

Shri Nath Pal (Rajapur): What is surprising about it?

Mr. Speaker: I could see that he was quite insistent about expressing his view; otherwise, introduction stage is not the proper time for this. When we take it up, he can take objection to it but not at the introduction stage. At this stage he can say that he objects to its introduction and he can take objection to the Ordinance at the moment we consider it. We are only at the stage of introduction of the Bill.

The question is:

“That leave be granted to introduce a Bill further to amend the Land Acquisition Act, 1894.”

The motion was adopted.

Shri S. K. Patil: Sir, I introduce the Bill.

STATEMENT RE: LAND ACQUISITION (AMENDMENT) ORDINANCE

The Minister of Food and Agriculture (Shri S. K. Patil): Sir, I beg to lay on the Table a copy of the explanatory statement giving reasons for immediate legislation by the Land Acquisition (Amendment) Ordinance, 1962, as required under rule 71(1) of the Rules of Procedure and Conduct of Business in Lok Sabha. [Placed in Library. See No. LT-291/62.]

12-19 hrs.

EXTRADITION BILL—contd.

Mr. Speaker: The House shall now take up further consideration of the following motion moved by Shri Asoke K. Sen on the 7th August, 1962, namely:—

“That the Bill to consolidate and amend the law relating to the extradition of fugitive criminals, be passed.”

Shri D. C. Sharma may continue his speech.

Shri D. C. Sharma (Gurdaspur): Sir, I made two points yesterday. I said that the Government had given due thought and due time to the consideration and drafting of this Bill. I also said that the Ministry of Law and the Congress party were not void of legal talent and were not void of understanding in such a way that it could not understand all the implications of this Bill and all that it involved. I believe that the speeches which have been made on behalf of the Congress party here show that the Members have understood all that this Bill involved and their speeches have been as good as that of any Member of any other party.

A point has been made that we are giving perhaps preferential treatment to Commonwealth countries. I think that is a misrepresentation of facts. Of course, we have three types of countries in this Bill and three types of agreements in view. But, the fact of the matter is that the Commonwealth countries are also going to be subject to all these things to which all the other countries are going to be subjected. For instance, I draw the attention of the House to clause 12(2):

“Every such application shall be by notified order, and the Central Government may, by the same or any subsequent notified order, direct that this Chapter and Chapters I, IV and V shall, in relation to any such Commonwealth country, apply subject to such modifications, exceptions, conditions and qualifications as it may think fit to specify in the order for the purpose of implementing the arrangement”.

The first point is that these treaties are going to be bilateral treaties; they are not going to be unilateral. At the same time, we are not giving a kind of blank permission to the Government to enter into any kind of treaty that it likes with any Commonwealth country. Whatever these treaties, they will be done by notified orders. Not only Chapter III will

apply to them, but all the other chapters will apply to these countries. At the same time, these chapters can be modified in the light of experience and in the light of our relations with those countries. We can have exceptions so far as these orders are concerned and we can lay down new conditions. We can also qualify whatever is said. Therefore, I believe that to think that the Commonwealth countries are being given a kind of blank cheque to do whatever they like in the matter of extradition Act is not correct. They are subject to so many provisions of law. They are subject to so many rules of procedure. They are subject to so many modifications and other things. Therefore, the fear of hon. Members that the Commonwealth countries are going to have some kind of a general permission to do whatever they like in the matter of extradition is not proper.

Much has been made of the warrant that is to be issued. It is not that the warrant that will be issued will be enough in itself to ensure extradition of any person. I draw the attention of the House to clause 17(2) and also to clause 17(3). That warrant is subject to two conditions. "If on such inquiry the magistrate is of opinion that the endorsed warrant is not duly authenticated": that is one of the things. Much stress has been laid on the endorsement of the warrant. It is subject to a further condition: or that the offence of which such person is accused is not there. All these things will make the warrant infructuous. The Magistrate will, pending receipt of orders of the Central Government, detain such a person in custody or release him on bail. If he has any doubt, he will not extradite him at once. He will send him to custody and report the case to the Government. Clause 17(3) makes the whole thing clear. It reads thus:

"The magistrate shall report the result of his inquiry to the Central Government and shall forward together with such report any writ-

ten statement which the fugitive criminal may desire to submit for the consideration of that Government."

Therefore, the warrant is not everything, but the warrant is subject to scrutiny not only on the fact of its authentication but also on the fact of the substance of the case; and even that is not enough; it is also subject to the approval of the Central Government.

Therefore, I think that so far as the Commonwealth countries are concerned, the precautions that we have taken are more than enough. We have hedged this Bill round with so many safeguards that I think that it will be very difficult for anybody to take undue advantage of it.

A point was made that the amendment put forward by Shri Rameshwar Tantia would have improved this Bill. I have great regard for Shri Rameshwar Tantia, and I do not think that he withdrew this amendment only because he was a member of the Congress Party and was subject to the discipline of the party. I do not think so; I believe that he withdrew his amendment because he knew that his amendment had already been included in the Bill that we are now going to pass. His amendment reads as follows:

"(3A) If the Magistrate is of the opinion that the offence, though not of a political nature, is not an offence in terms of the law of the land, he shall discharge the person against whom the extradition proceedings have been instituted."

Mr. Speaker: This is the third reading stage, and the hon. Member should not go into the details of the amendments that were moved and withdrawn. This is not the stage for that.

Shri D. C. Sharma: I agree with you, Sir, but somebody referred to this matter yesterday.

Mr. Speaker: That does not matter.

Shri U. M. Trivedi (Mandsaur): My hon. friend is not the Minister who is to reply to it.

Shri D. C. Sharma: Therefore, I would say that this amendment does not bring in any new point, because it is already implicit and explicit in the Bill. Therefore, I think that this Extradition Bill as it has been placed before the House by the Law Minister should be passed.

The Minister of Law (Shri A. K. Sen): I would not normally have taken pains to make a long reply on the third reading of this Bill but for certain unfortunate remarks which were levelled against not only myself personally but against the Government and against the party which supports the Government, by the Deputy Leader of the Communist Group, and I think that it is my duty to reply to them. Before I do so, I would again say that those remarks were not only unfortunate but completely unwarranted. He said:

"I am very sorry to find that the Government party with all its wealth of legal talent, for some reason or other, put out speakers who had hardly made a study of this Bill and knew hardly a thing about what was actually being contemplated by this Bill."

Sir, the Deputy Leader of the Communist Group has been longer in this House than I, but one lesson has escaped him which has not escaped me fortunately, and that is that the paramount duty that we owe to this House and to the parliamentary institutions to which we are a party, is to be respectful to the House and to our opponents in particular. As Government is respectful to the opponents, so the opponents should be to the Government and to the party which sustains the Government.

By saying so, my hon. friend tried to convey the idea that he had made a more thorough study and a more perfect study of the Bill. I shall endeavour to show that this thorough

study of his has only succeeded in enabling him to indulge in certain fallacies which are patent, and which will be demonstrated as such, and it is only on those fallacies that he has built up this imaginary attack on Government by saying that we have treated it in a cavalier fashion, and we have done it in a hurry as if we had something to hide, and we had something up our sleeves. He said that we had done it in a cavalier fashion, and he said that I had done it and done it in a hurry. All this is because, he says, we are giving an advantage to commonwealth countries which is undue. He cites the example of Pakistan and says that that country is fettered by all sorts of restrictions—we are all agreed upon that—and, therefore, we are going to give the fugitive criminals away to Pakistan. That is his argument. He forgets that there are plenty of safeguards which make the procedure in substance the same as in regard to non-Commonwealth countries. Before Pakistan gets its fugitive criminals extradited, it has to come within the definition of a Commonwealth country by an appropriate notification by the Central Government. That is in clause 12. Pakistan does not come in automatically. A more thorough study of the Bill, more thorough than what the Congress Members have done, would have enabled the hon. Member to appreciate that. Therefore, before Pakistan can claim the benefit of Chapter III, it has to be notified as a Commonwealth country. Before notification, it has to have a bilateral arrangement with India. The bilateral arrangement will specify under what circumstances and for what offences there will be extradition as between the two countries and in enlisting the offences in the bilateral arrangement, the Government would not be able to add any offence other than those mentioned in the Second Schedule, because extradition offences are specified in the Act itself. It is within the bounds of those extradition offences that the bilateral arrangement will have to specify on what offences

there would be extradition as between Pakistan and India. Those conditions equally apply to both countries.

After the arrangement has been made, it has to be notified under clause 12(2) with such modifications and qualifications as the Central Government may specify, as pointed out by Shri D. C. Sharma. Prof. Mukerjee, in his eagerness to criticise the Congress Members as not having made a parently forgotten to mention this particular point, I hate to think that he has not studied it or had made a cursory study of it before making his speech on the Bill. So I give him the benefit of doubt by saying that he has forgotten to mention it.

A further safeguard is that the moment a warrant comes, it is not to be transmitted as a matter of course. That is in clause 15. Again I say I hate to think that Shri H. N. Mukerjee had not studied it properly. So I give him the benefit of doubt by saying again that he had forgotten to mention it.

"Where a warrant for the apprehension of a fugitive criminal has been issued in any commonwealth country to which this Chapter applies and such fugitive criminal is, or is suspected to be in India, the Central Government may, if satisfied that the warrant was issued by a person having lawful authority to issue the same endorse such warrant in the manner prescribed."

The option to endorse the warrant is given to the Central Government. With the knowledge, wisdom and experience that it possesses, it is certainly well within reason to infer that the Central Government will not endorse it as a mere automation. It is not expected to act as an automation. Shri H. N. Mukerjee says—nothing remains; the warrant comes and it is endorsed; the magistrate has only to see that the warrant is properly authenticated.

Then, if I may read his own speech:

"...and if it is certified to be in order, as having been signed by the proper authority in the country seeking extradition, then, of course, the extradition takes place."

Well, Sir, if I were to borrow his own language, I may have, with justification, said this is cavalier and not ours. He says as a matter of course, all that the Government has to see and all that the magistrate has to see is whether the proper authority has issued the warrant, and then the warrant goes. Even after endorsement by the Central Government with all the care and scrutiny that it is expected to exercise, when it goes to the magistrate, the magistrate is again enjoined upon to see two things: firstly, as pointed out by Shri Sharma, that it has been issued by the proper authority, and secondly, that the offence for which extradition has been asked for is one which is an extradition offence within the meaning of the bilateral arrangement and the Extradition Act itself. It is only after such an enquiry the magistrate may issue the warrant for arrest. Initially the Central Government is not bound to endorse, and even after the magisterial enquiry the Central Government is not bound to issue it. Even at that late stage, the Central Government has been given the discretion of only issuing the warrant if it thinks fit. The word "may" is there again, in clause 18:

"The Central Government may, at any time after a fugitive criminal has been committed to prison under this Chapter, issue a warrant for the custody and removal . . ."

Even here it is not compulsory. Shri Mukerjee's criticism, therefore, that for a Commonwealth country like Pakistan all that is necessary is that Pakistan sends a warrant, the Central Government endorses it, the magistrate issues it and the man is sent to Pakistan, is not correct. If this is thorough study, we have different ideas of thorough study, and let us not be inflicted with such ideas of thorough study which expose a complete lack of understanding, if I may say so with respect, of the essential.

[Shri A. K. Sen]

provisions of this Bill. So, if the cap fits at all, it is not the party on this side, but the party on the other side which it fits, if he represents the amount of study that is expected of a constructive critic of this Bill.

He then accuses me of not being present here when he referred to the Geneva Convention of 1937, and says no answer has been given. I do not know if you, Sir, were here. I may not be physically present, but we have arrangements for transmission of all that happens in the House for the benefit of the person who is called upon to reply on behalf of the Government. When I had the note given to me by the Deputy Minister for External Affairs on this point saying that Shri Mukerjee had referred to the Geneva Convention for Prevention of Terrorism, that the convention was still binding on us though it is not binding on England, I took pains to answer that, though I was not here to hear that. Unfortunately, he was not here to hear me answering his objections. So, he again referred to it in his third reading speech saying no answer had come with regard to the 1937 Convention thinking that we had not replied. I took pains to read not from an English or from an American book, but from a Russian book. Possibly it was not thought that with such rapidity a Russian reply would be forthcoming from the Government, but the amount of thorough study we do enables us to bring out replies even from distant corners with regard to points which may not have been properly seen from before. I read out to show that this Convention never came into force. So, the question of its still being binding on us or England not being a party does not arise. I gave three answers. I said that first of all this Convention of 1937 never came into force, and I read out from this Russian book, from the textbook on international law now translated into English by their Foreign Publishing House. It is the only edition here. It is called *Textbook of International Law in Law School*.

It says on page 171:—

"In 1937, the Convention on International Prevention and punishment of terrorism was signed in Geneva by the representatives of 24 countries."

That included India; that did not include England, but it included Russia.

"including the Soviet Union".

That is what the book says.

"The signatories undertook to punish persons guilty of terrorist activity."

Prof. Mukerjee thought that such convention would be outrageous. But the Soviet Union accuses the bourgeois governments of not giving effect to it because it thinks that suppression of international terrorism is an international obligation. Anyway it said that this Convention provided—

"that the signatories should undertake to punish persons guilty of terrorist activity, of attacks upon life and health of Heads of States, official personages, acts of sabotage, preparation of terrorist acts etc."

It says:

"Subsequent events show that the major imperialist States that signed the Convention, by no means, intended to renounce terrorism as a means of imperialist intervention in the international affairs of States. The Convention was not ratified and never came into force."

He pointed out to some Lauterpacht Edition of *International Law* and said that no answer came from Government. The answer did come; but he was not here to hear it; nor did his friends enlighten him that I read out from that Russian book to show that this convention never came into force anyway.

The second answer I gave was that even if it was effective in 1937, ter-

rorism is not mentioned as an offence in the Second Schedule, and, therefore, it should not be a subject of any extradition treaty, far less an extradition proceedings in this country. It is only in respect of such offences as are specifically mentioned in the Second Schedule that extradition proceedings can be had. What is the use of thinking of some convention? To the extent the Extradition Act specifies offences, to that extent the existing arrangements will stand modified because, to that extent, by notification, this will be made applicable. Then there are sections 4 and 12.

If this is the cavalier reading of the thing, then we have to change our notion of 'cavalier'. With a view to be precise, I took the trouble of consulting the Oxford Dictionary, for the meaning of 'cavalier'.

Shri Hari Vishnu Kamath (Hoshanabad): Concise or big?

Shri A. K. Sen: It says, cut or supercilious.

Shri U. M. Trivedi: Concise or big?

Shri Hari Vishnu Kamath: Concise or big?

Shri A. K. Sen: It is concise, not the big one. The concise one is good enough for us. I suppose even in the bigger edition that meaning would be given. It is, curt, supercilious. That is the adjective with which Prof. Mukerjee greets us. Sir, you are here to correct us if we are ever curt, if we are ever supercilious. And, if ever what we said was supercilious or curt, we certainly ask the pardon of the House as we must. But I say so with confidence that if there was any superciliousness it was from the most cursory examination of the Bill and the imaginary force built up on it which were exposed by the hon. Member that such an appellation possibly might be attracted.

Then, he said further that we should make a declaration or we should have made a declaration that we shall give asylum, that is his language—in regard

to political offences. Our duty as a country should have been to tell the world that we are going to offer political asylum to whoever is suffering for political reasons in other countries including Commonwealth countries like the U.K. or Pakistan. An extraordinary way of sponsoring legislation! Starting with a declaration for the whole world, 'Know Ye, Gentlemen of the world, here is a country to which all fugitives from political oppression are invited to have an asylum'. So long as we are in charge of legislation such fantastic declarations will never find a place on the statute book, if I may say so. The declaration is written into the Bill itself; one does not brandish of such a universal nature. Universal declarations are meant for universal bodies like the United Nations. The intention not to extradite persons because of political offences or for whom extradition is wanted as a method of political persecution is written expressly into this very Bill. There is clause 31. What other declaration he wants, I do not know. A fugitive criminal shall not be surrendered or returned to a foreign State or a commonwealth country if the offence in respect of which his surrender is sought is of a political character or if he proves to the satisfaction of the magistrate or the court before whom he may be produced or the Central Government even if he fails before a magistrate—that the request or warrant for his surrender has in fact been made with a view to try or punish him for an offence of a political character. If this is not a clear indication and a clear prohibition against any extradition of a political nature, I do not know what it is. Professor Mukerjee says that we should have a declaration that we give political asylum to whoever may be there, whether he is inside the country or not and we should have said: come here, the gates are open; you must all come in thousands whoever is politically oppressed.

Shri U. M. Trivedi: They did not want the Tibetans to come.

Shri A. K. Sen: I am obliged to the hon. Member for referring to it. Political asylum is quite a different thing from extradition on political grounds. Asylum is the exercise of sovereign authority. Asylum in international law is the exercise of sovereign authority to grant a specified individual who is not a citizen of the country asylum; in other words, a person who is not a citizen, is entitled to stay so long as the country where he is staying allows him. A citizen of another State may be given asylum by another State to stay in that State indefinitely by way of political asylum and that permission is the exercise of sovereign authority. That is quite different from extradition. I am sorry that Professor Mukerjee with all his legal talent has made such a confusion over these two matters.

Shri U. M. Trivedi: He appeared to be sure of it; he did not want asylum from communist countries.

Shri A. K. Sen: That is why when this country gave asylum to Dalai Lama, most unreasonable objections were raised in many places, forgetting that the right to grant asylum is an attribute of sovereignty. It is quite apart from extradition as I explained before.

Shri Hari Vishnu Kamath: Even Karl Marx and Lenin were given asylum.

Shri A. K. Sen: Possibly that is what inspired professor Mukerjee to induce us to make a universal declaration on asylum.

Then again, with reference to the second schedule, he says: "... (it) should not be accepted without very careful thought having been given to them. . . Here is the power which we are giving to Government . . . merely by notification to add to the list of offences . . ." Lest I may be incorrect, I have taken pains to read and re-read it. He said it and I heard him say so. He says that the offences

mentioned in the schedule are capable of being added to by a notification by the Central Government. I read what he has said. He says:

"Here is the power which we are giving to Government if we pass this Bill, as we shall I am sure, merely by notification to add to the list of offences already scheduled here in the Second Schedule of this Bill."

I am amazed at this assertion. Nowhere have we given the power to add to the list of offences already scheduled in the Second Schedule. All that we have said in that regard to commonwealth countries Government may add to the schedule, but that is a different matter altogether. But that is only when a commonwealth country is brought within the schedule because of any bilateral arrangement that is entered into between us and a commonwealth country. But where he gets that fact that we can add to the schedule of offences, I fail to see.

Then he attacks the last item, item 18, in the Second Schedule, where we say that extradition offences include the offences under the Indian Penal Code or any other law for the time being in force. He attacks it. That means if we only confine it to the Indian Penal Code we cannot ask for extradition from other countries. For instance, a food adulterer may be taking refuge, and it comes under the Food Adulteration Act. There are many chapters under the Indian Penal Code which impose punishment and make the offences penal. We want to get at those people who may flee from this country and take refuge elsewhere. Otherwise, if the food adulterers take refuge in Pakistan, for instance, we cannot get them if Shri H. N. Mukerjee's contention is to be accepted.

We have certainly made a very thorough study of the problem, but that thorough study would not lead us anywhere if we confine ourselves

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to the Indian Penal Code only instead of specifying all the offences in all the other Acts. We have said: "other Acts in force". Even there we have given the right of discrimination to the Government. All these offences will be applied only by the Central Government by notification so that they may be brought within the scope of the extradition arrangements which may be entered into.

These are my submissions, in my humble opinion. I reiterate that this is a non-controversial Bill, and the heat that was introduced was completely unnecessary and completely unjustified. Shri H. N. Mukerjee was a member of the Joint Committee which went through the Bill and the unanimous recommendation of that Committee was incorporated in this Bill itself, and yet, I do not know how he came to generate such heat.

Shri Hari Vishnu Kamath: You have dispelled the heat and given light.

Shri A. K. Sen: I hope I have, but that prerogative is not mine. It must be somebody else's. My prerogative is only to assist hon. Members.

Mr. Speaker: The question is:

"That the Bill be passed."

The motion was adopted.

HINDU ADOPTIONS AND MAINTENANCE (AMENDMENT) BILL

The Minister of Law (Shri A. K. Sen): I beg to move:

"That the Bill further to amend the Hindu Adoptions and Maintenance Act, 1956, be taken into consideration."

This is a very simple Bill. There was a lacuna in the original Act which came to light. If I may read this section the lacuna would be apparent immediately. In the original Act, we made provision for adoption of

children whose parentage was known but not of children whose parentage was unknown. Children who have been brought up in orphanages or founding homes had been cast away by their unknown parents or by parents who had never married, which means illegitimate. If hon. Members would turn to the annexure, they will see the Explanation which says:

"The following persons are Hindus, Buddhists, Jains or Sikhs by religion, as the case may be:—

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion...."

—a child whose parentage is not known at all, and nobody knows whether he is a Hindu or any other—

"and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and"

We have had cases which have been brought to our notice and to the Prime Minister's notice also, genuine cases where persons have taken in adoption children from founding homes and orphanages and whose parents are not known. They have now been told that these children will not be entitled to inherit their property because they would not be capable of being adopted legally as their children. Many such cases have been brought to our notice. We thought that we should make the law clear and enable such parents to adopt legally such children whom they want to adopt whose parentage is not known. That is why the alteration is suggested in clause 2(bb) which reads as follows:

"any child, legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh; and".