

## ACT No. IV OF 1880.

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PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

*(Received the assent of the Governor-General on the 30th January, 1880.)*

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An Act to give effect to the Convention between the Governors General of British India and Portuguese India regarding the Extradition of Criminals, and to the twentieth Article of the Treaty between Her Majesty and the King of Portugal and the Algarves.

**W**HEREAS, by the nineteenth article of the Treaty of Commerce and Extradition between Her Majesty and the King of Portugal and the Algarves, executed at Lisbon on the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, it was provided that the High Contracting Parties should deliver up to each other those persons who, being accused or convicted of crimes committed in the Indian dominions or jurisdiction of the one party, should be found in the Indian dominions or jurisdiction of the other party, and that the circumstances and conditions under which, and the crime for which, such persons should be delivered up should form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed at the earliest date possible after the ratification of the said Treaty, and that such Convention should have the same binding character as the said Treaty, and should continue in force for the same period;

and whereas, in pursuance of the said article, the  
Convention

Convention set forth in the schedule hereto annexed has been executed;

and whereas by the twentieth Article of the said Treaty it was provided that Commissions issued in criminal trials and enquiries by the judicial tribunals of the one party, for the examination of persons resident in the dominions of the other, should be executed according to the provisions of the laws of the dominions where the witness resides;

and whereas it is doubtful whether under the existing law of British India there is authority to give effect to all the provisions of the said Convention and of the said twentieth Article;

It is hereby enacted as follows:—

1. The provisions of the said Convention shall be followed in British India in every case to which they apply.

Provisions of Convention to be followed.

The procedure prescribed in the Code of Criminal Procedure shall, in so far as it is not inconsistent with the said Convention, be followed in every such case.

Procedure.

2. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in Portuguese India in like manner as it may be obtained in relation to any civil matter under the Code of Civil Procedure, chapter XXV; and the provisions of that chapter shall be construed as if the term "suit" included a proceeding against a criminal.

Execution of commissions issued by Portuguese Criminal Courts.

3. This Act may be called "The Portuguese Treaty Act, 1880."

Short title.

#### THE SCHEDULE.

Whereas by the nineteenth Article of a treaty dated the twenty-sixth day of December, 1878, and ratified on the sixth day of August, 1879, between Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Most Faithful Majesty the King of Portugal and the Algarves, it is provided that the High Contracting Parties engage to deliver up to each other those persons

persons who, being accused or convicted of crimes committed in the Indian dominions or jurisdiction of the one party, shall be found in the Indian dominions or jurisdiction of the other party; and whereas by the same article it is further provided that the circumstances and conditions under which, and the crimes for which, such persons are to be delivered up, shall form the subject of a separate Convention between the Governors General of British India and Portuguese India, to be executed at the earliest date possible after the ratification of the said Treaty.

In pursuance of the said article, the undersigned Governors General of British India and Portuguese India, acting respectively on behalf of Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, and His Most Faithful Majesty the King of Portugal and the Algarves (hereinafter called the High Contracting Parties), have agreed that the said persons shall be so delivered up under the circumstances, and subject to the exceptions, hereinafter stated, namely:—

(a) When the crime for which extradition is claimed has been committed beyond the dominions of the party claiming, the requisition shall also be complied with, if the laws of the party applied to authorize a prosecution for such crime when committed beyond his dominions, and if the person claimed is a subject of the party claiming his extradition.

(b) The

(b) The crimes for which the extradition shall be granted are the following :—

BRITISH INDIAN PENAL CODE.		PORTUGUESE PENAL CODE.	
Crime.	Section.	Crime.	Article.
Murder, culpable homicide not amounting to murder, and causing death by rash or negligent act ... ..	299 to 304A	Voluntary homicide, including— ...	349
		Parricide ... ..	355
		Poisoning ... ..	353
		Infanticide ... ..	356
		And involuntary homicide caused by negligence ... ..	368
Attempt to commit murder or culpable homicide ... ..	307, 308, 611	Attempt at homicide ... ..	350; 6 to 11
Voluntarily causing hurt or grievous hurt ... ..	319 to 333 335 and 338	Wounding, causing contusions or hurts ... ..	359 to 367, 369
		Ordinary hurts under Articles 359 and 360, being excepted in the circumstances described in Articles 370, 377, and 378.	
Rape ... ..	375 and 376	Rape ... ..	394, 395 to 397
Kidnapping, abduction, concealing kidnapped person, slave dealing, or selling minors for immoral purposes ...	360 to 373	Kidnapping and hiding of minors ...	342 to 344
Immodest assault on a woman ... ..	354	Immodest assault on a woman ... ..	391
Causing miscarriage and abortion ...	312 to 316	Abortion ... ..	358
Exposure or abandonment of a child ...	317	Exposure or abandonment of a child	345 to 348
Thefts ... ..	378 to 382	Thefts ... ..	421; 424 to 431
Extortions, robberies, dacoities, attempts to commit robbery and belonging to a gang of thieves ... ..	388 to 402	Robbery ... ..	432 to 444
Criminal misappropriations and criminal breaches of trust ... ..	408 to 409	Theft ... ..	313; 422 to 425; 453
Receiving stolen property ... ..	410 to 414	Receiving stolen property ... ..	463
Cheating ... ..	415 to 420	Cheating, false pretences ... ..	450 to 452 [456
Lurking, house-trespass, house-breaking ... ..	443 to 446	House-breaking ... ..	380, clause 1
Fraudulent bankruptcy and fraudulent disposition of property ... ..	206, 208 421 to 424	Fraudulent bankruptcy and fraudulent disposition of property ...	447 to 449; 455
Dishonest opening of closed receptacle containing property ... ..	431 and 462	Dishonest opening or breaking of seals by public servants and others	310 to 312
Being a thug ... ..	310, 311	} Association of malefactors ... ..	263
Belonging to a band of dacoits or robbers ... ..	400, 401		
Aggravated cases of wrongful confinement ... ..	344 to 348	Aggravated cases of wrongful confinement ... ..	331 to 333
Mischief by fire or explosive substance	435, 436 and 438	Arson ... ..	466 to 474

BRITISH INDIAN PENAL CODE.		PORTUGUESE PENAL CODE.	
Crimes.	Section.	Crime.	Article.
Mischief to a vessel, or after preparation to cause death, hurt, or wrongful restraint ... ..	437, 439, 440	Aggravated cases of mischief ...	475 and 481
Counterfeiting or altering money, or uttering counterfeit or altered money, making or possessing instruments for above purposes ... ..	230 to 254	Counterfeiting or altering money, or uttering counterfeit or altered money, making or possessing instrument for above purposes ...	206 to 214
Counterfeiting or fraudulently using of Government-stamps issued for purposes of revenue ... ..	255 to 263	Counterfeit or fraudulent using of Government-stamps or stamped paper ... ..	228 and 229
Forgery and using of forged documents, and making of seals for fraudulent purposes ... ..	463 to 468; 470 to 477.	Forgery and using of forged documents, and making of seals for fraudulent purposes ... ..	215 to 217; 219 to 223; 230 and 231
Use of false trade-mark or property-mark, and frauds connected with such marks ... ..	478 to 489	Use of false trade-mark or property-mark, and frauds connected with such marks ... ..	230 and 231
Giving or fabricating false evidence to cause a person to be convicted of an offence, and subornation of the same...	194 and 195	Giving or fabricating false evidence to cause a person to be convicted of an offence, and subornation of the same ... ..	238 to 240
Illegal gratification taken by a public servant, or to influence a public servant ... ..	161 to 165	Illegal gratification taken by a public servant, or to influence a public servant ... ..	314 to 323; 452
Causing the evidence of the commission of any offence to disappear ... ..	201	Causing the evidence of commission of an offence mentioned in this Convention to disappear ... ..	464
False certificate or declaration made by public servant, or used by any person as evidence ... ..	197 to 200	False certificate or declaration made by public servants or used by any person as evidence ... ..	216 to 218; 221 and 222
Escape from lawful custody on accusation or conviction of any crime specified in this Convention ... ..	224	Escape from lawful custody on accusation or conviction of any crime specified in this Convention.	190 to 196
<i>Crimes against other Laws.</i>			
Piracy by law of nations ... ..		Piracy ... ..	162
Assaults on board a ship on the high seas, with intent to destroy life or to do grievous bodily harm ... ..		Voluntary homicide, as above ... ..	349, 353, 355, 356
		<i>Portuguese Maritime Code.</i>	
Sinking or destroying a vessel at sea, or attempting or conspiring to do so...		Loss or destruction of vessel, caused by a person on board ... ..	42
Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas, against the authority of the master.		Act of revolt committed by more than third of crew ... ..	46

The extradition shall also take place for complicity or participation in any of the aforesaid crimes, and for any attempt to commit any such crime, provided such complicity, participation or attempt be punishable by the laws of both the High Contracting Parties.

(c) No British subject by birth or naturalization shall be delivered up by the Government or authorities of British India to the Government or authorities of Portuguese India; and, in like manner, no Portuguese subject by birth or naturalization shall be delivered up by the Government or authorities of Portuguese India to the Government or authorities of British India. Naturalization after the commission of the crime shall not be an obstacle to the extradition.

(d) The Governor General of British India will, from time to time, communicate to the Governor General of Portuguese India a list of Native States which, with the subjects thereof, are entitled to be placed, for the purposes of this Convention, upon the same footing as British India and the subjects of Her Britannic Majesty.

(e) The extradition shall not take place if the person claimed has already been tried and acquitted, or punished, for the same crime for which extradition is asked. If he should be under trial for any other crime, his extradition shall be deferred until the conclusion of the trial; and if the execution of the sentence, if any, would interfere with the extradition, it shall be postponed, in order that the extradition may take place. If upon extradition he be sentenced to other further punishment, the two High Contracting Parties shall arrange that the punishments shall be fulfilled according to priority of date of sentence.

(f) The extradition shall not take place if, after the commission of the crime, or the institution of the prosecution or the conviction thereon, the person claimed shall have acquired exemption from prosecution, or punishment, by lapse of time, according to the laws of the State applied to.

(g) A

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(g) A person surrendered shall not be kept in prison or brought to trial, by the party to whom the surrender is made, for any other crime or on account of any other matters than those for which the surrender has been granted. This stipulation is not applicable to crimes committed after the extradition.

(h) If the person whose extradition is claimed by one of the High Contracting Parties shall be also claimed by one or more other Governments, on account of crimes committed in their respective dominions, the following rule shall be observed :—

If he is a subject of the High Contracting Party who claims him, the surrender shall be made to such party. If he is not so, the other High Contracting Party shall have the power of delivering him up to the reclaiming Government which, in the case in question, may appear to the former best entitled to the preference.

(i) The requisition for extradition may be made, on behalf of Her Britannic Majesty, by the Government of British India or by the Government of the Presidency of Bombay; and, on behalf of His Most Faithful Majesty, by the Government of Portuguese India :

Provided that, when the person claimed is accused of any of the above crimes which in British India is not exclusively triable by the High Court or the Court of Session, the requisition may also be made by the Governors of the Portuguese Settlements of Damaun and Diu, for any such crime committed in such Settlements respectively, and may be preferred directly to any District Magistrate or Political Agent within whose local jurisdiction such accused person may be found. Such District Magistrate or Political Agent shall, subject to the exceptions and conditions of this Convention, and unless he deem reference to higher authority to be absolutely necessary, comply with such requisition by delivering up the accused.

In like manner, any District Magistrate or Political  
Agent

Agent may make requisition to the Government of Portuguese India, or to the Governors of Damaun and Diu respectively, for the extradition of any person found in their jurisdiction who is accused of the commission, within the local jurisdiction of such District Magistrate or Political Agent, of any of the above crimes, the maximum punishment for which, by the Portuguese Penal Code, does not exceed imprisonment for seven years or an equivalent thereto. Subject to the exceptions and conditions of this Convention, such requisition shall be complied with by the delivering up of the accused, unless reference to higher authority shall be deemed absolutely necessary.

The authority receiving a requisition may hold, or cause to be held, such inquiry as he may deem sufficient for the purpose of ascertaining the existence of *prima facie* proof of facts which constitute a crime for which extradition may be granted under clause (b) of this Convention, and, in the absence of such proof, may decline to deliver up the accused person.

(j) Every requisition shall ordinarily be accompanied by the summons or warrant of arrest, or an authenticated copy thereof, issued by the competent authority of the State applying for it, and by a statement setting forth the facts of the offence, and sufficient particulars to enable the accused to be identified.

In cases of urgency, satisfactory proof of the existence of a warrant of arrest issued by competent authority may be provisionally accepted in support of a requisition.

(k) If the person claimed has not already been arrested by the authorities of the State to whom the requisition is made, such authorities shall at once proceed to secure his appearance.

(l) Any person accused of any of the above crimes, and whether a subject of the party in whose dominions or jurisdiction he is found or otherwise, may be arrested by the authorities of such dominions—

on production of a warrant of arrest issued by the competent authority of the other party ;

or



or on advice, from such competent authority, transmitted by post, telegraph, or other means, stating the existence of such warrant of arrest;

or on demand made by the Magistrate or Police-officer of the other party who has pursued the accused across the frontier;

or on receipt of advice of the fact of the crime, whether communicated by a private complainant or otherwise, and whether or not the individual offender may be known or specified by name.

(m) Every such Magistrate or Police-officer who has pursued the accused across the frontier shall be entitled to the protection and assistance of the Magistrates and Police-officers of the State to whose dominions or jurisdiction the accused has fled. They shall forthwith take up the pursuit, and, without waiting for the orders of higher authority, shall make all necessary searches, inquiries, pursuits, arrests and recoveries of stolen property, in accordance with the local law of criminal procedure.

The Magistrate or Police-officer who has pursued the accused across the frontier shall not enter houses or buildings, or make searches or arrests, except in presence or under the authority of a local Magistrate or Police-officer, but shall act in subordination to the local Magistrates or Police-officers, and shall assist them, if so required, in all necessary searches, inquiries, pursuits, arrests and recoveries of stolen property.

(n) Whenever any person is arrested in the dominions or jurisdiction of the one party for any of the above crimes committed in the dominions or jurisdiction of the other party, notice shall be given to the authorities of the other party, who may then, if the accused is a subject of the State where he is found, claim that he be tried there; or, if he is not such a subject, claim his extradition as provided in this Convention.

(o) All weapons and articles necessary as evidence shall

shall be seized in order to their production before the proper officer, and in case of extradition, in order that they may be delivered up with the accused when the extradition shall take place.

Such seizure and delivery shall extend to articles stolen or obtained by other offences, and the proceeds of such property, and to everything that may serve as evidence of the crime; and shall be made even when the extradition cannot be made, or the trial cannot be held, on account of the flight or death of the accused.

Nothing in this clause shall affect the rights of third parties to any such weapons and articles.

(p) The expenses occasioned by the arrest, imprisonment, maintenance and transport of criminals, and the conveyance of articles, shall, within the dominions and as far as the frontier, be defrayed by the party in whose dominions or jurisdiction such criminals or articles are found: the expenses by sea and beyond the frontier shall be defrayed by the other party.

(q) A British subject accused of having committed any of the above crimes in the Portuguese Indian dominions or jurisdiction, may be dealt with by the British Indian authorities as if the crime had been committed in British India; and a Portuguese subject accused of having committed any of the above crimes in the British Indian dominions or jurisdiction, may be dealt with by the Portuguese Indian authorities as if the crime had been committed in Portuguese India:

Provided that the accused is found in the dominions or jurisdiction of the party to whom he is subject, and has not been acquitted or punished in the dominions or jurisdiction in which he committed the crime.

Complaints of any such crimes shall be inquired into by the police and judicial authorities irrespective of

of the nationality of the complainant, in accordance with the local laws.

(*r*) In all such trials and enquiries, the evidence of witnesses whose attendance cannot be procured without an unreasonable amount of delay, expense or inconvenience, may be recorded by the judicial authorities of the State where the offence occurred, on receipt of an interrogatory Commission from the other State, and such depositions or certified copies thereof shall be received by the authorities of the other State as valid evidence: Provided that the authorities of the one State shall in all cases aid those of the other, as far as may be, in securing the personal attendance of witnesses, and reasonable time shall be allowed for the production of evidence before the final discharge or conviction of the accused.

(*s*) If within two months after receipt of notice of the arrest no requisition for extradition or complaint or application for a trial shall have been made, the accused may be set at liberty. He shall be set at liberty if, within one month of the day on which he was brought to the frontier or seaport, and there placed at the disposal of the party claiming, he shall not have been despatched to the dominions of such party:

Provided that, until the extradition takes place, the accused may be liberated on bail or recognizance where such procedure is allowed by the law of the dominions or jurisdiction where he is found; and that, after the extradition, the procedure shall be that provided by the law of the other dominions or jurisdiction.

(*t*) The High Contracting Parties engage to aid each other in the apprehension and surrender of deserters from their respective naval and military forces, and to apply all the provisions of this Convention to the offence of deserting.

It is agreed that this Convention shall have effect from the first day of February one thousand eight hundred and eighty.

Done

Done at Calcutta on the thirtieth day of January in the year of our Lord one thousand eight hundred and eighty.

LYTTON,

*Viceroy and Governor General  
of British India.*

Done at Panjim on the twentieth day of January in the year of our Lord one thousand eight hundred and eighty.

CAETANO AL<sup>DRE</sup> D'ALMEIDA ALBUQUERQUE,

*Governor General of Portuguese India.*