

Comparative Study on Human Rights and Extradition

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Abstract:

It is understood that there exist procedural blockades that legally prevents the extradition of fugitive offenders from United Kingdom to the countries requesting the extradition of such offenders. These procedural blockades ,generally in the form of establishing prima facie evidence ,human rights clauses and prison conditions are made a mandatory requirement under the European convention if human rights ,to which United Kingdom is bounded. In this present paper, the author attempts to analyse the human rights issues in the light of ECHR convention and it's adverse effect on extradition.

Keywords: Extradition, Human rights ,legal blockades, European convention on human rights, mandatory rules , prevents justice

Impact of ECHR Determination of Human Rights on UK Court Practices.

Under this context, if one examines, the interrelation between human rights and extradition request made by India to UK, it can be inferred that it is unduly biased and lacks clarity. As extradition rules are determined through bilateral treaties, in modern extradition practices, the role of court appears to be more defined in comparison to the earlier practices, when extradition was basically a foreign policy matter, exclusively left to the domain of the head of the State and its executive authorities. During the rule of kings, extradition was considered as a part of diplomatic trade-offs, being more similar to present States, determining their relationships with other States based on foreign and military supplies or a barrel of oil. The surrender of fugitive offenders, often raised political questions and drew the attention of political officials in the Government. The absolute sovereignty enjoyed by a State in determining the issues of extradition, its refusal or acceptance of extradition request made by the requesting State and laying interrelated conditions, was a norm followed in extradition procedures.

The Soering extradition case²⁵¹ further illustrates the human rights issue as a main deciding factor in determination of extradition request, where the requested person Jens Soering before approaching the European Court, pleaded his extradition case, requested by the US Government to UK, in the British Courts. He argued his case by stating that the foreign Secretary of UK had violated Article IV of the US – UK extradition treaty, by failing to obtain a strict promise from Virginia prosecutors not to seek the death penalty. Article IV of the extradition treaty between UK and US allows the requested State refused to surrender capital felons unless the requesting State gives assurances that death penalty shall not be carried out.²⁵² As it should be noted that in Soering case, the Virginia prosecutors only expressed their desire that death penalty shall not be carried out. Further, the District Courts of UK also held that Article IV gave discretion to the foreign Secretary of the State to evaluate the adequacies of the promise or

assurances made by the requesting State as to the non- applicability of the death penalty. The court also reasoned out that the Virginia prosecutor's statement as to the desire to compile with the assurance of the requesting State is not unreasonable as to violate *Wednesbury Standards*²⁵³. The judgment did bring out the scope of judiciary in conducting an extradition hearing, by holding out that the courts are empowered only to conduct a formal inquiry and not going into the details of performance of extradition principles by the requesting State. But, after *Soering* went on an appeal i.e., to the ECHR regarding the imposition of death penalty, the issue of human rights underwent a drastic change in the extradition relations between States. The jurisprudence of extradition principles in protecting individuals basic human rights can be well understood by analyzing the judgments delivered in these areas. For instance, in the *Dudgeon* case – the English court ruled that a mere existence of laws criminalising certain homosexual acts in Northern Ireland without actual proof of injury violate Article 8 of ECHR, where psychological distress was held to be violative of human rights.

In *Malone Vs Klass& others*, relating to wire tapping, the English court did give a contrary opinion by stating that wire tapping is difficult to establish substantively as it would amount to violation of Article 8 of the ECHR. It generally appears that ECHR is basically designed to protect immediate and apparent threat to the existence of human life either based on dignity or mental perceptions of disturbances caused by corrective legislations.

To the extent, the European court was more concerned about the need to conduct an impartial enquiry, to decide the case judicially in *Piersack* case,²⁵⁴ where the court had laid down guidelines to ensure the right to an impartial tribunal as guaranteed in Article 6(1) of the Convention is observed. They are as follows:

1. The court must ascertain whether the personal conviction given by a judge in a case was not prejudiced.
2. The Tribunal in its performance should have retained fairness or should have excluded any doubt on its fair conduct.

Apart from ensuring fair trial necessity by the contracting parties of the convention, it also expanded the scope of human rights by interpreting Article 3 of the ECHR in its broadest sense. For instance, in *Ireland Vs. UK*, the European courts gave a clear and distinct definition for the terms torture, in human and degrading treatment, where by the court held that torture is not only confined to physical injury but also encompasses mental health at the adverse effect caused by arrest, detention and interrogation. As in the above case, the authorities in Northern Ireland used extra judicial powers of arrest and interrogation and subjected 14 individuals suspected of IRA driven terrorist activities to unusual interrogation techniques. The court opined that though the interrogation did not result in torture in its strict sense, as it did not lead to physical injury, yet the mental repercussion suffered constituted to torture, thus violating Article 3. Similarly, in the *Tyrer's* case, the EC court considered a statute that permitted the imposition of judicial corporal punishment as degrading punishment under Article 3 even though, the appellant did not suffer or endure physical harm irrespective of the fact that the punishment was administered under substantial safeguards. But on the other hand, the court upheld the corporal punishment followed by Scottish school teacher, as the actual punishment was never used or intended to be used to humiliate or degrade any school student and threat of punishment was only designed to mould the school children to act in a more responsible way and it was also supported by majority of the parents.²⁵⁵

On the analyses of the above cases, one can draw a conclusion that in determining human right issues, the European courts has taken a more broader outlook, to encompass not only visible and immediate threats but also invisible disturbances, the mental agony suffered by the offender if exposed to trial or punishment. Further, the courts held that human rights protection should be followed in letter and in law irrespective of the legal provisions or nature of crime committed by the offender, Thus, the Jens Soering case established the basic principle to be followed by the countries who have ratified by the convention. The principles are as follows:

1. The responsibility of the requested State: The EC held that the requested State in extradition cases could incur liability of the European Convention, for violations taking place after extradition to the requesting State. For instance in Jens Soering case, UK extradited him to USA only after taking clear assurances from the Virginia State prosecutors that he shall not be hanged to death. If in case, after extradition, Soering had been subjected to degrading treatment in USA, then UK shall be held accountable for violation of Article 3. It should be noted that ECHR speaks of extradition only in the limited sense and a mention of it is found in Article 1 of the convention. But, irrespective of it, the convention firmly holds that extradition should not result in denial of human rights or fair trial. The court relied on the principle of objective danger and ensured that the convention shall provide necessary safeguards, parallelly providing for its effective implementation, The courts made the rule absolute and held that extradition shall not take place to those countries, where the fugitives might face inhuman treatment. The European court took the UN convention of torture to aid its interpretation of Article 3.
2. The standard of proof for potential violations: The standard of proof required to establish objective danger, that is the possibility of human rights violation on being extradited, is only to the extent of proof of potential violation and not actual violation. As in Soering's case, the court observed that the Virginia prosecutors only casually expressed that they shall inform, the sentencing judge of their court, that UK courts opposed the imposition of death penalty, and hence cannot act as an adequate assurance for withholding the imposition of death penalty by USA.
3. Inhuman or degrading treatment or punishment: The court observed that it is only concerned with the method adopted by the requesting State in administering punishment after extradition of the requested person. It should be noted clearly that EC does not consider death penalty to violate Article 3 of the ECHR per se, as it permits states to impose death penalty. It is only concerned with the manner in which the death penalty is imposed, if it is done by the requesting State, only with the sole intention to degrade the fugitive offender, then under such circumstances the EC does not permit extradition of the said offender. This can be better understood by referring to EC decision in Kirkwood case. In this case, the State of California, USA, sought the extradition from UK, E.M.Kirkwood who had allegedly killed two men in San-Francisco and was subsequently arrested at Heathrow Airport, UK. After having lost all the appeals in UK courts, Kirkwood applied to the European commission to block his extradition, arguing that the death row phenomena, the punishment which he shall be awarded in San Francisco for double murder charge, was inhuman and degrading. The Commission disagreed by one vote though it acknowledged that the execution of death sentenced after exhaustion of appeal process is a time consuming one and induces a lot of stress and anxiety in the minds of the offender, yet it did not amount to violation of Article 3 of ECHR. The court cited the following reasons for this decision - The Californian Law provided for acceleration of appeal process and the appellant would have the opportunity to challenge in the US

courts, under the cruel and unusual punishment clause contained in the Eighth Amendment of the US Constitution. Thus, with proper and assured remedies available within the national laws of the fugitive offender's State, the EC dismissed the application as inadmissible.

So to include, With these principles well established, the European convention invariably collided with the traditional extradition law, where the principle of non-inquiry was adopted by the States in determining extradition requests. Though, the Soering case enabled the national courts to block extradition on humanitarian grounds, it should be understood that the UK received the decision reluctantly. It had two effects on UK, first and foremost, it affected the Government extradition process. As it can be seen, after the decision in Soering's case, the Foreign Secretary had to obtain concrete assurances from the USA Government against execution of death penalty and the discretion power that can be exercised by the former, was considerably limited. This had an important influence on the determination of extradition cases by the UK Government. Imposition of death penalty was not perse cruel and unusual punishment and secondly, the decision in Soering case also shall reflect on how the UK courts shall henceforth decide extradition cases. Though, on one hand the UK courts shall ensure that it does not violate the convention, yet it might adopt narrow interpretation so as to limit its scope.