

Title: Introduction of the Repatriation of Prisoners Bill, 2002 moved by Shri I.D. Swami, the Minister of State, Ministry of Home Affairs.

14.43 hrs

MR. CHAIRMAN: Now, the House will take up the next item. Hon. Home Minister to move for leave to introduce the Repatriation of Prisoners Bill.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI I.D. SWAMI): On behalf of my senior colleague Shri L.K. Advani, I beg to move for leave to introduce a Bill to provide for the transfer of certain prisoners from India to country or place outside India and reception in India of certain prisoners from country or place outside India.

MR. CHAIRMAN : Motion moved:

"That leave be granted to introduce a Bill to provide for the transfer of certain prisoners from India to country or place outside India and reception in India of certain prisoners from country or place outside India. "

Shri Varkala Radhakrishnan has given notice to speak on this.

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Sir, I am not opposing the transfer of prisoners on humanitarian grounds. But I am opposing the introduction of the Bill on grounds of competence and jurisdiction.

MR. CHAIRMAN: You have given notice for opposing the Bill. If you are not opposing it, there is no scope for you to speak.

SHRI VARKALA RADHAKRISHNAN : Let me finish it. I have given notice to speak.

MR. CHAIRMAN: Are you opposing it?

SHRI VARKALA RADHAKRISHNAN : Yes.

MR. CHAIRMAN: Then, oppose it.

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SHRI VARKALA RADHAKRISHNAN : What can I do? I am not opposing the transfer of prisoners. But I am opposing the introduction of the Bill at this stage on grounds of competence and jurisdiction. We all know that we have Extradition Treaty with certain foreign countries.

When an offender is absconding and taking shelter in a foreign country, we get the attendance of that accused through Interpol. That treaty is there. But I am not aware of any treaty entered into between India and any other foreign country in regard to transfer of prisoners. We would have to enter into a treaty with another country. Before entering into a treaty with another country, how can we get jurisdiction to decide matters regarding a foreign citizen undergoing imprisonment under the Indian Act in a foreign State? ...(*Interruptions*)

MR. CHAIRMAN: Suppose an Indian citizen is imprisoned in a foreign country!

SHRI VARKALA RADHAKRISHNAN : Then, it should be *vice versa*. You are well aware that the Criminal Procedure Code, 1973 extends to the whole of India. There is no jurisdiction beyond our territory.

MR. CHAIRMAN: Except Jammu & Kashmir.

SHRI VARKALA RADHAKRISHNAN : Yes. That is another matter and that is a debatable point. Our Criminal Procedure Code extends only to India except Jammu & Kashmir. How could it be extended to a foreign country when our Criminal courts are functioning under the Criminal Procedure Code and the judgement is pronounced under the Criminal Procedure Code. Even in this Bill also, there is a provision. I can read that particular portion.

MR. CHAIRMAN: You can speak everything at the time of consideration.

SHRI VARKALA RADHAKRISHNAN : Yes. But, as to why I am pressing this point isâ€¦! ...(*Interruptions*)

MR. CHAIRMAN: When you want to oppose, you simply oppose it.

SHRI VARKALA RADHAKRISHNAN : Please do not interrupt. If you interrupt, I would not be able to complete the sentence. Mr. Chairman, Sir, please listen to me without distracting my attention. Why I refer to this is because the power of the court to revive the judgements and also power of the State Government and the Central Government to omit the sentence is also provided even after the transfer of prisoners to a foreign country. Our jurisdiction is still

there. This is done under the provisions of the Criminal Procedure Code. Then once the transfer is made and the prisoner is in the foreign country, how can we exercise jurisdiction over him without a treaty? We have an Extradition Treaty. But, we do not have a treaty in regard to the transfer of prisoners. So, it is a premature attempt. ...(*Interruptions*) Shall I continue?

MR. CHAIRMAN: You please conclude now.

SHRI VARKALA RADHAKRISHNAN : We shall have to first enter into a treaty or arrangement with a contracting State. Definition of 'contracting State' is given in the Bill. If the contracting State has already entered into a treaty or arrangement with us, then we get the jurisdiction.

MR. CHAIRMAN: You are talking about the merits of the Bill.

SHRI VARKALA RADHAKRISHNAN : It is not about the merits of the Bill. I am talking about its jurisdiction and the competency, not the merits of the Bill. I do not go into any merit of the Bill at all. I do not go into the provisions of the Bill at all. I am going into the jurisdiction and competency of this House to make a legislation.

Suppose, if there is an exchange of prisoners between India and Pakistan, how will it be carried out? Of course, how far Pakistan would comply with the treaty is another matter because Pakistan is encouraging the terrorist activities in India. With regard to transfer of prisoners, how can we make a legislation without any treaty with Pakistan.

First we should enter into a treaty with a foreign country. Then only this House can have the jurisdiction to pass the law here. Suppose we want to transfer prisoners between India and the United Kingdom, until and unless we enter into a treaty like the Extradition Treaty with that country, how can this House get the jurisdiction to legislate about the prisoners detained in the United Kingdom? If a foreign citizen is detained under the provisions of the Criminal Procedure Code in India, until and unless they surrender their jurisdiction, how can we legislate? Where is the competency for us to legislate? As far as extradition is concerned, we have an Extradition Treaty with the United Kingdom. So, with the help of Interpol we get the prisoners extradited to India.

MR. CHAIRMAN : Shri Radhakrishnan, you raised the question about the competence of this House to legislate on this matter. This House is omnipotent and this House has got the jurisdiction to pass a law regarding Indian citizens residing anywhere in the world. If they are in any prison and if they are brought back to India, they will come under the jurisdiction of Indian law.

SHRI VARKALA RADHAKRISHNAN : But they are deciding about foreign citizens detained in India.

SHRI I.D. SWAMI: Mr. Chairman, Sir, for the information of the hon. Member, I would like to inform him, through you, that the Government of India has already entered into agreements with three countries and we are negotiating with other countries also to enter into such agreements. We have already entered into an agreement with the United Kingdom, France and Norway and we are negotiating with other countries also for this purpose.

SHRI VARKALA RADHAKRISHNAN : That will have to be mentioned here, in the Statement of Objects and Reasons of this Bill. ...(*Interruptions*)

MR. CHAIRMAN: If you go through the provisions of the Criminal Procedure Code, you will find that the Government of India can ask for any detail and any document from any country. So, by virtue of that, they have entered into an agreement with France, UK and Norway.

SHRI VARKALA RADHAKRISHNAN : So, there must be an amendment to that effect in the Criminal Procedure Code also.

MR. CHAIRMAN: You read Section 169 of the Criminal Procedure Code. Then, it will be clear to you.

SHRI I.D. SWAMI: Sir, this is only an enabling law to transfer convicted persons from other countries to India and also to transfer foreigners convicted in India on humanitarian ground. I agree with the hon. Member that neither in the Criminal Procedure Code nor in the Prison Act nor in any other Act, we have a provision for this purpose. That is why, this Bill has been introduced here. By this enabling Bill we can achieve that purpose now, after entering into agreements with foreign countries.

Then, we have to see the human angle also, the climate and the accessibility of the families of convicted persons, whether Indians in foreign countries or foreigners in India. They have to be transferred to their respective countries. So, when we pass this Bill, this will enable us to implement the agreements which we have already signed with some countries and also in the process of signing with certain other countries. So, this House has full jurisdiction to pass this Bill. ...(*Interruptions*)

MR. CHAIRMAN: Shri Radhakrishnan, you can speak in detail at the time of consideration of this Bill.

SHRI I.D. SWAMI: Sir, article 253 of the Constitution makes it very clear that the Government of India can pass such a law for giving effect to international agreements. We have to have a law to fulfil international commitments. Since we do not have a law now, we have to pass this law here.

MR. CHAIRMAN: Yes; only after passing a law we can enter into a treaty. We cannot say that we are entering into a treaty as we are going to pass a law.

...(Interruptions)

SHRI MADHUSUDAN MISTRY (SABARKANTHA): Mr. Chairman, Sir, we can enter into a treaty and then pass a law over here.

SHRI I.D. SWAMI: No; first we have to have an enabling law and we have introduced this Bill only for that purpose.
...(Interruptions)

SHRI VARKALA RADHAKRISHNAN : Sir, how can you allow other Members, who have not given a notice, to speak now?

MR. CHAIRMAN: Yes; I cannot allow other Members who have not given a notice to oppose the introduction of this Bill.

...(Interruptions)

MR. CHAIRMAN: Shri Radhakrishnan, you can clarify all your legal doubts at the time of consideration of this Bill. Please take your seat now.

...(Interruptions)

DR. BIKRAM SARKAR (PANSKURA): In the Statement of Objects and Reasons, there is one sentence.
...(Interruptions)

SHRI I.D. SWAMI: That could be at the time of consideration.

DR. BIKRAM SARKAR : Sir, his objection is not valid. In the Statement of Objects and Reasons, it has been mentioned as under:

"The Bill proposes legislation, in conjunction with bilateral treaties to enable the Central Government to transfer foreign convicted persons to their country and *vice versa*."

That explains it. He was reading the first part of it. I am reading the last part in order to clarify the point.

MR. CHAIRMAN : Please do understand that this is to enable citizens languishing in jails in foreign countries.

...(Interruptions)

MR. CHAIRMAN: You are going to participate in the debate.

SHRI VARKALA RADHAKRISHNAN : That would be at a later date and not now. ...(Interruptions)

MR. CHAIRMAN: Now, the time is over. I have to inform the House that as per well established practice, the Speaker does not decide whether the Bill is constitutionally within the legislative competence of the House or not. The House also does not take a decision on specific question of the *vires* of a Bill. I shall, therefore, put the motion for introduction of the Bill to the vote of the House.

The question is:

"That leave be granted to introduce a Bill to provide for the transfer of certain prisoners from India to country or place outside India and reception in India of certain prisoners from country or place outside India."

The motion was adopted.

SHRI I.D. SWAMI: I introduce* the Bill.

*Introduced with the recommendation of the President.

MR. CHAIRMAN: The House would now take up matters under rule 377. Now, hon. Member, Dr. Madan Prasad Jaiswal.

14.57 hrs