

## CHAPTER 16

Extradition and Foreign Jurisdiction  
(Criminal Courts).

## PART A.—EXTRADITION FROM BRITISH INDIA.

Extradition means the surrender of a fugitive offender by one State to another in which the offender is liable to be punished or has been convicted. The law of extradition is based on the broad principle that it is in the interests of all nations that crimes recognised as such by the civilized world should not go unpunished.

Definition.

2. The Indian Extradition Act, 1903, deals with the surrender of fugitive criminals to States outside the British Empire. The Fugitive Offenders Act, 1881, 44 and (45 Victs. 69) deals with the surrender of fugitive offenders as between British possessions.

Laws applicable.

3. The Indian Extradition Act, 1903, defines a "Foreign State" as a State to which the English Extradition Acts, 1870 and 1873, apply. These are certain foreign countries (mostly in Europe and America) with which the British Government has entered into extradition treaties and to which the English Extradition Acts have been applied by an Order-in-Council. The procedure for surrender of fugitive criminals to such "Foreign States" is laid down in Chapter II of the Indian Extradition Act (which has been declared a part of the English Extradition Act, 1870, by an Order-in-Council, -vide the appendix to this Chapter), while the procedure for surrender to States other than "Foreign States" is laid down in Chapter III of that Act. In the case of States other than "Foreign States" the procedure varies according as there is or is not an extradition treaty with the State concerned. If there is such a treaty, the procedure in Chapter III must be followed subject to the provisions of the treaty (*vide* section 18). If there is no treaty, the procedure laid

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wn in Chapter III will prevail. The Indian States come under the class of States dealt with in Chapter III and the procedure laid down in that chapter will therefore apply to them except in so far as it may have been modified or superseded by the provisions of a treaty (if any) with the State concerned.

Arrest and detention of "fugitive criminal" of Foreign States.

4. In the case of "Foreign States" extradition of a "fugitive criminal" can be only obtained in respect of an "extradition crime," i.e., a crime specified in the first schedule of the Extradition Act, 1870,—(vide definition of a "fugitive criminal" in the English Extradition Act, 1870), and on a - requisition by the State concerned. Section 4 enables Magistrates to arrest "fugitive criminals" within their jurisdiction in certain circumstances, but they are required to report the arrest at once to the Government and are not empowered to take further action unless they receive an order from the Government for an inquiry under section 3, sub-section 1. An order for inquiry under that, sub-section can only be issued on a requisition from the State concerned. No person can be detained in custody for more than two months unless such an order is received from the Government, and the fugitive may apply to the High Court for his release, if detained longer without such order.

Procedure in case of fugitives from Indian States.

5. In cases falling under Chapter III also, similar procedure is prescribe, but the requisition can be made in respect of a person accused of having committed any "offence" in the territories of the State concerned. (*vide* section 9), In the case of States for which there is a Political Agent\* the requisition must be made through such an Agent.

\*Note.—The expression "Political Agent" is not defined in the Indian Extradition Act. It is defined in the General Clauses Act, 1897, as follows:—

"Political Agent" shall include-

- (a) the principal officer representing the Crown in any 'territory or place beyond the Eimits of British India; and
- (b) any office 'appointed to exercise all or any of the powers of a Political Agent for any place not forming part of British India under the law for the time being In force relating to foreign jurisdiction and extradition.

Section 10 empowers Magistrates to arrest such persons found within their jurisdiction, in certain circumstances specified in the section, but here again the Magistrates must report their action to the Government or to the Political Agent, when there is such an Agent for the State concerned and the person arrested cannot be detained in custody for more than two months without the sanction of the Government unless an order for inquiry is issued under section 9 or a warrant of arrest is issued by the Political Agent.

6. A warrant of arrest under section 7 can be issued by a Political Agent only if the following conditions are fulfilled:-

- (i) The State for which the Political agent is appointed is not a "foreign state".
- (ii) The offence is an "extradition offence." i.e., an offence specified in the First Schedule of the Indian Extradition Act, 1870.
- (iii) The person accused is not a European British subject (as defined in the Code of Criminal Procedure).

Warrant of arrest by Political Agents: Reference to Government and release of accused on bail.

A warrant of arrest issued by a Political Agent under section 7 is sufficient authority for the arrest of the offender and his surrender to the State according to the tenor of the warrant. The District Magistrate to whom the warrant is issued has no authority to question the legality of the warrant or to make any inquiry (*vide* 7 I.L.R. Lahore, page 159) but he is authorised to record the statement of the accused person and has the discretion under section 8-A to make a reference to the Provincial Government in the matter if he thinks it fit to do so and in the meantime he can release the accused person on bail. The latter section can be properly resorted to when, for instance the District Magistrate finds the warrant to be defective (e.g., on account of its having been issued against a European British subject\* or for a non-extradition offence, etc.) or there are other good reasons for not surrendering the accused person to the State.

7. The surrender of fugitive offenders as between "British possessions" is governed by the Fugitive offenders Act, 1881, read with Chapter IV of the

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Indian Extradition Act. By an Order-in-Council, Chapter IV has been recognised as a part of the Fugitive Offenders Act, 1881, (*vide* appendix). That Act is divided into two parts and the procedure varies according as the British possessions concerned are grouped together or not for the purposes of the Act. The Procedure in Part II applies in the case of possessions which are grouped together and is comparatively simpler.