



FINAL APPROVAL

It is certified that we have gone through and evaluated the dissertation submitted by **Syed Wajdan Rafay Bukhari**, a student of LL.M. International Law under University Registration No. **283-FSL/LLMIL/F16** titled **“The Interplay between Asylum and Extradition: Theory and Practice in United Kingdom and Pakistan”** in partial fulfillment for the award of degree of LL.M. International Law. We have evaluated the dissertation and found it up to the requirement in its scope and quality for the award of degree.

1. Supervisor
Dr. Susic Sejo
Assistant Professor of Law
Department of Law
International Islamic University
Islamabad.
2. Internal Examiner
Dr. Ataulah Khan Mehmood
Assistant Professor of Law
Department of Law
Faculty Shariah & Law
International Islamic University
Islamabad.
3. External Examiner
Mr. Muhammad Ramzan
Public prosecutor
District Rawalpindi



Accession No. TH 19313

342.41083
BUI

(6)

- 1 - Asylum
- 2 - Asylum British



TABLE OF CONTENTS

DECLARATION	7
ACKNOWLEDGMENTS	8
DEDICATION	9
LIST OF ABBREVIATIONS	10
ABSTRACT	11
Chapter 1: INTRODUCTION TO ASYLUM AND EXTRADITION	13
1. Introduction	13
1.1 Historical Background of Asylum	13
1.2 Asylum in International Law	15
1.2.1 Meaning, origin, and definition of term Asylum	15
1.2.2 Modern Development of Asylum	16
1.2.3 Difference between Asylum seeker and Refugee	16
1.3 Rationale for Asylum	17
1.4 Types of Asylum.....	17
1.4.1 Territorial Asylum.....	17
1.4.1.1 Political Asylum.....	18
1.4.1.2 Refugee Asylum.....	18
1.4.1.3 General Asylum	19
1.4.2 Extra-Territorial Asylum.....	19
1.4.2.1 Diplomatic Asylum.....	20
1.4.2.2 Asylum in Merchant Ships.....	21
1.4.2.3 Asylum in War Ships	21
1.4.2.4 Asylum in Premises of International Institutions.....	22
1.5 The right of Asylum under International Instruments.....	22
1.5.1 Universal Declaration of Human Rights	22
1.5.2 Convention on Territorial Asylum	23
1.5.3 A Declaration of Territorial Asylum.....	23
1.6 Asylum as a Customary Law	23
1.7 Asylum as a Human Right	24
1.8 Extradition in International Law	25

1.8.1 Meaning, origin, and definition of Extradition:	25
1.8.2 Significance and purpose of Extradition	26
1.8.3 Facilitation of Extradition in Criminal Procedures	26
1.9 Extradition and Rendition	27
1.10 Extradition and Abduction	27
1.11 Extradition and Deportation	28
1.12 Is Extradition a legal duty	28
1.13 Conditions for Extradition	28
1.14 Extradition Procedures - An Overview	29
1.15 Treaties and Conventions Related to Extradition	30
1.15.1 Bilateral Extradition Treaties	30
1.15.2 Regional Extradition Agreements	30
1.15.3 Extradition obligations under Multilateral Treaties	30
1.16 European Arrest Warrant	31
1.17 An Appraisal of Relationship Between Asylum and Extradition	31
1.17.1 Similarities between Asylum and Extradition	32
1.17.1.1 Conflict of obligations	32
1.17.1.2 Acts of Sovereign	33
1.17.1.3 Subjects of asylum and extradition	34
1.17.1.4 Protection for the individual	34
1.17.2 Dissimilarities between Asylum and Extradition	34
1.17.2.1 Purpose of asylum and Extradition	34
1.17.2.2 Difference of Rationale	35
1.17.2.3 Proceedings of asylum and extradition	35
1.18 Conclusion	35
Chapter 2: ASYLUM AND EXTRADITION IN THE UNITED KINGDOM	38
2.1 Introduction:	38
2.2 Historical Background	38
2.3 Asylum law and Practice in UK	39
2.4 Asylum Laws and Policy	40
2.4.1 Government Department Responsible for Asylum	41
2.4.2 Criteria to Determine the Asylum Applications	42
2.4.3 Prohibition on obtaining Refugee Status	43

2.4.4 Restricted Leave.....	43
2.4.5 Revoking Refugee Status.....	44
2.4.6 Accommodation and Benefits for Asylum Seekers	44
2.4.7 Support for Failed Asylum Seekers	45
2.5 Appeals on Refusals.....	45
2.5.1 Appeals Process	46
2.5.2 Special Immigration Appeals Commission.....	46
2.6 Deportation on National Security Grounds.....	47
2.7 Path to Naturalization	47
2.8 Immigration Detention.....	48
2.11 Extradition Law and Practice in the United Kingdom	50
2.12 Historical Background	50
2.13 Extradition Law in the United Kingdom.....	51
2.13.1 The Extradition Act 2003.....	51
2.13.2 Structure of Extradition Act 2003	52
2.14 Extradition Procedure in the United Kingdom.....	53
2.14.1 Bars to Extradition	54
2.15 Amendments in the Extradition Act 2003.....	55
2.16 Human Rights bars on Extradition from the UK	56
2.17 Bars mentioned in ECHR Articles.....	56
2.17.1 Article 3 of ECHR.....	56
2.17.2 Article 8 of ECHR.....	57
2.18 Assurances	58
2.19 Appeal Against the Order of Extradition	58
2.19.1 Criticism.....	59
2.20 European Arrest Warrant	59
2.21 Conclusion	60
Chapter 3: ASYLUM AND EXTRADITION IN PAKISTAN	63
3.1 Introduction.....	63
3.2 Asylum Law in Pakistan	63
3.3 Asylum Procedure in Pakistan	64
3.3.1 Application.....	65
3.3.2 Protection needs Assessment Interview	65

3.3.3 First Instance Interview.....	65
3.3.4 First Instance Decision.....	66
3.3.5 Application Rejection and Appeal.....	66
3.4 Mandate Refugee.....	67
Asylum procedure in Pakistan chart.....	68
3.5 Islamic Asylum system.....	69
3.6 Pakistan’s National Policy on Refugees.....	70
3.7 Afghan Refugee in Pakistan.....	71
3.7.1 Durable Solution for Afghan Refugees.....	72
3.8 Pakistan and International Standards for the Refugees.....	74
3.8.1 Personal status.....	74
3.8.2 Movable and Immovable Property.....	75
3.8.3 Employment resources for refugees.....	75
3.8.4 Self-Employment.....	76
3.8.5 Education to Refugees.....	76
3.8.6 Freedom of movement.....	77
3.8.7 Travel Documents.....	77
3.9 Principle of refoulement and non-refoulement.....	78
3.10 Extradition Law and Practice in Pakistan.....	80
3.11 Extradition Law and procedure in Pakistan.....	80
3.11.1 Validity of the Extradition Act 1972.....	81
3.11.2 Chapter I- Preliminary.....	82
3.11.3 Chapter II – Surrender of Fugitives.....	83
3.11.3.1 Section 5 – Liability of fugitive to be surrender.....	83
3.11.3.2 Section 6 – Requisition for Surrender of Fugitive.....	85
3.11.3.3 Section - 7 – Order for Magisterial Enquiry.....	85
3.11.3.4 Section 8 – Magisterial Enquiry.....	86
3.11.3.5 Section 9 – Exhibit of Evidence and Depositions.....	86
3.11.3.6 Section 10 – Report of Magistrate.....	87
3.11.3.7 Section 11 – Delivery of Offender.....	87
3.11.3.8 Section 12 - Discharge of Apprehended Person.....	87
3.11.3.9 Section 13 – Powers of Federal Government.....	88
3.11.3.10 Section 14 – Simultaneous Requisitions.....	88

3.11.4 Chapter III – Accused Person Surrender To Pakistan.....	88
3.11.4.1 Section 17- Return of Surrendered person to foreign state	89
3.11.5 Chapter IV - Miscellaneous	89
3.11.5.1 Section 19 – Bail of Arrested Person.....	89
3.12 Conclusion	89
Chapter 4: OVERLAPPING BETWEEN ASYLUM AND EXTRADITION.....	92
4.1 Introduction.....	92
4.2 Principle of non-refoulement	92
4.2.1 Application of non-refoulement in Extradition.....	94
4.2.2 The exception to the principle of non-refoulement.....	94
4.2.3 The principle of non-refoulement and assurances	95
4.2.4 The principle of non-refoulement and grounds of refusal for extradition.....	96
4.2.4.1 Political offence exemption	96
4.2.4.2 Discrimination clauses	97
4.2.4.3 Refusal on notions of justice and fairness.....	97
4.2.5 Principle of Non-refoulement and bars to extradition.....	97
4.3 Extradition of Recognized Refugees.....	98
4.3.1 Requested State Who Has Given the Refugee Status to An Individual	98
4.3.2 By another state.....	98
4.3.3Mandate Refugees by UNHCR.....	99
4.3.4 Effect of the Extradition of Refugees.....	99
4.4 Extradition of Asylum Seekers	100
4.4.1 Asylum and Extradition procedures for Asylum seekers.....	100
4.5 Suitable Procedure for Asylum and Extradition Procedures.....	101
4.5.2 Segregation of the proceedings of Asylum application and extradition request	103
4.5.3 Acceptance of the Asylum claims for the person whose Extradition is process.....	103
4.6 Extradition and Exclusion.....	104
4.6.1 Relation Between Exclusion and Extradition for Non-Political Offences.....	104
4.6.2 Different Purposes and Criteria of Exclusion and Extradition.....	105
4.7 Definition of political offences	105
4.8 Excludable acts vs. Extraditable offences.....	107
4.8.1 Standard of proof of exclusion and extradition.....	107
4.8.2 Exclusion, Extradition and Terrorism	108

4.9 UNHCR in the extraction of sylum seekers and refugees.....	108
4.10 Interpol “red notices”	109
4.11 Conclusion	109
5. CONCLUSION AND RECOMMENDATIONS	111
5.1 Conclusion	112
5.2 Recommendations.....	114
5.2.1 To the Government of Pakistan	114
5.2.1.1 On The Issue of Asylum	114
5.2.1.2 On The Issue of Extradition	115
5.2.2 To the Government of United Kingdom	115
5.2.2.1 On The Issue of Asylum	115
5.2.2.2 On The Issue of Extradition	116
5.2.3 To the United Nations High Commissioner for Refugees (UNHCR).....	117
BIBLIOGRAPHY	119
Appendix I: THE EXTRADITION ACT 1972.....	128

DECLARATION

I, **Syed Wajdan Rafay Bukhari**, hereby declare that this dissertation is original and has never been presented in any other institution. I, moreover, declare that any secondary information used in the thesis has been duly acknowledged.

Student: **Syed Wajdan Rafay Bukhari**

Signature: _____

Date: _____

Supervisor: **Dr.Sušić Sejo**

Signature: _____

Date: _____

ACKNOWLEDGMENTS

First and foremost, I be indebted of thankful to my ALLAH who showed me the straight path in every sphere of life by throwing HIS Mercies upon me regarding all walks of life.

Then, I be obliged of thankful to my Supervisor **Dr.Sušić Sejo** for his invaluable help, guidance and support during the formulation of every stage of this thesis. He was always there to listen and to give advice. He showed me different ways to approach a research problem and the need to be persistent to accomplish a goal. I know that it is an honor to know him and study under his supervision. He has always been a friend and mentor especially in the reviewing of my work. Without his encouragement, constant guidance and insightful comments, I could not have finished this study.

I owe special thanks to **Prof. Dr. Mushtaq Ahmed** and **Prof. Dr. Ataullah Khan Mehmood** for their invaluable interest, sincerity and trust in me. They helped me a lot during the completion of this research by their invaluable guidance and ideas. They both are not less than an institute in themselves.

I also want to thanks with same words written above to my idealistic personality **Mr. Asif Safdar (Principal, Gillani Law College BZU)**. He showed me different ways to approach a research problem and the need to be persistent to accomplish a goal.

How can I forget, I would like to express my gratitude to my mother **Syeda Zahra Sajid**, for giving me life in the first place, for educating me, for their trust and faith in me while I was writing this thesis, just as they have been doing throughout my entire life. For listening to my complaints and frustrations, and for believing in me.

I also want to thanks even, I'm obliged to have my elder **Syed Burhan Rafay Bukhari** and my younger brother **Syed Rehan Rafay Bukhari**. Without their existence, support and never-ending tolerance, it would be impossible to complete this thesis.

DEDICATION

TO

MY LATE FATHER

PROF. SYED SAJID HUSSAIN BUKHARI

AND

MY BELOVED MOTHER

SYEDA ZAHRA KHATOON

LIST OF ABBREVIATIONS

COSOR	Convention on the status of Refugees 1951
EA	Extradition Act 2003 (United Kingdom)
EAW	European Arrest and Warrant
ECHR	European Convention on Human Rights 1950
ECtHR	European Court of Human Rights 1959
EHRR	European Human Rights Reports
EWHC	England Wales High Court
GoK	Government of United Kingdom
GoP	Government of Pakistan
GoA	Government of Afghanistan
IAA	Immigration and Asylum Act 1999
ICJ	International Court of Justice
NIA	Nationality, Immigration and Asylum Act 2002
POSOR	Protocol on the status of Refugees 1967
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees 1950
IRO	International Refugee Organization
ICJ	International Commission of Jurists

ABSTRACT

The thesis appraises about the interplay of asylum and extradition procedure in United Kingdom and Pakistan. Interplay itself is a query in *legum* studies, which should be resolved by bifurcating the two doctrines. Interplay includes overlapping and contradictions. Overlapping delineates when two doctrines or tenets of law came on the same track and create problems for each other. On the other hand, contradiction means when two doctrines or precepts confront each other by crossing them. Asylum and extradition overlap and contradict in various ways, as for instance, if extradition is sought for the asylum seeker or refugee.

The thesis assesses the policy of United Kingdom to deal with asylum seekers and refugees on its soil while deciding the extradition requests. For that purpose, a thorough study of the laws and practice of United Kingdom has been made to analyze the observance of non-refoulement principle especially in a situation where extradition is sought for the asylum seeker or refugee. However, it is contended that Government of United Kingdom is not obliging with convention relating to the status of refugee 1951.

The thesis further evaluated the Pakistani law and practice while deciding the extradition requests of asylum seeker and refugee. It has been examined that Government of Pakistan is reluctant to ratify the convention relating to the status of refugee 1951 due to security and geopolitical concerns. Meanwhile, principle of non-refoulement has been regarded as the *opinio juris* by the civilized states. Therefore, it bounds the Pakistan to oblige by it -albeit of fact that- they are not the party to convention relating to the status of refugee 1951 and related protocol 1967.

Chapter 1
**INTRODUCTION TO ASYLUM
AND EXTRADITION**

Chapter 1: INTRODUCTION TO ASYLUM AND EXTRADITION

1. Introduction

Asylum is the sanctuary or protection by one sovereign state to an individual who is in danger due to religious, racial and political persecution.¹ Doctrine of extradition provides a procedure in which one state surrenders an accused person to an individual to the other state for the trial of that person in the court of law.² Meanwhile, a situation occurs where asylum and extradition intersect each other, as for instance, if a state grants an asylum³ to an individual on its soil and a request of extradition came across of the same person by a state (requesting state) with which the granting state has the treaty. It mostly happens in the cases of political nature.⁴ On the other hand, a conflicting situation can arise in deciding the extradition requests; the state (requested state) is under an obligation of the extradition treaty and also bound to follow the doctrine of non-reoulement.⁵ In order to properly comprehend the relationship between asylum and extradition, it is necessary to elaborate first the asylum and extradition separately.

1.1 Historical Background of Asylum

Historically, asylum term was used as an 'inviolable place' where another state is unable to exercise its jurisdiction. This legal connection created a link between asylum and jurisdiction. Plainly, history depicts it as a privilege of a jurisdictional state rather than a right. In ancient times,

¹ United Nations, "Asylum-Seekers," UNHCR, accessed January 05, 2018, <http://www.unhcr.org/asylum-seekers.html>.

² "Extradition," Merriam-Webster, accessed January 05, 2018, <https://www.merriam-webster.com/dictionary/extradition>.

³ Steve Peers and Nicola Rogers, *EU Immigration and Asylum Law Text and Commentary*, vol. 12 (Boston, USA: MartinusNijhoff, 2006). p.7.

⁴ Saroj Arora."Legal regime of extradition national and international perspective." (2013). p.167.

⁵ MetajOldian, "The Multilevel Asylum System Policies: The Analysis of the North Africa Emergency Management in Padua and Venice." *BenvenutiSuPadua@Thesis - Padua@Thesis*, October 01, 2014, p.11. accessed April 02, 2018, <http://tesi.cab.unipd.it/47094/>

sanctuaries were offered by the holy places. 'Holy places' due to its link with divinity were considered as inviolable. The honor of the holy places was due to fear of the wrath of God on the violators. Thus, divinity was the actual cause of protection to the unfortunate people of the society.⁶ It is found that asylum in Egyptian civilization in the temple of Amon and Osiris, it is considered a place of refuge for the slaves who flee from the cruel behavior of their lords. In Greek, there were a multiplicity of Gods and each city was protected by a particular God.⁷ There are some credible evidence that privilege of asylum was exercised by the Roman Empire. They opened a place in the temple for the victims and reluctant to send back them to the claimants due to humanity. So, the researcher can say that it was the first time, Roman Empire, who formally exercised this privilege/right. A city was opened for the purpose of protection to the fleeing people. Practically and presumably, Italy was the first city in which asylum was took place except for Greek colonies Magna and Garcia.⁸ In 323 AD, the great Constantine, authorization was given to the churches for granting asylum. This power of churches involved it in the matter of criminal jurisdiction and it is often said that this was the actual cause by which Catholics got more and more power.⁹ In Islamic law, this term asylum is used as 'jawar'. '*Pact of Medina*'¹⁰ has many provisions as to jawar of Muslims into the Medina and '*Treaty of Hudebia*'¹¹ also had a term in the treaty that if a Muslim flees from the Medina to Makka, they will be protected by Quresh. In Arabian Peninsula, asylum is in existence from a long period of time, but it was formally inducted thereby

⁶S. Prakash Sinha. *Asylum and international law*. MartinusNijhoff Publishers, 1971. p.5.

⁷Saroj Arora. "Legal regime of extradition national and international perspective." (2013). p.172.

⁸Arthur Hugh Clough, ed. *The lives of the noble Grecians and Romans*. Modern library, 1932. p.16.

⁹Katalin Siska. "Historical and Legal Perspectives of the Right of Asylum and Extradition until the 19th Century." *Miskolc J. Int'l L.* 1 (2004). p.188.

¹⁰Barrister Nazir Ahmed. "The Charter of Madina: the first written Constitution of the world." (2013).

¹¹Perry S Smith. "Of War and Peace: The Hudaibiya Model of Islamic Diplomacy." *Fla. J. Int'l L.* 18 (2006). p.135.

Prophet Muhammad (PBUH), who started this doctrine after entering into Mecca and proclaimed two places as a sanctuary. One is Mecca and second the home of Abu Jahal.

Another view is that it is a human right rather than a privilege of state or churches, Theory of Suarez and Grotius is that asylum is an inherent human right which is derived from the Natural law theory.¹²

1.2 Asylum in International Law

1.2.1 Meaning, origin, and definition of term Asylum

The doctrine 'asylum' has no definite meaning in international law it is defined with the attached words i.e. 'asylum seeker'. It is used in different paradigms by the different states. But it can be properly coupled with the 'protection' to an individual by a state.¹³ Another accepted sight is that this word is of a Latin language but it came from the Greek language 'Asyilia' which means inviolable place.¹⁴

Asylum is defined in the dictionary as "Asylum is a protection from extradition and arrest given by a nation on its territory to political offenders and refugees."¹⁵

On the face it, this doctrine has two elements. First, the shelter which is more than a temporary refuge.¹⁶ Second, states provide an active protection on its territory.¹⁷

¹²Brian Bix. "Natural law theory." *A companion to philosophy of law and legal theory* 223 (1996). p.225.

¹³BattjesHemme, and HoogleraarEuropeesasielrechten de Vrije. *European asylum law and international law*. M. Nijhoff, 2006. p.5.

¹⁴M. CherifBassiouni. *International extradition: United States law and practice*. Oxford University Press, 2014. p.137.

¹⁵www.dictionaryfindlaw.com/definition/asylum.html (accessed December 25, 2017).

¹⁶Francesco Cherubini, *Asylum Law in the European Union* (London: Routledge, 2016). p.47.

¹⁷Joseph Gabriel Starke. *Starke's international law*. Butterworth-Heinemann, 1994. p.323.

1.2.2 Modern Development of Asylum

Treaty of West Phalia is considered as the evolution of modern international law because territorial jurisdictions¹⁸ were demarcated in Europe by providing them sovereignty on their jurisdictions. By this treaty, territorial criminal jurisdiction was also delimited. This development of criminal justice system, the practice of asylum is limited in its exercise by the churches. Some of the limitations on the exercise of asylum were inter alia,

- 1) Places shall not have the absolute immunity to all types of fugitives because states have to prosecute the fugitives.
- 2) The existence of reciprocal duty of states to surrender the fugitives to other in certain cases.¹⁹

On the other side, right of asylum and refugee²⁰ is considered to be realization of modern international law. In the mid of 20th century, we can find many bilateral and multilateral treaties relating to the international human rights law and international refugee law under the shadow of United Nations. The topical development is linked with the evolution of human rights, which took place after the Second World War.²¹

1.2.3 Difference between Asylum seeker and Refugee

It is noted that readers are the same view for the asylum seeker and refugee but it is pertinent to mention here that there is a plausible distinction between the two terms i.e. asylum seeker and refugee. Asylum seeker is an individual who is seeking international protection in a state other

¹⁸M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.364.

¹⁹William BT Mock. "Treaty of Westphalia." In *Encyclopedia of Global Justice*, Springer Netherlands, 2011. pp. 1095-1096.

²⁰ Steve Peers and Nicola Rogers, *EU Immigration and Asylum Law Text and Commentary*, vol. 12 (Boston, USA: Martinus Nijhoff, 2006). p.549.

²¹ Katalin Siska. "Historical and Legal Perspectives of the Right of Asylum and Extradition until the 19th Century." *Miskolc J. Int'l L.* 1 (2004). p.188.

than his/her origin. While refugee is an individual who has been fled from his/her state of origin due to persecution and got the status of refugee. So, it can be said that every refugee was -in first instance- an asylum seeker and later become a refugee. But an asylum seeker whose claim of asylum is not accepted will not be called as refugee.²²

1.3 Rationale for Asylum ²³

The emergence of the non-ecclesiastic state is a downfall of religious asylum. The separation of churches from the states in many European countries is the cause of development of asylum as we found in these days. This right of asylum shifted from the churches towards the states in their jurisdictions.

1.4 Types of Asylum

There are two major types of asylum i.e. territorial and extra-territorial.

M.Cherif Bassiouni elaborate these two terms as,

(1) **Territorial Asylum:** Territorial asylum is a denial of the authoritative process which provides one state a jurisdiction over an individual for the purpose of extradition or rendition but the person sought was granted asylum on the territory of another state.

(2) **Extraterritorial Asylum:** Asylum is granted in diplomatic mission due to diplomatic immunity.²⁴

1.4.1 Territorial Asylum

Territorial asylum is based on the principle of sovereignty, to grant or refuse the asylum-on its territory- is the sole discretion of a state. There is no obligation on the state to grant asylum to an

²² "What's the Difference between a Refugee and Asylum Seeker?" Amnesty International Australia, November 06, 2017, accessed July 02, 2018, <https://www.amnesty.org.au/refugee-and-an-asylum-seeker-difference/>.

²³M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.204.

²⁴Ibid

individual. The name “territorial asylum” is because the territory is one of the attributes of a state. The state is independent in its decisions on its territory. The state is neither bound to prevent the aliens nor bound to admit aliens on its territory. The state can admit anyone on its territory and expel anyone from its territory except treaty obligations.²⁵

Territorial asylum is further segregated into three types.

1.4.1.1 Political Asylum

The political asylum is approved only for the violators of political offences.²⁶ Political asylum is an old notion, in which political persons were persecuted for their political ideologies and religious beliefs in their own country or in others. Politicians are expelled from their states on different grounds then other states grant them political asylum. It is considered as a political consideration²⁷

1.4.1.2 Refugee Asylum

Refugee asylum is another type of territorial asylum, this asylum is granted on the ground of human rights²⁸-although not binding- because the victims are being persecuted in their states or they are expelled as treated stateless persons²⁹. Technically, there is no difference between political asylum and refugee asylum because the principles for political asylum are mutatis mutandis applies on refugee asylum. Refugee is defined³⁰ in the convention relating to status of Refugees 1951, ‘as a

²⁵John Bassett Moore, and Francis Wharton, *A Digest of International Law...* Vol. 2. US Government Printing Office, 1906.

²⁶M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.83.

²⁷<http://www.mqm.org/quaid/quaid-page-1.htm> (accessed January 05, 2018).

²⁸ See Article 14, Assembly, UN General. "Universal declaration of human rights." *UN General Assembly* (1948).

²⁹NyiNyi Kyaw. "Rohingya Muslims: Myanmar's forgotten people." (2008). p. 7

³⁰Francesco Cherubini, *Asylum Law in the European Union* (London: Routledge, 2016),p.8.

person who owing to well-founded fear of being persecuted for reasons of race³¹, religion³², nationality³³, membership of a particular social group³⁴ or political opinion³⁵, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to return to it'. Presently, 145 states are parties to the convention.

1.4.1.3 General Asylum

Some people seek better life opportunities for economic and social factors but they don't fall into the category of refugees and political asylum. Their asylum will vary from state to state policy. These persons can seek asylum on the basis of the civil war in their own country or natural disaster and economic welfare.³⁶

1.4.2 Extra-Territorial Asylum

The state can grant asylum on its notional territories such as legations and consular premises on the actual territory of other states. There are multiple factors for granting asylum on the territory of other states.

- i. The Diplomatic Privileges
- ii. Custom
- iii. Usage
- iv. Treaty

³¹Steve Peers and Nicola Rogers, *EU Immigration and Asylum Law Text and Commentary*, vol. 12 (Boston, USA: MartinusNijhoff, 2006). p.558.

³²Ibid

³³Ibid

³⁴Ibid supra note 33 p.561.

³⁵Ibid supra note 33 p.559.

³⁶J. G Starke. "Introduction to International Law, 10." *Aufl.*, London (1989). p.358.

The extraterritorial asylum³⁷ can be further divided into

- i. Diplomatic Asylum
- ii. Asylum in Merchant Ships
- iii. Asylum in War Ships
- iv. Asylum in Premises of International Institutions

1.4.2.1 Diplomatic Asylum

Diplomatic³⁸ asylum is granted in the legation of diplomatic envoys. There is no formal procedure prescribed in an international instrument. But it can be created by 'special agreements' under Article 41 of Vienna Convention on Diplomatic Relations 1961. But this right of the state is controversial in its very nature because legation is a privilege for the diplomats not for the others.

In the Asylum case *Columbia v. Peru*³⁹ the Court stated:

In diplomatic asylum case, a refugee is living in the territorial jurisdiction of a state where the offense was committed. In this situation, diplomatic asylum can cause an intervention to the sovereignty of the territorial state. Sovereignty cannot be challenged in any case except agreed by the parties.

There are some principles regarding the diplomatic asylum.

- The modern international law does not recognize diplomatic asylum due to a violation of the principle of territorial jurisdiction.
- Diplomatic asylum is permissible when there is well established local custom.

³⁷M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.414.

³⁸M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.478.

³⁹*Colom v. Peru*, 1950 I.C.J. 266 (1950).

- If an individual is in danger from mob disorder or some urgency in nature, it can be granted as a temporary measure⁴⁰.
- It can also be granted on the basis of special agreements between the states.

The United Kingdom didn't recognize diplomatic asylum. In a famous case of Jullian Assange,⁴¹ British authorities warned the Ecuadorian embassy to surrender Jullian Assange because Diplomatic and Consular Premises Act 1987 provides that diplomatic missions can lose their immunity in certain circumstances. Namely, if (1) the sending State ceases to use the land for the purposes of its mission, or (2) the British Secretary of State withdraws his acceptance or consent in relation to the land.⁴²

1.4.2.2 Asylum in Merchant Ships

There is no concept of asylum on private and merchant ships because they don't enjoy the diplomatic immunity. They have many other rights except the right to grant asylum. Local authorities can arrest an individual from a private or merchant ship to an individual in violation of their municipal law.⁴³

1.4.2.3 Asylum in War Ships

Asylum on warships is granted only on the basis of humanitarian grounds. Warships on the water also considered as the floating Irelands of the flag state and privileged on the basis diplomatic immunity. It was held that if an individual is granted asylum on the ship by Commander of the

⁴⁰Steve Peers and Nicola Rogers, *EU Immigration and Asylum Law Text and Commentary*, vol. 12 (Boston, USA: MartinussNijhoff, 2006). p.453.

⁴¹*Judicial Authority in Sweden v Julian Paul Assange*. (Westminster Magistrates' Court, February 24, 2011).

⁴² See section 1, "Diplomatic and Consular Premises Act 1987 ." www.legislation.gov.uk/ukpga/1987/46.

⁴³Daniel P O'Connell. *International Law Vol 1+ 2*. Stevens, 1965. p.814.

ship then authorities of the shore cannot escape him/her out without the permission of commander.⁴⁴

1.4.2.4 Asylum in Premises of International Institutions

There is no such provision in modern international law to grant asylum by the international institutions in their premises of the territorial state against their sovereignty. But in extreme circumstances, right to grant temporary refuge⁴⁵ from the mob in danger can be granted.

1.5 The right of Asylum under International Instruments

Right to grant asylum is a discretionary right of a sovereign state. It was considered as a customary right of state and other states didn't consider it as an unfriendly act of the granting state. In International law, the asylum was first time recognized as a human guarantee in the Universal Declaration of Human Rights.⁴⁶

1.5.1 Universal Declaration of Human Rights

UDHR developed the asylum right in a very logical manner as it is a right for those who are subject to persecution not for those who are being prosecuted for the nonpolitical offenses. Article 14(1) states that

Everyone has the right to seek and to enjoy in other countries asylum from persecution.

⁴⁴Alf Ross *A Textbook of International Law: general part*. The Lawbook Exchange, Ltd., 2006. p.183.

⁴⁵Matthew E. Price, *Rethinking Asylum: History, Purpose and Limits* (Cambridge: Cambridge University Press, 2009). p.164.

⁴⁶ See Article 14, Assembly, UN General. "Universal declaration of human rights." *UN General Assembly* (1948).

1.5.2 Convention on Territorial Asylum

Article 1 of the Convention on territorial asylum provides that,

Every State has the right in the exercise of its sovereignty, to admit into its territory such persons as it deems advisable without, through the exercise of this right, giving rise to a complaint by other State.⁴⁷

1.5.3 A Declaration of Territorial Asylum

This declaration was adopted by UN General Assembly which specified principle regarding territorial asylum i.e. a state has the rights to give asylum on its territory.

1.6 Asylum as a Customary Law

Some states without legal basis are exercising the right to grant asylum on the basis of customary practice. Because this customary obligation was fundamentally exercised to protect the individual from the persecution of another state.⁴⁸ Customary law is developed with the state practice and then it is perused consistently as intended to beneficiaries. Permanent Court of International Justice in the Lotus case⁴⁹ stated that customary international law is created in a negative conduct rather than positive conduct. Meaning thereby, it abstains from doing a certain act, if there is no such abstention then the rule of permissibility follows. The binding nature of custom emanates from its consistent practice obligated by the concerned state expressly.

⁴⁷"Convention on Territorial Asylum 1954." www.refworld.org/docid/3ae6b36614.html (accessed January 15, 2018).

⁴⁸S. Prakash Sinha. "An Anthropocentric View of Asylum in International Law." *Colum. J. Transnat'l L.* 10 (1971). p.78.

⁴⁹*FR v. Turk*, 1927 P.C.I.J. (ser. A) 10 (1927).

1.7 Asylum as a Human Right

Asylum is a right, primarily, granted on the humanitarian grounds. Granting asylum is also considered as an act of humanity. Granting of asylum is not the establishing an independent right rather it is an act of enforcement of the already existing human right.⁵⁰

With the development of international human right law, asylum is considered as a human right for those individuals who are being persecuted or unfairly prosecuted. For that reason, an independent convention was adopted by the international community 'Convention on the Status of Refugees'.⁵¹ This was the way forward in supplanting the human rights. There is still not a clear enforceable right of asylum by an individual but there are two types of asylum application are accepted.

- i. As granted to refugees, the ground for this asylum application is the persecution⁵² on the basis of race, religion, creed and political opinion.
- ii. As granted to political persons, this is granted to those politicians who have well-founded fear of persecution by their rivals in their state of origin due to the vengeance of political reasons.

According to J. Stone,⁵³ Asylum is right of a state in a jurisprudential sense but it would be more appropriate to term it as a liberty of the state because the state is not bound to grant asylum nor it

⁵⁰Paul Weis. "The international protection of refugees." *American Journal of International Law* 48, no. 2 (1954). pp. 193-221.

⁵¹UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html> [accessed 6 January 2018]

⁵²Matthew E. Price, *Rethinking Asylum: History, Purpose and Limits* (Cambridge: Cambridge University Press, 2009). p.103.

⁵³Julius Stone. "The province and function of law." (1946).

is compelled for it. It has two features, 'liberty' with the viewpoint of state and 'right' with respect to an individual in international law.

1.8 Extradition in International Law

1.8.1 Meaning, origin, and definition of Extradition:

The terms extradition is the creation of Latin language, it means the deport of a person to the sovereign of the state. The modern term extradition derives from the term extra-tradition because in primitive times it was against the hospitality to surrender the person who came for refuge in a state. Many authors defined the extradition in a diverse manner.

Mr. Cherif Bassiouni defined the extradition, the author is of the view that extradition is a system rather than dictum. He portrayed it as a stage of criminal justice system. It is a demand of one state to other by which an accused person can be returned to the demanding state.

Extradition is considered as a system by which one state delivers an accused person to another state on her demand.⁵⁴

American heritage dictionary appraises it as a request of surrender by one state to another of an accused person. The request is for the purpose of trial in the court of law.

Extradition is a request of one state to another for the legal surrender of an accused person for the purpose of trial.⁵⁵

Article 102 of Rome statute provides that extradition is a surrender of an accused person by one state to another by way of treaty between the states. And national legislation plays also an

⁵⁴M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.2.

⁵⁵AC03100283, Anonymus, ed. *The American heritage dictionary of the English language*. Houghton Mifflin, 2000.

important role in extraditing an individual. So, the ratifying states must have their national legislations to deal with situation.

Extradition is the surrender of a person by one statute to another through convention or national law.⁵⁶

1.8.2 Significance and purpose of Extradition

As researcher discussed earlier that, in the primitive times, it was against the tradition to surrender a person who seeks refuge in a state but nowadays it is a well-settled trend that asylum stops where extradition begins.⁵⁷ But now, it is considered as a part of the criminal justice system. Although extradition varies from state to state it can be settled regionally and globally likewise EAW (European Arrest Warrant).⁵⁸ In this era of globalization, a state cannot survive without extradition, because an individual can easily cross the borders after committing an offense in one state. To arrest and prosecute a transnational offender, extradition is the most significant tool.

1.8.3 Facilitation of Extradition in Criminal Procedures

A criminal person can be surrendered to the state for the following reasons.

Suppression of crime: An accused person cannot be prosecuted due to lack of jurisdiction if he fled away in another state. Extradition is a tool to get back these offenders so that no one can go unpunished.

Extradition is a warning: It is a warning for the criminals that they cannot be set free in any other state in order to escape from punishment. It acts as deterrence too.

⁵⁶ See Article 102, "Rome Statute of the International Criminal Court." www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf (accessed January 25, 2018).

⁵⁷Peter Malanczuk. *Akehurst's modern introduction to international law*. Routledge, 2002. p.117.

⁵⁸https://e-justice.europa.eu/content_european_arrest_warrant-90-en.do (accessed January 25, 2018).

Protection of the interest of territorial state: Every state wants peace in its territory. If a state is embracing the notion extradition policy than it is an open invitation to the transnational and international offenders for refuge. This is a threat to its own territory.

Extradition assists in reciprocity: Reciprocity⁵⁹ is the law of nature, if one state is assisting another state for the purpose of prosecution then the other state will also try to give her support in future.⁶⁰

1.9 Extradition and Rendition

These two terms considered a similar concept but there are certain differences between the extradition and rendition but the major distinction between the two is procedural in nature rather than substantive. In extradition, there must be some formal legal basis for the surrender of the accused but in rendition, there is no need for any formal agreement between the two states.⁶¹ In extradition, a person is a surrender by a judicial procedure⁶² but in rendition, he/she is returned by the administrative authorities.⁶³

1.10 Extradition and Abduction

Extradition and Abduction are totally different concepts of criminal justice system but they overlapped in the history. Suspected persons were abducted from the state and delivered up to the

⁵⁹M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.496.

⁶⁰*Signnificance and Legal Parameters of the concept of Extradition.* http://shodhganga.inflibnet.ac.in/bitstream/10603/8652/10/10_chapter%202.pdf (accessed January 25, 2018).

⁶¹M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.43.

⁶²Steve Peers and Nicola Rogers, *EU Immigration and Asylum Law Text and Commentary*, vol. 12 (Boston, USA: MartinussNijhoff, 2006). p.224.

⁶³Garcia and Michael J, "Renditions: Constraints Imposed by Laws on Torture," Dtic.mil, p.4, accessed february 05, 2018, <http://www.dtic.mil/docs/citations/ADA473984>.

requesting state without any legal formalities. E.g. Adolf Eichmann was abducted from Argentina by Israel in 1960.⁶⁴ An abduction is an illegal act while extradition is a legal one.

1.11 Extradition and Deportation

Extradition and deportation are similar concepts in procedure but different in substance because, in deportation, an individual is expelled from the state of residence to state of its origin⁶⁵ without any request but in extradition, an individual is expelled from the state on a formal request by the state.⁶⁶ A citizen of a state cannot be expelled by way of deportation but he/she can be surrendered on the basis of other jurisdictional mechanisms.⁶⁷

1.12 Is Extradition a legal duty

Grotius is considered as a father of modern international law, in his point of view, the state has a duty⁶⁸ to extradite or punish the offender on its soil. This legal duty is based on the law of nature. The Supreme Court of USA mentioned it in *Factor Vs Labubnenheimer*. There is no duty on the state to extradite without a treaty.⁶⁹

1.13 Conditions for Extradition

- i. Commission of an offense; extraditable offense⁷⁰

⁶⁴*Eichmann Case*, 36 I.L.R. 5 (1961).

⁶⁵Steve Peers and Nicola Rogers, *EU Immigration and Asylum Law Text and Commentary*, vol. 12 (Boston, USA: MartinusNijhoff, 2006). p.552.

⁶⁶M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.228.

⁶⁷Hari Om Agarwal. *International Law & Human Rights*. Central law publications, 2005. p.233.

⁶⁸Ibid supra note 68. p.11.

⁶⁹*Welch v. Helvering*, 290 U.S. 111, 54 S. Ct. 8, 78 L. Ed. 212 (1933).

⁷⁰Ibid supra note 68. p.507.

- ii. The legal and jurisdictional base for the request of extradition; a bilateral or multilateral treaty which imposes a legal obligation to extradite and most importantly the requesting state must have the jurisdictional claim on the offender.
- iii. Determination of requested state to extradite or not; the requested state must provide a fair⁷¹ inquiry to the accused person.

1.14 Extradition Procedures - An Overview

Extradition procedures vary from state to state legislation but there are some common safeguards and guarantees in every national legal system. Most commonly the two organs of state executive and judiciary are involved in the extradition proceedings. There are three stages of extradition proceedings.

- i. When a request for extradition reached in the ministry, the concerned minister examines the request whether it is admissible or not in accordance with the state legislation. A formal assessment is made by the minister staff for the purpose of refusal grounds. If requested state found the request inadmissible for any ground, the request will stand rejected in its initial stage.
- ii. If the minister concerned found the request admissible, he will forward it to the judicial authority for the purpose of inquiry of accused. This is the stage at which accused is given an opportunity to be heard. The evidence is taken during this stage and legal obstacles to the extradition are determined.

⁷¹Francesco Cherubini, *Asylum Law in the European Union* (London: Routledge, 2016). p.62.

- iii. After determination by the judicial authority, the decision is to be forward to the minister again. In majority states, the decision of judge not to extradite is binding on the minister but the decision of the judge to surrender a person is in the discretion of the minister.

There is a procedure of review and appeal in different national legal systems.

1.15 Treaties and Conventions Related to Extradition

1.15.1 Bilateral Extradition Treaties

Extradition is considered as a reciprocal duty. Many states have signed between them the treaty for cooperation. A very large number of such treaties have been signed in the 20th century. The bilateral treaty provides a legal basis for the extradition as a prerequisite for the permission to surrender the fugitive.

1.15.2 Regional Extradition Agreements

The regional agreement is made to reconcile the different legislation on one platform especially for the support of criminal justice system. States have the choice of reservation on the provisions of the treaty. There are many examples of regional agreements for extradition.

- European Arrest Warrant

1.15.3 Extradition obligations under Multilateral Treaties

Extradition is also found in some multilateral treaties for some special offenses i.e. war crimes, a crime against humanity, a crime against peace and genocide.

There are some international instruments which provide an obligation to extradite.

- Article 7(2) of the Convention on the Prevention and Punishment of the Crime of Genocide (1948) mentioned an obligation on the states to extradite the offenders to those states on whose jurisdiction offense was committed.⁷²

1.16 European Arrest Warrant

European arrest warrant was a replacement of the European convention on extradition 1957. It was made in 2002 by eight-member states of EU namely Finland, United Kingdom, Portugal, Ireland, Spain, Denmark, Sweden and the Belgium. It is enforced since 1st January 2004. This system was established to harmonize the extradition procedures in different EU states because there are different legal systems in Europe. High profile cases like Pinochet⁷³ were solved by EAW. This idea of EAW found its basis from the EU's move towards "area of freedom, security, and justice".⁷⁴ The intention for the establishing this system to enhance the speed and ease the extradition in Europe by eliminating the administrative and political technicalities. First, it was made for the arrest of terrorists but then it was amended and other crimes were added to it.⁷⁵

1.17 An Appraisal of Relationship Between Asylum and Extradition⁷⁶

Asylum and extradition are mutually exclusive doctrines of international law as researcher examined above. These two concepts are a purely subject matter of public international law but their bifurcation is also significant due to the major division of laws. Asylum is the concept of

⁷² UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations, Treaty Series, vol. 78, p. 277, available at: <http://www.refworld.org/docid/3ae6b3ac0.html> [accessed 7 February 2018]

⁷³*ex parte Pinochet*, 38 I.L.M. 581, 2 All E.R. 97 (1999). see also *Prosecutor v. Furundzija, Case*, 1 P. 153 (1998).

⁷⁴"Commission of the European Communities." www.statewatch.org/news/2001/sep/euarrest2.pdf (accessed January 26, 2018).

⁷⁵Denis Staunton. "Introduction of EU Arrest Warrant to cause Problem for Ireland." *The Irish Times*, October 24, 2001: 10.

⁷⁶M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.211.

international human rights law and international refugee law. It is the name of protection to an individual who seeks refuge for his/her life in another state. It is granted on the basis of humanitarian grounds. Asylum is an administrative decision. It is an Inquiry which is conducted secretly. It is said that asylum stops where extradition begins.⁷⁷ But once a state decides to grant asylum, his extradition is deferred, for the time being, one can say that this is a procedural safeguard to the asylum applicant. But a refugee or person to whom the state has granted asylum can be -subject to legal requirements- extradited him/her where he/she is alleged for committing a crime.

Conversely, it is the absolutely opposite concept of asylum. Extradition is the concept of the criminal justice system. In this era, the criminal justice system cannot work without extradition. Because extradition is a judicial procedure; an inquiry is conducted for the determination of surrender to the accused person. The inquiry is conducted in an open court because the demanded person can be tortured or bear the severe punishment. In extradition, an individual is demanded by one state on the ground of its jurisdictional claims for the purpose of prosecution.

1.17.1 Similarities between Asylum and Extradition

Asylum and extradition are considered as opposite concepts but there are some similarities in the two doctrines.

1.17.1.1 Conflict of obligations

In procedures of both doctrines, the requested state found herself in a conflict of obligations such as when the question raises to grant extradition or not, the requested state is bound to observe certain principles of the doctrine of asylum such as the principle of non-refoulement⁷⁸. Same as

⁷⁷Peter Malanczuk. *Akehurst's modern introduction to international law*. Routledge, 2002. p.117.

⁷⁸Francesco Cherubini, *Asylum Law in the European Union* (London: Routledge, 2016). p.47.

when a person came into a state although illegally but it is proved that he/she will be persecuted in the requesting state. Then requested state is bound by the refugee law and customary law under customary law and international refugee law not to return that individual. The non-refoulement principle is a French term which came from the 'refouler' meaning thereby repel the enemy or drive back. In the immigration studies, refoulement means to return those individuals who entered a state illegally or without valid documents.⁷⁹ In the context of human rights and in particular international refugee law, it is a protection granted to an individual in whom a prohibition is created on the states to return an individual due to persecution in demanding state or state of origin.⁸⁰ This principle is enshrined in article 33 of the convention on the status of refugees.⁸¹

1.17.1.2 Acts of Sovereign

Convention on territorial asylum 1954 provides that this is the right of the sovereign to grant asylum or not. Asylum is considered as a right of the state not for the individuals. A state can reject or refused to grant asylum on some grounds mention in the convention.⁸² If the researcher talks about the extradition, it is same as the asylum in case of the authority of state because this is the right of the state to return or not the individual to requesting state even a state is not bound to ratify a multilateral or bilateral agreement relating to extradition. In these terms of sovereignty, these two concepts are similar in nature.

⁷⁹Guy S. Goodwin-Gill and Jane McAdam. *The refugee in international law*. Oxford University Press, 2007. p.201.

⁸⁰Elihu Lauterpacht and Daniel Bethlehem. "The scope and content of the principle of non-refoulement: Opinion." *Refugee protection in international law: UNHCR's global consultations on international protection* (2003): pp. 89-90.

⁸¹UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <http://www.refworld.org/docid/3be01b964.html> [accessed 6 January 2018]

⁸² See Article 32, "Convention Relating to the Status of Refugees 1951."

1.17.1.3 Subjects of asylum and extradition

The major subject of international law is a 'state'. But the subject of asylum and extradition is an individual.

1.17.1.4 Protection for the individual

If we follow the procedures of asylum and extradition then we will be found that these two doctrines protect the individual's interest rather than the state's interest. Asylum protects an individual from persecution. Extradition provides an individual a fair inquiry before expulsion from the state.

1.17.2 Dissimilarities between Asylum and Extradition

There are some differences between them; researcher will discuss some major differences here.

1.17.2.1 Purpose of asylum and Extradition

The asylum is based on the human right because the sole purpose of asylum is to protect the rights of an individual particularly the life of human beings.⁸³ It works to secure the individual from persecution. Extradition is a concept of international criminal works for the criminal justice system. If a person fled away into another state after the commission of an offense he/she can be refouled back on jurisdictional claims subject to bilateral or multilateral agreements. It works to protect the individual from prosecution.

⁸³M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.206.

1.17.2.2 Difference of Rationale

The basic principles of extradition are dual criminality⁸⁴, the rule of specialty, a treaty between the states etc. Conversely, we don't find a single principle of extradition into the asylum. In the asylum, political asylum and refugees asylum is granted on different considerations.

1.17.2.3 Proceedings of asylum and extradition

The proceedings of asylum and extradition are different. Asylum proceedings are secretly held. This is an administrative decision to grant asylum or not.⁸⁵ Contrary to asylum, extradition is a judicial decision. It is held in an open court except in certain circumstances. A person is extradited on the decision of court after fair inquiry.

1.18 Conclusion

In this chapter, the researcher briefly elaborated the two doctrines of international law namely asylum and extradition. The purpose of metaphor the asylum and extradition -in this chapter- separately is to lay down a foundation for the reader to comprehend the thesis properly. Asylum and extradition are intersected concepts. A situation can occur in a state where these two doctrines counter each other i.e. if extradition is sought by one state for the asylum seeker⁸⁶ or refugee; then the requested state is bound by the bilateral and multilateral extradition agreements and also bound by the principle of non-refoulement. Meaning thereby, if a person is an asylum seeker or refugee and he/she is in danger of being persecuted in the requesting state, so requested state must oblige the principle of non-refoulement rather than refouled that person in the mentioned circumstances. However, asylum and extradition are considered as opposite concepts by the fraternity but this

⁸⁴Ibid p. 500.

⁸⁵Ibid at. p.20.

⁸⁶Francesco Cherubini, *Asylum Law in the European Union* (London: Routledge, 2016). p.227.

chapter appraised some similarities between the two doctrines. Now, it will be easy to understand the next chapter which will discuss the asylum and extradition procedures in the United Kingdom.

Chapter 2

ASYLUM AND EXTRADITION IN UNITED KINGDOM

Chapter 2: ASYLUM AND EXTRADITION IN THE UNITED KINGDOM

2.1 Introduction:

In this chapter, the researcher will discuss the asylum and extradition laws and procedures in the UK separately. These two doctrines -asylum and extradition- cannot be discussed jointly because of their opposite concepts as I have discussed in the previous chapter. In order to proper construction of this chapter, the researcher will follow the consecutive writing approach (one after the one).

The UK is based on the common legal system⁸⁷; it has a broad range of legislative pieces and legal decisions on the subject asylum and extradition. In common legal system states, the decisions of superior courts in hard cases are called as precedents and they have the equal sanctity of the legislation passed by the parliament. So, the researcher will discuss some renowned cases of Britain as well as of ECtHR (European court of human rights) in this chapter.

2.2 Historical Background

As researcher discussed earlier, UK is common law state, it's superior court decisions are considered as a legislative source. Back in 1891, a court decision provides that "*no alien has any right to enter this country except by leave of the Crown.*"⁸⁸ This decision metaphors the rigid system for granting asylum in the UK in history. Same as The Aliens Restriction Act 1914,⁸⁹ the Aliens Restriction (Amending) Act 1919,⁹⁰ and the Rules and Orders formulated under the

⁸⁷ A common law system is the system of jurisprudence that is based on the doctrine of judicial precedent, the principle under which the lower courts must follow the decisions of the higher courts, rather than on statutory laws.

⁸⁸ "Musgrove v Toy: HL 1891." Accessed February 06, 2018. <http://swarb.co.uk/musgrove-v-toy-hl-1891/>.

⁸⁹ Section 2, "Aliens Restriction Act 1914." Accessed February 06, 2018. <https://www.legislation.gov.uk/ukpga/Geo5/4-5/12/contents/enacted>.

⁹⁰ Section 92, "Aliens Restriction (Amendment) Act 1919."

abovementioned acts⁹¹ have given the statutory basis and created a limitation on immigration in UK. Presently, Immigration act 1971⁹² and Immigration, nationality and asylum act 2006⁹³ are relevant laws dealing with the asylum system in UK. The rules made the upper mentioned laws are flexible and they can be amended according to need of time. A very simple procedure is to be followed to amend the rules of immigration i.e. a statement to the change the rules of immigration is provided to the parliament for consideration. These changes become the law in forty days unless parliament of UK object upon it.

2.3 Asylum law and Practice in UK

The UK has a set of provisions⁹⁴ to grant asylum⁹⁵ for those who are being persecuted in other states as well as to protect its own citizens from those who can exploit and abuse the asylum system. The first step to grant asylum begins at the borders⁹⁶ of United Kingdom. A well-established criterion has been developed for the purpose of acceptance and rejection. UK has a list of safe countries⁹⁷, if an individual is from a country of the safe list, his/her application would be rejected at the first instance. And for other asylum applications, a well-established criterion of

⁹¹ Aliens Order 1920 | Making Britain. Accessed February 07, 2018. <http://www.open.ac.uk/researchprojects/makingbritain/content/1920-aliens-order>.

⁹² "Immigration Act 1971."

⁹³ Ibid supra note 2.

⁹⁴ "The Immigration, Asylum and Nationality Act 2006 (Commencement No. 6) Order 2007.". Accessed February 02, 2018. <http://www.legislation.gov.uk/uksi/2007/1109/made>.

⁹⁵ Steve Peers and Nicola Rogers, *EU Immigration and Asylum Law Text and Commentary*, vol. 12 (Boston, USA: MartinusNijhoff, 2006). p.10.

⁹⁶ Ibid p.169.

⁹⁷ Francesco Cherubini, *Asylum Law in the European Union* (London: Routledge, 2016). p.82.

international⁹⁸ law is followed i.e. the person seeking asylum has a justifiable fear of persecution⁹⁹ or other injury.

2.4 Asylum Laws and Policy

Generally, an individual can apply for the asylum after entering into the UK territories. A well prescribed criteria is provided to grant asylum on the asylum applications. The applicants are required to submit applications on a prescribed proforma. Those whose applications are accepted got the refugee status. Rejected applicants are not eligible for the refugee status,¹⁰⁰ however, they can be granted the provisional leave to stay in the UK on the humanitarian grounds. The status of refugee and leave granted on humanitarian grounds are given for the five years at initial level. They have the access towards the welfare funds.¹⁰¹ A person is qualified for the citizenship in UK after staying five years legally in UK.¹⁰²

From April 2015, an individual can enter in the UK after going through the biometric procedure. A system of exit checks has been incorporated, by which the record of outgoing persons is reconciled with the immigration database. This system prevents the duplicate applications and checks upon the individuals having criminal background.¹⁰³

⁹⁸ United Nations. "Convention and Protocol Relating to the Status of Refugees 1951." UNHCR. Accessed April 02, 2018. <http://www.unhcr.org/3b66c2aa10>

⁹⁹ Matthew E. Price, *Rethinking Asylum: History, Purpose and Limits* (Cambridge: Cambridge University Press, 2009). p.103.

¹⁰⁰ Francesco Cherubini, *Asylum Law in the European Union* (London: Routledge, 2016). P.29.

¹⁰¹ Gower, Melanie. "Constituency Casework: Asylum, Immigration and Nationality." Commons Library Briefing - UK Parliament. May 13, 2015. p. 6.

¹⁰² Section 6, "British Nationality Act 1981.

¹⁰³ "Asylum and Immigration Appeals Act 1993." Accessed February 07, 2018. <https://www.legislation.gov.uk/ukpga/1993/23/contents>.

The Government of UK is aware of the fact that persons are being persecuted in their states and they are legally entitled to have the protection or temporary refuge.¹⁰⁴ But the other side of the coin is some people are seeking asylum for their undesirable purposes. So, the policy, laws, and rules are vastly complex due to speculations. The major laws and rules governing the asylum procedures in the UK is Immigration Act 1971¹⁰⁵ and Immigration Rules.¹⁰⁶ The Immigration Act 1971 provides that a person i.e. aliens who entered in the UK without permission had committed an offense.¹⁰⁷ There are some conditions to enter in the UK, if an alien enters in the UK by violating those conditions then it is a prosecutable offense. Refugee convention and the European convention on human rights are not incorporated in UK domestic law.¹⁰⁸

2.4.1 Government Department Responsible for Asylum

The home department is responsible for all the matters relating to asylum, immigration, nationality and border issues. It has some directorates to deal with the particular issues. Each directorate is headed by a Director General.

Minister and Home Secretary for Immigration are responsible to deal with the asylum applications.¹⁰⁹ Authorities of immigration are liable to check the compliance of relevant laws such as working without authorization, it also removes the individuals those who entered in the UK illegally. Border Security force (BSF) is in charge for the custom control at UK ports and airports.¹¹⁰

¹⁰⁴ Steve Peers and Nicola Rogers, *EU Immigration and Asylum Law Text and Commentary*, vol. 12 (Boston, USA: MartinusNijhoff, 2006), p.453.

¹⁰⁵ Ibid supra note 8.

¹⁰⁶ "Immigration Rules 1994.". Accessed February07, 2018. <http://www.refworld.org/docid/3ae6b5b00.html>.

¹⁰⁷ Ibid supra note 8.

¹⁰⁸ Section 23, "Asylum and Immigration Appeals Act 1993." Accessed February08, 2018. <https://www.legislation.gov.uk/ukpga/1993/23/contents>.

¹⁰⁹ Hawkins, Oliver. "Asylum Statistics." Commons Library Briefing - UK Parliament. January 23, 2018. p.10.

¹¹⁰ Ibid supra note 6.

2.4.2 Criteria to Determine the Asylum Applications

Asylum claims are decided on the objective basis rather subjective.¹¹¹ Immigration officials receive the applications for asylum and take no part in determining them, they forward the applications to the UK visas and immigration then it takes the decision on the behest of Secretary Home Department. Secretary of state issues the instructions for asylum policy which provides the guidance to the authority in making the decisions to grant or reject the asylum.¹¹²

Convention relating to the status of refugees 1951 was the first international instrument which enunciated a comprehensive definition of refugee.¹¹³ It was very difficult for the framers of this convention to agree upon this definition.¹¹⁴

A person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country.¹¹⁵

UK further supplements some criteria in determining the asylum application.

An asylum seeker has arrived in any port of UK or already present in the UK.

He is a refugee, as defined in regulation 2 of The Refugee or Person in Need of International Protection (Qualification) Regulations 2006.

¹¹¹ Ibid supra note 14.

¹¹² "Asylum Policy." Visas and Immigration Operational Guidance: Asylum Policy. Accessed February08, 2018. <https://www.gov.uk/topic/immigration-operational-guidance/asylum-policy>.

¹¹³ Steve Peers and Nicola Rogers, *EU Immigration and Asylum Law Text and Commentary*, vol. 12 (Boston, USA: MartinusNijhoff, 2006). p.323.

¹¹⁴ Francesco Cherubini, *Asylum Law in the European Union* (London: Routledge, 2016). p.8.

¹¹⁵ Article 1, United Nations. "Convention and Protocol Relating to the Status of Refugees." UNHCR. Accessed February09, 2018. <http://www.unhcr.org/3b66c2aa10>

There is no reasonable grounds and circumstances which can cause a threat to the national security of UK. If the application would be rejected it can breach the Geneva Convention and cause him to send back in the country where his life is threatened on account of his race¹¹⁶, religion,¹¹⁷ nationality¹¹⁸, social group,¹¹⁹ political opinion¹²⁰ etc.¹²¹

2.4.3 Prohibition on obtaining Refugee Status

There must be a balance of need for the people who have the genuine need of it rather than the applicants who have “undesirable purposes”. If an individual is a threat for the community of UK, he can be subjected to deportation on the direction of secretary.¹²² Same as if Immigration officer has some reliable information which can be considered as not conducive to the public good. For example, conduct and character of the person are undesirable to give him leave to enter.¹²³

2.4.4 Restricted Leave

Restricted leave is granted to those individuals who could not qualify for asylum sanctuary in the UK. This is a type of temporary refuge, it is granted on humanitarian reasons. If it is not granted to the individuals then it can cause breach of UK’s obligation under ECHR.¹²⁴ For that reason, an individual is given restricted leave.¹²⁵ Moreover, restricted leave is not granted in typical cases where the asylum seeker has committed war crimes, a crime against humanity outside the country.

¹¹⁶ Steve Peers and Nicola Rogers, *EU Immigration and Asylum Law Text and Commentary*, vol. 12 (Boston, USA: MartinusNijhoff, 2006). p.558.

¹¹⁷ Ibid

¹¹⁸ Ibid p.559.

¹¹⁹ Ibid p.561.

¹²⁰ Ibid p.559.

¹²¹ "Immigration Rules 1994.". Accessed February07, 2018. <http://www.refworld.org/docid/3ae6b5b00.html>.

¹²² Ibid

¹²³ Ibid

¹²⁴ "Exclusion under Article 1F of the Refugee Convention." GOV.UK. Accessed February09, 2018. <https://www.gov.uk/government/publications/asylum-instruction-exclusion-article-1f-of-the-refugee-convention>.

¹²⁵ "Restricted Leave." GOV.UK. Accessed April 25, 2018. <https://www.gov.uk/government/publications/restricted-leave-asylum-casework-instruction>.

2.4.5 Revoking Refugee Status

The status of refugee can be revoked by the State Secretary on the grounds such as misrepresentation, omitted facts and false documentation which were used for seeking asylum in the UK.¹²⁶ If the disclosure about the forged documentation appears after the granting of asylum and it seems that this individual is not conducive for the community, then he can be deported/removed on an immediate basis by revoking his status.

2.4.6 Accommodation and Benefits¹²⁷ for Asylum Seekers

To provide support to the asylum seekers is the sole liability of the immigration authorities.¹²⁸ And to provide accommodation is the responsibility of the home department.¹²⁹ If they are destitute.¹³⁰ Local authorities may be insisted to provide the accommodation.¹³¹ Support given by the home office includes the utilities, free access to schooling and healthcare and a weekly cash allowance is also provided for needs.¹³²

It is a common perception that the UK has a soft policy for asylum seekers. It was before the 2000 but now it is very conservative. The government introduced new laws and rules after 2000, these laws provide that asylum seekers are allowed for administrative detention, they are not permitted

¹²⁶ Ibid

¹²⁷ Steve Peers and Nicola Rogers, *EU Immigration and Asylum Law Text and Commentary*, vol. 12 (Boston, USA: MartinusNijhoff, 2006). p.725.

¹²⁸ "Immigration and Asylum Act 1999." Accessed February 10, 2018. <https://www.legislation.gov.uk/ukpga/1999/33/contents>.

¹²⁹ Section 21, "National Assistance Act 1948." Accessed February 10, 2018. <https://www.legislation.gov.uk/ukpga/Geo6/11-12/29/section/21>.

¹³⁰ Policy Bulletin. "Duty to Offer Support, Family Unity, Vulnerable Persons, Withdrawing Support". Accessed February 011, 2018.

¹³¹ Section 33, "National Assistance Act 1948." Accessed February 10, 2018. <https://www.legislation.gov.uk/ukpga/Geo6/11-12/29/section/21>.

¹³² "Reforming Support for Failed Asylum Seekers and Other Illegal Migrants." GOV.UK. Accessed February 11, 2018. <https://www.gov.uk/government/consultations/reform-of-support-for-failed-asylum-seekers-and-other-illegal-migrants>.

to work in the UK, limit the benefits provided.¹³³ Asylum seekers from the state which deemed as a safe state by the UK are considered as unfounded claim and can be removed from the UK.¹³⁴

2.4.7 Support for Failed Asylum Seekers

If an asylum seeker become destitute in fourteen days and also unable to get refugee status or protection on humanitarian grounds, then they can obtain support under section 4 of Immigration Act 1999.¹³⁵ This support is also known as section 4 support¹³⁶ to the asylum seekers. On March 31, 2015, 4900 failed asylum seekers were receiving £28 million support.¹³⁷ This principle of support is wrong as the government is spending a large amount on those who are not entitled to the asylum. Another factor is that people are abusing this support.¹³⁸

2.5 Appeals on Refusals

Special Tribunals services are the forums of appeal against the refusal to grant asylum. It is a dual system, at first instance, Tribunal's asylum support chamber is liable for examination of appeals against determinations for termination and withdraw of financial support and accommodation.¹³⁹ The second appeal lies in the Court of Appeal against the decision Tribunal service.

¹³³ Section 37, "Nationality, Immigration and Asylum Act 2002." Accessed February11, 2018. <http://www.legislation.gov.uk/ukpga/2002/41/contents>.

¹³⁴ "Five Year Strategy for Asylum and Immigration." Accessed February11, 2018. <https://www.gov.uk/government/publications/five-year-strategy-for-asylum-and-immigration>.

¹³⁵ Section 95(3), "Immigration and Asylum Act 1999." Accessed February12, 2018. <https://www.legislation.gov.uk/ukpga/1999/33/section/95>.

¹³⁶ "The Immigration and Asylum (Provision of Accommodation to Failed Asylum-Seekers) Regulations 2005."

¹³⁷ Gower, Melanie. "Asylum Support: Accommodation and Financial Support for Asylum Seekers." Commons Library Briefing - UK Parliament. October 14, 2015. Accessed February12, 2018. <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01909>. p. 13.

¹³⁸ "Reforming Support for Failed Asylum Seekers and Other Illegal Migrants." Accessed February12, 2018. <https://www.gov.uk/government/consultations/reform-of-support-for-failed-asylum-seekers-and-other-illegal-migrants>. p. 6.

¹³⁹ Gower, Melanie. "Asylum Support: Accommodation and Financial Support for Asylum Seekers." Commons Library Briefing - UK Parliament. October 14, 2015. Accessed February12, 2018. <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01909>. p. 4.

2.5.1 Appeals Process

An asylum seeker has the right to make an appeal against the decision of UK Visas and immigration but the right of appeal has been reduced by the Immigration Act 2014.¹⁴⁰ Many grounds of appeal have been repealed. Instead, they refused applicants have given the right of administrative review of their applications.¹⁴¹ 59% applications are refused at the first instance¹⁴², most of the time two-thirds of the refused applicants challenge the decision in appeal and in appeal one quarter got the relief.¹⁴³

2.5.2 Special Immigration Appeals Commission

Decisions taken on the threat of national security and public interests are too appealable but an independent court is created for hearing the appeals from those decisions due to their very nature. "*Special Immigration Appeals Commission (SIAC)*"¹⁴⁴, it was created in 1997. They hear the decisions of deportations¹⁴⁵ and removal from the UK on national security ground.¹⁴⁶ SIAC is not considered as a court, so it is not bound to follow the traditional and conventional procedures. It takes evidence¹⁴⁷ that is not admissible in the court and it can allow those witnesses¹⁴⁸ for testimony those cannot be cross-examined by the appellants.

¹⁴⁰ Section 30, "Immigration Act 2014." Accessed February 13, 2018. <http://www.legislation.gov.uk/ukpga/2014/22/contents/enacted>.

¹⁴¹ Ibid supra note 41

¹⁴² Hawkins, Oliver. "Asylum Statistics." Commons Library Briefing - UK Parliament. January 23, 2018. Accessed February 13, 2018. <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN01403>.

¹⁴³ Ibid at 2

¹⁴⁴ "Special Immigration Appeals Commission Act 1997." Accessed February 12, 2018. <https://www.legislation.gov.uk/ukpga/1997/68/contents>.

¹⁴⁵ M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.228.

¹⁴⁶ "The Special Immigration Appeals Commission (Procedure) Rules 2003." Accessed February 12, 2018. <http://www.legislation.gov.uk/uksi/2003/1034/contents/made>.

¹⁴⁷ "PP v Secretary of State for the Home Department: SC 23 November 2007." Accessed February 13, 2018. <http://swarb.co.uk/a-v-secretary-of-state-for-the-home-department-and-x-v-secretary-of-state-for-the-home-department-hl-16-dec-2004/>.

¹⁴⁸ Ibid at 8

2.6 Deportation on National Security Grounds

'National security concern' is considered as a very wealthy ground of refusal an asylum application. An individual can be deported immediately on the said ground because its appeal is limited. National security is not defined in the UK's legislation or convention. Courts are reluctant to define it in the decisions, "*even in those cases where the Courts have considered the extent of their powers to review executive decisions of that kind.*"¹⁴⁹ because they consider that executive is in a better position to define it.¹⁵⁰ Terrorism is taken as the major ground of rejection on the basis of national security.

2.7 Path to Naturalization¹⁵¹

Individuals including Refugees who are living in the UK lawfully may be eligible after some specified time period. They can apply for UK citizenship by meeting some additional requirements of citizenship. Primary law dealing with the nationality is British nationality Act 1981 as amended.¹⁵² Refugees can seek British citizenship by way of naturalization. It is not given to the individuals on the ground that they are living in the UK lawfully or marrying with the British girl. Individuals must meet the criteria mentioned in British nationality Act 1891.¹⁵³

¹⁴⁹ "Hilton v. Secretary of State for Foreign and Commonwealth Affairs, Information Tribunal (National Security Appeals Panel).

¹⁵⁰ "A v Secretary of State for the Home Department UKHL," Accessed February 13, 2018, https://en.wikipedia.org/wiki/A_v_Secretary_of_State_for_the_Home_Department

¹⁵¹ M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.244.

¹⁵² Participation, Expert. "British Nationality Act 1981." Legislation.gov.uk. January 01, 1982. Accessed May 06, 2018. <https://www.legislation.gov.uk/ukpga/1981/61>.

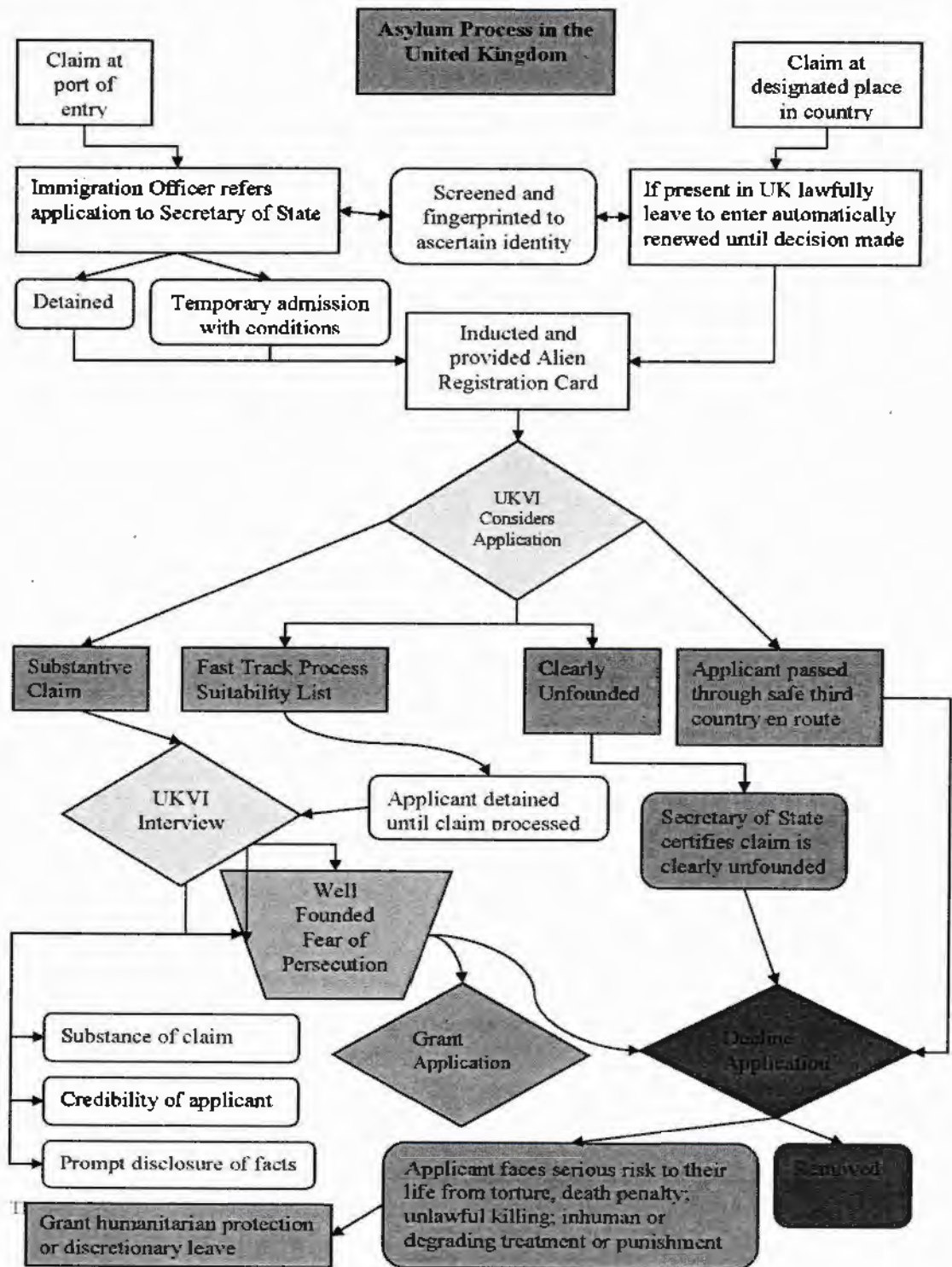
¹⁵³ "Become a British Citizen." GOV.UK. Accessed May 06, 2018. <https://www.gov.uk/becoming-a-british-citizen>.

2.8 Immigration Detention

The officials of the Home department can detain the asylum seekers who have been entered in the UK without proper authorization till their determination of asylum application.¹⁵⁴ It is the most controversial and objectionable asylum policy of the UK. This detention is for the administrative purpose to check the applicant's identity and his/her claim of asylum. There is no maximum time limit for that detention and even that detention cannot be challenged into the court. UK government should take measures to remove this executive abuse of power.

¹⁵⁴ McGuinness, Terry, Melanie Gower, and Oliver Hawkins. "Immigration Detention in the UK: An Overview." Commons Library Briefing - UK Parliament. June 13, 2017. Accessed May 06, 2018. <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7294>

2.10 Asylum Process in the United Kingdom - Chart



2.11 Extradition Law and Practice in the United Kingdom

Extradition is based on the principle of comity¹⁵⁵ in order to promote international cooperation and justice. It is not a predominant obligation in international law.¹⁵⁶ Extradition is the doctrine of the criminal justice system. Each country has its variant criminal justice system, different criminal theories, and diverse modus operandi to prosecute and convict the fugitives. However, due to its cooperative nature, each country accepts some level of the criminal justice system of the other state. Extradition is a gatekeeping mechanism because one of the major purposes is to return the individual for facing the trial or if convicted, to serve the punishment in the requested state.

Hence the dictum of extradition is not the process where the question of innocence or guilt is to be determined, it is a procedural step which enables one state to require a person from the other state on the ground of crimes committed on its territory. It is a fairness with the victims and promotion of rule of law in the state.

2.12 Historical Background

Extradition is not a new concept in England. It has a rich history of legislation and settled court decisions. England concluded five extradition treaties from 1174 to 1794. However, the nineteenth century is considered as the modern arena of extradition law and practice because in a very short phase the UK negotiated various extradition treaties with foreign states.¹⁵⁷ Prominent treaties included the Jay treaty with the United States 1794 and treaties with France and USA in 1842 and 1843 respectively. UK extradition law remained in a perpetual revolution from Extradition Act

¹⁵⁵ Briggs, Adrian. "The Principle of Comity in International Law." *Recueil Des Cours, Collected Courses*, Volume 354 (2007). p.15.

¹⁵⁶ "Independent Review of the United Kingdom's Extradition Arrangements." Accessed February 14, 2018. <https://www.gov.uk/government/publications/independent-review-of-the-united-kingdoms-extradition-arrangements>.

¹⁵⁷ M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.83.

1870 till the Extradition Act 1989. The purpose of the EA 1989 Act was to comply with the European Convention on Extradition. In the 1990s, EU took a step for the cooperation in the criminal justice system, the core of that cooperation was the domestic implementation by way of legislation or other means.¹⁵⁸ European Arrest Warrant (EAW) 2001 was established as a new regime in the criminal justice system by which fugitives will be sent back to requesting states by minimizing the procedural technicalities.¹⁵⁹ EAW system provides some framework directives into the member states.¹⁶⁰ UK -by complying the framework- rewrite the extradition law through Extradition Act 2003. There were some concerns about the extradition procedures in the UK, particularly a larger time is required for the purpose of extradition.¹⁶¹

2.13 Extradition Law in the United Kingdom

2.13.1 The Extradition Act 2003

The recent law governing the extradition matters in the UK is The Extradition Act 2003. This act recognized that extradition is an instrument for criminal prosecution internationally. It also emphasized that no one should be allowed to escape from prosecution just because of crossing international borders.¹⁶²

¹⁵⁸ "The European Convention on Extradition Order 1990." Accessed February14, 2018. <http://www.legislation.gov.uk/uksi/1990/1507/contents/made>.

¹⁵⁹ Warbrick, Colin, Dominic Megoldrick, Mark Mackarel, and Susan Nash. "Extradition and the European Union." *International and Comparative Law Quarterly* 46, no. 04 (1997). p.12.

¹⁶⁰ United Nations. "Council Framework Decision 2002/584 on the European Arrest Warrant and the Surrender Procedures between Member States." Accessed February14, 2018. <http://www.refworld.org/docid/3ddcfc495.html>.

¹⁶¹ "Full Text of "An Almanack . 1938". Accessed February14, 2018. https://archive.org/stream/in.ernet.dli.2015.83749/2015.83749.An-Almanack-1938_djvu.txt.

¹⁶² Committee Office, and House of Lords. " Extradition: UK Law and Practice" House of Commons - Transport, Local Government and the Regions - Appendices to the Minutes of Evidence. Accessed February14, 2018. <https://publications.parliament.uk/pa/ld201415/ldselect/ldextradition/126/12602.htm>.

2.13.2 Structure of Extradition Act 2003

Extradition Act 2003 bifurcated in two parts. **Part 1 category** and **part 2 category**, this division is made on the basis of territories such as EAW territories and Non-EAW territories respectively. Extradition requests by the EAW states are dealt with part 1 category and an expeditious procedure is provided to extradite a person.¹⁶³ Part 2 category contains the principles for extraditing the fugitives to all those states with whom the UK has a bilateral¹⁶⁴ or multilateral extradition treaty.¹⁶⁵

The purpose of EAW system is to ignore the lengthy extradition procedures among the EAW states for extraditing the accused persons and for those who have been convicted in one of the member states by the competent court.

A fast-track procedure¹⁶⁶ was developed by the EAW, some significant features are given below.

- There is no requirement as to prima facie case by requesting state. Only mutual recognition is necessary.
- There is the only judicial procedure for extraditing the individual and executive is detached from the procedure.
- The requirement of dual criminality is removed. Offense bearing the punishment of three years imprisonment is an extraditable offense.
- The exception of extradition to the citizen is deleted.

¹⁶³ "The Extradition Act 2003 (Designation of Part 1 Territories) Order 2003," Accessed February 15, 2018, <https://www.legislation.gov.uk/ukSI/2003/3333/contents/made>.

¹⁶⁴ M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.42.

¹⁶⁵ *Ibid.* p.91.

¹⁶⁶ Steve Peers and Nicola Rogers, *EU Immigration and Asylum Law Text and Commentary*, vol. 12 (Boston, USA: Martinus Nijhoff, 2006). p.367.

Part 2 category mainstreamed the procedures for extradition to non-EAW states. A judicial and executive procedure is prescribed for extraditing the accused person. In part 2, no specific offenses have been mentioned because conditions of extradition treaties vary from one state to another state. There is some state with whom the UK has no extraction treaties. This is because of political¹⁶⁷ concerns such as the UK did not recognize Taiwan as an independent state so it cannot negotiate a treaty with Taiwan. The UK can extradite a person to a state or territory even if there are no specific extradition arrangements with them. The UK extradited Zain Taj Dean¹⁶⁸ to Taiwan despite no extradition treaty. They are called ad hoc arrangements or renditions¹⁶⁹. Ad hoc arrangements are entered to meet the needs of states in certain times.

2.14 Extradition Procedure in the United Kingdom

The researcher will discuss here the brief procedure of extradition in beginning. Comprehensive procedural principles will be discussed later in this chapter.

When an extradition request is received by the UK, if it is from the EAW state, the request must be certified by the designated authority. National Crime Agency (NCA) is the concerned authority in England, Wales and Northern Ireland. In Scotland, Crown Office and Procurator Fiscal Service is the concerned authority. These authorities certify the extradition request made by the EAW state. Non-EAW state's request is certified by the Home Secretary. This certification allows the enforcement authorities to issue the arrest warrants of the requested person. If the requested person is arrested when he/she is brought before the court for the initial hearing. There are different courts

¹⁶⁷Matthew E. Price, *Rethinking Asylum: History, Purpose and Limits* (Cambridge: Cambridge University Press, 2009). p.69.

¹⁶⁸ "British Citizen Goes on the Run with Fake Passport in Taiwan." *The Telegraph*. January 30, 2013. Accessed February 15, 2018. <https://www.telegraph.co.uk/news/worldnews/asia/taiwan/9836278/British-citizen-goes-on-the-run-with-fake-passport-in-Taiwan.html>.

¹⁶⁹ Rendition is a "surrender" or "handing over" of persons or property, particularly from one jurisdiction to another. For criminal suspects, extradition is the most common type of rendition.

in England, Wales, Scotland and North Ireland for seizing the extradition matters. Westminster Magistrates Court heard the cases of extradition in England and Wales. Sheriff Court in Scotland. Resident magistrates are responsible for hearing extradition matters in Northern Ireland.

The judge must in initial hearing:

- Determine the identity of the requested person;
- Inform the accused person about the extradition request and asking for his/her consent for extradition;
- If accused person has not consented to extradition, then fix a date for hearing the matter.

On the date of hearing, an inquiry is made out for the purpose of satisfying the judge that requested person has committed an extraditable offense and no bars to extradition applies. Order of extradition is made subject to fulfillment of abovementioned conditions. If any bars apply on extradition, then the arrested person must be discharged. Appeals may be preferred in the high court and supreme court.¹⁷⁰

2.14.1 Bars to Extradition

There are certain bars on extradition prescribed in the 2003 Act. These bars are the limitations on the extradition requests. Extradition cannot be ordered in violation of under mentioned bars.

- A person cannot be subjected to the trial of that offense for which he has already convicted or acquitted i.e. double jeopardy;

¹⁷⁰ Committee Office, and House of Lords. " Extradition: UK Law and Practice" House of Commons - Transport, Local Government and the Regions - Appendices to the Minutes of Evidence. p.34. Accessed February14, 2018. <https://publications.parliament.uk/pa/ld201415/ldselect/ldextradition/126/12602.htm>.

- Extradition cannot be ordered on extraneous considerations such as prosecution, detention on the basis of race, nationality, religion etc;
- If the accused person was a child at the time of the commission of the offense for which he has been sought for the extradition;
- The principle of specialty must be satisfied by the issuing state i.e. a person must be prosecuted for the alleged offense for which he has been sought;
- Human rights concerns as mentioned in ECHR;
- Proportionality;
- Forum;
- Mental and physical considerations must be considered for extraditing an accused person.
- Abuse of process, the court must satisfy itself that proceedings will not be abused.¹⁷¹

2.15 Amendments in the Extradition Act 2003

Four amendments have been taken place in Extradition Act 2003:

- Forum bar was created by Police and Justice Act 2006;¹⁷²
- Policing and Crime Act 2009 introduced Schengen Information System, deferral of extradition request in order to the conclusion of the domestic trial or serve the sentence;¹⁷³
- The Anti-social Behavior, Crime, and Policing Act 2014 stated a bar, allowing the temporary transfer of requested persons, leave to appeal requirement;¹⁷⁴

¹⁷¹ "Regina (Kashamu) v Governor of Brixton Prison and Another; Regina (Kashamu) v Bow Street Magistrates' Court; Regina (Makhulif and Another) v Bow Street Magistrates' Court: QBD 23 Nov 2001. pp. 27–31.

¹⁷² "Police and Justice Act 2006," Accessed February 15, 2018, <https://www.legislation.gov.uk/ukpga/2006/48/contents>.

¹⁷³ "Policing and Crime Act 2009," Accessed February 15, 2018, <https://www.legislation.gov.uk/ukpga/2009/26/contents>.

¹⁷⁴ "Anti-social Behaviour, Crime and Policing Act 2014," Accessed February 16, 2018, <http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>.

2.16 Human Rights bars on Extradition from the UK

A Judge is duty bound to determine the extradition requests in compliance with the ECHR.¹⁷⁵ Human rights bar applies to both categories i.e. EAW states and Non-EAW states. There is a presumption taken by the courts that the issuing state will not violate the human rights bar. This presumption is worthful in cases of EAW states because EAW states are signatory to ECHR and there are certain judicial and legal bars contained in the convention. In, part two category, the presumption is rebuttable.

2.17 Bars mentioned in ECHR¹⁷⁶ Articles

Article 3 (Chance of torture and inhumane treatment or punishment in the issuing state) and Article 8 (Protection of personal and family rights) of the convention are cited as prohibitions on extradition.

2.17.1 Article 3 of ECHR

Article 3 provides an absolute right and ample prohibition on the extradition if there are substantial grounds to believe that the requested person will be tortured in the requesting state.

ECtHR defined in **Soering case**,¹⁷⁷ the torture, inhumane or degrading treatment that there must be the severity of ill-treatment, it also depends upon the method of its execution. It was established that member state is in violation of ECHR if an individual is extradited where he could be treated in breach of the convention's rights. The UK held responsible for expulsion because there were

¹⁷⁵ Expert Participation, "Extradition Act 2003," Accessed February 16, 2018, <https://www.legislation.gov.uk/ukpga/2003/41/section/21>.

¹⁷⁶ Francesco Cherubini, *Asylum Law in the European Union* (London: Routledge, 2016), p.176.

¹⁷⁷ *Soering v United Kingdom* (1989) 11 EHRR 439

substantial grounds to believe that Soering will face torture or inhumane punishment if extradited.

This case settled a protection under Article 3 of ECHR.

In **Hawking and Edward case**,¹⁷⁸ ECtHR explained the meaning of torture by saying that, severity varies from case to case and the 'real risk' was defined as the possibility of the event on basis of probability. That probability must be 51% on its occurrence.

2.17.2 Article 8 of ECHR

Article 8 is a qualified right. "*Everyone has the right to respect for his private and family life, his home and his correspondence.*" Government authorities are not allowed to do interference with the constitutional rights of citizens but as the researcher mentioned earlier that it is a qualified right so in exceptional circumstances Government can suspend or terminate that right of individuals.

In *a case*¹⁷⁹ Supreme court stated that there is no exact test to measure the exceptional circumstances. Family and private rights are given weight by the public interest in the matters of extradition. But "public interest is more important than the private interest" but this principle varies from case to case.

Mr. Justice Blake in the *Matuszewski v Regional Court*¹⁸⁰ stated that the jurisdiction to review the judgment carries an equal status of the appeal and court must check that his decision was proportionate. The factors which carry the weight are a timeline, the seriousness of the matter impact on the victims.

¹⁷⁸ Harkins and Edwards v United Kingdom (2012) 55 EHRR 19

¹⁷⁹ HH v Deputy Prosecutor of the Italian Republic, Genoa (2012) 3 WLR 90

¹⁸⁰ Matuszewski v Regional Court in Radom (2014) EWHC 357 (Admin)

2.18 Assurances

Assurance is a concept in extradition whereby the requesting state provides a guarantee to the requested state for the protection of basic human rights of a requested person in the issuing state.

In the *Elashmawy case*,¹⁸¹ the Italian authorities provide an assurance to the UK authorities that the imprisonment of Elashmawy will follow the Article 3 of ECHR.

In *Othman (Abu Qatada) v United Kingdom case*,¹⁸² ECtHR has given criteria for courts in consideration of assurances matters. This matter is for the deportation of Abu Qatada but criteria laid down in it is completely applied in extradition matters.

- Terms and conditions of assurances have been disclosed to the court;
- Terms and conditions must be specific not the vogue;
- The person who is giving assurance is in position to bind its state for that assurance;
- Assurance is given by a Central Government or local authorities;
- Assurances provided are legal or illegal in issuing state;
- The issuing state is a party to ECHR or not;
- The relations between the states are abiding by nature or not;
- Assurances have been verified by the diplomatic office;
- A requested person has been previously treated in a manner violative to ECHR.

2.19 Appeal Against the Order of Extradition

There was an automatic right to appeal under Extradition Act 2003. The Anti-social Behavior, Crime and Policing Act 2014 has amended the process of appeal in extradition matters. It has

¹⁸¹ *Elashmawy v Prosecutor General of the Republic of Italy* (2014) EWHC 322 (Admin)

¹⁸² *Othman (Abu Qatada) v United Kingdom* (8139/09) (2012) 55 EHCR 1

abolished the automatic appeal process.¹⁸³ In the new law, an application is to lodged within 14 days in Non-EAW states and 7 days in EAW states. Arguable Case is a threshold for seeking leave to appeal. Application for leave to appeal can be dismissed in limine.¹⁸⁴ This amendment streamlined the extradition procedure with other laws because there are very few laws in which automatic right of appeal is provided.

2.19.1 Criticism

Some jurists consider that right of an automatic appeal was a safety for the requested person which has been abolished by the law. It was a safeguard against the extradition. It is thought that leave to appeal created some complications in extradition proceedings.

The researcher's view about this new appeal process is that it expedites the extradition proceedings. Because the right of appeal has been limited by introducing the permission for the appeal. Another reason is that extradition is not full force trial rather it is an inquiry. The question of innocence or guilt is not to be determined at this stage, this appellate right is for the purpose of protecting the rights of a requested person in issuing state.

2.20 European Arrest Warrant

EAW was recognized in 2002 by the decision of Frame work on EAW. In actual it is the replacement of an old system of extradition in European countries. It was made by the eightmember states of EU. The purpose of EAW to harmonize the extradition procedures in different EU states. There is two major prevalent legal system in Europe i.e. Common Legal system and Civil Law Legal system. This EAW provides a liberal and comfortable procedure for

¹⁸³Kapferer, Sibylle. *The interface between extradition and asylum*. UNHCR Department of International Protection, 2003. p.89.

¹⁸⁴ Ibid. p.90.

extraditing the individuals in both legal systems. A high-profile case Pinochet¹⁸⁵ was also settled by the EAW approach. Firstly, it was introduced to extradite the terrorists but now it is enforced for all type of offenses. It removes many technicalities of an extradition proceeding. It is considered as swifter and streamlined process.

Extradition under the EAW removes the prima facie case requirement i.e. requesting state has to establish its prima facie case against the individual in the requested state. This scheme of extradition is a gateway to secure the criminal justice system among the EU states. The government of UK stated that EAW enabled the government to bring major criminals from EAW states in the very short period.

2.21 Conclusion

The United Kingdom is consisting of four states England, Wales, Scotland and Northern Ireland. It have devolved certain powers to the states by creating their own legislative bodies such as Scottish Parliament, Northern Ireland assembly and Welsh assembly. Certain powers have been devolved to these bodies but the subject of immigration, nationality, and asylum is not devolved it is retained by the UK. As it is shown above that, there is well-established criteria formulated for granting the asylum. Nor the asylum policy is flexible neither it is rigid. A true and real asylum seeker can get the asylum in the UK easily and a fake applicant is precluded in the first instance by the biometric and exit control system approach. There are some lacunas in the laws and rules such as an individual must be present in the UK for seeking asylum and administrative detention. But it can be said that the UK has its own fully prescribed forum for the asylum matters.

¹⁸⁵ *ex parte Pinochet*, 2000 A.C.1 119 (2000).*ex parte Pinochet*, 2000 A.C.1 119 (2000).

Extradition is considered as the gateway to secure the criminal justice at international level. A person -who has committed a crime in a state- can only be returned to a state by way of extradition for the purpose of prosecution. Law of one state cannot be applied in another state so that, extradition created an approach for bringing an individual from one state to another state. Extradition is a request by the one state to another for surrendering the accused person. There is no proper international treaty for the extradition process rather it is based on the principle of reciprocity and comity of nations. Extradition law in the UK is a refined one among the other states. Extradition Act 2003 is a comprehensive piece of legislation. In researcher's view, the division of procedure i.e. a different method for EAW states and a different approach is used for the non-EAW state must be synchronized. This division is also expensive in nature such as different authorities are required for certifying the extradition requests. This harmony will not affect the EAW system and provide an easy process towards extradition proceedings.

Chapter 3
ASYLUM AND EXTRADITION IN
PAKISTAN

Chapter 3: ASYLUM AND EXTRADITION IN PAKISTAN

3.1 Introduction

In this chapter, the researcher will -in the first part of this chapter- discuss about the asylum law and practice in Pakistan and then in second part, the law and procedure of extradition from Pakistan to other states. An interesting point here is that Pakistan has no special legislation relating to asylum system, neither it is a party to refugee convention 1951 nor the party to protocol relating to refugees 1967. Refugees are being treated in accordance with the Foreigners Act 1946. Since, Pakistan has not ratified the convention or protocol, so the rules mentioned in the convention are not binding on it. The question raises here that then how Pakistan has provided sanctuary to the 4 million Afghan refugees. The answer, in short, is Pakistan has provided asylum on Islamic principles of Hijarah and in addition to this, in 1993, Pakistan has signed cooperation agreement with United Nations High Commissioner for Refugees (hereinafter referred as UNHCR), by this agreement, Pakistan has given the mandate to the UNHCR for the determination of refugees status. Since 1993, UNHCR is dealing with the determination of refugee status in Pakistan.¹⁸⁶

3.2 Asylum Law in Pakistan

Unfortunately, there is no specific law to deal with the asylum claims in Pakistan. The heading above-mentioned must not be titled as written instead it should be written as “no asylum law in Pakistan”. But due to formal writing, the researcher wrote it as “asylum law in Pakistan”. There are some instruments which are indirectly applicable to the asylum law in Pakistan. Foreigners Act

¹⁸⁶ United Nations, "Co-operation Agreement between the United Nations High Commissioner for Refugees and the Government of Pakistan 1993," Accessed February 21, 2018, <http://www.unhcr.org/subsites/afghancrisis/46c98acd2/agreement-government-islamic-republic-pakistan-government-islamic-republic.html>.

1946¹⁸⁷ is the relevant law to deal with the asylum matters, but it has no express provisions with regard rather it simply states that Federal Government has the authority to make laws to deal with the aliens and foreigners. This is very vague document as 'alien' is not defined in it. No special criteria are prescribed for determining the aliens. From 1947 to 1993, it is said that asylum was granted to people by the interior ministry on the basis of Islamic principles of asylum. But there was no proper system to grant asylum. In 1993, a cooperation agreement¹⁸⁸ 1993 was signed between the Government of Pakistan (hereinafter referred as GOP) and UNHCR in which GOP allowed the UNHCR to grant asylum on the basis of GOP. So, it can be said that Foreigners Act 1946 and Cooperation agreement 1993 are the relevant instruments for granting asylum.

3.3 Asylum Procedure in Pakistan

There was no proper procedure prescribed for granting asylum before 1993. After signing the cooperation agreement in 1993 there is a specific procedure. The process to seek asylum is delineated by the UNHCH under its mandate. Now it is the responsibility of UNHCR to deal with the asylum claims on the behest of GOP.¹⁸⁹ Asylum claims are determined by the UNHCR office under its mandate. The asylum granted by the UNHCR is called as 'Mandate Refugees'.¹⁹⁰

There are different steps to seek asylum in Pakistan. The researcher will discuss all these steps in a consecutive manner and then will depict it with the help of chart.

¹⁸⁷ "The Foreigners Act, 1946." Accessed February 22, 2018. https://en.wikipedia.org/wiki/The_Foreigners_Act,_1946

¹⁸⁸ Ibid supra note 2

¹⁸⁹ "Asylum System in Pakistan." UNHCR Pakistan. Accessed February 23, 2018. <https://unhcrpk.org/about/asylum-system-in-pakistan/>.

¹⁹⁰Maynard, P. D. "The Legal Competence of the United Nations High Commissioner for Refugees." *International and Comparative Law Quarterly* (1982): pp. 415-425.

3.3.1 Application

In order to seek asylum, the asylum seeker must come in person to the UNHCR or its partner office. Applicant must possess the certain document such as Identity card, passport etc. If the applicant has no documents, even then, he/she can apply by showing some evidence which could be treated as relevant for granting asylum.¹⁹¹

3.3.2 Protection needs Assessment Interview

The applications then scheduled for the protection need assessment interview to identify that protection is needed or application is fake. If application will be founded to fulfill the criteria, then the application will be registered with UNHCR. If application will be founded as fake, then it will not be referred for registration with UNHCR.¹⁹²

3.3.3 First Instance Interview

After registration, an interview is taken of the accepted applicants. A day is intimated to the applicants for the interview. On the day of interview, the applicants must come with their complete family members and they must bring the document of registration with UNHCR. Applicants are required to bring all necessary documents which they have in their possession. UNHCR relies on the statements and documents. Documents are considered very supportive in the claim of asylum, so all necessary documents must be produced i.e. identity cards, school certificates, political party membership cards, birth certificates, service cards etc. UNHCR is conscious about these types of facts that it is difficult for the individuals to carry all travel documents in the freight situation, so failing to produce the relevant documents will not become the cause of the rejection. It is

¹⁹¹ "Leaflet for Asylum Seekers in Pakistan," Information Leaflet for Asylum Seekers in Pakistan Fill Online. p.1, Accessed February 23, 2018, <http://www.internshipcoverletterexample.com/form/65245992-Information-Leaflet-for-Asylum-Seekers-in-Pakistan>.

¹⁹² Ibid at p.2.

recommended for the asylum seekers to produce the concrete evidence in order to get asylum in Pakistan. Interview can be taken more than one time.¹⁹³

3.3.4 First Instance Decision

After interview, the applicants will be notified whether have been recognized as refugees or their claim have been rejected. The decision may take several months. If the application is accepted then the UNHCR will recognize you and your family as refugees. UNHCR will issue a refugee card which will be valid for 12 months.¹⁹⁴ However, UNHCR will assist you for the perpetual solution for residence. This card does not mean you are the legal immigrant of Pakistan, but it will protect you from the arrest for returning the refugees.

3.3.5 Application Rejection and Appeal

If the application is rejected at first instance interview, then the applicant will be given the reason for rejection in writing. However, applicant will have the right for reconsidering the application by UNHCR. Applicant must appeal against the decision within one month from the date of notification. Applicant must focus on the reason of rejection as if he/she will satisfy the UNCHR officials about the reason of rejection, he might be recognized as refugee in appeal. In appeal matters, the interview is not necessary as the decision is made on the basis of your appeal petition. However, interview can be conducted again in complicated cases.¹⁹⁵

¹⁹³ Ibid supra note 7 at p. 2.

¹⁹⁴ "Status Determination." Pakistan 2017 Regional Refugee Response Plan | Global Focus. Accessed February 24, 2018. <http://reporting.unhcr.org/node/3614>

¹⁹⁵ Ibid supra note 7 at p. 3.

3.4 Mandate Refugee

Mandate refugees are those persons who have been recognized as refugees by UNHCR acting under the authority of its Statute and relevant UN General Assembly resolutions. Mandate status is especially significant in States that are not parties to the 1951 Convention or its 1967 Protocol. As Pakistan is not the party to the convention 1951, so it has authorized the UNHCR to grant asylum to the individuals. This authorization is contravening notion as against the concept of sovereignty. To grant asylum is a sovereign right. If this right is being exercised by any other authority -in this context UNHCR- than this is the delegation of state sovereignty. This authorization shall be subject to confirmation by the relevant ministry of Pakistan. It will also cause double check upon the status determination of refugees.

Asylum procedure in Pakistan chart

Application

Protection Needs Assessment / Registration

1st Instance Interview

Rejection

Acceptance

Appeal Application

Identification of durable solution

(Within 4 weeks after the result)

Appeal Interview (If required by UNHCR)

Appeal Rejection

Appeal Acceptance

End of Administrative Procedure

Identification of durable solution

3.5 Islamic Asylum system

Islam is a universal religion, it embraces the different people from different races, ethnicities, and nationalities. The ideas of Islamic asylum and refugee protection makes the sense of inclusiveness. The Quran, most important scripture of Islam and the primary source of Sharia mentioned many times in it about the just, fair and cooperating society. An example can be quote here, Quran gave the framework of justice in inter-personal relationships toward the poor and needy people¹⁹⁶. The concept of asylum and refugee was the integral part since the creation of Islam. In 622 AD, Prophet Muhammad PBUH sought refuge in Madina when he was being threatened for persecution in Makkah. This migration (Hijrah in Islam) was the first time use of asylum protection in the other city-state.¹⁹⁷ The protection given by the people of Madina was the actual concept of asylum. Islam has given the obligation to Islamic states for protecting the poor and needy people, for that reason, the host state will be rewarded. The liability to protect the persecuted people can be found in the Fourth Surah of Quran.¹⁹⁸ "*He who migrates in the path of God will find frequent refuge and abundance*". Migration is necessary for the Muslims if their beliefs are threatened. Fifth Surah of

¹⁹⁶Manuty, M. Nur. "The Protection of Refugees in Islam: Pluralism and Inclusivity," *Refugee Survey Quarterly* 27, no. 2 (2008): p. 25.

¹⁹⁷Suhrke, Astri. "Refugees from Political Conflict," *The Cambridge Survey of World Migration*, 1995, p. 457.

¹⁹⁸ Ayat 97-99 (Indeed, those whom the angels take [in death] while wronging themselves - [the angels] will say, "In what [condition] were you?" They will say, "We were oppressed in the land." The angels will say, "Was not the earth of Allah spacious [enough] for you to emigrate therein?" For those, their refuge is Hell - and evil it is as a destination. Except for the oppressed among men, women and children who cannot devise a plan nor are they directed to a way. For those it is expected that Allah will pardon them, and Allah is ever Pardoning and Forgiving.)

Quran¹⁹⁹ states that Muslims should bound themselves by the treaties and agreement of refugee rights.

Aman is also used in Islamic terms for protecting the non-Muslims in Islamic states. There is a proper guideline in Surah Nine of Quran that Muslim populations must protect the rights of refugees and provide them the right to voluntary repatriation. The principle of *Hijrah* and *Aman* are the true sense of modern international refugee law but they have been ignored by the academic and political discourse.

3.6 Pakistan's National Policy on Refugees

Pakistan's new national policy was drafted in 2013.²⁰⁰ It is a comprehensive document which is based on reality on ground rather than theoretical approach. The document is not the wish of Government of Pakistan but to achieve it with practical executions. The preferred solution of Government of Pakistan has always been the return of Afghan refugees with dignity and safety to their homeland. Voluntary repatriation remains the core essential of Pakistan's national refugee policy. Pakistan is aware of the fact that the law and order situation in Afghanistan is poor and with no opportunities. To provide a conducive environment in Afghanistan is imperative because if the environment is not favorable than refugees will not return from Pakistan. Pakistan proposed 48 reintegration sites for the returnees where they can live a better life in their homeland. Education is the key to promote self-reliance. So, it was proposed in the policy that educational institutes

¹⁹⁹ Ayat 1 (O you who have believed, fulfill [all] contracts. Lawful for you are the animals of grazing livestock except for that which is recited to you [in this Qur'an] - hunting not being permitted while you are in the state of ihram. Indeed, Allah ordains what He intends.)

²⁰⁰Khan, Muhammad Abbas. "Pakistan's national refugee policy." *Forced Migration Review* 46 (2014): p. 22.

must be built for the returnees at 48 sites. By educating people, they will find themselves their durable solution.

3.7 Afghan Refugee in Pakistan

Massive refugee movements broke out in 1980s. The actual problem arose in 1978 when some urban people of Afghanistan headed by the **Noor Muhammad Taraki** came in power and tried to establish communist state. This communist regime was supported by the Soviet Union. Their policies for social welfare were challenged and resented by the Islamic scholars. Those who came on front and opposed the communist regime were responded very harshly. A civil war broke out there due to this problem. People of Afghanistan started fleeing towards the neighboring countries.²⁰¹ The first wave of Afghan refugee came in the end of 1978, they were only 3000 afghans. By the early 1979, the number reached at 20000.²⁰² In December 1979, Soviet army invaded Afghanistan in support of their allies. After few weeks, approximately 600000 afghans fled into Pakistan. This number increased throughout the decade. In 1990, UNHCR estimated that there were 3.3 million refugees in Pakistan.²⁰³ The Afghans in Pakistan were mostly ethnic Pashtuns, so they got refuge mostly in Pashtun dominated areas. UNHCR established 300 villages for these refugees²⁰⁴. Although they were free to move anywhere in Pakistan and seek any type of job.

²⁰¹ Muneer, Muhammad. "Refugee Law in Islam", *Journal of Social Sciences*, vol. 4, No. 2, August (2011), p. 3.

²⁰² *Ibid* at p. 12

²⁰³ Nicolson, Vaneesa Johan. *Reconciling Notions of Asylum and Refugees in Islam and International Law: A Case Study of Afghan Refugees in Pakistan*, Master's thesis, The University of Western Ontario, (2009), p. 5.

²⁰⁴ United Nations, "The State of The World's Refugees 2000: Fifty Years of Humanitarian Action," UNHCR, p. 116, Accessed February 25, 2018, <http://www.unhcr.org/afr/publications/sowr/4a4c754a9/state-worlds-refugees-2000-fifty-years-humanitarian-action.html>.

The Government of Pakistan had given the refugee status more than 4 million persons. It is the second largest protection provided to the refugees worldwide. As the researcher mentioned earlier GOP is neither party to the convention nor it has special legislation for asylum system. The Afghans were given the refugee status without any assessment criteria. The strict interpretation of Pakistan's law states that they are illegal immigrants.²⁰⁵ The entry, stay and movement of the foreigners is structured by the Foreigners Act 1946. This law is not the exhaustive piece of legislation, it has amended many times in history. Last amendment in the Act was took place in 2000. The provisions inserted states that the person who contravenes the provisions of Foreigners Act by entering Pakistan illegally will be sentenced with ten years imprisonment. It is said that Pakistan is reluctant to ratify the convention 1951 due to economic and geopolitical²⁰⁶ problems.

3.7.1 Durable Solution for Afghan Refugees

Refugee status is not a permanent solution.²⁰⁷ So, there is required a durable solution is for the refugees.²⁰⁸ International refugee law provides three kinds of solutions.

- 1) Voluntary repatriation;
- 2) Integration (Pakistan in this context);
- 3) Resettlement to a third country.²⁰⁹

²⁰⁵ United Nations, "Boosting Refugee Protection in Pakistan," UNHCR, 2006, p. 1, Accessed February 25, 2018, <http://www.unhcr.org/news/latest/2004/12/41c6d2524/boosting-refugee-protection-pakistan.html>.

²⁰⁶ Ibis supra note 17 at p. 13.

²⁰⁷ Trakroo, Ragini. "Refugees and the Law." New Delhi: Human Rights Law Network, 2011. p. 115.

²⁰⁸ Chimni, Bupinder S. "From resettlement to involuntary repatriation: towards a critical history of durable solutions to refugee problems." *Refugee Survey Quarterly* 23, no. 3 (2004): p. 58.

²⁰⁹ Goodwin-Gill, Guy S. *The Refugee in International Law*. Oxford: Clarendon Press, 1983. p. 219.

Pakistan's national policy delineated the first solution as voluntary repatriation to Afghan refugees.

Voluntary repatriation is further divided in two ways.²¹⁰

- 1) Organized Repatriation²¹¹
- 2) Spontaneous Repatriation²¹²

Organized repatriation means the return of refugees by the assistance and transportation of UNHCR. It is a preferred category by UNHCR because it helps to UNHCR to maintain record of refugees. Another way, which is not encouraged by UNHCR is return by refugee him/her self. It is not preferred because refugees return to their state of origin without cessation of hostilities. It carries out without prior intimation to UNHCR officials so maintain the record is impossible in this way.²¹³ First repatriation was taken place in 1989, in which 0.5 million refugees were repatriated after the Soviet Union withdrew their troops from Afghanistan.²¹⁴ In 1992, again approximately 1.2 million refugees were repatriated.²¹⁵ By the end of 1996, the total repatriation of refugees were 3.84 million.²¹⁶ The takeover of Kabul by the Taliban decreased the repatriation of refugees to their homeland due to law and order situation.²¹⁷ UNHCR reported that, in 1998²¹⁸,

²¹⁰ United Nations. "Handbook on Voluntary Repatriation: International Protection." UNHCR, p. 12. Accessed February 26, 2018. <http://www.unhcr.org/publications/legal/3bfe68d32/handbook-voluntary-repatriation-international-protection.html>.

²¹¹ Ibid supra note 23 at p. 196.

²¹² Ibid supra note 26 at p. 19.

²¹³ United Nations. "Protecting Refugees: A Field Guide for NGOs (produced Jointly by UNHCR and Its NGO Partners)." UNHCR, p. 63.

²¹⁴ Newland, Kathleen. "1998 World Refugee Survey." Carnegie Endowment for International Peace. Accessed February 27, 2018. <https://carnegieendowment.org/1998/07/30/1998-world-refugee-survey-event-53>.

²¹⁵ Schmeidl, Susanne, and William Maley. "The case of the Afghan refugee population: finding durable solutions in contested transitions." *Protracted displacement in Asia: No place to call home* (2008): p.140.

²¹⁶ United Nations. "Voluntary Repatriation." UNHCR. Accessed February 27, 2018. <http://www.unhcr.org/voluntary-repatriation-49c3646cfe.html>.

²¹⁷ Ibid supra note 31 at p. 135

²¹⁸ United Nations, "U.S. Committee for Refugees World Refugee Survey 1999 - Pakistan," Accessed February 28, 2018, <http://www.refworld.org/docid/3ae6a8cb14.html>.

approximately 93000 refugees were repatriated. In 1999²¹⁹, approximately 92000 refugees were repatriated with decreased number nearly 76000 refugees repatriated in 2000²²⁰. And in 2001²²¹, 65000 refugees were repatriated. Following the attack of 9/11, the repatriation stopped immediately. After that again afghans came to Pakistan for sanctuaries. It must be stated here that during the registration of PORs, 84.2% (393844 families) afghans were not willing to return to their homeland. It was due to lack of security, shelter, livelihood etc.²²²

3.8 Pakistan and International Standards for the Refugees

Pakistan's practice with regard to refugees is in question; whether Pakistan meets the international canons for the protection of refugees or not. Pakistan has neither ratified the convention 1951 nor the protocol 1967. So, Pakistan is not bound to comply with principles enshrined in the convention. Even Pakistan is not bound to comply with the upper mentioned convention and protocol but it has -in cases of Afghan refugees- met the standards set by the convention.

3.8.1 Personal status

Article 12²²³ of the convention states that personal status of the refugee is to be governed by the country of his/her domicile or if he has no domicile of any country then by his country of residence. In Pakistan, there are followers of different school of thoughts, but Hanafis are in majority. The

²¹⁹ United Nations, "U.S. Committee for Refugees World Refugee Survey 2000 - Pakistan," Accessed February 28, 2018, <http://www.refworld.org/docid/3ae6a8cf4.html>.

²²⁰ United Nations, "U.S. Committee for Refugees World Refugee Survey 2001 - Pakistan," Accessed February 28, 2018, <http://www.refworld.org/docid/3ae6a8cf4.html>.

²²¹ United Nations, "U.S. Committee for Refugees World Refugee Survey 2002 - Pakistan," Accessed February 28, 2018, <http://www.refworld.org/docid/3ae6a8cf4.html>.

²²² "Afghanistan's Refugee Crisis | Middle East Research and Information Project." The Syrian Regime's Business Backbone | Middle East Research and Information Project. Accessed March 01, 2018. <http://merip.org/mero/mero092401>.

²²³ The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

personal law of the citizens is to be applied in accordance to their sects. Pakistan's practice in this regard can be seen in Afghan refugee crisis. They have been facilitated to regulate their own personal law matters like marriage, divorce, inheritance etc.²²⁴

3.8.2 Movable and Immovable Property

Article 13 of the refugee convention 1951 states that state must provide the conducive environment to the refugees as it is generally available for the aliens with regard to acquire movable and immovable property. Pakistan's law in this regard does not prevent the foreigners to acquire the property. So, there is no bar on the refugees to acquire the property. However, there was imposed a restriction on the Afghan refugee by a notification of interior ministry.²²⁵ If the researcher depicts you the reality on ground, it is now open secret that Afghans are acquiring property in different parts of Pakistan. Apart from the other cities, they have acquired the property in Islamabad Capital Territory. They have shops in the luxury markets of Islamabad such as 'Blue Area', 'Supermarket' and 'Jinnah Super Market'. Same as they have also constructed houses in the sectors of Islamabad. The above evidences show that Pakistan is complying extraordinary in accordance with the convention 1951.

3.8.3 Employment resources for refugees

Article 17²²⁶ of the convention states that contracting state must provide the wage-earning sources to the refugees. Restrictions on the foreign nationals shall not be applied on refugees but refugees cannot be employed in the government and semi-government departments. However, they can be employed in private sector and Government has encouraged the Afghan refugees to be employed

²²⁴ Page 91 of

²²⁵ Smyser, William R. *Refugees: extended exile*. Vol. 129. Praeger Publishers, 1987. p. 92.

²²⁶ "Community Based Social Work with Afghan Refugees in Pakistan / by David Millwood," 1995.

in private sector. Much of Afghan refugees are working in construction companies as a lower staff. Pakistan's practice in this regard is partially complied with

3.8.4 Self-Employment

Article 18 states that state must provide the favorable opportunities to the refugees for self-employment in the fields of agriculture, industry, and handicraft. As far as Pakistan is concerned, it has treated the Afghan refugees like their own nationals. There is no specific record as to this regard but visit to any major city will show that how refugees are doing their businesses. The major business of Afghan refugees are peddling cigarettes, handicraft goods, carpets and running restaurants. In Islamabad, the 'Sunday bazar' held at Peshawar Morr Kashmir highway. Refugees run their own business in that Jumma bazar. In Multan, the major market is Hussain Aghai Bazar, they have their own shops of shoes and dresses.

3.8.5 Education to Refugees

According to Article 22²²⁷ of the convention 1951, states must provide the same elementary education to the refugees as they are providing to their own nationals. Particularly with respect to remission in fees, foreign scholarships, technical education etc. Pakistan's practice in this regard is far better than the requirement in convention. There have been established elementary schools in the camps of Afghan refugees. There are distinctive schools for male and female in the camps.²²⁸ Government had established 450 schools in NWFP (after eighteenth amendment it is now name as KPK) for the purpose of educating the Afghan children because 2.4 million Afghanrefugees out

²²⁷ The Contracting States shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education.

²²⁸ Humanitarian Assistance Programme for Afghan Refugees in Pakistan (Islamabad: Chief Commissionerate for Afghan Refugees, Government of Pakistan, August 1983), p.10.

of 3 million were living in NWFP back in 1984.²²⁹ There are about 70000 afghan students were enrolled in these schools. There was no school fee, apart from this, school's books and uniform were provided by the government. The medium of education was Pushto and majority of teachers were among the Afghan nationals. Another step of the government of Pakistan was that there was no restriction on the Afghan children to get admission in the Pakistani schools and colleges. Fourteen centers for training and production of carpet were established by the Government of Pakistan in 1983. In the end of 1983, there were 237 refugees were being trained.

The above evidences delineate that Pakistan exceeds the standards mentioned in the convention.

3.8.6 Freedom of movement

Article 26 of the convention provides that refugees shall have the right to choose the residence and move freely in the contracting state subject to certain limitation as they are on the aliens. As far as Pakistan's practice is concerned, there is no bar on the refugees for their movement. Afghan refugees are settled in villages of NWFP, Baluchistan and Mianwali district of Punjab. More than one million refugees have been settled in urban areas of Pakistan.

3.8.7 Travel Documents

Article 28 of the convention 1951 states that Contracting state must provide the travel document for the purpose of traveling abroad to those refugees who are unable to have their travel documents from their country of origin or residence. However, this privilege can be denied if that can cause threat to the national security of the state.

Pakistan's practice in this regard, there is no bar on the refugees to travel abroad. Government of Pakistan encourages to the refugees for traveling abroad because it will reduce the burden on

²²⁹ The Muslim, 21 February 1984.

national exchequer. Normally, these travel documents are valid for one or two years. This travel document is one-page identity card, which is valid for traveling abroad. In 1982, there were 1700 refugees, who got travel document from Government of Pakistan to travel abroad in search of jobs.²³⁰ 150 afghan refugees went to Makkah for holy pilgrimage. The government of Pakistan is issuing passport to Afghan refugee on the model set by the Government of France, Germany, Canada and the USA.

3.9 Principle of refoulement and non-refoulement

Article 32 and 33 of the Convention 1951 provides the most significant principle of asylum law as to return and non-return of refugees. Article 32 provides that contracting state must not expel the refugees except on the ground of national security or public order. Article 33 provides that the person shall not be returned to the state where the life of that person is threatened on the basis of his/her nationality, race, religion and political opinion etc. Pakistan's practice in this regard is fully in compliance to the convention. When the Afghan refugees arrived in the Pakistan, their credentials were carefully scrutinized by the Government of Pakistan. 58 people were found 'black' out of 3 million refugees. These 58 persons were asked to return their state, no revenging action was taken against them. One of the cases is prominent in this regard, Afghan diplomat Abdur Rehman Pazhawk who had the political record which was anti-Pakistan and in favor of independent 'Pakhtunistan'. He was given the political asylum by the government but after few months, he started propaganda for independent 'pakhtunistan'. He committed the high treason against the Government of Pakistan, but he was not tried for that offense, he was simply asked to return to his state. There were also some minor cases in which Afghans were found threatened to

²³⁰ Abdul lah, "World's Largest Case Load : Afghan Refugees", Pakistan and Gulf Economist, 2 July 1983, p.33.

against the community of Pakistan but they were still not returned to their sate because they have a well-found fear of persecution in Afghanistan.

3.10 Extradition Law and Practice in Pakistan

The dictionary meaning of extradition is “the giving up or delivery of the person”²³¹. In its technical sense, surrendering the accused person to the foreign state. Extradition is the most significant doctrine of international law. This doctrine is basically a step forward in criminal justice system where the offender leaves the border of one state in order to immune from trial. This is based on the principle of ‘comity of nations’ as the cooperation is fundamental ingredient of Extradition. This part of chapter will classify the law relating to the extradition in Pakistan and procedural aspects therein. The major focus will be on the Extradition Act 1972 (hereinafter called an EA 1972) and its interpretation by the superior courts of Pakistan. The validity of EA 1972 will be discussed in detail because it is considered as ultra vires to the Constitution of Pakistan 1973 (hereinafter called as COP).

3.11 Extradition Law and procedure in Pakistan

The Extradition Act 1972²³² consists of four chapters, twenty-four sections, and one schedule. This law is not exhaustive piece of legislation. Before the upper mentioned act, the applicable laws relating to extradition in Pakistan were the EA 1870, EA 1873 and EA 1903.²³³ This law regulates the procedure to surrender the accused person to the requested state and requisition of an accused person from foreign state.

²³¹Daudpota, and Faisal. "Extradition Law of Pakistan - Rights of Fugitive Offenders v. Pakistan's Goal to Attain Honoured Place Amongst the Nations of the World." p.1. Accessed March 02, 2018. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1530185.

²³² "Extradition Act 2003." Legislation.gov.uk. Accessed March 03, 2018. <http://www.legislation.gov.uk/ukpga/2003/41/contents>.

²³³ "Extradition Act 1903 - Legislation." Accessed March 04, 2018. <https://www.bing.com/cr?IG=42CFA6888E84462891F740F23E385083&CID=14985CF804B164C11EFE5709051E6536&rd=1&h=HJ6oVZ1R4iI3b4xdq3tqSS1xA0ZvemopUO6KR-9J1Rs&v=1&r=https://www.legislation.gov.au/Details/C1903A00012&p=DevEx.LB.1,5499.1>.

3.11.1 Validity of the Extradition Act 1972

The EA 1972 was challenged in the case *Nasrullah Khan Henjra vs. Government of Pakistan*²³⁴. The assertion of the petitioner was that every citizen of Pakistan has the absolute right to remain in Pakistan as provided in Article 15 of the COP but then he could be forcefully removed from Pakistan by the procedure prescribed in EA 1972. A reference was made about the practice of Civil law countries that they don't extradite their own nationals. It seems clear that the framers of COP have followed the practice of civil law countries by incorporating the Article 15 in COP. Article 8²³⁵ of the COP states that if any law which contravenes or takes away the fundamental rights of citizen as provided in COP will be void. The prayer of the petitioner was that the EA 1972 should be declared null and void. The Supreme Court rejected the petition and held that there is no inconsistency between the COP and EA 1972. Supreme Court argued that Objective resolution is the Grund Norm²³⁶ of COP, it provides that the goal of Pakistan is to achieve the respect and honor among the nations of world by international cooperation, peace, and progress. It was also noted that principle of policy in Article 40 of the COP provides that Pakistan will promote international peace and security. If Pakistan became the safe haven for the offenders then how it will achieve her goal at international level.

Legality of EA 1972 was assailed in *Nargis Shaheen vs. Federation of Pakistan*²³⁷, it was argued that this law is repugnant to the injunction of Islam as to surrender the Muslims to non-muslims.

²³⁴ "PLD 1994 SC 23."

²³⁵ Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.

²³⁶ Grundnorm is a German word meaning "fundamental norm." The jurist and legal philosopher Hans Kelsen coined the term to refer to the fundamental norm, order, or rule that forms an underlying basis for a legal system.

²³⁷ "PLD 1993 Lahore 732."

It was contended that Article 227²³⁸ states that any law which is inconsistent with the injunction of Islam would be declared void. The High Court based its argument by referring the Hudebia Treaty²³⁹. This treaty was between the non-Muslims of Mecca and Muslims of Madina. One of the provisions in the treaty was that if a person fled from Mecca without the permission of his/her Guardians then he/she will be returned to the people of Mecca. It was implemented in the case of Abu Jandal, who was surrendered to the Mecca in compliance with the treaty of Hudebia. It is now well-settled law that EA 1972 is intra vires of the COP.

Extradition Procedure in Pakistan

The Extradition Act 1972 is substantive as well as procedural law. The procedure of extradition is elaborated in the said act. The researcher has to follow the scheme of commenting to the sections in order to proper understanding of extradition procedure. The interpretation of the provisions by the superior courts will also discussed simultaneously.

3.11.2 Chapter I- Preliminary

This chapter of EA 1972 has four sections. Section 1(4) provides two types application. Firstly, surrender the fugitive to the foreign state with which Pakistan has extradition relations. Secondly, seeking the fugitive from foreign state by way of extradition with which Pakistan has extradition relations. Section 3 of the EA states that Federal Government has the duty to publish the names of states with which Pakistan has extradition treaty. The word used for these foreign states is 'treaty

²³⁸ All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions.

²³⁹ "Treaty of Hudaibiya," Accessed March 04, 2018. <https://www.bing.com/cr?IG=5BCBDF665E6D4F6DAA1A360B7FAF2A5C&CID=1387A44635806DF72432AFB7342F6CC1&rd=1&h=QO6Jy3jViWtTiPON2q58cunpboy3sugPbN4RMKpeUM&v=1&r=https://www.scribd.com/document/39797259/Treaty-of-Hudaibiya&p=DevEx.LB.1,5924.1>.

state'. Supreme Court in the case *Muhammad Azim Malik vs. the Government of Pakistan*²⁴⁰ held that mere non-publication of treaty in official gazette has no bar to extradition if Pakistan has the valid extradition treaty with state.

Pakistan has extradition with some states. The names of the states are mentioned below.²⁴¹

Netherlands

Denmark

Austria

Iraq

Portugal

Luxemburg

Italy

Belgium

France

Greece

Switzerland

United States of America

Argentina

3.11.3 Chapter II – Surrender of Fugitives

This chapter of Extradition Act 1972 is most significant part of that law. It has ten sections. These sections deal with the first type of application of extradition law i.e. surrender the accused person to the foreign state. The researcher will discuss here the relevant sections in detail with case laws.

3.11.3.1 Section 5 – Liability of fugitive to be surrender

Section 5(1) deals with the surrender of accused person. Offender is liable to be surrendered and apprehended by the requested state in a prescribed procedure. There are seven exceptions to the

²⁴⁰ “PLD 1989 SC 519.”

²⁴¹ “Does Pakistan Has Extradition Treaty with Any Country of the World?” – Quora, accessed July 03,2018, <https://www.quora.com/Does-Pakistan-has-extradition-treaty-with-any-country-of-the-world>.

extradition mentioned in section 5(2). Here the researcher will discuss these grounds of rejection briefly.

First ground for rejection of extradition request is political offense. Extradition would be rejected if the accused person has been charged with political offense. Political liberalism has recognized that those who are fighting against the oppression, tyranny, and self-determination are the freedom fighters so they should not be extradited. This ground was recognized after the American and French revolutions.²⁴² The first treaty for refusing on the basis of political offense was made between the Belgium and France in 1834.²⁴³ **Second** ground is provided in 5(2)(b) which states that extradition will not be allowed in the cases of trivial nature. Offenses which are not punishable with death penalty, life imprisonment and imprisonment less than one month will not be considered for extradition proceedings. **Third** ground is prescribed in section 5(2)(c) i.e. lapse of time. However, lapse of time is not applicable in criminal justice system but there are some states which bars the prosecution on the basis of time-barred. In a case, *Zulqarnain khan vs. Government of Pakistan*,²⁴⁴ the accused person challenged his extradition on the basis of lapse of time. The accused person took the plea that he cannot be tried in USA because the crime committed there was in 1984 and under the USA law, a person cannot be tried after five years laps of time. The court held that the plea taken by the accused person is not correct because the accused person had been already indicted on 28-06-1984. However, court noted that lapse of time is a valid ground but, in this case,

²⁴² "Extradition Law and Practice." Paperback - Bruno Amable - Oxford University Press. April 29, 2018. Accessed March 05, 2018. <https://global.oup.com/academic/product/extradition-law-and-practice-9780198268178?cc=us&lang=en&>.

²⁴³ "Legal Responses to International Terrorism." Google Books. Accessed March 05, 2018. https://books.google.com.pk/books/about/Legal_Responses_to_International_Terrori.html?id=N9b_0zreI-0C&redir_esc=y.

²⁴⁴ "PLD 1994 SC 23."

it is not applicable. **Fourth** ground talks about the precept of specialty, the requesting state is to prosecute the offender for those offenses for which his extradition was sought from the requested state. **Fifth** ground is about the doctrine of Double Jeopardy in extradition law. This ground is based on the principle “no one should be vexed twice for the same cause”. If the person has tried earlier for the same offense, he will not be tried again for the same offense. **Sixth** ground is not a ground of rejection *strictosensu*. It is in actual the stay by the superior court to stop the extradition proceedings. In *Zulqarnain khan case*²⁴⁵, Supreme court stay the extradition inquiry on the ground that the accused person has to defend himself in the appeal before the high court. So, accused person cannot be extradited till the decision of appeal. Last and **seventh** ground of rejection is about the discrimination. There are four grounds of discrimination such as nationality, religion, race and political opinions. If the requesting state intends to prosecute the accused person on the basis of the above mention discriminations then the requested state is under no obligation to surrender the accused person.

3.11.3.2 Section 6 – Requisition for Surrender of Fugitive

The requisition by the foreign state can be made by the diplomatic agent of that state. The Federal Government of Pakistan is the concerned authority to deal with the requisitions of extradition requests.

3.11.3.3 Section - 7 – Order for Magisterial Enquiry

According to section 7 of EA 1972, Federal Government is authorized to order the Magistrate to enquire for the extradition requests. According to this section, Federal government has the power to order or not for the enquiry. The words of section are “... *the Federal Government may, if it*

²⁴⁵ “PLD 1994 SC 23.”

thinks fit, issue an order...” Supreme Court of Azad Jammu & Kashmir interpreted the words ‘may’ and ‘shall’ in the case *Muhammad Shafiq vs. Chief Secretary and others*.²⁴⁶ The Court mentioned in its judgment that if the word ‘may’ be used in the statute to effectuate the right, to authorize the body for doing justice and to work for the public good. It is submitted that the word ‘may’ used in the section is to enforce a right so it is mandatory for the Federal Government to order for enquiry.

3.11.3.4 Section 8 – Magisterial Enquiry

This section prescribes the procedure to of enquiry by the magistrate. After the order of enquiry by the Federal Government, Magistrate shall issue the summons or warrant in order to get presence of the accused. The powers of Magistrate First class for the determination of extradition matters is equivalent to court of session. The purpose of this enquiry is not to declare guilty or innocence of the accused person. The purpose is to find out that the prima facie case has been established against the accused person and to check the legal bars against extradition. In a case,²⁴⁷ the High Court stated that the enquiry by the magistrate is not a trial *stricto sensu*, so the Magistrate is not bound to hold the exact mode of trial as provided by the Criminal procedure Code 1898 (CrPC).

3.11.3.5 Section 9 – Exhibit of Evidence and Depositions

This section provides the certain admissible documents for the purpose of enquiry. This is a special law so, it will curtail the jurisdiction of general law i.e. Qanoon e Shahadat Order 1984. In *Muhammad Azim Malik case*,²⁴⁸ the Supreme Court stated that statements recorded by the authorized person on oath are admissible in evidence even the officials are not there for cross-

²⁴⁶ “PLD 1973 Azad J & K 27.”

²⁴⁷ “1994 PCrLJ 229 Lah.”

²⁴⁸ “PLD 1993 Lah. 732.”

examination. In *Nasrullah Khan case*²⁴⁹, the Court held that the report prepared by the Magistrate on the basis of hearsay evidence is of no legal effect.

3.11.3.6 Section 10 – Report of Magistrate

This section states that Magistrate has to conclude in the enquiry that whether prima facie case has been established or not against the accused person. If the case has been made out against the offender, he will be committed into prison till the further order of delivery by the Federal Government. On the other hand, if no case has been established against the accused person, he will be discharged.

3.11.3.7 Section 11 – Delivery of Offender

This section states the manner of delivery of the offender. This section is subject to reception of enquiry report in favor of foreign state. The enquiry report and statements are considerable for the Federal Government. If the Federal Government considers that the offender has committed crime and he must be surrendered to the foreign state, then it may issue the warrant for his/her surrender. This warrant is an administrative order which allows the custody and removal of offender. This section has been elaborated by the court in the *case*²⁵⁰, as Federal Government is bound to take the complete view of the report and statements of accused person and then form its own opinion. However, offender has no right to be heard personally on this stage.

3.11.3.8 Section 12 - Discharge of Apprehended Person

It applies where the offender is in custody of Federal Government and not surrendered within two months after issuing the order of surrender. If then above condition has been met then offender can

²⁴⁹ "PLD 1994 SC 23."

²⁵⁰ Ibid supra note 74

invoke this section. However, court interpreted this section in another way. The High Court in a *case* noted that section 12 is not binding in nature, therefore if the Federal Government has not surrendered the offender within two months, it will not make any difference.

3.11.3.9 Section 13 – Powers of Federal Government

Federal Government has the complete power to stay the extradition proceedings at any stage even after submission of positive report in favor of foreign state. If the Federal Government is of the opinion that the request was not in good faith or against the justice or public order. In a *case*,²⁵¹ the Court stated that the Federal Government is not bound to surrender the accused person even if it bound by the treaty with foreign state.

3.11.3.10 Section 14 – Simultaneous Requisitions

If Federal Government receives two extradition requests by different states for the same offender, the Federal Government has the discretion to determine with situation on objective basis.

3.11.4 Chapter III – Accused Person Surrender to Pakistan

This is the brief chapter as consist on three sections. It deals with the second type of application of extradition law i.e. request by the Government of Pakistan for seeking the extradition of accused in Pakistan. Only section 17²⁵² of this chapter is desired to be discussed here because it provides the rerun of accused person to foreign state.

²⁵¹ “1994 AC 556 (HL).”

²⁵² A person’s extradition to a category 1 territory is barred by reason of specialty if (and only if) there are no specialty arrangements with the category 1 territory.

3.11.4.1 Section 17- Return of Surrendered person to foreign state

Federal government has to bear the cost of return to the accused person in the state from where he was sought for trial if proceedings against the surrendered person have not been commenced after the six months of his/her arrival in Pakistan.

3.11.5 Chapter IV - Miscellaneous

This chapter has seven sections but the researcher will discuss only section 19 because it is one of the important sections of the EA 1972.

3.11.5.1 Section 19 – Bail of Arrested Person

This section states that the provisions of CrPC will be applicable in the bail matters for the accused person. In the case *Sami Nasir vs. the state*,²⁵³ the Sind high court held that bail application is rejected for the accused person because the bail application is considered on the ground that the accused person will be present before the court when and where will be called. The request is made by the United States of America, and there is no guarantee that if the accused person will be granted bail, he will go and appear before the United States' court.

3.12 Conclusion

There is no legislation with regard to asylum system in Pakistan. But Pakistan boasted 2nd largest refugee population in the world. The reason seem here that Pakistan had followed the Islamic doctrine of asylum i.e. Concept of *Hijrah* and *Aman*. Asylum in Pakistan is not a difficult for the asylum seekers who meets the criteria of refugee as mentioned in convention 1951. Usually, it is the duty of Home department to deal with the asylum claims. But all the process running in

²⁵³ "1984 PCrLJ1553 Karachi."

Pakistan under the UNHCR mandate. Pakistan needs a comprehensive piece of legislation for determining the asylum claims.

Extradition law in Pakistan cannot be considered as an exhaustive legislation. There are many things which have not been discussed in the law, for instance, if there is an extradition request by the state where death penalty is prohibited and the offense is of the nature of death penalty. These types of situation can only be delineated in an exhaustive law. There is also an ambiguity about the order of enquiry as the simple understanding of the section depicts that federal government has the authority to order the enquiry or not, but the courts are interpreting it in another way. So, it is need of the time to revise the extradition law. The provisions must be in compliance with the constitution and the treaties made by the Pakistan with foreign states.

Chapter 4

**OVERLAPPING BETWEEN
ASYLUM AND EXTRADITION**

Chapter 4: OVERLAPPING BETWEEN ASYLUM AND EXTRADITION

4.1 Introduction

Overlap means when one thing intermeddles with the other thing by contradicting or bypassing the rules and principles of the second thing. Rules and principles of asylum and extradition overlap each other in different ways. For example, if an extradition request is reached in one state for the person who is a refugee²⁵⁴ or asylum seeker, in this situation, the requested state is bound by the principles of asylum law to protect the refugee or asylum seeker and on the same time, the requested state has to oblige by the treaty obligation. This situation causes the overlapping between the asylum and extradition procedures. The overlapping between the two doctrines is not obvious in each and every case. Asylum and extradition are opposite concepts in their original context. But they are not mutually exclusive from each other. Asylum is an offshoot of international human rights law and international refugee law. It does not stand in a way to confront the extradition as it is one of the stages in the criminal justice system to prosecute the offenders. This chapter will delineate the aspects where two doctrines are in the clash and how they can be harmonized.

4.2 Principle of non-refoulement

Principle of non refoulement is considered as a cornerstone of internstional refugee law.²⁵⁵It is considered as a foundation of international refugee law. Non-refoulement is a legal term which is not defined in the convention²⁵⁶, it can be defined as “not to return the person”. It is a general duty

²⁵⁴ Francesco Cherubini, *Asylum Law in the European Union* (London: Routledge, 2016). p.8.

²⁵⁵ Ibid p.47.

²⁵⁶ Assembly, UN General. "Convention relating to the status of refugees, 28 July 1951, United Nations, Treaty Series, vol. 189." Retrieved April 20 (2015): p. 137.

of the state not to return the person if he is a refugee defined in the convention. It is provided in the Article 33 of the COSOR 1951.²⁵⁷

“No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race²⁵⁸, religion²⁵⁹, nationality²⁶⁰, membership of a particular social group²⁶¹ or political²⁶² opinion.”

The principle of non-refoulement applies to the refugees as defined in the convention. This principle protects the both the ‘mandate refugees’ and the refugees whose status has been recognized by the state. Chiefly, this principle is a bar against the expulsion and extradition but the person taking the advantage of this principle has the onus to proof the threat of persecution.²⁶³ The issue here is that, this principle does not apply to the asylum seeker.²⁶⁴ A special provision is required for protecting the asylum seekers too.²⁶⁵

²⁵⁷ See Article 33, UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189. Accessed May 18, 2018. <http://www.refworld.org/docid/3be01b964.html>

²⁵⁸ Steve Peers and Nicola Rogers, *EU Immigration and Asylum Law Text and Commentary*, vol. 12 (Boston, USA: MartinusNijhoff, 2006). p.558.

²⁵⁹ Ibid

²⁶⁰ Ibid supra note 6 p.559.

²⁶¹ Ibid supra note 6 p.561.

²⁶² Ibid supra note 6 p.559.

²⁶³ Ibid at .p.103.

²⁶⁴ "Handbook on Procedures and Criteria for Determining Asylum" Accessed March 05, 2018. <http://www.bing.com/cr?IG=DFE295B43C004810AB80FFFC566994FD&CID=34ED9B6F8A5C65E7069F909C8BA16419&rd=1&h=23BaFHzojiPbEBdgSS9U518z6YML2KRhJYWq4Dt21Y&v=1&r=http://www.unhcr.org/4d93528a9.pdf&p=DevEx.LB.1,5068.1>

²⁶⁵ MetajOldian, "The Multilevel Asylum System Policies: The Analysis of the North Africa Emergency Management in Padua and Venice." *BenvenutiSuPadua@Thesis - Padua@Thesis*, October 01, 2014, p.13. accessed April 02, 2018, <http://tesi.cab.unipd.it/47094/>

The bar contained in principle of non-refoulement is obligatory on all the member states to the convention. States who are not a member of the convention are also bound by the customary international law to abide by the principle.²⁶⁶

4.2.1 Application of non-refoulement in Extradition

The principle of non-refoulement is fully incorporated in extradition procedures. The Declaration on right to asylum was intentionally annexed with the Convention on extradition among the member states of EU 1996 provides that

“the Convention is without prejudice either to the right of asylum as recognized under the Member States.”²⁶⁷

Numerous states have legislated in order to incorporate the principle of non-refoulement in their national procedures of extradition. Jurisprudence also deep-rooted that principle of non-refoulement applies in extradition procedures. For example, in France, Conseil d’Etat quantified that principles of asylum make an impediment for surrendering the accused person to the country of origin.²⁶⁸

4.2.2 The exception to the principle of non-refoulement

Article 33(2) of the 1951 Convention:

The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment

²⁶⁶ United Nations, "Declaration of States Parties to the 1951 Convention And/or Its 1967 Protocol Relating to the Status of Refugees," UNHCR, p. 17.

²⁶⁷ See Article 3(2), "CONVENTION RELATING TO EXTRADITION BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION" - Accessed 10 March, 2018. <https://www.legal-tools.org/doc/376d58/pdf/>

²⁶⁸ United Nations. "Bereciurta-Echarri." Refworld. Accessed March 11, 2018. http://www.refworld.org/cases,FRA_CDE,3ae6b7264.html

of a particularly serious crime, constitutes a danger to the community of that country.²⁶⁹

An exception to the principle of non-refoulement is also provided in the second part of the same provision. A state is sovereign in its decision, the state can refoule an individual on the ground of threat to its national security. But the state is not permitted to expel a person in a state where he could be the subject of torture²⁷⁰, inhumane and degrading treatment. Because it is against the peremptory norm (jus cogens) of international law.

Ireland v United Kingdom,²⁷¹ this case principally concerning the threshold at which 'cruel and unusual treatment' becomes 'torture' for the purposes of Article 3 of the ECHR. The ECtHR found that the five techniques caused intense physical and mental suffering to the persons subjected thereto and also led to acute psychiatric disturbances during interrogation.

4.2.3 The principle of non-refoulement and assurances

Assurance is a concept of extradition law, which means guaranteed. This guarantee is provided by one state to another state that if the requested person will be surrendered to the requesting state, the surrendered person will not be tortured or subjected to degrading punishment whatsoever. This assurance, in some cases, prescribes the fair trial of the requested person in the requesting state. Assurance is considered as a legal obstacle in returning the accused person. This is common in the cases of capital punishments.²⁷²

²⁶⁹ Ibid

²⁷⁰ M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.801.

²⁷¹ *Ireland v United Kingdom*, 2 E.H.R.R. 25 (1978)

²⁷² M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.611.

It is pertinent to mention here that if there is a real danger of degrading punishment, then requested state cannot absolve itself by extraditing the individual with assurances.²⁷³ Assurances cannot ignore the human rights concerns. The purpose of assurances is not a friendly relation between the two states, as it is concerned with the protection of an individual.

4.2.4 The principle of non-refoulement and grounds of refusal for extradition

Extradition law itself provides some grounds on which extradition is refused to the requesting state. These grounds overlap with the principle of non-refoulement in many ways. These grounds are stated below.

- Political offence exemption;
- Discrimination clause and refusal;
- Justice and fairness.

However, it is to be noted here that these grounds are not limited to the refugees and asylum seeker as in the case of non-refoulement.

4.2.4.1 Political offence exemption

Extradition is not granted for the political offenders because they are considered as freedom fighters for their right of self-determination. They are given protection from the prosecution in certain political offences. This benefiting exemption is also mentioned in Article 1 of the Convention relating to the status of refugees 1951. However, the principle of non-refoulement is different in its scope and function with the political offence exemption.²⁷⁴ Such as, political offence

²⁷³Bundesgericht. 1990. IJRL/0152 (International Journal of Refugee Law December 18). Tunisiaann. 2001. EMARK 2001/4 (Swiss Asylurekurskommission, 4).

²⁷⁴ M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.669.

exemption is a privilege for the individuals on certain type of offences even they have no any risk of torture or justifiable danger of persecution in the state.²⁷⁵

4.2.4.2 Discrimination clauses

Extradition will not be approved if there are considerable grounds before the requested state that person would be prosecuted for the discriminatory motives. In other words, if the person would be persecuted rather than prosecuted then extradition would not be given to the requesting state. This exemption is closely linked with the principle of non-refoulement of international refugee law.

4.2.4.3 Refusal on notions of justice and fairness

This ground of refusal maintains that person will not be subjected to extradition if there are chances of injustice and unfairness. For instance, if due process of law or fair trial are dubious for the requested person, then extradition would be refused. This ground is much similar to the persecution mentioned in the Article 1 of the Convention 1951.

4.2.5 Principle of Non-refoulement and bars to extradition

Human rights law is a clear bar in front of extradition if a state has the reason to believe that rights of the individual will be violated in the requesting state. Degrading punishment and torture are some of the major human rights bars in cases of extradition. There is no exception to this prohibition such as, if the individual is a threat to the community and national security of state but there are chances of torture to him/her in the requesting state, he will not be extradited.

²⁷⁵ Hilton, Arthur C. "Harmonizing Political Asylum and International Extradition: Avoiding Analytical Cacophony." 1985. p.458.

4.3 Extradition of Recognized Refugees

Extradition of the recognized refugees is a matter of concern for three stakeholders. As seen above that many states have legislated to ban the extradition of the refugees.

- The requested state who has given the refugee status to an individual;
- The state other than the requested state;
- Mandate Refugees by United Nations High Commissioner for Refugees (UNHCR).

4.3.1 Requested State Who Has Given the Refugee Status to An Individual

The principle of non- refoulement binds the requested state for non-extradition of the recognized refugee. Even the request is made by the state of origin or to a state where persecution can be anticipated. Extradition can be made in exceptional circumstances as to threaten the community or national security of the requested state. But it is pertinent to mention here that, extradition of recognized refugee is a tough decision for the requested state so it cannot be granted without supporting evidence.

4.3.2 By another state

If a state has granted the asylum to an individual in another state, even then, it is bound by the principle of non-refoulement. The status of refugee is concerned with the authorities of requested state and the state where the refugee is residing. The question about the extradition of the recognized refugee can be raised extraterritorially. But if the refugee comes within the ambit of exclusion provisions then he/she can be extradited.²⁷⁶

²⁷⁶ United Nations. "Note on the Extraterritorial Effect of the Determination of Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees." 1978, p. 280.

These types of cases are handled by the 'red notices' of Interpol.²⁷⁷ These notices allow the state for the provisional arrest of refugees. Here a case can be quoted of Muhammad Solih, he was the Uzbek national, he got asylum in Norway. His extradition was sought by the Uzbek authorities from the Czech Republic. He was apprehended in the Czech Republic by the way of red notice of Interpol. But he was not extradited to the Uzbek authorities, he was returned to Norway.²⁷⁸

4.3.3 Mandate Refugees by UNHCR

Extradition of the refugees who have been given the status by the UNHCR will have the similar considerations such as, the principle of non-refoulement applies on the 'mandate refugees'.²⁷⁹ The status given by the UNHCR is significant because it is considered as international protection to that individual. This status must be respected by the authorities of the requested state.²⁸⁰

4.3.4 Effect of the Extradition of Refugees

As researcher mentioned earlier, extradition of a refugee can be made in exceptional circumstances. The question raises here about that status of protection given by the requested state. Whether the status of refugee is cancelled or revoked. Cancellation of the status of refugee means the decision to grant the asylum was wrong and it should not be granted by the requested state. Meaning thereby, it was void ab initio. Revocation of the status of refugee means, the decision was right at the time of granting asylum but it should be withdrawn due to the conduct of refugee. Cancellation or revocation must be in taken place with due process of law and with a fair trial. As researcher mentioned earlier, extradition of a refugee can be made in exceptional circumstances.

²⁷⁷ "Red Notices." Types of Human Trafficking / Trafficking in Human Beings / Crime Areas / Internet / Home - INTERPOL. Accessed May 19, 2018. <https://www.interpol.int/INTERPOL-expertise/Notices>

²⁷⁸ "CZECH REPUBLIC/UZBEKISTAN: FEAR OF FORCIBLE DEPORTATION/FEAR OF TORTURE, MUHAMMAD SALIH." Accessed April 01, 2018. <https://www.amnesty.org/en/documents/eur71/004/2001/en/>

²⁷⁹ Bianchini, Katia. "The Mandate Refugee Program: a Critical Discussion." *International Journal of Refugee Law* 22, no. 3 (2010): 367-378.

²⁸⁰ Turk, Volker. "UNCHR's Supervisory Responsibility." *Rev. quebecoise de droit int'l* 14 (2001): 135.

The question raises here about that status of protection given by the requested state. Whether the status of refugee is cancelled or revoked. Cancellation of the status of refugee means the decision to grant the asylum was wrong and it should not be granted by the requested state. Meaning thereby, it was void ab initio. Revocation of the status of refugee means, the decision was right at the time of granting asylum but it should be withdrawn due to the conduct of refugee. Cancellation or revocation must be in taken place with due process of law and with a fair trial.

4.4 Extradition of Asylum Seekers

As we have seen in before, extradition of refugees is prohibited under the law except in exceptional circumstances. The principle of non-refoulement applies to the refugees defined in Article 1 of the convention relating to the Status of Refugees 1951. But the question is whether the principle of non-refoulment applies on the persons who have sought the asylum by a state but yet not be recognized as refugee such as 'asylum seeker'. In some states, extradition of an asylum seeker is also prohibited.

But generally, the protection of non-refoulment principle is expanded towards the asylum seeker. UNHCR knew that extradition of asylum seekers is commonly practiced in some states. It is an implied violation of the non-refoulement principle. If a person applied in a state for asylum, the state must determine the status of refugee in accordance with the provisions of the convention. It advances some questions relevant to the procedures of asylum and extradition, states espoused different approaches in determining the extradition and asylum requests.

4.4.1 Asylum and Extradition procedures for Asylum seekers

There are some states in which extradition proceedings are suspended till the decision of asylum claim. Section 34 of the Law No. 9.474 in the Brazil on procedures for the Implementation of the

1951 Convention states that “*extradition application will be suspended until the final determination of asylum claim.*”²⁸¹ In Spain, section 5(2) of Law No. 5/1984 on the right of asylum provides that extradition proceedings will be suspended on the reception of asylum application.²⁸²

In some states, it is recognized by the law that extradition must not be permitted if it would be violation of non-refoulement principle. In the United Kingdom, courts held in a case that asylum application and extradition requests can be proceeded in the same time till the final determination. The court stated that asylum and extradition are lengthy procedures if one procedure will be suspended for the determination of other.²⁸³

In case of United States, extradition request suspends the asylum application at first instance. Board of Immigration appeals holds the asylum application till the determination of extradition request. The consideration of US is that asylum application complicates the extradition proceedings.²⁸⁴

4.5 Suitable Procedure for Asylum and Extradition Procedures

On reception of extradition request, the appropriate authorities must scrutinize the extradition request whether it meets the requirements of extradition treaty or law. Then to check that whether extradition request is barred by the human rights or other bars under the national or international

²⁸¹ Lilliana Lyra Jubilut and Silvia Menicucci De Oliveira SelmiApolinario, “Refugee Status Determination in Brazil: A Tripartite Enterprise.” *Refuge: Canada’s Journal on Refugees*, p.36, accessed July 02,2018, <https://refuge.journal.yorku.ca/index.php/refuge/article/view/26029>.

²⁸² “SPAIN -DISCRETION WITHOUT BOUNDS- The Arbitrary Application of Spanish Immigration Law.” Google Books. Accessed July 03,2018. [https://books.google.com.pk/books?id=ZivWnotOoa0C&pg+PA14&Ipg=PA14&dq=Section 5\(2\) of Law](https://books.google.com.pk/books?id=ZivWnotOoa0C&pg+PA14&Ipg=PA14&dq=Section 5(2) of Law).

²⁸³ R. (on the application of Karpichkov and another) v. Latvia and the Republic of South Africa and another, Queens Bench Division (Administrative Court), CO/2553/2000, 26 April 2001.

²⁸⁴ *Barapind v. Reno*, 225 F.3d 1100 (9th Cir. 2000).

law. These procedures vary from one case to another. But one obligation will remain the same in each and every case, that is to check the implementation of the principle of non-refoulement.

Procedures of extradition for the asylum seekers need to be organized in order to respect the international refugee protection by the requested state.

- Decision of asylum claims before the determination extradition
- Segregation of the proceedings of Asylum application and extradition request
- Acceptance of the Asylum claims for the person whose Extradition is process

4.5.1 Decision of asylum claims before the determination extradition

When an extradition is sought for the asylum seeker, it is difficult for the requested state to determine that the extradition is legitimate unless the status of refugee is settled. In the first instance, it is to be determined that, the requested person is having the considerable fear of persecution in a state. This inquiry is necessary for the final determination of extradition request. This inquiry will not suspend the extradition request, the purpose is to provide a better understanding of the situation to the requested state. So, the requested state is not required to suspend the extradition proceedings, but it must decide the asylum application first even in parallel proceedings. Under international human rights law, international refugee law and customary international law, the state is bound to assess the risk of persecution of the asylum seeker whose extradition is demanded by the state. In all cases, there are chances, that asylum application will be accepted at a later stage of proceedings so, extradition requests must not be processed of an asylum seeker before the final decision at highest court of appeal.

4.5.2 Segregation of the proceedings of Asylum application and extradition request

In some states, if there is a sound fear of persecution of the person is determined with the extradition request. In this case, the decision of extradition authorities will not be binding on the asylum authorities. Asylum objections are taken before the administrative authorities while surrender of an accused person is not appealable in many states. This combined determination can cause many problems as appeal and review.

The authorities deciding the extradition requests are not expert of international refugee law. Another possibility is that extradition procedures provide minimum standards to raise objections before the court. In many states, judicial authorities are not entitled to decide the deep asylum issues and the final decision of asylum is in the hand of executive authorities of government. There are very limited legal remedies available by the judicial authorities in the matters of extradition, they cannot provide the better opportunity to the asylum seeker in the same proceedings. In view of international refugee law, the determinations of extradition and asylum procedures must be separate. Because combine determination can affect the very purpose of convention 1951 as the purpose is to provide the protection to an individual who has the well-founded fear of persecution.

4.5.3 Acceptance of the Asylum claims for the person whose Extradition is process

The consideration of the fact that a person seeking asylum in the state after he has learned about his extradition request is baseless. Because there are chances that extradition request intimate him/her about the persecution in the requesting state. It follows that extradition of the asylum seeker cannot be made the ground of rejection. The extradition request of the asylum seeker in the safe country or safe third country cannot be made the basis of rejection of asylum claim. Meaning there by, an accused person must have the right to prove that he has a well fear of persecution and his evidence must be taken into consideration.

4.6 Extradition and Exclusion

The link between the asylum and extradition is closely met at the doctrine of exclusion as defined in the international refugee law. It is basically an exception to the refugee protection. It states that, in certain circumstances, the state is not bound to give protection to an individual. The exclusion criteria are mentioned in the Article 1F²⁸⁵ of the Convention 1951.²⁸⁶

There are some points where the extradition and exclusion overlap each other.

- Political offenders are exempted from the extradition and this creates a link between the asylum and extradition. Since the interpretation of the political offence is imperative.
- The duty to prosecute or to extradite in international crimes is established which has a close link between the exclusion and extradition.
- Determination of asylum has the bearing on the extradition proceedings vice versa.

4.6.1 Relation Between Exclusion and Extradition for Non-Political Offences

A logical link can be found between the principle of non-extradition and political asylum. The essence of political asylum is to provide protection against the extradition of political offences. This was the view of drafters of the refugee convention that fugitives of ordinary crimes would not be entitled to the international protection, as the offenders of ordinary crimes would be extraditable under the law. UDHR provides that right to seek and enjoy asylum cannot be invoked in genuine cases. The drafters of the convention intended that criminals should not run away from

²⁸⁵ "The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that: (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes; (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee; (c) he has been guilty of acts contrary to the purposes and principles of the United Nations."

²⁸⁶ See Article 1F Assembly, UN General. "Convention relating to the status of refugees, 28 July 1951, United Nations, Treaty Series, vol. 189." Retrieved April 20 (2015): p. 137.

the prosecution under the shadow of refugee protection. Some scholars consider that, Article 1F (b) of the Convention 1951 is directly linked with extradition.²⁸⁷ They are of view that these two concepts are directly linked.²⁸⁸

4.6.2 Different Purposes and Criteria of Exclusion and Extradition

Exclusion and extradition are governed by different criteria and have different purposes. Exclusion is a doctrine of international refugee law which states that international protection is excluded for those persons who have committed certain serious crimes. This doctrine of exclusion is mentioned in Article 1F of the Convention 1951. This provision excepted the protection given by the states to an individual. Exclusion takes away the rights of an individual if he/she falls in the exclusion criteria.

In contrast, extradition is concerned with the criminal justice system and a type of international legal assistance between the states. It surrenders the individual for the prosecution of non-political crimes. It used for the prosecution as well as for the enforcement of the sentence. This is purely based on the bilateral and multilateral treaties.²⁸⁹ However, a person can be expelled from one state to another by way of rendition.

4.7 Definition of political offences

In the law of extradition, the exemption of political offence is an exception to extradite even the requested state has the treaty obligation with requesting state. In the law of refugee, political

²⁸⁷ Goodwin-Gill, Guy S. "The Extra-Territorial Reach of Human Rights Obligations: A Brief Perspective on the Link to Jurisdiction." In *International Law and the Quest for its Implementation. Le droit international et la quête de sa mise en oeuvre*, pp. 289-304. Brill, 2010.

²⁸⁸ Fitzpatrick, Joan. "The post-exclusion phase: extradition, prosecution and expulsion." *Int'l J. Refugee L.* 12 (2000): p. 272.

²⁸⁹ M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014), p.91

offence excludes the individual from the application of exclusion clause.²⁹⁰ Fugitives of political offence can be granted asylum if they meet the inclusion criteria mention in the clause 1A of the convention.²⁹¹ Political offence is nowhere defined in extradition law. There are different criteria to determine the political offence such as crime committed with the political purpose or motive.²⁹² In the case of refugee law, there is also no prescribed definition and test for a political offence. Courts determine on the basis of extradition decisions.

In New Zealand, Refugee Status Appeal Authority stated in a decision that exception of the non-political crime of refugee law is similar to extradition but not equivalent to it.²⁹³ A court of appeal in the US held that assessment of non-political crime in asylum proceedings and determination of political offence in extradition are distinct and separate inquiries.²⁹⁴ In Canada, the Federal court stated that political offence exemption in asylum and extradition are different concepts but they complement each other.²⁹⁵ House of Lords in the UK found a difference between the asylum and extradition in political offence exemption, if there is a question of political offence then there is a general duty on the state not to return while in the case of asylum there is a duty to return (refoulement) except if the offence is non-political.²⁹⁶

²⁹⁰ See Article 1F Assembly, UN General. "Convention relating to the status of refugees, 28 July 1951, United Nations, Treaty Series, vol. 189." Retrieved April 20 (2015): p. 137.

²⁹¹ See Article 1A Assembly, UN General. "Convention relating to the status of refugees, 28 July 1951, United Nations, Treaty Series, vol. 189." Retrieved April 20 (2015): p. 137.

²⁹² "T v. Secretary of State for the Home Department," p. 856, accessed April 19, 2018, http://www.refworld.org/cases,GBR_HL,3ae6b70f4.html.

²⁹³ "Refugee Appeal No. 29/91 Re SK." Accessed April 20, 2018. http://www.refworld.org/cases,NZL_RSAA,3ae6b7410.html.

²⁹⁴ *McMullen v. Immigration & Naturalization Service*, 658 F.2d 1312 (9th Cir. 1981).

²⁹⁵ *Chan v. Canada (Minister of Employment and Immigration)*, 1995 S.C.R.3 593 (1995).

²⁹⁶ *Ibid* at supra note 31

4.8 Excludable acts vs. Extraditable offences

If the excludable acts i.e. non-political crimes are in question, they can be extraditable²⁹⁷ offences in accordance with the concerned treaty. For example, they may not be serious non-political offences. The threshold is not defined in the convention 1951. A certain limitation is required in order to reach the exclusion clause. In some states, interpretation of Article 1F(b) is applicable in extradition proceedings with reference to the political offence.²⁹⁸ Even if the crime is declared as “non-political crime” in both cases, it does not mean the fugitive will be excluded and extradited simultaneously.

4.8.1 Standard of proof of exclusion and extradition

Article 1 F of the Convention 1951 stated that “serious reasons for consideration” is a brink to reach the exclusion. This criterion is not universal because there are different legal systems in different states.²⁹⁹ In common law states, different standards are familiar, for example, “balance of probabilities”³⁰⁰, “beyond the reasonable doubt”, “probable cause”³⁰¹. In civil law states, there is not a hard and fast requirement for the proof in order to remove the person from international protection.

The evidentiary requirement in the extradition law is mostly inferred from the treaty and national law of the requested state. It may vary from state to state or even within the state. But generally, requesting state -in matters of extradition- is not required to prove the guilt of accused. Because

²⁹⁷ M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.507.

²⁹⁸ See section 91T of the Australian Migration Act 1958 (as amended), which refers to the definition of “political offence” in section 5 of the Extradition Act 1988.

²⁹⁹ “Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees.” p. 115. Accessed April 21, 2018. <http://www.refworld.org/docid/3f5857d24.html>

³⁰⁰ *Ramirez v. Canada (Minister of Employment and Immigration)*, 1992 F.C.2 306 (1992).

³⁰¹ “Refugee Appeal No. 29/91 Re SK.” Accessed April 20, 2018. http://www.refworld.org/cases,NZL_RSAA,3ae6b7410.html.

that question would be determined in the trial. In some common law states, there is a requirement to prove the "prima facie case". In some states, extradition would be granted if a statement which imputes the requested person along with the copy of arrest warrant or judgment of the court.

In some cases, sufficient evidence to grant asylum may be not standard of proof in exclusion matters.³⁰² However, information that is "serious reasons for consideration" in the exclusion but they are insufficient or inadmissible in extradition matters.

4.8.2 Exclusion, Extradition and Terrorism

Terrorism, as defined in the instruments, is a non-political offence and an extraditable offence. In some cases, the conduct which is considered as terrorism come in the scope of Article 1F of the convention 1951 gave rise to exclusion under international protection.³⁰³ Article 1 F is considered as a basis for excluding the terrorists within the ambit of international protection.³⁰⁴ This article is vague and has different interpretations. UNHCR comprehend this provision as it will be applicable to those people who are acting at the behest of the state. UNHCR's view is that Article 1F(c) is to be applied in extreme circumstances. There is no unanimous definition of "terrorism" in international law, it is defined by the states in their national laws.

4.9 UNHCR in the extraction of asylum seekers and refugees

UNHCR is not directly involved in extradition procedures. But, UNHCR involves itself in the matters of extradition of refugees or an asylum seeker in order to honour the non-refoulement principle. The state is sovereign in the matters of extradition, so it has the right to exclude the

³⁰² *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, 1998 S.C.R.1 982 (1998).

³⁰³ "Background Note on the Application of the Exclusion Clauses: Article 1F of the 1951 Convention Relating to the Status of Refugees." Pp. 25-27. Accessed April 21, 2018. <http://www.refworld.org/docid/3f5857d24.html>.

³⁰⁴ "A/RES/51/210. Measures to Eliminate International Terrorism." United Nations. Accessed May 19, 2018. <http://www.un.org/documents/ga/res/51/ares51-210.htm>.

UNHCR's interference in the matters of extradition. UNHCR has the mandate for the international protection of refugees, so states are bound to notify the UNHCR about the extradition of refugee or asylum seeker.

4.10 Interpol "red notices"

Interpol was established in 1923, it is an inter-governmental organization which was developed for the purpose of mutual assistance in the criminal justice system. It has 181 members states. Interpol involves itself in matters where extradition is sought in the foreign who has given the status of refugee. Interpol initiates the process by different notices. Through Interpol, information about the accused person is given to the requesting state.

Article 3 provides that,

It is strictly forbidden for the Organization to undertake any intervention or activities of a political, military, religious or racial character.³⁰⁵

Refugees who are being detained in conformation to the red notice is an unwarranted situation. In this situation, the request for the arrest is rejected by one or more states.

4.11 Conclusion

As we have seen in this chapter, there are multiple instances where asylum and extradition intersect with each other. For example, if the requested person for extradition is a refugee or an asylum seeker, or asylum application is filed subsequently by the requested person for extradition. The actual overlapping between the two occurs on the function of the non-refoulement principle. Because one of the pre-requisites for extraditing the individual is to fulfil the proper

³⁰⁵ "The Constitution." - INTERPOL. Accessed April 25, 2018. <https://www.interpol.int/About-INTERPOL/Legal-materials/The-Constitution>.

implementation of the principle of non-refoulement as mentioned in the convention 1951. Another principle of refugee law - the doctrine of exclusion- interrelate asylum and extradition in various ways. The contradictions, overlapping³⁰⁶, interfacing, intersecting and interplaying between the asylum and extradition does not matter, the thing is how to resolve these contradictions. The best possible way is to stop the extradition proceedings in order to determine the asylum claims. By this way, the human rights would be protected and criminal justice will not overlap the human rights.

³⁰⁶ M. Cherif Bassiouni, *International Extradition: United States Law and Practice* (New York, NY: Oxford University Press, 2014). p.453.

Chapter 5

**CONCLUSION AND
RECOMMENDATIONS**

5. CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The thesis talked about the overlapping and contradiction of the asylum and extradition procedures in the United Kingdom and Pakistan. So, it can be concluded here, after writing this thesis, that the point of overlapping and contradiction occurs -chiefly- on the application of principle of non-refoulement for the asylum seekers and refugees. The principle of non-refoulement is an absolute right in the international refugee law, international human rights law. Meaning there by, the non-refoulement principle is not subject to derogation. Meanwhile, it has been regarded as the *opinio juris* by the civilized states. Therefore, it bounds the states to oblige by it albeit of fact that they are not the party to convention relating to the status of refugee 1951 and the relating protocol 1967.

Although, doctrine of non- refoulement is a vibrant bar in extradition matters but Government of United Kingdom had violated it in letter and spirit. Recently, the courts of UK settled in a precedent that proceedings of asylum and extradition can be proceeded in a parallel. Superseding the extradition request on asylum application is a blatant violation of principle of non-refoulement. Government of United Kingdom is bound to comply with the convention relating to the status of refugees 1951 and related protocol 1967. The decision caused the overlapping between asylum application and extradition request. Therefore, Extradition proceedings must be suspended till the determination of asylum request in order to oblige by the principle of non-refoulement.

Pakistan had refuged more than 4 million refugees from 1978 till now, it had fulfilled the inclusion criteria for the asylum seekers. However, Pakistan had dishonored the principle of non-refoulement in its recent Afghan refugee policy 2013. The Afghan refugee policy by the Government of Pakistan is spontaneous repatriation of Afghan refugees. The deteriorating security situations and

human rights concern in Afghanistan is a question for this repatriation of Afghan refugees. In spite of UNHCR's protest to GoP was meaningless. The policy for the Afghan refugees should be the resettlement them in different states of the world rather to return in the freight state.

5.2 Recommendations

5.2.1 To the Government of Pakistan

5.2.1.1 On the Issue of Asylum

A highly appreciated and commendable job done by the Government of Pakistan as it sheltered more than four million refugees in last thirty years. Pakistan became the second largest state which provided the sanctuary to this huge amount of displaced person despite the fact that it had neither party to the refugee convention 1951 and protocol 1967 nor it has its own national legislation for asylum seekers.

1. The first and foremost recommendation to the Government of Pakistan is to ratify the Refugee convention 1951 and its related protocol 1967. The ratification will not cause any burden on the Pakistan because Pakistan is doing the same mentioned in the convention except not complying with some Articles of the Convention.
2. After ratifying the said convention and protocol, Pakistan is in dire need to legislate a comprehensive piece of legislation to deal with the asylum applications and the perpetual solution for the refugees. That national legislation must comply with the international refugee law and human rights law.
3. Pakistan should withdraw from the cooperation agreement 1993 between GoP and UNHCR 1993. Because this agreement had given authority to UNHCR for granting refugees. This is against the concept of sovereignty.
4. Government of Pakistan must reconsider its Afghan refugee policy 2013. The repatriation without facilitation in Afghanistan is not a solution. There are some other means to solve the refugee problems i.e. resettlement and integration.

5.2.1.2 On the Issue of Extradition

There is a statute -in Pakistan- for the matters relating to the inquiries of extradition namely The Extradition Act 1972. But there are some lacunas in it which must be improvised by amending it. A dreadful need for the insertion of new provision in order to eliminate the cases in which extradition is sought for the asylum seekers and refugees.

1. It is recommended that Extradition Act 1972 is required to be amended such as grounds of refusing extradition mentioned in section 5. Section 5(2)g provided the rejection of extradition request on the basis of discrimination which are race, nationality, political opinion and religion. The discriminations should not be limited on four identity bases rather it shall be amended as to include all type of discrimination.
2. A new section must be inserted as section 8A, it must be inserted as, "The concerned Magistrate shall stay the proceedings of extradition inquiry till the determination of asylum request of asylum seeker or refugee."

5.2.2 To the Government of United Kingdom

5.2.2.1 On the Issue of Asylum

United Kingdom is party to the convention relating to the refugee status 1951 and its related protocol 1967. UK have comprehensive legislation to deal with asylum claim. Presently, Immigration act 1971 and Immigration, nationality and asylum act 2006 are relevant laws dealing with the asylum system in UK. They have the complete process to seek asylum in UK but there are some flaws in it which are too considered for amendment in it.

1. These laws are strict in application of exclusion clause rather than inclusion clauses. It is recommended that exclusion clauses in the said act must not be applied on the individuals who are being persecuted in their home countries.
2. There is no provision in the law which states that proceedings of extradition shall not be initiated against the asylum seeker till the determination of asylum claim. It is recommended that a new section must be inserted to address the issue relating to the extradition proceedings against the asylum seeker.
3. Extradition of refugees is prohibited in accordance with the principle of non-refoulement. So, it is recommended that provisions of the upper mentioned laws be fully implemented in practice to comply with the article 33 of COSOR 1951.

5.2.2.2 On the Issue of Extradition

The recent law for extraditing the fugitives in United Kingdom is Extradition Act 2003. It was updated due to introduction of EAW (European Arrest Warrant) in European Union states. This statute has been divided in two parts, first part deals with the EAW member states and second part deals with non-EAW states. The first part has no major issues for recommendations although second part is required to be amended on the undermentioned recommendations.

1. Section 39 and 121 of Extradition Act 2003 fully caters the situation in which asylum is claimed after the extradition proceeding is initiated. section 39 applies on the EAW states, it provides that extradition will not be executed to the EAW states till the determination of asylum claim. Section 121 deals with the non-EAW states. This section states that extradition will not be affected with non-EAW states till the decision of asylum claim. The researcher recommends that extradition proceeding should be stopped till the determination

of asylum claim because parallel proceeding may cause the claim ineligible for asylum determination.

2. It is recommended that there is a need of insertion the new provisions to cater with situation in which extradition is sought for the refugee or asylum seeker. The section shall state the prohibition on the extradition proceedings till the decision of asylum claim in United Kingdom.
3. There is a disharmony in the decisions of courts due to different rules of extradition for EAW states and others for non-EAW states. It is recommended that Extradition Act 2003 shall be coordinated by eliminating the major discriminations in it for the part one category states and part two category states.

5.2.3 To the United Nations High Commissioner for Refugees (UNHCR)

UNHCR was created in 1950. It is a principal organ of United Nations to deal with matters of refugees. It is mandated to protect the refugees, stateless persons and displaced person. It assists the states for local integration, repatriation and resettlement of the refugees. The working of UNHCR is praiseworthy. One can criticize the policies of UNHCR but cannot disapprove the mandate given to it. There are some recommendations to UNHCR for amending their policies.

1. The procedure to seek and get asylum is worst in United Kingdom. UNHCR should review the national legislation of United Kingdom and approach them to amend that law. UNHCR should request the Government of United Kingdom to insert the provision in Extradition

Act 2003 regarding the suspension of extradition proceedings till the decision on asylum application.

2. UNHCR is doing spontaneous repatriation of Afghan refugees. They are providing cash to refugees for their return. Minute Cash is not a solution, UNHCR must stress on the institution building. It must establish the employment cycle in order to generate their own incomes. This can be done by beginning the new projects like small and large industries. Providing the opportunity to work for returnees will cause the self-construction of Afghanistan.
3. Voluntary repatriation is a solution but forceful repatriation is not the perpetual solution. Voluntary repatriation can only be possible by stabilizing the peace in Afghanistan. Refugees are reluctant to return their homeland if they are feeling threat and danger in their homeland. So, the desire to return voluntarily remains in the hand of refugee community. It is recommended that UNHCR must focus on creating the conducive environment by using all forum like UN, EU, OIC, SCO etc.

BIBLIOGRAPHY

BOOKS

1. Battjes, Hemme, and Hoogleraar Europe esatie lrechtan de Vrije. *European asylum law and international law*. M. Nijhoff, 2006.
2. Bassiouni, Cherif. *International Extradition: United States Law and Practice*. New York, NY: Oxford University Press, 2014.
3. Peers, Steve and Rogers, Nicola. *EU Immigration and Asylum Law: Text and Commentary*. vol. 12 Boston, USA: Martinuss Nijhoff, 2006.
4. Price, Matthew E. *Rethinking Asylum: History, Purpose and Limits*. Cambridge University Press, 2009.
5. Cherubini, Francesco. *Asylum Law in the European Union*. London: Routledge, 2016.
6. Ross , Alf. *A Textbook of International Law: general part*. The Law book Exchange, Ltd., 2006.
7. Starke, Joseph Gabriel. *Starke's international law*. Butterworth-Heinemann, 1994.
8. P O'Connell, Daniel. *International Law. Vol 1+ 2*. Stevens, 1965.
9. Booth, VE Hartley, and Peter Sells. *British extradition law and procedure: including extradition between the United Kingdom and foreign states, the Commonwealth and dependent countries and the Republic of Ireland*. Vol. 2. BRILL, 1980.
10. Foster, Michelle. "Refugees, Asylum Seekers and the Rule of Law." (2011): 431-434.
11. Gibney, Matthew J. *The Ethics and Politics of Asylum*. Cambridge University Press, 2004.
12. Hathaway, James C. *The rights of refugees under international law*. Cambridge University Press, 2005.
13. J.Whittaker, David. *Asylum Seekers and Refugees in*. Taylor & Francis e-Library, 2006.
14. Malanczuk, Peter. *Akehurst's modern introduction to international law*. Routledge, 2002.

15. O'Nions, Helen. *Asylum-a right denied: a critical analysis of European asylum policy*. Routledge, 2016.
16. Simeon, James C. *Critical Issues in International Refugee Law*. First. Cambridge University Press, 2010.
17. Agarwal, Hari Om. *International Law & Human Rights*. Central law publications, 2005.
18. Singer, Sarah. *Terrorism and Exclusion from Refugee Status in the UK: Asylum Seekers Suspected of Serious Criminality*. Hotei Publishing, 2015
19. Sheare, Ivon Anthony. *Extradition in international law*. Manchester University Press, 1971.
20. Sinha, S. Prakash. *Asylum and international law*. Martinus Nijhoff Publishers, 1971.
21. Shah, Prakash Amritlal. *Refugees, Race and the Legal Concept of Asylum In Britain*. Cavendish Publishing Limited, United Kingdom, 2000.
22. Shaw, Malcom N. *International Law*. 6th. Cambridge University Press, 2008.
23. Slingenbergh, Lieneke. *The Reception of Asylum Seekers Under International Law: Between sovereignty and equality*. Hart Publishing Oxford, 2014.
24. Zolberg, Aristide R., AstriSuhrke, and Sergio Aguayo. *Escape from violence: Conflict and the refugee crisis in the developing world*. Oxford University Press on Demand, 1992
- Singer, Sarah. *Terrorism and Exclusion from Refugee Status in the UK*. Koninklijke Brill nv, Leiden, The Netherlands., 2015.

CASE LAWS

1. *Abdul Ghaffar v. Federation of Pakistan & Others*. (SCMR 1536 2000).
2. *Nasrullah Khan Henjra v. Government of Pakistan*. (PLD 1994 SC 23).
3. *Nargis Shaheen vs. Federation of Pakistan*. (PLD 1993 Lahore 732).
4. *Al-Saadoon and Mufdhi v. United Kingdom*, 51 E.H.R.R. 9 (2010).
5. *Barapind v. Reno*, 225 F.3d 1100 (9th Cir. 2000).

6. *Bilasi-Ashri v. Austria*. (April 16, 2002).
7. *Chahal v. United Kingdom*, 23 E.H.R.R. 413 (1996).
8. *Colom v. Peru*, 1950 I.C.J. 266 (1950).
9. *Eichmann Case*, 36 I.L.R. 5 (1961).
10. *Chandra Sekhar Shome v. The Province of East Pakistan and Others*. (PLD Dacca 119 1962).
11. *Federation of Pakistan v Muhammad Haris Hassan & Others*. (PLD Karachi 119 2004).
12. *I.A. v. Asylum and Immigration Tribunal*. CSIH 28 (United Kingdom: Court of Session (Scotland), April 1, 2011).
13. *Welch v. Helvering*, 290 U.S. 111, 54 S. Ct. 8, 78 L. Ed. 212 (1933).
14. *FR v. Turk*, 1927 P.C.I.J. (ser. A) 10 (1927).
15. *A v Secretary of State for the Home Department* UKHL
16. *Ireland v United Kingdom*, 2 E.H.R.R. 25 (1978).
17. *Hilton v. Secretary of State for Foreign and Commonwealth Affairs, Information Tribunal National Security Appeals Panel*: (2016).
18. *PP v Secretary of State for the Home Department* SC (2007).
19. *K.R.S. v. the United Kingdom*, Appl. No. 32733/08, Council of Europe, ECHR, (2017).
20. *Mir Aimal Kanshi v. The State & Others*. (PCrLJ 1097 1998).
21. *Mirza Ifikhar Mehmood v Area Magistrate, Police Station Nekapura, Sialkot & Others*. (PLD Lahore 2009).
22. *Mst. Akhtar Malik v. Federation of Pakistan & Others*. (PCrLJ 229 1994).
23. *Mst. Shaheena Iqbal v. Federation of Pakistan & Others*. (PLD Lahore 266 1998).
24. *Muhammad Asim Malik v. Anwar Jalil & Others*. (PLD Lahore 279 1989).
25. *Sami Nasir vs. the state*. (1984 PCrLJ1553 Karachi).
26. *Muhammad Azim Malik v. A.C. & S.D.M. Preedy (South) Karachi & Others*. (PLD Supreme Court 266 1989).
27. *Nargis Shaheen v. Federation of Pakistan & Others*. (PLD Lahore 732 1993).

28. *Nargis Shaheen v. Federation of Pakistan & Others.* (SCMR 1706 1994).
29. *Nasrullah Khan Henjra v. Government of Pakistan & Others.* (PLD Supreme Court 23 1994).
30. *Muhammad Azim Malik vs. the Government of Pakistan.* (PLD 1989 SC 519).
31. *Zulqarnain khan vs. Government of Pakistan.* (PLD 1994 SC 23).
32. *Muhammad Shafiq vs. Chief Secretary and others.* (PLD 1973 Azad J & K 27).
33. *Akhtar Malik vs. Federation of Pakistan and five others.* (1994 PCrLJ 229 Lah.).
34. *Othman (Abu Qatada) v. United Kingdom, App.,* 9 Eur. Ct. H.R. 264 (2012).
35. *ex parte Pinochet,* 38 I.L.M. 581, 2 All E.R. 97 (1999).
36. *Prosecutor v. Furundzija, Case,* 1 P. 153 (1998).
37. *Soering v. United Kingdom,* 11 E.H.R.R. 439 (1989).
38. *Ramirez v. Canada (Minister of Employment and Immigration),* 1992 F.C.2 306 (1992).
39. *Pushpanathan v. Canada (Minister of Citizenship and Immigration),* 1998 S.C.R.1 982 (1998).
40. *Chan v. Canada (Minister of Employment and Immigration),* 1995 S.C.R.3 593 (1995).
41. *McMullen v. Immigration & Naturalization Service,* 658 F.2d 1312 (9th Cir. 1981).
42. *T.I. V. The United Kingdom,* Appl. No. 43844/98, Council of Europe, ECHR, (2000).
43. *Tomic v United Kingdom,* 17837/03, Council of Europe: ECHR, (2003).
44. *Regina (Makhlulif and Another) v. Bow Street Magistrates' Court:* QBD (2001).
45. *Judicial Authority in Sweden v Julian Paul Assange.* (Westminster Magistrates' Court, February 24, 2011).

ACADEMIC JOURNALS & ARTICLES

1. Brimblecombe, N. "Asylum nursing in the UK at the end of the Victorian era: Hill End Asylum." *Journal of psychiatric and mental health nursing* 12, no. 1 (2005): 57-63.

2. Cantrell, Charles L. "The political offense exemption in international extradition: a comparison of the United States, Great Britain and the Republic of Ireland." *Marq. L. Rev.* 60 (1976): 777.
3. Capdevila, Rose, and Jane EM Callaghan. "'It's not racist. It's common sense'. A critical analysis of political discourse around asylum and immigration in the UK." *Journal of Community & Applied Social Psychology* 18, no. 1 (2008): 1-16.
4. Chakrabarti, Shami. "Rights and rhetoric: The politics of asylum and human rights culture in the United Kingdom." *Journal of Law and Society* 32, no. 1 (2005): 131-147.
5. Paul, Weis. "The international protection of refugees." *American Journal of International Law* 48, no. 2 (1954):193-221.
6. Fassin, Didier, and Carolina Kobelinsky. "How Asylum Claims Are Adjudicated: The Institution as a Moral Agent." *Revue française de sociologie* 53, no. 4 (2012): 657-688.
7. Gibney, Matthew J. "Asylum and the Expansion of Deportation in the United Kingdom." *Government and opposition* 43, no. 2 (2008): 146-167.
8. Gilmore, William C. "Extradition and the political offence exception: Reflections on United Kingdom law and practice." *Commonwealth Law Bulletin* 18, no. 2 (1992): 701-719.
9. Groarke, John Patrick. "Revolutionaries Beware: The Erosion of the Political Offense Exception Under the 1986 United States-United Kingdom Supplementary Extradition Treaty." *University of Pennsylvania Law Review* 136, no. 5 (1988): 1515-1545.
10. Gilbert, Geoffrey S. "Right of Asylum: A change Direction." *British Institute of International and Comparative Law*, July 1983.
11. Briggs, Adrian. "The Principle of Comity in International Law." *Recueil Des Cours, Collected Courses, Volume 354* (2007).
12. Heuser, Stefan. "Is there a right to have rights? The case of Right of Asylum." *Ethical Theory and Moral Practice* 11, no. 1 (February 2008): 3-13.
13. Harvey, Colin. "Restructuring asylum: recent trends in United Kingdom asylum law and policy." *International Journal of refugee law* 9, no. 1 (1997): 60-73.
14. Haste, Helen. "Assets, aliens or asylum seekers? Immigration and the United Kingdom." *Prospects* 36, no. 3 (2006): 327-341.

15. Hussein, Shereen, Jill Manthorpe, and Martin Stevens. "Exploring the potential of refugees and asylum seekers for social care work in England: A qualitative study." *Health & social care in the community* 19, no. 5 (2011): 468-475.
16. Kapferer, Sibylle. *The interface between extradition and asylum*. UNHCR Department of International Protection, 2003.
17. Karakaya, Mustafa. "The protection of refugees and asylum seekers against extradition under international law." *Law & Justice Review* V, no. 1 (june 2014)
18. Kendall, Emily C. "Sanctuary in the 21st Century: The Unique Asylum Exception to the Extradition Rule." *Mich. St. Int'l L. Rev.* 23 (2014): 153.
19. Kirchheimer, Otto. "Asylum." *American Political Science Association*, December 1959.
20. Gower, Melanie. "Asylum Support: Accommodation and Financial Support for Asylum Seekers." Commons Library Briefing, 2015.
21. Lewis, Kenneth L. "The Extradition Treaty Between Jamaica and the United States: Its History and the Saga of Christopher" Dudus" Coke." *The University of Miami Inter-American Law Review* 45, no. 1 (2013): 63-90.
22. Warbrick, Colin, Dominic Mcgoldrick, Mark Mackarel, and Susan Nash. "Extradition and the European Union." *International and Comparative Law Quarterly* 46, no. 04 (1997).
23. Sheare, Ivon Anthony. *Extradition in international law*. Manchester University Press,(1971).
24. Slingenberg, Lieneke. *The Reception of Asylum Seekers Under International Law: Between sovereignty and equality*. Hart Publishing Oxford, (2014).
25. Symonds, Bob. "The origins of insane asylums in England during the 19th century: a brief sociological review." *Journal of advanced nursing* 22, no. 1 (1995): 94-100.
26. Thomas, Robert. "Consistency in asylum adjudication: Country Guidance and the asylum process in the United Kingdom." *International Journal of Refugee Law* 20, no. 4 (2008): 489-532.
27. Treacher, Amal, Annie Coombes, Claire Alexander, Lucy Bland, and Pam Alldred. "Exile and asylum: women seeking asylum in 'Fortress Europe'." (2003): 1-4.

28. van Krieken, Peter J. "Hijacking and Asylum: Some remarks on the hijacking problem and its repression, with respect to the law on asylum." *Netherlands International Law Review* 22, no. 1 (1975): 3-30.
29. Maynard, P. D. "The Legal Competence of the United Nations High Commissioner for Refugees." *International and Comparative Law Quarterly* (1982): pp. 415-425.
30. Manuty, M. Nur. "The Protection of Refugees in Islam: Pluralism and Inclusivity," *Refugee Survey Quarterly* 27, no. 2 (2008).
31. Muneer, Muhammad. "Refugee Law in Islam", *Journal of Social Sciences*, vol. 4, No. 2, August (2011).
32. Chimni, Bupinder S. "From resettlement to involuntary repatriation: towards a critical history of durable solutions to refugee problems." *Refugee Survey Quarterly* 23, no. 3 (2004).

THESIS

1. Ahmed, Ghufraan. "Extradition and human rights a comparative study of Pakistani extradition law with other jurisdictions." August 2011.
2. Ali, Arshad. "The concept of extradition in modern law of nations and Shariah: a comparative study." 2015.
3. Nicolson, Vaneesa Johan. *Reconciling Notions of Asylum and Refugees in Islam and International Law: A Case Study of Afghan Refugees in Pakistan*, Master's thesis, The University of Western Ontario, 2009.
4. Arora, Saroj. "Legal regime of extradition: National and International Perspective." July 2013.
5. Hatam, Ahmad Khalid. "Non-refoulement and Pakistan's go home attitude: a case study of Afghanistan Refugees." July 2009.

CONVENTIONS AND LEGISLATIONS

1. Convention Relating to the Status of Refugees 1951.

2. European Convention on Human Rights 1950.
3. The Foreigners Act 1946.
4. Rome Statute of the International Criminal Court 2002.
5. Extradition Act 2003 (United Kingdom).
6. Immigration Act 2014.
7. Police and Justice Act 2006.
8. Policing and Crime Act 2009.
9. Crime and Courts Act 2013.
10. The European Convention on Extradition Order 1990.
11. Special Immigration Appeals Commission Act 1997.
12. The Special Immigration Appeals Commission (Procedure) Rules 2003.
13. Convention on the Prevention and Punishment of the Crime of Genocide 1948.
14. International Convention on the Suppression and Punishment of the Crime of Apartheid 1973.
15. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity 1968.
16. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984.
17. Aliens Restriction Act 1914.
18. The Immigration, Asylum and Nationality Act 2006.
19. British Nationality Act 1981.
20. National Assistance Act 1948.
21. Asylum and Immigration Appeals Act 1993.
22. Immigration Act 1971.
23. Immigration and Asylum Act 1999.
24. Nationality, Immigration and Asylum Act 2002.
25. Protocol Relating to the Status of Refugees 1967
26. Diplomatic and Consular Premises Act 1987 .
27. Universal declaration of human rights 1948.
28. Convention on Territorial Asylum 1954.

AGREEMENTS

1. "Agreement Between The Government of Pakistan, Government of Afghanistan, and The United Nation High Commissioner for Refugees Governing The Repatriation of Afghan Citizens Living In Pakistan." July 19, 2016.
2. "Cooperation Agreement between the United Nations (United Nations High Commissioner for Refugees) and the Government of Pakistan." Islamabad, Pakistan, September 18, 1993.
3. Treaty of Hudaibiya 626 AD.

WEBLIOGRAPHY

<https://www.google.com.pk/>

<https://www.wikipedia.org/>

<http://www.un.org/en/index.html>

<http://www.unhcr.org/>

<http://unhcrpk.org/>

<http://www.refworld.org/docid/3fe846da4.html>

Appendix I: THE EXTRADITION ACT 1972

THE EXTRADITION ACT, 1972

CONTENTS

CHAPTER I

PRELIMINARY

1. Short title, extent commencement and application
2. Definitions
3. Treaty State
4. Application of Act to non-treaty States

CHAPTER II

SURRENDER OF FUGITIVE OFFENDERS

5. Liability of fugitive offenders to be surrendered
6. Requisition for surrender of fugitive offender
7. Order of Magisterial enquiry
8. Magisterial enquiry
9. Receipt in evidence of exhibits, depositions, etc
10. Magistrate to report after the enquiry
11. Removal and delivery of the fugitive offender
12. Discharge of person apprehended if not surrendered within two months
13. Powers to the Federal Government to discharge a fugitive offender
14. Simultaneous requisitions

CHAPTER III

SURRENDER TO PAKISTAN OF PERSONS ACCUSED OF EXTRADITION OFFENCES

15. Requisition for surrender of persons to Pakistan

16. A person surrendered by a treaty State not to be tried for previous offence

17. Return of the persons surrendered to Pakistan

CHAPTER IV

MISCELLANEOUS

18. Jurisdiction as to offences committed at sea or in air

19. Release of persons arrested on bail

20. Property found on fugitive offender

21. Lawfulness of custody and re-taking under warrant issued under Act

22. Power to make rules

23. Power to amend the Schedule

24. Repeal

THE SCHEDULE

THE EXTRADITION ACT, 1972

An act to consolidate and amend the law relating to the extradition of fugitive offenders

Whereas it is expedient to consolidate and amend the law relating to the extradition of fugitive offenders;

It is hereby enacted as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent commencement and application.— (1) This Act may be called the Extradition Act, 1972.

(2) It extends to the whole of Pakistan.

(3) It shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint.

(4) It shall apply in relation to the return of persons to and to persons returned from,—

(a) a treaty State, subject to a declaration under section 3, if any ; and

(b) a foreign State not being a treaty State, subject to a direction under section 4.

2. Definitions.— (1) In this Act, unless there is anything repugnant in the subject or context.—

(a) 'extradition offence' means an offence the act of omission constitution which falls within any of the descriptions set out in the Schedule and, if it took place within, or within the jurisdiction of Pakistan would constitute an offence against the law of Pakistan and also—

(i) in the case of treaty State, an offence a person accused of which is, under the extradition treaty with that State, to be returned to or from that State; and

(ii) in the case of a foreign State not being a treaty State, an offence specified in a direction issued under section 4;

(b) 'extradition treaty' means a treaty or agreement between Pakistan and a foreign State for the extradition to or from such State of a person accused or convicted of an extradition offence ;

(c) 'foreign State' includes every constituent part, colony or dependency of such State ;

(d) 'fugitive offender' means the person who, being accused or convicted of an extradition offence is, or is suspected to be, in any part of Pakistan;

(e) 'prescribed' means prescribed by rules made under this Act;

(f) 'treaty State' means a foreign State with which an extradition treaty is for the time being in operation.

(2) In determining for the purposes of this Act whether an offence against the law of a foreign State falls within a description set out in the Schedule, any special intent or state of mind or special circumstances of aggravation which may be necessary to constitute that offence under the law shall be disregarded.

3. Treaty State.— (1) As soon as may be after the commencement of this Act, the Federal Government shall publish in the official Gazette a list of the foreign State with which an extradition treaty is in operation, specifying in respect of each such State the offences persons accused of which are, under the treaty, to be returned to or from that State.

(2) Whenever there is concluded an extradition treaty between Pakistan and a foreign State, the Federal Government may, by notification in the official Gazette, declare such State to be a treaty State for the purposes of this Act.

(3) A declaration under subsection (2) in relation to foreign State shall specify the offences persons accused of which are, under the extradition treaty with that State, to be returned to or from that State and may provide that this Act shall apply in relation to that State with such modification as may be set out therein ; and the provision of this Act shall have effect accordingly.

4. Application of Act to non-treaty States.— (1) Where the Federal; Government considers it expedient that the persons who, being accused or convicted of offence at places within, or within the jurisdiction of, a foreign State, are or are suspected to be in Pakistan should be returned to that State, notwithstanding that there is no extradition treaty with that State, it may, by notification in the official Gazette, direct that the provisions of this Act, shall, with respect to such offences and subject to such modifications, exceptions, conditions and qualifications, if any, as may be specified therein, have effect in relation to that State.

(2) Where a direction under subsection (1) in relation to a foreign State is in force, the provisions of this Act shall, with respect to the offences specified in that direction, have effect in relation to such State as if it were a treaty State.

CHAPTER II

SURRENDER OF FUGITIVE OFFENDERS

5. Liability of fugitive offenders to be surrendered.— (1) Subject to the provisions of subsection (2), every fugitive offender shall be liable to be apprehended and surrendered in the manner provided in this Act, whether the offence in respect of which his surrender is sought was committed before or after the commencement of this Act and whether or not a Court in Pakistan has jurisdiction to try that offence.

(2) No fugitive offender shall be surrendered—

(a) if the offence in respect of which his surrender is sought is of a political character or if it is shown to the satisfaction of the Federal Government or of the Magistrate or Court before whom he may be produced that the requisition for his surrender has, in fact, been made with a view to his being tried or punished for an offence of a political character;

(b) if the offence in respect of which his surrender is sought is not punishable with death or with imprisonment for life or a term which is not less than twelve months ;

(c) if the prosecution for the offence in respect of which the surrender is sought is, according to the law of the State asking for the surrender, barred by time;

(d) if there is no provision in the law of, or in the extradition treaty with, the State asking for the surrender that the fugitive offender shall not, until he has been restored or has had an opportunity of returning to Pakistan, be detained or tried in that State for any offence committed prior to his surrender, other than the extradition offence proved by the facts on which the surrender is based ;

(e) if it appears to the Federal Government that he is accused or alleged to have been convicted of such no offence that if he were charged with that offence in Pakistan he would be entitled to be discharged under any law relating to previous acquittal or conviction ;

(f) if he has been accused of some offence in Pakistan, not being the offence for which his surrender is sought, or is undergoing sentence under any conviction in Pakistan, until after he has been discharged, whether by acquittal or on the expiration of his sentence or otherwise ;

(g) if it is shown to the satisfaction of the Federal Government or of the Magistrate or Court before whom he may be produced that he might if surrendered be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

6. Requisition for surrender of fugitive offender.— A requisition for the surrender of a fugitive offender shall be made to the Federal Government:—

(a) by a diplomatic representative in Pakistan of the State asking for the surrender; or

(b) by the Government of the State asking for the surrender through the diplomatic representative of Pakistan in that State ; or

(c) in such other manner as may have been settled by arrangement between the Federal Government and the Government of the State asking for the surrender.

7. Order of Magisterial enquiry.— Where a requisition is made under section 6, the Federal Government may, if it thinks fit, issue an order to enquire into the case to any Magistrate of the First Class who would have had jurisdiction to enquire into the extradition offence to which the requisition relates if it had been an offence committed within the local limits of his jurisdiction. **8.**

Magisterial enquiry.— (1) On receipt of an order under section 7, the Magistrate shall issue a summons or a warrant for the arrest of the fugitive offender according as the cause appears to be one in which according to the law of Pakistan a summons or warrant would ordinarily issue.

(2) When the fugitive offender appears or is brought before him, the Magistrate shall enquire into the case in the same manner, and have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by a Court of Session and shall take such evidence as may be produced in support of the requisition and on behalf of the fugitive offender, including any evidence to show that the offence of which the fugitive offender is accused or alleged to have been convicted is an offence of a political character or is not an extradition offence.

9. Receipt in evidence of exhibits, depositions, etc.— (1) In any proceedings against a fugitive offender under this Act, exhibits and depositions, whether or not they are received or taken in the presence of the person against whom they are used, 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 statements on oath which purport to have been issued, received or taken by any Court of Justice outside Pakistan, or copies thereof, and certificates of, or judicial documents stating the fact of, conviction before any such Court, shall be deemed duly authenticated—

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

(b) if the depositions or 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 the original depositions or statements or to be true copies thereof, as the case may require;

(c) if 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 ; and

(d) if the warrant depositions, statements, copies, certificates and judicial documents, as the case may be, are authenticated by the oath of some witness or by the official seal of a minister of the State where the same were respectively issued, taken or given.

(3) For the purpose of the section, 'warrant' includes any judicial document authorizing the arrest of any person accused or convicted of an offence.

10. Magistrate to report after the enquiry.— If, after the enquiry under section 8, the Magistrate is of opinion—

(a) that a prima facie case has not been made out in support of the requisition for surrender of the fugitive offender, he shall discharge the fugitive offender and make a report to that effect to the Federal Government;

(b) that a prima facie case has been made out in support of such requisition, he shall—

(i) report the result of his enquiry to the Federal Government

(ii) forward, together with such report, any written statement which the fugitive offender may desire to submit for the consideration of the Federal Government; and

(iii) subject to any provision relating to bail, commit the fugitive offender to prison to await the orders of the Federal Government.

11. Removal and delivery of the fugitive offender.— If upon receipt of the report and statement under clause (b) of section 10, the Federal Government is of opinion that the fugitive offender ought to be surrendered, it may issue a warrant for the custody and removal of the fugitive offender and for his delivery at a place and to a person to be named in the warrant:

Provided that the fugitive offender shall not be so delivered until after the expiration of fifteen days from the date he has been taken in custody under such warrant.

12. Discharge of person apprehended if not surrendered within two months.— If a fugitive offender who, in pursuance of this Act, has been taken into custody to await his surrender is not conveyed out of Pakistan within two months after such committal, the High Court, upon application made to it by or on behalf of the fugitive offender and upon proof that reasonable notice of the intention to make such application has been given to the Federal Government, may order such prisoner to be discharged unless sufficient cause is shown to the contrary.

13. Powers to the Federal Government to discharge a fugitive offender.— If it appears to the Federal Government that by reason or the trivial nature of the case or by reason of the application for the surrender of a fugitive offender not being made in good faith or in the interest of justice or for any other reason it would be unjust or inexpedient to surrender the fugitive offender, it may, by order, at any time stay the proceedings under this Act, against him and direct any summons or warrant issued under this Act, to be cancelled and the fugitive offender, if he is in custody or under detention, to be discharged.

14. Simultaneous requisitions.— If requisitions for the surrender of a fugitive offender are received from more than one treaty State, the Federal Government may, having regard to the circumstances of the case, surrender the fugitive offender to such State as it may think fit.

CHAPTER III

SURRENDER TO PAKISTAN OF PERSONS ACCUSED OF EXTRADITION OFFENCES

15. Requisition for surrender of persons to Pakistan.— A requisition for the surrender to Pakistan of a person who, being accused or convicted of an extradition offence, as or is suspected to be in treaty State may be made by the Federal Government—

- (a) to the diplomatic representative in Pakistan of that State;
- (b) to the Government of that State through the diplomatic representative of Pakistan in that State ; or
- (c) in such other manner as may have been settled by arrangement between the Federal Government and the Government of that State.

16. A person surrendered by a treaty State not to be tried for previous offence.— A person surrendered by a treaty State in pursuance of a requisition under section 15 shall not, until he has been restored or has had an opportunity of returning to that State, be tried in Pakistan for an offence committed prior to the surrender, other than the extradition offence proved by the facts on which the surrender is based.

17. Return of the persons surrendered to Pakistan.— The Federal Government may, if it thinks fit, on the request of a person surrendered to Pakistan in pursuance of a requisition under section 15, arrange for him to be sent back at the cost of the Federal Government and with as little delay as possible to the State by which he was so surrendered if—

- (a) proceedings against him for the offence for which he has surrendered are not begun within the period of six months from the day of his arrival in Pakistan; or
- (b) he is acquitted or discharge on his trial for that offence.

CHAPTER IV

MISCELLANEOUS

18. Jurisdiction as to offences committed at sea or in air.— Where the offence in respect of which the surrender of a fugitive offender is sought was committed on board any vessel on the high seas or any aircraft in the air outside Pakistan or the Pakistan territorial waters and such vessel or aircraft comes into any port or aerodrome of Pakistan with the fugitive offender on board, the Federal Government and any Magistrate having jurisdiction in such port or aerodrome may exercise the powers conferred on it or him by this Act.

19. Release of persons arrested on bail.— The provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), relating to bail shall apply to a fugitive offender arrested or detained under this Act in the same manner as they would apply if he were accused of committing in Pakistan the offence of which he is accused or has been convicted; and in relation to such bail the Magistrate before whom he is brought shall have, as far as may be, the same powers and jurisdiction as a Court of Session under that Code.

20. Property found on fugitive offender.— Everything found in the possession of a fugitive offender at the time of his arrest which may be material as evidence in proving the extradition offence may be delivered up with the fugitive offender on his surrender, subject to the rights, if any, of third parties with respect thereto.

21. Lawfulness of custody and re-taking under warrant issued under Act.— It shall be lawful for any person to whom a warrant is directed in pursuance of the provisions of this Act to receive, hold in custody and convey the fugitive offender mentioned in the warrant to the place named in the warrant, and, if such offender escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be re-taken as a person accused of an offence against the law of Pakistan may be re-taken upon an escape.

22. Power to make rules.— (1) The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely.

- (a) the form in which a requisition for the surrender of a fugitive offender may be made ;
- (b) the removal of fugitive offenders apprehended or in custody under this Act and their control and maintenance until such time as they are handed over to the persons entitled to receive them ;
- (c) the seizure and disposition of any property which is the subject of, or required for proof of, any alleged offence with respect to which this Act applies; and
- (d) the form and manner in which the Magistrate may be required to make his report to the Federal Government under this Act.

23. Power to amend the Schedule.— The Federal Government may, by notification in the official Gazette, amend the Schedule so as to add any entry thereto or modify or omit any entry therein.

24. Repeal.— The Extradition Act, 1903 (XV of 1903), is hereby repealed.

THE SCHEDULE

[See section 2 (1) (a)]

EXTRADITION OFFENCES

1. Culpable homicide.
2. Maliciously or wilfully wounding 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. Bribery.
7. Perjury or subornation of perjury or conspiring to defeat the course of justice.
8. Arson.
9. An offence concerning counterfeit currency.
10. An offence against the law relating to forgery
11. 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.
12. Burglary, house-breaking or any similar offence.
13. Robbery.
14. Blackmail or extortion by means of threats or by abuse of authority.
15. An offence against bankruptcy law or company law.
16. Malicious or wilful/damage to property.
17. Acts done with the intention of endangering vehicles, vessels or aircraft.
18. An offence against the law relating to dangerous drugs or narcotics.
19. Piracy.
20. Revolt against the authority of the master of a ship or the commander of an aircraft.
21. Contravention of import or export prohibitions relating to precious stones, gold and other precious metals.
22. Aiding an abetting or counseling or procuring the commission of, or being and accessory before or after the fact to, or attempting or conspiring to commit, any of the aforesaid offences.

[22-A] Illicit dealing in arms, ammunition or explosive material used in their production.

