RECOGNITION OF THE PASSIVE NATIONALITY PRINCIPLE IN INDIA

By Karan Tripathi[328] & Krishna Parkhani[329]

INTRODUCTION

The Indian Penal Code (IPC) is an illustrious living document which holds within itself all possible crimes envisaged by extent of human cruelty. It was codified in 1860 by colonial lawmakers who, in the well sought after twenty three chapters, not only wanted to give shape to India's criminal justice regime but also to make amends of the existing bottlenecks in its British counterpart. However, every law is a fiddle of human rationale which shall be perfectly tuned to the harmonies of society. For as we have seen, a detuned fiddle (law) is not only ridiculed but also deliberately demeaned by its patrons. Law, on the other hand, shall also be seen as an instrument of social change. It has ample power to cohesively drive the moralistic and idealistic perspective of the society by the means of sanction or just adherence to authority. Although, these two perspectives of law forms many conjectures which have to be addressed in wider sense to avoid chaos and confusion which leads to injustice. Indian Penal Code is no exception.

Since its inception, IPC has been anything but flexible. The approach of IPC in many subject matters have become highly retrospective as its tentacles ceases to extend to the increasing complexities of society and associated crimes. One such subject matter is "Passive Nationality Principle". The extraterritorial nature of crimes has been recognized by IPC under Section 3 which reads as – "Any person liable, by any Indian law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India." Moreover, this section makes more sense once it is read along with Section 4 which reads as – "The provision of this code will apply also to an offence committed by any citizen of India in any part of the world beyond India as well as any person on any vessel which is registered with India." In addition to this, Section

[328] 1st Year, BA LLB Student, Symbiosis Law School, Pune
[329] 5th Year, BA LLB Student, Symbiosis Law School, Pune

188 of Criminal Procedure Code reads as – When a citizen of India commits an offence outside India, whether on the high seas or elsewhere, he may be dealt with in respect of such offence as if it had been committed at any place within India.[330] ”

Analysing the aforesaid sections, we scrutinize that Indian Criminal Justice system has a very restricted and straight jacketed scope when it comes to extra territorial crimes. The law of the land only recognize the “Active Nationality Principle of Jurisdiction” which talks about the crime committed by an Indian citizen on a foreign territory. What is highly concerning is the total apathy and ignorance of the very significant concept of “Passive Nationality Principle of Jurisdiction” which signifies issues where an Indian citizen is attacked (of a crime punishable by IPC) on a foreign territory.

This research paper envisages of putting under the ambit of Indian legal fraternity the importance of Passive Nationality Principle of Jurisdiction in the context of crimes committed by foreign citizens, enemies, companies, etc against the citizens of India. This academic work will highlight the restraints of Criminal Justice system in India when it comes to policies of extradition and double taxation and how adversely it inflicts psychological and judicial injustice on the person who has been victimized.

UNDERSTANDING EXTRATERRITORIALITY

Extraterritoriality principle broadly refers to the extension of a state’s influence, beyond its territory, on the rights of the people. Such principle owns its causation to the process of economic globalization and is directly affective to the corresponding social, cultural and economic rights. This concept comes across as a contemporary shift from the conventional idea of geographical jurisdiction and it exists as one of the most controversial concept under International Law.

[330] Pheroze v State, 1964 (2) Cr. L. J. 533

The principle of extraterritoriality in the context of criminal justice find its roots in the very famous adjudication of Nazi war crimes at the Nuremberg tribunals in the post World War era.[331] Following the lines of Nuremberg, Israel had also exercised this principle in an extremely acknowledged case of Attorney General of the Government of Israel v. Eichmann where a member of Gestapo was prosecuted for his explicit involvement in "final solution".[332] Both these landmark cases embarked upon the journey of application of state's extraterritorial jurisdiction as the ethical principles of betterment of global peace and security were invoked. In the present scenario, many countries, including India, have recognized the extraterritorial principle of jurisdiction under their domestic legislations. This paper is concerned with the application of extraterritoriality through "Nationality Principle of Jurisdiction."

NATIONALITY PRINCIPLE OF JURISDICTION

The nationality principle is a concept which legitimizes extraterritorial jurisdiction by a state over their nationals even when such an act has been commissioned beyond their territory. Such a principle is invoked by a state when its citizen is involved in any criminal matter, which is punishable under its domestic law, on a geographical area which is not under the territorial control of that particular state. The determination of the entities that can be brought under the ambit of "national" is solely left to the discretion of the concerned state as long as such discretion does not violate certain International obligations, for instance, under the Convention on the Reduction of Statelessness. Most of the Common Law states choose to exercise extraterritoriality jurisdiction over citizens, residents, persons and corporate entities.[333]

There are two types of Nationality Principles

1. Active Nationality Principle

2. Passive Nationality Principle

ACTIVE NATIONALITY PRINCIPLE

[331] H. Gluzman, 'On Universal Jurisdiction – Birth, Life and a Near-Death Experience', Bocconi School of Law Papers, Paper No. 2009-08/EN, p. 4, citing R. Teitel, 'Nuremberg and its Legacy: Fifty Years Later', in B. Cooper (ed.), War Crimes: the Legacy of Nuremberg, 1990, p. 50.
[332] (1961) 36 International Law Reports 5.
[333] See, Criminal Code Act 1995 (Cth), s. 272.6.

When the state exerts extraterritorial jurisdiction over its national who has been accused to be the perpetrator of the extraterritorial act, it is described as active nationality principle. A report for the Harvard Corporate Social Responsibility Initiative makes it clear that states perceive the active nationality principle as the strongest basis for direct extraterritorial jurisdiction.[334]

In Indian Criminal Justice System, IPC and CRPC gives respectful insight and recognition to this principle. Section 3 of IPC recognizes active nationality principle as it reads as "Any person liable, by any Indian law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India."This principle is further extended by Section 4 which reads as "The provision of this code will apply also to an offence committed by any citizen of India in any part of the world beyond India as well as any person on any vessel which is registered with India." Apart from IPC, Criminal Procedure Code gives recognition to the active nationality principle through Section 188 which reads as "When a citizen of India commits an offence outside India, whether on the high seas or elsewhere, he may be dealt with in respect of such offence as if it had been committed at any place within India."

AILMENT IN CRIMINAL PROCEDURE CODE IN THE PURVIEW OF NATIONALITY PRINCIPLE

Section 188 of the Code of Criminal Procedure provides for extra territorial jurisdiction over Indian citizens and also on non citizens. This provision needs to be read in light of section 4 of the Indian Penal Code 1860 which expounds upon the extent of jurisdiction in respect of acts committed outside India by Indian citizens. This section specifies two cases in which a person can be dragged to court for offences committed out of India, namely:-

1. When an Indian citizen commits an offence in any place either on the high seas or elsewhere; and

2. When any person not being a citizen of India, commits an offence on any ship or aircraft registered in India.

[334] J.A. Zerk, 'Extraterritorial Jurisdiction: Lessons for the Business and Human Rights Sphere From Six Regulatory Areas' (Working Paper No. 59, Harvard Corporate Social Responsibility Initiative, 2010), p. 13.

The phrase 'offence committed outside India' refers to an Indian citizen who commits an offence at any place outside India or on the high seas may be dealt with in respect of such offences as if it had been committed in India. The word 'offence' means an act or omission made punishable by any law for the time being in force.[335] To attract this section, t is imperative to ascertain that an accused has been guilty of an act or omission made punishable by the domestic legislation of India; for the time being in force. [336]

The expression 'citizen of India'[337], includes every person who had his domicile in the territory of India at the commencement of the Constitution. Furthermore citizenship can be obtained by:

1. By way of birth i.e. being born in India.

2. Either whose parents were born in India.

3. An individual who has been a resident of the Indian Territory for not less than 5 years immediately preceding the commencement of the Constitution.

The word "found" must be taken to mean, not where a person is discovered, but where he is actually present.[338] Where a man is in the country and he is charged before a Magistrate with an offence under the Penal Code, it will not avail to him to say that he was brought illegally from a foreign country. The principal upon which English cases are based also underlies this Section.[339] A citizen of India who was a soldier in the Indian Army committed a murder in Cyprus while on service in the Army. He was accused of such an offence in Agra. It was held that the criminal court at Agra has the jurisdiction to try him.[340] The expression " at which place he may be found", under section 188 of the Cr.PC has the effect that the victim who suffered at the hands of the accused on a foreign land can complain about the offence to a competent court which he may find convenient.[341]

SANCTION OF THE CENTRAL GOVERNMENT

[335] Section 2(n) of the Code of Criminal Procedure, 1973
[336] Narayan Mahale, 59 Bom 745
[337] Article 5 of the Constitution of India
[338] Maganlal, (1882) 6 Bom 622
[339] Sahebrao v. Suryabham, (1948) Nag 334
[340] Sarmukh Singh v. State, (1879) 2 All 218 FB
[341] Om Hemrajani v. State of UP AIR 2005 SC 392

Where the offence is committed outside and beyond India, then previous sanction of the Central Government becomes necessary for inquiry or trial of such offence. Offence of conspiracy to do illegal acts was committed during a meeting in Mumbai and not at Singapore, though the illegal act was carried out in Singapore. It was held that for investigation and trial of the offence sanction of the Central Government was not necessary.[342]

When the conspiracy for cheating a bank was hatched at Chandigarh in confabulation with a non resident Indian at Dubai and during the continuous course of transaction certain documents were forged and payment was obtained

LACUNAE IN INDIAN PENAL LAW IN THE CONTEXT OF EXTRATERRITORIAL JURISDICTION OF INDIAN COURTS

Section 1-5 of Indian Penal Code talks about specific applicability of the code through explicit definitions.

Section 1 establishes the Act as its applicability extending to whole of India except of State of Jammu and Kashmir. Section 18 defines "India" as a "territory" of India and fails to include territorial waters. This is where the bottleneck lies. Since it was the colonial lawmakers that drafted IPC which was eventually accepted in 1860, they could never go beyond the laws prevailing in Britain. Since, the Territorial Waters Jurisdiction Act was enacted in Britain in 1878; IPC is left deprived of such inclusive clause of recognition. Years later, Territorial waters are now recognized under Section 3 of the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976[343].

Section 3 of the IPC reinstated that "any person liable by any Indian Law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this code for any committed beyond India in the same manner as if such act had been committed within India. The wording of the section very evidently appears as IPC does not by itself establish liability or jurisdiction for any commission of act beyond India's territory[344]. This indirect establishment of jurisdiction is generally established between the concerned state through extradition treaty or invocation of good relations. These two requirements are often rendered weak as India has not

[342] Vinod Kumar Jain v. State through, CBI, 1991 Cr.LJ 669 (Del)
[343] See Raymund Gencianeov v. State of Kerala, 2004 CriLJ2296
[344] See Samarudeen v. Assistant Director of Enforcement on 9 December, 1995, CriLJ 2825

signed extradition treaty with many states as well as does not boast of good relations with its neighbouring countries such as Pakistan and China. Under such tense and complicated geopolitical clouds, exercising indirect jurisdiction becomes so difficult that envisaging direct intervention seems impossible. The situation now requires addition of an Indian Law that will establish such liability under Indian Penal Law[345].

Extraterritorial offences are further incorporated under Section 4 which reads as (1) offences committed by any citizen of India in any place without and beyond India (2) any person on any ship or aircraft registered in India wherever it may be (3) any person in any place without and beyond India committing an offence targeting a computer resource located in India.

The problem with clause (1) is that it only extends jurisdiction to the person "on board" the Indian ship. Thus, it stays quiet on the person who's not "on board" the ship or aircraft which is registered with India. Moreover this clause tends to exclude of an Indian citizen which is on board a foreign vessel on High Seas[346]. In addition to this, clause (2) very subtly touches upon Passive Nationality Principle which is not recognized by any statute in India. Clause (3), on the other hand, has not been replicated in Section 188 of Cr.PC. This renders cyber interference to remain an extraterritorial crime even when it creates humongous and complicated national repercussions.

PASSIVE NATIONALITY PRINCIPLE

If a national of state A becomes a victim of an extraterritorial crime in state B, then the jurisdiction that prevails over that national is defined as "Passive Nationality Principle." When it comes to availing criminal jurisdiction, passive nationality principle is the most contested and debated theme in contemporary International law[347]. Judge Moore, in the very famous Lotus Case, expressed his dissent with passive nationality principle with following words –

'[A]n inhabitant of a great commercial city (...) may in the course of an hour unconsciously fall under the operation of a number of foreign criminal codes (...) this (...) is at variance not only with the principle of exclusive jurisdiction of a State over its own territory, but also with the equally

[345] "Centre only a formal party in the case", in the Hindu, April 22, 2012, p.7.
[346] Bombay High Court, Manuel Philip v. Emperor, AIR 191 Bom 280
[347] A. Chehtman, The Philosophical Foundations of Extraterritorial Punishment, 2010, p.67.

well settled principle that a person visiting a foreign country (...) falls under the dominion of the local law[348]."

THE PASSIVE PERSONALITY PRINCIPLE

Before proceeding with the need to include the passive nationality principle within the domestic legislative framework it would be pertinent to understand the concept of the passive personality principle. If the nationality head of jurisdiction may be characterised as one of the 'active personality', the reverse of the coin is 'passive personality'. According to this principle aliens may be punished for acts abroad harmful to nationals of the forum. This is considerably more controversial, as a general principle, than the territorial and national principles. In Cutting a Mexican court exercised jurisdiction in respect of publication by a US citizen in a Texas newspaper of matter defamatory of a Mexican citizen. The Court applied the passive nationality principle; this led to protests from the US, although the outcome was inconclusive.[349] The passive personality principle has been much criticised. One early complaint was that it served no wider goal of criminal justice: it did not correspond to a domestic conceptualisation of jurisdiction, would not close an enforcement gap and lacked any social aim of repression.[350] There is also the concern that this would expose an individual to multiple jurisdictions. However, such objections have not prevented the development of something approaching a consensus on the use of passive nationality principle, especially cases pertaining to international terrorism.[351] Aut dedere aut indicare provisions in most criminal law treaties authorize the use of passive nationality jurisdiction as between state parties.[352] The authors of this paper concur with the view that gradually passive nationality principle has carved its space in international law. Furthermore, if more countries were to adopt this principle, within their domestic legislation, then the issues of extradition would be better resolved and help a nation to strengthen diplomatic ties with the international community.

Nearly all states assume jurisdiction over aliens for acts done abroad which affect the internal or external security or other key interests of the state, a concept which takes in a variety of offences

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[348] S.S. Lotus (France v Turkey) (Judgement), [1927] PCIJ (ser A) No 10, cited in G.D. Triggs, International Law: Contemporary Principles and Practices, 2006, p. 355.
[349] Moore, 2 *Digest* 228-242; FRUS (1887) 751-867
[350] Donnedieu de Vabres, "*Les Principes modernes du droit penal international",* (1928) 170.
[351] ICJ Report, "*Arrest Warrant",* 2002
[352] Article 4 (b) Convention on Offences Committed on Board Aircraft, 1963

not necessarily confined to political acts.[353] The UK and USA allows and practices significant exceptions to the doctrine of territoriality, this is a welcome change from the USA's stance in the aforementioned Mexican case.

INTERNATIONAL PUBLIC COMPANIES

Multinational Public Enterprises or international bodies corporate, is characterised in general by an international agreement providing for cooperation between governmental and private enterprises[354]. These can be defined as entities which are not constituted by the application of domestic laws of only one country. Members and directors of such institutions represent various sovereignties and the legal personality is not based on the decision of a particular national authority or the application of a national law. The rules governing such institutions are an amalgamation of several national laws. These enterprises vary widely in constitutional nature and in competences. Examples of such companies include INTELSAT established in 1973 as an intergovernmental structure for global commercial telecommunications satellite system.

On the other hand transnational constitute private business organisations comprising several legal entities linked together by parent organisations and are distinguished by size and multinational spread. The international community has often tried to come up with a uniform set of guidelines for international commercial enterprises be it private or public; but the arduous negotiations haven't proved to be very effective as far as the implementation and the recognition of the OECD Guidelines for Multinational Enterprises or the International Labour Organisation Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy; is concerned.

Within India's domestic legislative framework corporate criminal liability is recognised and practiced by way of Section 447 of the Companies Act 2013 which specifies punishment for fraud. The punishment being imprisonment from 6 months to 10 years for directors or other officials of the company involved in the said act and a fine extending to thrice the value of the fraud. The term fraud has been defined under section 447(1) of the Companies Act 2013.

If the passive nationality principle was to be adopted in India, and subsequently various other countries as well then it would lead to harmonisation of the way countries deal with corporate

[353] Nusslien v. Belgian State, (1950) 17 ILR 136, Public Prosecutor v. L (1951) 18 ILR 206
[354] The Extension of Corporate Personality in International Law, Leiden, 1978

criminal liability. Within the Indian context, one observes, that, the provisions of criminal law, commercial and business laws and taxation laws are inter-twined. Thus with the requisite amendments in the IPC the penal provisions regarding company law and taxation can also be strengthened thereby preventing the repetition of cases like the Vodafone taxation case[355], which questioned the methodology adopted by India as far as tax deduction at source is concerned.

INDIA AND THE ROME STATUTE

The International Criminal Court is a permanent international court to investigate and bring to justice individuals who commit the most serious violations of international law, namely war crimes, crimes against humanity and genocide. The concept saw its inception via the Nuremberg and Tokyo tribunals, which tried the perpetrators of the World War II atrocities. However, more recently, the U.N. Security Council - created ad hoc war crimes tribunals of Rwanda and the Former Yugoslavia.

It is from these the aforementioned tribunals that led to the drafting of the Rome Stature and the eventual formation and functioning of the ICC, which came into force on July 1, 2002 by ratification of 60 countries. More so, as the past half century alone has seen large number of deaths running into millions in more than 250 conflicts spanning the globe.[356] Therefore, it is for such reasons that the creating of the ICC had become absolutely necessary.

India has still not acceded to the Rome Statute. The government of India has maintained that its position vis-à-vis the Court remains unchanged. The Indian delegate at the Conference stated[357]:

"We can understand the need for the International Criminal Court to step in when confronted by situations such as in former Yugoslavia or Rwanda, where national judicial structures had completely broken down. But the correct response to such exceptional situations is not that all nations must constantly prove the viability of their judicial structures or find these overridden by the ICC."

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[355] Vodafone International Holdings B.V. v. Union of India and Assistant Commissioner of Income Tax, (2008) 22CTR Bom(649)

[356] Singh and Mishra, "International Criminal Court – Politics of the "Unlike-Minded" Nations, (2004) PL WebJour 8

[357] Ramanathan, Usha; "India and the ICC"; Frontline Magazine Volume 18 - Issue 07, Mar. 31 - Apr. 13, 2001; Accessed from: http://www.frontline.in/navigation/?type=static&page=flonnet&rdurl=fl1807 /18070670.htm Last accessed: August 27, 2013

Therefore, India has always had a feeling of not involving themselves in the ICC since they have a functioning judiciary capable of punishing such criminals. Moreover, even India's Additional Secretary to the UN, Mr. Dilip Lahir stated Conference on the International Criminal Court on June 16, 1998, "stressed that the ICC should be based on the principles of complementarity, State sovereignty, and non-intervention in internal affairs of States, and that its Statute should be such as to attract the widest acceptability of States, with State consent as the cornerstone of the ICC jurisdiction[358]."

India abstained in the vote adopting the statute in 1998, saying it objected to the broad definition adopted of crimes against humanity, the right given to the Security Council to refer cases, delay investigations and bind non-State Parties, and the use of nuclear weapons or other weapons of mass destruction not being explicitly outlawed[359]. Other anxieties about the court concern how the principle of complementarity would be applied to the Indian criminal justice system and the power of the prosecutor to initiate prosecutions, among other issues[360]. Some of these objections and concerns have waned over the years. Moreover, heightened activities on the ICC in India in the past year have generated greater participation and interest from diverse constituencies including parliamentarians, academia, media and various civil society groups. If India was a nation ratifying the treaty the ICC, its citizens could be suitably tried for war crimes, crimes against humanity and genocide. It provides for ICC jurisdiction over the following:[361]

a) Offences committed on the territory of a State Party (including crimes committed on that territory by a national of a non-state party), by a national of a state;

b) Over crimes committed by any person when granted jurisdiction by the UN Security Council; and

c) Over crimes committed by nationals of a non-state party or on the territory of a non-state party where that non-state party has entered into an agreement with the court providing for it to have such jurisdiction in a particular case (consent).

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[358] Lahiri, Dilip. (June 16, 1998). Statements in the Conference on the International Criminal Court - Statement by Mr. Dilip Lahiri, Additional Secretary (UN) on June 16, 1998

[359]Coalition for the International Criminal Court Website. Accessed from: http://www.iccnow.org/?mod=country&iduct=77 Last accessed: August 27, 2013

[360] Ibid

[361] Sabharwal, Y.K, CJ, The International Criminal Court—Its Role, Tasks and Performance

This definitely increases the opportunity for Indian citizens to be prosecuted under the Rome Statute as there might be a scenario of a non-international armed conflict that can arise especially in the cases of insurgency wars since the ICC jurisdiction also includes non-international armed conflicts.

Power to try any citizen committing crimes listed in the Rome Statute

First, any state has the right to hold a trial for crimes such as genocide, crimes against humanity and war crimes and the national courts retain jurisdiction over these crimes. There are however two situations when the ICC may step in: a] if the country in question is unwilling to prosecute the crime, or is clearly shielding someone from responsibility for ICC crimes, or, b] if the country in question is genuinely unable to investigate or prosecute ICC crimes because its legal system has collapsed (Art. 17 (1) (b), Rome Statute). The complementarity provisions of the ICC Statute (Articles 17 to 19) are thus central to the understanding of India's rejectionist stance, even though the Rome Statue constrains the Court's investigations to those situations where a state concerned is unable or unwilling to investigate and prosecute, and thus if India would carry out genuine investigations the ICC would not have jurisdiction[362].

However, India fears that its own system would be judged unable or unwilling to prosecute. In 2005, the Indian government representative Rao Interjit Singh mentioned in the Lok Sabha why India rejected the Rome Statute:

"India has not signed the Statute of the International Criminal Court as there are several deficiencies in the Statute, including that it brings under the purview of the Court several crimes, which are subject to national jurisdiction, and makes the primacy of national jurisdiction subject to the satisfaction of the Court." [363]

India has been vying the position of a permanent member in the United Nations Security Council without changing its stance on ratifying or acceding to the Rome Statute. If India was to adopt the passive nationality principle then it would be able to persuade the world community regarding its strong domestic policy regarding any criminal threat to the sovereignty of the nation.

[362] Radosavljevic, Dragana. (2007). An Overview of the ICC Complementarity Regime. In: Review of International Law and Politics 3 (10): 96-114

[363] MEA (Ministry of External Affairs). 2005. Unstarred Question No. 1740. Accessed from: http://meaindia.nic....5/03/17rs11.htm Accessed on September 3, 2013

CONCLUSION

The most problematic situation in criminal justice system is the victimization of Indian nationals abroad as passive nationality principle is not recognized by any statute in India. Indian justice framework has continued to maintain its silence on the pleas of various Indian nationals who have been attacked in a foreign state. They are usually forced to approach a foreign court where the nationality of the person committing that crime belongs to. Due to this blatant refusal for recognition, Indian courts cannot exercise any dialogue with other state to help Indian nationals by submission of the criminal to their jurisdiction. However, if passive nationality principle is recognized, states can actually ask for the submission of the criminal as well as exercise intimidation techniques to exert their position. This would surely contribute lengths to the ideal of free and fair justice. This issue is augmented when India does not have an extradition treaty in place with the concerned State. For instance there is no extradition treaty between India and Pakistan. Due to the terrain and various others factors the porous border has led to various Indian citizens innocently trespassing into Pakistan and they are held prisoners over there due to the fact that there is no extradition treaty or the explicit recognition of the passive nationality principle. The practice of extradition enables one state to hand over to another state a suspected or convicted criminal, it is based on a bilateral treaty between the two nations.

Nationality Principle is undoubtedly one of the most debated and contentious concept of criminal law as well as international law. However, total apathy towards its existence and disregard for its application results in great injustice to the citizens of a country. In India, penal system has acquired a very restrictive approach when it comes to extraterritoriality principle of jurisdiction. Despite the presence of it in section 3 and 4, construction of the clauses gives a very restrictive application of the principle. Such a scenario swells the victimization of the national who has been attacked abroad and causes humongous mental trauma and physical discomfort.

India should take a leaf out of USA's policy regarding claims in the context of economic issues whereby USA seeks to apply its laws outside its geographical territory.[364] When the claims are founded upon the territorial and nationality theories of jurisdiction, problems do not often arise, but the claims made on the basis of the so called 'effects' doctrine have provoked considerable

[364] Holmes v. Bangladesh Biman Corporation [1989]1 AC 1112,1126

controversy. This goes beyond the objective territorial principle to a situation where the state assumes jurisdiction on the grounds of a party is producing 'effects' within its territory. This is so even though all the conduct complained of takes place in another state.[365] The classic statement of the American doctrine was made as follows:

"Any state may impose liabilities even upon persons not within its allegiance, for conduct outside its borders that has consequences within its borders which the state reprehends."[366]

The medicine to this ailing criminal justice system shall be the adequate recognition of the passive nationality principle and proper application of active nationality principle. This can be done by amending both IPC and Cr.PC. and by establishing favourable relations with International regimes. The Honourable Apex Court of India has already recognised this principle in the recent ruling pertaining to whether the Kerala High Court has jurisdiction to try the Italian marines. Chief Justice Dattu, has opined, that the Italian marines shall be tried as per the Indian laws since the offence was committed in the contiguous zone of India and the passive nationality principle allowed India to exercise jurisdiction over them.[367]

The current central government has made tremendous efforts to strengthen diplomatic ties and international relations for this it is essential to have a strong domestic policy which complements the sovereign nation's economic and social progress. With suitable amendments to the Indian Penal Code and the Code of Criminal Procedure if the passive nationality principle is recognised then not only shall the criminal justice system be strengthened but India will be able to bring to justice citizens which are trapped in other countries awaiting trial or caught up in issues of extradition. Lastly, this is a poignant contemporary issue which seeks to change the geopolitics of the nation by deciding the course of multilateral talks especially between India and its neighbours. The recognition of this principle shall affect India's stance on corporate criminal liability as well as taxation. Thus this is a holistic remedy to counter various issues within the domestic framework and it shall change the perspective of the global community towards India.

[365] US. v. Noriega ,808 F.Supp.791 (1992)
[366] US v. Aluminium Company of America, 148 F.2d 416 (1945)
[367] Republic of Italy v. Union of India, Writ Petition No. 135 of 2012