence not punishable with death,
- (3) An offence not punishable with life imprisonment,
- (4) An offence not punishable with imprisonment for more than 12 months,
- (5) An offence the prosecution of which has become time barred according to the law of the state asking for surrender,
- (6) An offence other than the extradition offence for which he shall be detailed or tried when extradited,

²⁷ Section 10 EA '72

²⁸ *op. cit.*, 15

²⁹ *op. cit.*, 22

³⁰ Section 11 EA '72

³¹ Section 13 EA '72

³² *op. cit.*, 22

³³ *op. cit.*, 7

³⁴ *op. cit.*, 22

³⁵ Section 5(2) EA '72

- (7) An offence that if prosecuted in Pakistan would entitle the fugitive offender to be discharged under any law relating to previous acquittal or conviction,
- (8) An extradition offence, however, is also accused of or convicted for an offence in Pakistan, until his acquittal or completion of sentence term,
- (9) An extradition offence, however, is able to show to the satisfaction of the Federal Government of Pakistan or the inquiry magistrate, that he might suffer prejudice at his trial or punished for the reason of his race, religion, nationality or political opinion.

Further, that the fugitive offender who is in custody of the Federal Government of Pakistan has the right to seek his discharge by the order of the High Court if such fugitive offender is not conveyed out of Pakistan within two months of his committal.³⁶ As it is not mandatory upon the High Court to order such discharge, 'therefore, even if extradition order is not passed within two months w.e.f.³⁷ the date of committal, it will not make any difference and the order (of surrender) will remain lawful.'³⁸ Also that, in the case of *Zulqunain Khan v. The Government of Pakistan*³⁹ the fugitive offender also had a separate appeal pending against him after acquittal from a murder case in Pakistan, therefore, it was held by Lahore High Court that such fugitive offender's extradition 'can not be effected until his discharge on the dismissal of the appeal ... by the Supreme Court, or if he is convicted in that appeal, until he undergoes his sentence.'⁴⁰ However, 'Besides acquittal or expiration of the sentence the law envisages that a person can be extradited if he is discharged otherwise'.⁴¹ Therefore, if a fugitive offender is extradited while he is also required to undergo any sentence in Pakistan then, such sentence in Pakistan is 'deemed to have been suspended and it has to revive after his return. He has to undergo the remaining sentence and no exception can be taken to the same.'⁴²

D. Arrest & Bail

The warrant of arrest of the fugitive offender is issued by the First Class Magistrate upon receipt of the order, to commence inquiry, from the Federal Government of Pakistan in accordance with the provisions of the EA '72.⁴³ The fugitive offender also has the right to move the bail application before the same Inquiry Magistrate who is empowered to decide the same in accordance with Criminal Procedure Code of Pakistan.⁴⁴

The issue of grant of bail to the fugitive offender came before the Karachi High Court in the case of *Sami Nasir Hussain v The State*⁴⁵ where the fugitive offender had a case registered against him under section 1343, Article 18 of the U.S. Code in America for defrauding the Girard Bank in Wilmington, Delaware to the extent of US \$ 1.6 million. At the request of the US Government the extradition proceedings were under progress against the fugitive offender. The Karachi High Court held that there was no guarantee that after the grant of bail,

³⁶ Section 12 EA '72

³⁷ The abbreviation 'w.e.f.' is used for the phrase 'with effect from'

³⁸ *op. cit.*, 24

³⁹ 1990 MLD 1611 (where MLD stands for 'Monthly Law Digest', a law digest Published by PLD Publishers, Lahore, Pakistan)

⁴⁰ *op. cit.*, 39

⁴¹ *Mst. Shaheena Iqbal v. Federation of Pakistan & Others* [PLD 1998 Lahore 266]

⁴² *op. cit.*, 41

⁴³ Section 8 (1) EA '72

⁴⁴ Section 19 EA '72

⁴⁵ 1984 PCrLJ 1553

the fugitive offender will go and appear before the Court in USA, therefore, the discretion to grant bail could not be exercised in favour of the fugitive offender.

Part – III: Constitutional Rights of Fugitive Offender

A. Habeas Corpus

According to Article 199(1)(b)(i) of the Constitution of Pakistan, 1973, the High Courts in Pakistan have the jurisdiction to entertain the habeas corpus petitions. Under this discretionary power the High Court may make an order ‘directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner’.

Therefore, ‘In the petition for *habeas corpus* ordinarily the Court will not review the evidence to substitute its own opinion for that of the Magistrate on the question of existence of a prima-facie case. But if the Court is satisfied that the conclusion on facts as found were such as no reasonable person properly applying his mind to the issues could have reached those conclusions, it is clear duty of the Court to interfere. Likewise, if rules regulating inquiry are disregarded or the requisition was product of ulterior motives or it suffered from want of good faith or there were other jurisdictional defects, the Court shall not hesitate, even for a moment to step in and interfere to protect a valuable right of a citizen of this country not to be extradited to a foreign land for trial of a particular offence.’⁴⁶

EA ’72 makes it lawful for any person to receive in Pakistan, the custody of an arrested fugitive offender subsequent to compliance of the EA ’72 itself.⁴⁷ However, where a fugitive offender has been arrested and detained without following the procedural requirements of EA ’72 then the High Courts in Pakistan have declared such detention as improper and without any lawful authority.⁴⁸

Further, where a person has already been forcibly and unlawfully extradited to a foreign country and the *habeas corpus* petition on his behalf is filed subsequently, then it has been held by Lahore High Court in the case of *Mir Aimal Kanshi v. The State & Others*⁴⁹ that as ‘the person whose unlawful arrest and detention has been called in question is not in custody of any Government functionaries nor is otherwise anywhere in Pakistan. It is, therefore, not possible for this Court to determine the validity of the arrest and extradition ... Similarly, no writ can be issued against a foreign State for the production of the petitioner detenu before this Court in terms of Article 199 or under any other law. ... We cannot issue a writ, which is uncertain, ineffective or futile in the matter of repatriation of the petitioner whose custody is being regulated by a foreign Court.’⁵⁰ This is because, ‘near illegal manner of arrest and production of an accused before a competent court does not affect the validity of the trial.’⁵¹ The Court, being frustrated, went on to observe that, ‘we would like to express in clear terms that we do not approve or appreciate the manner in which the petitioner was surrendered and

⁴⁶ *op. cit.*,22

⁴⁷ Section 21 EA ’72

⁴⁸ *Mirza Iftikhar Mehmood v Area Magistrate, Police Station Nekapura, Sialkot & Others* [PLD 2009 Lahore 215]

⁴⁹ *Mir Aimal Kanshi v. The State & Others* [1998 PCrLJ 1097]

⁵⁰ *op. cit.*,49.

⁵¹ *op. cit.*,49.

extradited to a foreign state. Under Article 4 of the Constitution of Islamic Republic of Pakistan, it is the inalienable right of every citizen to enjoy the protection of law and to be dealt with in accordance with law. Both under Articles 4 and 9 of the Constitution, no action detrimental to the life and liberty can be taken except in accordance with law. ... It is the Constitutional obligation of the Government to ensure that the higher national interests being a sovereign and independent Islamic State are not jeopardised thereby causing a serious jolt. The State functionaries are not expected to be always too ready and willing to hand over the person of its citizens for extradition to a foreign State in the absence of due observance of the provisions of the Constitution, the Extradition Act, 1972 and other laws of the country. The Federal Government may also take into consideration as to how many foreign nationals have been extradited to Pakistan so far under any reciprocal arrangements. It is high time that the Federal Government should take the stock of the whole situation so as to rationalise the policy of extradition. However, we leave it to the petitioners and others to take up the matter further before the Federal Government and/or to take any other appropriate proceedings.’⁵²

B. *Right To Reside In Pakistan*

As per Article 15 of Pakistan’s Constitution, ‘Every citizen shall have the right to remain in, and, subject to any reasonable restriction imposed by law in the public interest, enter and move freely throughout Pakistan and to reside and settle in any part thereof.’ However, in *Zulqaunain Khan’s Case*⁵³ the Court held that ‘no doubt, like any other citizen, the petitioner has a right to reside in Pakistan and move about freely in any part thereof but his right is subject to reasonable restrictions imposed by law. His movements therefore can be restricted within the country and he can be sent out if the law so directs. Extradition Act, 1972, is a law which places reasonable restriction or embargo on his right to live in the country if he commits an offence against the law of a foreign state because he can be extradited for trial’⁵⁴ and he loses his right to live in his own country for the time being. The Supreme Court of Pakistan has also ruled that ‘... Article 15 was never intended to afford protection against extradition to citizens who are accused of serious crimes in other countries.’⁵⁵

At another instance, the Lahore High Court has ruled that ‘Extradition Act, 1972 and the treaty... which deal with the extradition cannot be said to be violative of the Article 15 (of the Constitution) of the Islamic Republic of Pakistan inasmuch as accused who is to be surrendered is not being denied his right to reside in Pakistan. He is to be surrendered to a “treaty-country”, for the purpose of facing of a trial in a criminal case before a Court of competent jurisdiction in a foreign country. The law of extradition provides power to Government to pass an order of surrender in such a case, therefore, cannot be said to be restrictive of the right of accused to live and reside in Pakistan. Such an order cannot be equated with an order of expulsion from the country.’⁵⁶

Part – IV: Objectives Resolution of 1949 and International Extradition

The ‘Objectives Resolution’ was passed by the Constituent Assembly of Pakistan within two years after the creation of Pakistan. In 1949, this resolution stood to contain the guidelines on the basis of which the future constitution of Pakistan was to be made. Therefore, in the

⁵² *op. cit.*,49.

⁵³ *op. cit.*,39.

⁵⁴ *op. cit.*,39.

⁵⁵ *Nasrullah Khan Henjra v. Government of Pakistan & Others* [PLD 1994 Supreme Court 23].

⁵⁶ *op. cit.*,25.

constitutions that followed, the Objective Resolution was incorporated as the preamble to such constitutions. However, the present Constitution of Pakistan that was promulgated in 1973, not only holds the Objective Resolution as its preamble, but also, by virtue of its Article 2-A, renders it as the substantive part of the Constitution.

The scheme of Objectives Resolution contains a number of things, including the guarantee of and obligation to observe the fundamental right of social justice as enunciated by Islam and subject to public morality. The Muslims in Pakistan have been guaranteed the right to be enabled to order their lives in accordance with the teachings and requirements of Islam as set out in the Holy Qur'an and the *Sunnah*.⁵⁷ At the end of this resolution is a statement of the goal of the people of Pakistan of attaining rightful and honoured place amongst the nations of the world and of making full contribution towards international peace, progress and happiness of humanity. 'It does not stand to reason that, on the one hand, one Constitution after another should be reiterating the commitment of the Pakistan nation to attainment of honoured place amongst the nations of the World, yet, on the other hand it should incorporate a provision which would make Pakistan a safe haven for those of its citizens who commit serious crimes abroad and then take refuge in Pakistan to avoid punishment.'⁵⁸ Therefore, 'Extradition Act, 1972 and the (extradition treaties) ... can also be upheld on the ground that the same is not only a step towards the achievement of social justice, but is quite in accord with the public morality and goes a long way to the achievement of ultimate object of creation of Pakistan.'⁵⁹

Further, as regards treaties it has been held by Lahore High Court that, 'In the present "world order" when all the nations are ultimately to live like family members, a person who is alleged to have committed a crime which affects the society of one country, is a criminal of the other society as well, irrespective of religion, colour or creed and hence facilitation of his trial by a country where offence has been committed, is bounden duty of all States. A criminal has no vested right to refuse trial for commission of an offence for which he is to be tried by a competent Court. A treaty which is necessary for international peace and prosperity even with a "non-Muslim" State, is also supported by the Ist International Treaty entered into between Prophet Muhammad (may peace be upon him) and other non-Muslims tribes and nations'.⁶⁰

Part – V: Extradition to Pakistan

The Federal Government of Pakistan is empowered to make a requisition to a treaty state for extradition to Pakistan of a person who is accused or convicted of an extradition offence and is or is suspected to be in such treaty state. This requisition may be made through the diplomatic representative of such treaty state in Pakistan, through Pakistan's diplomatic representative in such treaty state, or through any arrangement mutually agreed to in between Pakistan and such treaty state.⁶¹ EA '72 requires that the person who is surrendered by a treaty state to Pakistan shall not be tried for any offence other than the extradition offence.⁶² Further that, if the proceedings for extradition offence do not begin within six months of the arrival of the extradited person in Pakistan or if such person is acquitted or discharged on his

⁵⁷ *Sunnah* stands for 'the sayings and practices of the Prophet Mohammad (peace be upon him) of Islam'

⁵⁸ *op. cit.*, 55

⁵⁹ *op. cit.*, 25

⁶⁰ *op. cit.*, 25

⁶¹ Section 15 EA '72

⁶² Section 16 EA '72

trial, then the Federal Government of Pakistan is obliged to send that extradited person back to the treaty state with as little delay as possible.⁶³

Part – VI: Conclusion

International extradition treaties are a part of the international law that exists to rationalize the relationship between independent states. However, whether or not, a person should be extradited is the question to be determined solely on the basis of the constitution and the national laws of the country to whom the request for extradition has been made. The Lahore High Court acknowledged this aspect and held that, ‘the Courts must, therefore, give a strict interpretation to the provisions of the Extradition Act’.⁶⁴ However, it is a well-settled constitutional principle, at least in foreign jurisdictions, that international treaties made by the Government can not be given legal effect if they conflict with the constitution of the country. ‘Extradition Act and extradition treaties are the outcome of the State necessities to curb the commission of crimes, in the interest of humanity and each State which is bound by the treaty is required to surrender the fugitive offender to the Demanding State. Nevertheless, it is the main duty of the State to satisfy itself that the demand of the State is reasonable, just and grounded upon sufficient material,’⁶⁵ Therefore, ‘The job of the asylum states are limited. Their only concern is to examine whether the charge and the material before them are sufficient to connect the fugitive offender with the offences for which he is to be tried.’⁶⁶

The conclusion of Lahore High Court has summed up Pakistan’s perspective as regards the law of extradition that the EA ’72 is not *ultra vires* of the Constitution of Pakistan, ‘and is rather quite in accord with the constitution, the injunctions of Islam, as set out in “Holy Qur’an” and Sunnah, intrinsic object of international treaties entered into by a Muslim State, the provisions of prevalent international law, the principles of administration of social justice, fits in the new “world order” and is an important step in the aid of creation of a universal peace and brotherhood.’⁶⁷

⁶³ Section 17 EA ’72

⁶⁴ *op. cit.*,22

⁶⁵ *op. cit.*,22

⁶⁶ *op. cit.*,22

⁶⁷ *op. cit.*,25