

## PART B.—EXTRADITION TO BRITISH INDIA.

Extradition of fugitive offenders who have fled from British India to other States is a matter governed by political and administrative consideration and not by legislation—except where the State to which the offender has fled is a British possession. In the latter case extradition is governed by the Fugitive Offenders Act 1881. The offences committed in British India to which the Act applies are piracy, treason, and any offence punishable under the Indian Penal Code with rigorous imprisonment for a term of twelve months or more or with any greater punishment (*vide* section 19 of the Indian Extradition Act, 1903).

When extradition from British possessions and other states is possible.

2. With a view to ensure regularity of procedure in cases where an offender has fled to a British possession it is directed that the powers of issuing and endorsing warrants and of issuing and endorsing summons and the powers generally conferred upon Magistrates by the Fugitive Offenders Act, 1881, should, as a rule be exercised, by the District Magistrate himself, or in cases of necessity, by only those subordinate Magistrates of the first class who are acquainted with English.

Authority competent to issue summons, warrants, etc.

3. Evidence should be taken that the person against whom the warrant is applied for has absconded then evidence that an offence has been committed by such person should be faithfully and minutely recorded under section 512 of the Code of Criminal Procedure. If upon such evidence the Court issues a warrant, the warrant should be in the form prescribed by section 75 and directed as required by section 77. Evidence should be taken showing clearly that the offence charged is one to which the Fugitive Offenders Act applies, or at least a certificate from the Magistrate should be appended to the warrant clearly showing that the offence charged is of that description. All the evidence should be taken, if possible, in the presence of the Police officer to whom the warrant is addressed, and to whom it is desired that the fugitive offender should be delivered.

Procedure

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4. A copy should be made of every deposition and every documentary exhibit; and each copy should contain a declaration, signed by the Magistrate as such, that it is a true copy of the deposition taken by himself or an exhibit produced to him, as the case may be. The whole of the copy of the record thus made should then be entrusted to the Police officer to whom the warrant is addressed, who will be in a position to authenticate every portion of it when produced by him in the possession in which the fugitive offender is.

Procedure where evidence is not taken in the presence of Police Officer entrusted with the execution of warrant.

5. When the presence of the Police officer, who is to execute the warrant, cannot be obtained at the proceedings referred to, then each copy must, before being entrusted to the Police officer, be sealed with the seal of the Governor of the State in which the proceedings were held. Although when the documents can be authenticated by the oath of a witness in the possession from which it is desired to procure the delivery of the offender, the seal of the Governor is not essential, it is expedient that the seal should be affixed whenever it can be conveniently done.

Identifying accused.

6. If the Police officer entrusted with the execution of the warrant is unable to identify the accused he should be accompanied by some person able to identify the accused.

Approval of District Magistrate required when subordinate Magistrate takes action.

7. The approval of the District Magistrate should be obtained by Subordinate Magistrates where action under the Fugitive Offenders Act, 1881, seems requisite, and ordinarily action should be taken only by the District Magistrate himself: if this is not feasible, then by a Magistrate who knows English.

Evidence as to nature of offence when offender is to be obtained from United Kingdom.

8. In all future applications for the removal of an offender from the United Kingdom under the Fugitive Offenders Act, 1881 (44 and 45 Vict., Chap. 69), it must be proved by evidence that the acts with which the accused is charged amount, under the law in force in the British possession from which the application for his rendition has been received, to an

offence punishable by 12 months imprisonment with hard labour or some greater punishment

9. The most convenient method of complying with these instructions will be to arrange that all applications of the nature in question shall be accompanied by the deposition of a judge, advocate, barrister, solicitor or any official in a position from which the knowledge of the law may be presumed, duly authenticated in the manner provided for by section 29 of the Fugitive Offenders Act, and containing the necessary evidence. The course indicated above should ordinarily be followed in future.

Evidence of a person having legal knowledge is advisable.

10. A deposition should also be taken of the following facts from any person competent to prove them:—

Evidence as to other matters.

- (1) The statute under which the charge is brought.
- (2) That such enactments is still in force.
- (3) That the facts charged if established by evidence constitute the offence dealt with by such statute.
- (4) That the offence dealt with in such statute is punishable in the territory by some punishment within the terms of Section 9 of the Fugitive Offenders Act. 1881.

11. Cases may occur in which the adoption of the above mentioned course would not be quite suitable. In such cases, since a point of Indian law may also be proved by oral evidence; arrangements can, if necessary, be made for the attendance of any competent witness who happens to be available in England at the time (e.g., judicial officers employed in India who are at home on leave, Advocates of the Indian High Courts, etc.) who would be able to furnish the necessary evidence.

Evidence of witnesses available in England may be suitable in some cases.

12. Extradition from States outside the British Empire is governed generally by treaties with the States concerned. In the case of the more important States such treaties exist.

Extradition from states outside British Empire.

Extradition from  
Indian : States  
Extradition from  
parts of India to  
which the Act  
does not extend.

13. The most common class of cases occurring in British India are those where the offender escapes into an Indian Native State. For the procedure to be followed in cases where extradition is sought from Indian States see Punjab Government Consolidated Circular No. 20.