

15.29 hrs.

EXTRADITION BILL

The Minister of Law (Shri A. K. Sen): Sir, on behalf of the Prime Minister I beg to move:

"That the Bill to consolidate and amend the law relating to the extradition of fugitive criminals, be taken into consideration."

This is really a non-controversial measure. The whole question of extradition before Independence was covered by three Acts which held the field. The first one was an Act of the British Parliament, and that dealt with the extradition of fugitive criminals from and to other countries outside the British Dominions, as was specified by the British Government. Then, extradition of fugitive offenders *inter se* Commonwealth countries was governed by the Fugitive Offenders Act. Then, there was an Indian Act, the Indian Extradition Act, which dealt with the residue of the matter.

The operation of these Acts has always proved cumbersome. I remember, even before Independence, whenever such matters cropped up, there used to be a good deal of research and racking up of all laws and procedures in order to find out really which law held the field. After Independence, as a result of the decision of the Supreme Court, it was found that the Fugitive Offenders Act, which governed the question of extradition between Commonwealth countries was not in operation any more. That was the decision. Therefore, over a vast area with which we were really physically connected, our people going to and people from those Commonwealth countries coming in, especially from England, in which really the question of extradition was of some importance, it became very difficult. It was felt absolutely necessary that we must amend the law relating to extradition at least to enable our Government to get the criminals who have gone over to Commonwealth countries, especial-

ly Pakistan and neighbouring countries, and also those countries to get fugitive criminals coming from their territories to India. Therefore, a comprehensive Bill was drafted and has now been introduced before this House.

There are no controversial provisions. The international law relating to extradition of criminals has been recognised and applied, namely, that our law will not enable persons to be extradited on political grounds and even if extradition is wanted by other countries on grounds which are not ostensibly political, but will turn out to be primarily political or really political, our courts may decline to allow extradition. We have divided the territories over which this law will operate, broadly, into three categories: first, of all, foreign countries with which we have extradition agreements; secondly, Commonwealth countries with which we have extradition arrangements; thirdly, Commonwealth countries with which we have no extradition arrangements. The operation of the law so far as Commonwealth countries with which we have extradition arrangements we shall have extradition arrangements is, by some process, their own warrants, brought to this country and transmitted by their diplomatic representatives and properly endorsed by the Government, would be executed as if it was a warrant of our own courts. Apart from that, it has prescribed procedures for execution of requests for extradition.

Shri Tangamani (Madurai): May I know the names of the countries with which we have extradition arrangements; nowhere it is indicated.

Shri A. K. Sen: It is in the Schedule. The Schedule gives the names of the Commonwealth countries with which we have extradition arrangements: the First Schedule.

Shri Tangamani: The Schedule only gives the Commonwealth countries. I would like to know the countries other than the Commonwealth with whom we have at present extradition arrangements.

Shri A. K. Sen: We have a list. If the hon. Member so desires, we shall be able to circulate the list. We have not done so because it is immaterial which is the country. The principle is what is more important. The countries with which we have extradition agreements which are reciprocal, would be governed by the procedure prescribed in Chapter II.

It is really a necessary provision. A part of the law having become Parliamentary law, it is very doubtful whether it still continues in operation. The Fugitive Offenders Act has been declared to be not in operation. The whole matter has to be covered anew. I think we have adopted very well known liberal principles in drafting our provisions.

Mr. Deputy-Speaker: Motion moved:

"That the Bill to consolidate and amend the law relating to the extradition of fugitive criminals, be taken into consideration."

Shri H. N. Mukerjee (Calcutta—Central): Mr. Deputy-Speaker, it is a good thing that we are now having an Extradition Act which would consolidate and amend the law existing today in regard to extradition of fugitive criminals. I feel, however, that there has been a certain amount of haste on the part of the Government in bringing forward this Bill in the present shape. I want an extradition Act to be put on our Statute-book as soon as possible. But, I do wish that our consolidated Act is something which is fully in conformity with the spirit of our Constitution and the desires of our people.

I say that there has been some haste in the Government coming forward in regard to this Bill also because I would have liked the Government to have suggested a reference of this matter either for eliciting opinion from circles which are in the know about this kind of thing or for reference to

a Select Committee. I did not myself give notice of an amendment of that sort, because, I could guess from the go of things that it was merely a cry in the wilderness. I am suggesting it now to the Government that perhaps it would be wiser, perhaps it would be more advisable for the Government to wait a little longer. Perhaps the Ministers are in consultation.

Mr. Deputy-Speaker: Yes.

Shri H. N. Mukerjee: Perhaps, it would be more advisable for the Government—I want at least the Law Minister's undivided attention.

Shri A. K. Sen: I was actually discussing that.

Mr. Deputy-Speaker: Exactly, when the hon. Member says that it is advisable, the Minister has to see whether it is really so.

Shri A. K. Sen: I can assure the hon. Member that I was informing the Prime Minister of the suggestion he has thrown.

Shri H. N. Mukerjee: I feel that in regard to this matter, more care should have been taken. Particularly because, the Law Commission itself had suggested that this kind of a statute might profitably have been referred to the Law Commission. I am quoting from the Fifth report of the Law Commission which was concerned with British statutes applicable to India. There, we find an Appendix, where a certain number of statutes are mentioned. The idea of the Law Commission was that consideration of these statutes should be postponed till the Government proceeded to legislate upon them and the opinion of the Commission was sought. I do not quite know if the opinion of the Commission had been sought in this matter. If it had been, I have no grouse at all.

At that point of time when the Law Commission submitted its Fifth report to the Government of India, there

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was also a note by Dr. N. C. Sen Gupta who was a Member of the Commission, which suggested that the Extradition Act should be taken up as quickly as possible. He had referred to certain difficulties which ought to be sought to be overcome when legislation was brought before Parliament. I find that the suggestions made in Dr. N. S. Sen Gupta's note to the Fifth report of the Law Commission of India have not been properly observed. I find, for instance, in the Bill, there is naturally and necessarily reference to extradition treaties and on page 2, clause 2, sub-clause.(d), it is said what an extradition treaty means. Dr. N. C. Sen Gupta in this minute had pointed out—I am quoting from pages 89 and 90 of the Fifth report of the Law Commission of India—

“The question as to the existence of Extradition treaty of India with other countries is not free from difficulty. The answer to the enquiry by the Commission to the Government of India does not clear up the matter. The continuance of the rights and obligations under the International agreements is governed by the International Agreements Order made by the Governor-General under section 9 of the Indian Independence Act. International conventions and membership of international organisations are governed by paragraphs 2 and 3 of the Schedule to that Order. Paragraph 4 lays down a more general rule in the following words:—

“Subject to Articles 2 and 3 of this agreement, rights and obligations under all international agreements to which India is a party immediately before the appointed day will devolve both upon the Dominion of India and upon the Dominion of Pakistan, and will, if necessary, be apportioned between the two Dominions.”.

And Dr. Sen Gupta goes on to say:

“This makes it clear that India becomes a party to all conventions and International organisations of which India, before the Partition, was a member, for instance, the United Nations, the Berne Convention on Copyright and various labour and other conventions under the League of Nations, now United Nations. But with regard to treaties, the provision in paragraph 4 of the Schedule to the Order does not make the position clear at all.”.

Then, he adds:

“But with regard to other foreign countries, India had the advantage of Extradition treaties by the British Government with those countries. The question whether these treaties continue or not is not at all free from ambiguity. Questions arise whether India is a party to such treaties within the meaning of paragraph 4 where the treaties were concluded not with India specifically but with Britain on behalf of the entire British Empire. Secondly, if the treaty exists, whether the advantage of it or the obligations under it have passed to India or to Pakistan also remains obscure.”.

I have made this rather lengthened quotation, because I discovered that India under the British dispensation had entered into or had agreed to certain international conventions which have a bearing upon the law of extradition and particularly in regard to the definition of political offence. I am sure the hon. Law Minister will agree with me that the definition of political offence is a very important matter in regard to extradition, because fugitive criminals are extradited from one country to the other, but if it is a political offence under which a fugitive person is charged, then, naturally, no question of extradition ought to arise, particularly, in a

country like ours. I should refer to this matter in some detail a little later. But I find—I am quoting from *Oppenheim's International Law (Lauterpacht's Sixth Edition of 1947)*—that at page 649 of this book, it is found that:

“At Geneva in November, 1937, there was a convention which was signed by 23 States who had undertaken to treat as criminal offences acts of terrorism including conspiracy, incitement and participation in such acts, and in some cases to grant extradition for such offences.”

Now, political terrorism was sought by this convention to be brought under the definition of ordinary crimes so that anybody against whom ostensibly a case of political terrorism could be set out would be extraditable. Apart from India, and this is what Oppenheim's book says, no member of the British Commonwealth of nations signed this convention, but India signed it because India in those days was a country which as a member of the British Empire wanted to pose before the world a certain definition of political offence, that is to say, political terrorism or whatever can come under the wide definition of political terrorism would not have the immunity which political offences are given as far as the extradition law is concerned.

We all know about the famous case of Savarkar and we know how bravely he had jumped off the ship at Marseilles and he had swum across to the soil of France; we know also how the French police possibly acting in connivance with the British authorities on board the ship caught hold of Savarkar, and he was surrendered to the British authorities on board the P&O ship in which he was travelling. We know all that. That was a complete violation of international law. It was such a violation of international law that France actually had to submit a petition that this should not have been done and that Savarkar should be

returned to France, but then the Hague Court of those days held that he could not be returned, and an error had been made, there was no doubt about it that he was a political offender, and, therefore, he should not have been extradited; but once an error had been committed, it could not be rectified. That is a very famous decision on the Savarkar case which is generally mentioned in every standard book on international law, and we are very well aware of it. But in our extradition law there is a special provision that we can offer asylum to those who are suffering under political obloquy or under some kind of political charge, and that is why it is very necessary that we have a definite understanding that this kind of convention to which India had made herself a party in the pre-Independence days is no longer valid at all.

I referred to this matter only because Dr. Sen Gupta himself has pointed out in his note appended to the report of the Law Commission that these are matters which have got to be very carefully gone into, and, therefore, it is something to which Government ought to give its very careful attention.

Shri Tyagi (Dehra Dun): Are political murders also covered by this?

Shri H. N. Mukerjee: I can only say this that all attempts, from the point of view of international law to define a political offence have not yet succeeded; that is to say, there are three schools of thought; one which says that a political motive or a political purpose would exonerate, and, therefore, that something done, whether violent or non-violent, even a murder which is committed for a political objective ought to be exonerated, another view is that it ought not to be exonerated; and a third view tries to go in between and it suggests that the merits of the matter have got to be examined. But every attempt so far made to define a poli-

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tical offence for purposes of extradition which would be unanimously acceptable has failed, and international conventions in that regard have not yet been possible because of this difference, in so far as international jurists are concerned.

Therefore, I feel that as far as we are concerned, we have got to take very great care that we do not do anything which suggests that we do not offer political asylum. England, for instance, has a very good record in spite of her having an empire and all that, as far as offering political asylum is concerned, it has a very fine record. And in a book like this, namely Oppenheim's book, for instance, I find that the Russian Socialist Federal Soviet Republic had an article in their constitution; it is a quotation in French, which says that

"All foreigners persecuted for political activity or for religious conviction would have the right of asylum."

Now, every reputable country agrees on the right of asylum to be given to political offenders, and I wish that our Government does not take any step which can even remotely be interpreted to mean that we are not treating political offenders with the very greatest care, as far as extradition is concerned.

Then, again, in clause 4 of the Bill, it has been said, of course, that fugitive criminals shall not be surrendered or returned to a foreign State or Commonwealth country, if the offence in respect of which the surrender is sought is of a political character, and then it goes on to explain it. But I find some difficulty, because there is a chapter called chapter III which relates to the Commonwealth countries, and there is a very distinct difference between this chapter and the rest of the Bill.

There is, in the First Schedule, a list of the Commonwealth countries

with which we have our extradition arrangements, and in the Third Schedule, the extradition offences in relation to Commonwealth countries to which Chapter III applies are enumerated.

Now, I do not know why in this enumeration of extraditable offences in relation to Commonwealth countries I find treason being mentioned. Piracy is first, and then it is treason. Every definition of a political offence in so far as a definition has been attempted, says that treason, sedition and that sort of thing should certainly come under the definition of a political offence.

15.49 hrs.

[SHRI JAGANATHA RAO in the Chair].

I was looking up the Encyclopaedia of the Social Sciences where it is said that there is no generally accepted definition of a political offence, but obviously it includes more than treason, sedition and the like, since these offences are not included in the treaty lists of extraditable crimes. Now in the list of extraditable crimes in so far as the Commonwealth countries are concerned, we include 'treason'. I do not understand why. Commonwealth countries include, for instance, Pakistan, Malaya, Singapore and so on. It may very well be that somebody in Pakistan is hauled up for treason and he runs away to this country. Now, are we going to interpret the provisions in this Bill in such a way that because Pakistan is a Commonwealth country and because treason is an extraditable offence, as we have put down in the Third Schedule, therefore, the fugitive from Pakistan who has been accused of treason ought to be given over to Pakistan or to Malaya or to some other country? This is a provision which is a very dangerous one. That is why I feel that we have to give a great deal more attention to this kind of measure than we have done so far. This kind of thing is supposed

to be too technical, to difficult, for the likes of us to deal with and we therefore leave the matter to the discretion of Government and the omniscience which Government has. Naturally we have confidence that Government in this kind of matter will move with proper circumspection and look into these things. I find that there are certain things in this Bill which require very much more careful consideration than we have been able to give so far.

Then again I have noticed from Oppenheim's book on International Law in the section on Extradition—my hon. friend, the Law Minister, knows a great deal about this kind of thing—that there are certain countries, especially on the Continent of Europe, which have a provision in their extradition law to the effect that as far as their own nationals are concerned, they do not extradite them; they do not send them over to the other country if they have committed some crime elsewhere. They are punished in the country of their origin. They do not surrender their own nationals. England surrenders her own nationals. The United States surrenders her own nationals. Now, they have a certain tradition and a certain way of looking at things. We may have a great deal of affinity with them as far as British jurisprudence is concerned. It may be following the British practice, therefore, that we are thinking of surrendering our own nationals. But the Continent of Europe, the majority of countries on the Continent of Europe, have a provision in their extradition law saying that they do not surrender their own nationals, but they try to do their duty by punishing the nationals concerned for whatever crime they may have committed. For that purpose, they get the evidence from the other side. They have that kind of reciprocal arrangement.

We have to think very hard about this kind of thing. In the present posture of affairs, is it very necessary

for us to follow the British practice in so far as the extradition of our nationals is concerned?

Then again, I find that as far as the forms regarding requests for extradition are concerned, generally international law insists that the forms should be rather carefully worded and rigid formalities should be properly observed. Now, we have also laid down that the request has to come through the Embassy or other representation of the country concerned. But there is a saving clause, that there may be 'other arrangements', apart from the request to be formally and properly conveyed through the Embassies or similar organisations. There is a provision in our Bill here which says that other arrangements might also be arrived at with other countries and those arrangements might be the methods of securing the extradition of our own nationals. Reciprocally, we might have the same advantage. But are we really getting any advantage out of this business? Should we not be rather more careful than we are at the moment?

These are the things which have got to be very carefully gone into. I cannot understand why Government had to bring forward this Bill to be passed this very Session. If we have waited so long, we might as well wait till the next Session.

Then I find a particular differentiation between Commonwealth countries and other countries. After all, there is no very special reason why our extradition procedure and even the principles of our extradition law should be rather different in the case of Commonwealth countries whereas they are more rigid as far as other countries are concerned. If we really consider certain principles to be correct, let us apply those principles to all countries without any discrimination, whichever country comes and wishes to have reciprocal relationship with us—of course, that goes without saying.

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Therefore, I feel that all these matters have to be taken very carefully into consideration. To recapitulate, I would insist that Government pays more attention to Dr. Sen Gupta's Note to the Fifth Report of the Law Commission of India. I say that the expression 'extradition treaty' should be defined a great deal more carefully than it has been. I wish a very clear enunciation of what the position is in regard to those conventions and other understandings which India had arrived at with other countries before we were independent, and I say that in regard to the definition political offences we have got to be a great deal more careful, specially in regard to the inclusion of 'treason' in the Third Schedule—which means that if Commonwealth countries want people accused of treason—may be wrongly—we have to surrender them, we have to give over our own nationals to their custody.

There are certain other things also which have got to be gone into. This is a technical matter which, I feel, has to be examined with some circumspection. But somehow Government seems to be in a hurry. I do wish Government holds its hands and there is a reference of this matter to some kind of consultative process. I do not suggest that a Select Committee of this House is the best thing. May be for elicitation of opinion, Government can circulate it. But at least I suggest that Government should not proceed in a hurry. There are certain misgivings in my mind which are by no means clarified when I find the Bill as it is and when I heard what the Law Minister said when moving the Motion for consideration of this Bill.

Shri A. K. Sen: Government will not be averse to having a Select Committee, if that is the feeling of the House.

Some Hon. Members: Yes.

Shri Tyagi: I want a little clarification. This is a new subject for me. But I could not understand the logic of having a list of offences, mentioned in the Second Schedule, that is, extradition offences in relation to foreign States other than treaty States or Commonwealth countries to which Chapter III does not apply, which is much longer than the list of offences in relation to Commonwealth countries. What is the meaning of this? Have we to surrender for a larger number of offences to these countries with whom we have no treaty relations than to the Commonwealth countries, treaty countries? In the case of the treaty countries, the list of offences is much smaller. What is the logic behind this differentiation?

Shri A. K. Sen: May I be excused if I ask the hon. Member to repeat his point, because I was informing the Prime Minister about the statement I have just made regarding a Select Committee? I am very sorry I did not follow everything that the hon. Member said.

Shri Tyagi: If the intention is to postpone, then of course, the question does not arise; I need not go into details.

Shri A. K. Sen: We shall go on with the discussion. Instead of passing the Motion for consideration, we shall pass a Motion for reference to a Select Committee.

Shri Tyagi: I wanted the hon. Minister to throw light on this point. Why is the list of offences mentioned in the Second Schedule much longer than the list of offences enumerated in the Third Schedule? The longer list is in relation to those countries with whom we have no treaty and the smaller list is in relation to those countries with whom we have treaties or which are in the Commonwealth. I want to know why we are accommodating non-treaty countries to a larger extent than the treaty countries in respect of whom the list is comparatively small.

Shri A. K. Sen: His point is, why more offences are listed in the Second Schedule. It was mentioned already by the previous speaker.

Shri Tyagi: Yes, with regard to Commonwealth countries or treaty countries, the number of offences under which extradition will have to take place in much smaller than the number of offences, a list of which is enumerated in relation to those countries with whom we no treaty arrangements, or which are not included in the Commonwealth.

Shri A. K. Sen: That is not the exact thing. To understand the two Schedules, one will have to look at clause 2, sub-clause (c), items (ii) and (iii).

Clause 2(c) (ii) says:

"in relation to a foreign State other than a treaty State or in relation to a commonwealth country to which Chapter III does not apply, an offence which is specified in, or which may be specified by notification under, the Second Schedule;"

That means, you have given a whole gamut of offences in respect of which a notification may be made. You have given that wide range, and the notification will specify extradition offences out of the list.

16 hrs.

Shri Tyagi: The heading of the Second Schedule reads:

"Extradition offences in relation to Foreign States other than treaty States or commonwealth countries to which Chapter II does not apply."

This has got a bigger list.

Shri A. K. Sen: If you look at clause 2(c) (iii), it says:

'(c) 'extradition offence' means—

(iii) in relation to a commonwealth country to which Chapter III applies, an offence which is specified in, or which may be specified by notification under, the Third Schedule;"

That is with regard to the Third Schedule.

So far as the Second Schedule is concerned, clause 2(c) (ii) applies, which states:

"in relation to a foreign State other than a treaty State or in relation to a commonwealth country to which Chapter III does not apply, an offence which is specified in, or which may be specified by notification under, the Second Schedule;"

That means, out of this list of offences, the notification will select certain offences. That is why the list has been given.

Shri D. C. Sharma (Gurdaspur): This is a very technical Bill, as has been mentioned by Shri H. N. Mukerjee and also the hon. Minister. So, we all want to be educated so far as this Bill is concerned.

Firstly, what is the urgency for trying to consolidate and amend this Bill now? After all, India has been free for more than ten years, and till now we did not think it necessary. Further, the existing situation, I feel, so far as India is concerned, is all right.

Shri A. K. Sen: Will he, first of all, split up the exact matters on which clarification is sought? Then the hon. Member may speak.

Shri D. C. Sharma: Secondly, I want to know from the hon. Minister—he should circulate a note—the countries with which we have extradition treaty now. Myself and some other Members have been putting questions on the floor of the House

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with regard to some countries, and we have not made any headway. So far as the Commonwealth countries go, Pakistan is mentioned. I do not think we have any extradition treaty with Pakistan. If there had been one, I think Bhupat who went away from this country after doing many mentionable and unmentionable things would have been extradited. No such thing happened. Now, you are going to have this treaty with the Commonwealth countries including Pakistan, but they have not tried to enter into such a treaty with us. So, I think most of this is going to be a kind of pious wish. It will merely remain on our statute-book.

I wonder how many countries of the Commonwealth will have this reciprocal arrangement with us, not many countries I think. For instance, take the United Kingdom. Phizo is said to have a double nationality. He is a national of the Commonwealth and a national of the Indian Union. He is in the United Kingdom carrying on anti-Indian propaganda, doing all kinds of things. I do not know if he is doing anything which can be described as a political offence, but he is there and we have been putting questions on the floor of the House to know why he is not being extradited from the United Kingdom. So, I do not understand why we are having this First Schedule when at least these two countries, Pakistan our neighbour, and the United Kingdom, from which we have perhaps derived the inspiration for this legislation, are not doing anything of the kind. So far as the other countries of the Commonwealth like Australia, New Zealand etc., are concerned, I do not think the problem arises.

Shri A. K. Sen: What is the point on which he wants clarification?

Mr. Chairman: I take it he wants to make a speech.

Shri D. C. Sharma: I am only asking for clarifications from the hon. Minister.

Mr. Chairman: On what points? He wants to know the exact points.

Shri D. C. Sharma: Firstly, what is the urgency for bringing forward this Bill? Secondly, what are the Commonwealth countries with which we have extradition treaties now, or what are the countries which are clamouring for such a treaty with us?

Thirdly, in the Second Schedule, a list is given of the extradition offences in relation to foreign States other than treaty States or commonwealth countries to which Chapter III does not apply. Obviously, we are having three types of extradition treaties. Why can we not have one omnibus kind of treaty? What purpose is going to be served by having one type of treaty with one country, and another with another? After all, offences are offences, and if one offence deserves extradition with reference to one country, it should deserve extradition with reference to other countries also. Why are you going to pick and choose?

For instance, in the Second Schedule, though certain things are good and should be there, there are also offences like cheating.

Shri Tyagi: Cheating can be understood, but what about mischief? Even in Parliament, there are a number of mischievous Members. What is the definition of mischief?

Shri D. C. Sharma: I can understand attempt to murder, culpable homicide etc.

Mr. Chairman: They are offences under the Indian Penal Code.

Shri D. C. Sharma: Then, why not say all the offences under the Indian Penal Code are to be included in the Second Schedule? Why do you pick and choose?

For instance, there is assault on a boarded vessel. Why not on a boarded aircraft? After all, so many things are being done on aircraft also. We may have other means of conveyance also.

Shri N. R. Muniswamy (Vellore): You wanted some clarification.

Shri D. C. Sharma: I am asking for clarifications, what else? I want the hon. Minister to explain it to us. If he had not said that the Bill was a very technical one, I would not have asked him.

The highly technical quality of the Bill was further augmented by the speech of the hon. Member, Shri Mukerjee. He also brought so many legal tomes to explain to us that the thing is very difficult.

My other point is this. The Law Minister should make it clear what constitutes a political offence. Shri Mukerjee said that it could not be explained. If it cannot be explained, then why are you putting it here? After all, some explanation must have been put on political offence in the annals of the law courts of our country or other countries. Some clue should be given as to what constitutes a political offence so far as this extradition treaty is concerned. It is very necessary that some specific instances should be given. I am saying all this because, as has been pointed out by my hon. friend Shri Tyagi, who is a respected Member of this House, it is a very complicated thing and we want to be enlightened on the subject before we are asked to pass it. I hope the hon. Law Minister who knows all these things will be able to explain it to us because we are non-technical men.

Shri N. R. Muniswamy: I want one clarification. As it is, there are three types of offences for extradition purposes. One is with regard to the Commonwealth countries, the other is with regard to the foreign States and the third is non-treaty States. I want to have a list of the treaty States so that we can have clear conceptions.

Shri Bal Raj Madhok (New Delhi): Mr. Chairman, as Shri Mukerjee said just now, this is a technical Bill. I endorse the suggestion made by my hon. friends that there should have been a Select Committee for going in-

to it. Apart from that, there are certain things which come to my mind when we look into the Bill. A distinction has been made between the Commonwealth and the other countries, as if the Commonwealth countries are more friendly to us than the other countries. Actually, it is not the case. Commonwealth countries are independent in all respects. Some of the Commonwealth countries are more remote and unfriendly to us than perhaps many other countries with which we have no such relation. So far as this law goes, it will concern mainly our relations with the countries which are our immediate neighbours, particularly Pakistan and China . . . (*Interruptions.*) In respect of Pakistan, we may be having some law but our actual experience in the last few years has been that Pakistan has not been co-operating with us at all in the matter of extradition of criminals. Many people left India for Pakistan after embezzling Government money and committing other kinds of crimes and not one of them had been extradited from Pakistan so far. So many people in Pakistan may be dubbed as traitors but they may not be so according to our law and if somebody takes asylum here for political reasons we must give him asylum but when he is demanded by Pakistan for having committed treason according to Pakistani law, he has to be handed over. There are no political liberties in Pakistan at this time. The same is true of communist countries. Anybody who speaks against the Government may be dubbed as traitor. But it may not be treason in our country. Further more, whenever a law is passed we try to follow it very faithfully while the other party does not do so. The result is that we will be working against our own people and also against people who come and take asylum in our country. It is, therefore, necessary that all the aspects are looked into very carefully as to what we mean by treason and political offence. There has been a demand inside and outside the House that we should make a law defining treason in

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this country. So many people who have committed treason against this country are going scotfree. When we do not have a law in our own country, we may have to extradite a person to a neighbouring country if he has committed treason in that country while a person who is in a similar position in another country will not be extradited here. That is not a correct thing. This distinction between the Commonwealth and other countries must be done away with and we should examine this law in relation to the countries with which we have immediate connections, which are our immediate neighbours. We must apply this law with an eye on the political systems under which the people are living. The laws in two democratic countries can be more or less the same but will not be the same if one is a democracy and the other is a totalitarian country. The laws are different; the concept of liberties is different. We must take into account all these points before we make a law and therefore, I submit that it would be better if this law were placed before a Select Committee.

Shri Naushir Bharucha (East Khadesh): I would invite the attention of the House to clause 4 of this Bill which provides for restrictions on surrender of fugitive criminals. It says that a fugitive criminal shall not be surrendered or returned to a foreign State or commonwealth country if the offence in respect of which his surrender is sought is of a 'political character'. I, for one, have not been able to make out any distinction as to what is treason and what is an offence of a political character. Thus, if we say that we are going to surrender a person for treason or if it is to be made an extraditable offence under certain circumstances, how do we distinguish treason from offences of a political character? My own opinion is that in any case a person charged with treason must not be surrendered because invariably the so-called treason is nothing but difference of political opinion. Take for instance treason in a communist country, or treason in a country, where the normal democratic laws do not prevail, where there is autocracy. There

even the expression of political opinion different from the political creed held by the dictator would be deemed as treason. In such cases there should not be any extradition for, after all, what is extradition if it is not based upon the promotion of international justice? The idea is that the fugitive must not be allowed to escape if he has committed an offence simply because he runs away into another country where the political boundaries intervene. But at the same time, if we look to the essence of the thing, my submission is that in no case where the offence charged is treason the man should be surrendered because it is a political offence invariably and treason is nothing but holding a political opinion different from what the State wants the people to hold. I, therefore, submit that if that point is kept in view in a large number of cases it will be found that it is a political offence.

If you look at clause 4(b) you will see that a fugitive criminal shall not be surrendered if the prosecution for the offence in respect of which his surrender is sought is according to the law of that State or country barred by time. I am not aware of any law of a country placing a time limit such as, that no murderer shall be prosecuted after two or three years. I can understand a time-limit being applied to civil litigation. In only one case or clause of criminal offences is there a time-limit. When municipal offences are committed I can understand a time-limit. The time-limit for prosecution is three months or so. But I do not understand the need for the time-limit here. I do not understand what exactly the significance of this thing will be.

Shri N. R. Muniswamy: It is the law of the State.

Shri Naushir Bharucha: Yes; but let us take the case of theft, for example. Supposing in a country the rule is that the man who commits theft is not to be prosecuted after one year. If you are going to condone the offence after an year, you may as well condone it now. What is the charm in saying that you must surrender him for justice as if it makes a big difference?

Thirdly, take the second schedule. The offences are so widely worded there; of course, of necessity it may be so. Take, for example, theft, extortion, robbery, dacoity, etc. A theft may be a very petty act. Do you want to make it an extraditable offence? I submit that for petty thefts people should not be extradited. Extradition must be there only in cases where the moral conscience is shocked and not for each and every petty offence.

Take cheating. Petty cheating cases may be there and these small criminal cases might give a country the handle to get back a political prisoner. Take, for example, a case where the political prisoner escapes. He might have committed the offence of forging a passport or some such thing which might come within the definition of cheating. They will say, "We are not asking him for a political offence, but we are calling for him because he has cheated the Government by giving a false name and has escaped." It may be that he has committed some petty theft or something. But the real purpose for which he is wanted is much bigger, namely, a political offence. Therefore, I am not in favour of including in extraditable offences all and sundry types of offences.

Then again, take item 18 of the second schedule. What is an extraditable offence? The item says:

"Any offence against any other section of the Indian Penal Code or against any other law which may, from time to time, be specified by the Central Government by notification in the Official Gazette either generally for all States or specially for one or more States."

There again, I am not prepared to give authority to the Government to specify the offences, because my own submission is that when we agree to an extradition treaty, we surrender a part of our sovereignty for a particular purpose, and that surrender

should therefore be as little as possible. As I read this, the list of offences is so big that I am of the opinion that nothing more should be included and no further liberty or latitude should be left to the Government to incorporate any additional extraditable offence.

Take next the third schedule. There, you find at the end, "any offence against any other section . . ." etc. There also the Government is given latitude to specify any offence of whatever character as an extraditable offence.

I also fully share the view expressed by some previous speakers, Shri Bal Raj Madhok and others, in respect of one point. What is the logical basis for making a distinction in the matter of categorising extraditable offences between Commonwealth countries, the States with whom we have treaties, and other foreign countries? I could understand if it is a question of customs duty preference, or imperial preference or something like that. But what is there to make a distinction between two sets of States? If an offence is so heinous as to be an extraditable offence so that we should surrender a criminal to a Commonwealth country, we should as well, on moral and humanitarian grounds, surrender him to any foreign country. If, for example, it is a murderer or criminal like Bhupat, why make a distinction between a Commonwealth country and a foreign country? How is Bhupat less dangerous to a foreign country than to a Commonwealth country? I submit that the distinction should not be based on that aspect of the matter. Originally, in the previous legislation which we had on this subject, namely, the United Kingdom Extradition Act and the Fugitive Offenders Act, all these had historical basis and historical reasons for making a differentiation between Commonwealth countries and other countries. But there is no such logic or rationale behind this classification of extraditable offences for Commonwealth countries and other countries.

[Shri Naushir Bharucha]

I therefore submit, and I am glad, that the hon. Minister in charge of this Bill is accepting the suggestion that this aspect should be referred to the Select Committee. The basis of the entire Bill and the basis of extradition itself will have to be altered and that will be done, I hope, in the Select Committee.

Shri Tangamani: Mr. Chairman, Sir, I am really glad that Shri H. N. Mukerjee has mentioned about the various provisions of the Bill. I am glad to note that Government are willing to refer this to the Select Committee or, in the alternative, to circulate it for eliciting public opinion. Personally I would like the Bill to be circulated for eliciting public opinion because in that case many students of international law and also political parties will be in a position to come forward with very concrete suggestions.

As the House is aware, the classical definition of extradition is the delivery of an accused person or a convicted individual to the State in whose territory he is alleged to have committed or to have been convicted of the crime by the State in whose territory the alleged criminal happens for the time being to be. All along, when we go through any book on international law, we find that most of the States wanted to give refuge not only to the political offenders but also to the other kinds of offenders so as to establish that they are supreme in their own territory. This has been going on till the 18th century when different States having treaty relations allowed only exchange of political prisoners. It is only after the 18th century that certain offences were listed and the treaty countries wanted to exchange prisoners who had committed very grave offences.

I should like to mention in this connection how far-reaching is the scope of this Bill. If only we go through the second schedule, we will find listed in it about 18 offences. Quite a large

number of them are minor offences, what are generally known as non-cognizable offences. I would mention item 8, cheating (sections 415 to 420); then mischief, (sections 425 to 440). Then take ordinary theft. Though it is a cognizable offence, it is a very minor offence. Then there is kidnapping. There are as many as 18 offences most of which are offences which really escape notice if they are committed in a particular country. Take a very minor offence committed by X in a country and we are very particular that this man should be handed over to that country. This attempt at becoming much wiser than the wise man is something which I am not able to understand.

Take the third schedule. Already many hon. Members have addressed themselves to this particular point. We have listed nearly 18 offences regarding those States with whom we are having extradition treaties. Six more are added on in the case of Commonwealth countries. In the case of the commonwealth countries, the inclusion of Pakistan is at present at least very pregnant with explosive possibilities. I can well imagine a large number or at least a few people who do not agree with the form of Government in Pakistan and who seek refuge in this country. According to this, because they have committed an offence against the law of that country, treason, sedition or whatever it is, it is incumbent on us to send back those particular persons immediately.

I believe it was in the nineteenth century when the question of extradition came up. The countries were anxious only to exchange persons who have committed serious offences and the distinction was made about political refugees in different parts of the world. Many instances are given in this particular book on international law. Even Karl Marx was more in the nature of a political refugee. Maybe he was not exiled from a particular

country, but wherever he stayed—Germany, France or Belgium—there was always some kind of prosecution after him. Any writing of his was always looked upon with suspicion. So, he could get a proper atmosphere in a country like U.K.

Mazzini, Mussolini, Lenin and many other revolutionaries who wanted to have a certain kind of ideology could get some kind of shelter in those countries. One of the respected Members of this House, Raja Mahendra Pratap is one such. When we were all students, when a number of students were enlisting themselves in the International Brigade for saving the legally formed Government of Spain, one name always stood out—the name of Madam La Passionaria. Today that brave lady is in a particular country where she has been given this asylum. Everybody knew about this great lady. In the same way, there are ever so many names which have illumined the history of the past and probably there will be such names in future also.

So, it is necessary that this kind of exchange of political prisoners which is contemplated under the third schedule should not be there. Enough has been already said about this. I can mention the names of the colleagues of Vir Savarkar like Dr. Rajan and V. V. S. Ayyar. These people were able to get shelter after reaching this country. There was a warrant of arrest for V. V. S. Ayyar as soon as he got into P&O Fort. He managed somehow to land at Bombay. In India he knew that he would be detected by the British police. So, he sought shelter in Pondicherry. Mahakavi Bharathi, who escaped from a warrant issued by the Government of India, got political refuge in Pondicherry. Today the Tamil people are proud of him. Most of his best works, which have imbibed national feelings in Tamil Nad people were written when he was in Pondicherry.

We all know the great Aurobindo. He did most of his work in Pondi-

cherry. These are all instances to show that those who were hounded out by a particular form of Government were always able to find shelter in another country and their contribution has always been great. So, that should be borne in mind if we are true to our tradition and true to our past. That is why I feel that there must be deletion of 'treason'. Our definition of political offences must be such that complete discretion must be vested in the hands of the Government to decide whether it is a political offence or not. As Prof. Mukerjee has already pointed out, on many occasions—there was an occasion as early as 1902 when the Extradition Treaty by the Pan American Conference was signed by the 12 States and they could not agree even when the question of political offences came up. It is because in a new state which has been formed many political refugees will be coming in and their status and other things have to be looked into. That is one point on which I would like to add to what many hon. Members have already stated. I really feel that the principle adopted by States such as France and Germany of never extraditing one of their own subjects to a foreign State should be followed here also. That will be a salutary practice. Let us not allow a criminal to escape, but let us not easily hand over our national to any other country because he committed an offence of cheating. Because one of our nationals has committed an offence of cheating in a foreign country with whom we have extradition treaties or in any other commonwealth country, let us not take it into our head that we must immediately surrender that man to that particular territory. I feel that the continental practice, the practice which has been adopted in France and Germany may be followed.

Shri D. C. Sharma: East Germany or West Germany?

Shri Tangamani: Both East Germany and West Germany. Only the

[Shri Tangamani]

other day the Prime Minister was telling us that in spite of what we got in the papers there are people moving from East Germany to West Germany and from West Germany to East Germany. Although one type of exodus is only mentioned in some of the papers here, the Prime Minister made it perfectly clear that so far as the Germans are concerned there is absolutely no distinction between the East Germans and the West Germans.

Dr. M. S. Aney (Nagpur): What is the motion before the House? Is it for consideration, is it for referring the Bill to a Select Committee or is it for circulation? What is the motion before the House which we are discussing?

Shri A. K. Sen: The motion was for consideration. Then, as I have announced, we shall be moving tomorrow a formal motion for reference of the Bill to a Joint Committee consisting of 21 Members, 14 from this House and 7 from the other House.

Shri Tangamani: If such a motion is going to be moved, my submission will be that enough time must be given for consideration of the Bill by the Joint Committee. There are Bills like the one on Election Law, the Banaras Hindu University Bill and others which are going to Select Committees, but the House had directed in those cases that the Select Committees must submit their reports before the end of this session.

Shri A. K. Sen: No, no; not in this.

Shri Tangamani: In the case of this Bill, Sir, the directive should be of such a nature that enough time should be given to members of the Joint Committee and also the larger public to say something in this matter.

Shri A. K. Sen: This won't come back in this session. For the simple reason that the Prime Minister will be away on the 31st August, this will have to be taken up only in the next session.

Shri Tangamani: If such an assurance is given by the hon. Minister,

then I do not want to say anything more. If it is a question of moving amendments and all that, I have several things to say about the various clauses. Now that the Bill is going to be referred to a Joint Committee, I am sure the members of the Joint Committee will go carefully into the different clauses.

Mr. Chairman: The hon. Member can as well speak on the clauses.

Shri Morarka (Jhunjhunu): Give the benefit of your views to the Joint Committee for their guidance.

Shri Tangamani: My first submission will be on clause 2(d). The definition that has been given about the extradition treaty requires some revision, because it is a blanket definition. It says: that all the treaties which were entered into even before the 15th August 1947 will also be taken as extradition treaties. The danger of accepting such a definition has already been pointed out by Professor Mukerjee.

On clause 4 I feel that "political offence" must be framed in such a way that if in the opinion of the Government an offence is of a political nature, then the provisions of this Act will not apply. In that way, it must be as broad as possible.

Chapter II deals with procedure. I have not applied my mind as to which would be the best procedure. Chapter III, which deals with Commonwealth countries should not be there. The distinction between Commonwealth countries and non-Commonwealth countries should go. In other words Chapters II and III deal with procedure of more or less a similar nature.

Coming to miscellaneous things, certain suggestions which have been given by standard text books on international law may also be considered. Then, the offences which have been mentioned in the second and third schedules may be clubbed into one

schedule. Instead of having 14 plus 6 offences in the schedule, we need mention only more heinous crimes like murder, robbery, dacoity or piracy. If necessary, we can have a provision for enlarging the schedule. Instead of having 20 offences in Schedule II and Schedule III, we could have some major offences, which are of a heinous character, with the provision that the list may be enlarged.

I hope that my suggestions will be favourably considered by the Select Committee.

Shri L. Achaw Singh (Inner Manipur): Mr. Chairman, I rise to welcome this Bill. I am very glad that the Minister incharge of this Bill has assured the House that the Bill would be referred to a Select Committee, because I feel there are clauses in this Bill which are controversial and the provisions have not been comprehensive enough.

This Bill seeks to consolidate and amend the law of extradition on fugitive criminals from and to foreign States and Commonwealth countries. Up till now we have been following the United Kingdom Extradition Act and most of the provisions were made applicable to the whole of India. As has been made clear, the Act of 1907 does not apply to the erstwhile Part B States, and that is one of the defects of the existing law. Then again, the Fugitive Offenders Act of 1891 has been declared by the Supreme Court as not applicable to India after India became a Republic. So, it is high time that we have such a Bill.

I will now make some observations regarding some features of the Bill. Under clause 31 the Central Government would decide to which State and country a fugitive criminal has to be surrendered after taking into consideration all the circumstances of the case when simultaneous requisitions are made by more than one country.

This is a very good provision. Then clause 20 is another feature which provides the channel for requisitions for the surrender of a person accused or convicted of an extradition offence committed in India and who is suspected to be in a foreign country or a Commonwealth country.

I feel that this enactment has been long overdue. We have had certain particular difficulties, particularly with Pakistan and Burma. Some of our nationals, specially Naga hostiles, have gone into Burma and when we raised the question about the position of these people on the 13th March last, we were given a very unsatisfactory reply by the hon. Deputy Minister of External Affairs. There were three Naga hostiles there. They called themselves the emissaries of the Federal Government of Nagaland. They have been there since 1957. For the last three years they have been detained by the Burmese Government for the alleged offence of trespassing into their territory. Some of the hon. Members here asked the Government as to why we have not made any request for their deportation to this country.

Then again there is the case of Mr. Phizo who fled to Pakistan and who was residing in Dacca for a pretty long time. In spite of the knowledge of our intelligence people and of the Government of India we could do nothing with it because we had no such treaty. Unless we had a general law governing the extradition provisions, we could not do anything. We could not proceed with a treaty with Pakistan.

Extradition is a reciprocal business. We have to enter into agreement with other countries. The principle of the law is there. The criminal should not go unpunished. Different countries help each other in bringing those persons who are accused of some offence to justice. So now that we are going to have a law when the Bill is passed, we have to enter into

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agreements with different countries on a reciprocal basis for the extradition of fugitive criminals from one country to another.

It has been made quite clear that this law would apply to us and to the countries with whom we enter into agreements and treaty arrangements. Any treaty with any of these countries, I am sure, will conform to the basis of this law.

I have to make some observations regarding clause 3 which provides that in regard to a Treaty State the Central Government should be empowered to render the application of this Act subject to modifications, exceptions, conditions and qualifications. The same provision is also there in clause 13 under which the Central Government would be empowered to make the application of the Act subject to these modifications, exceptions, conditions and qualifications as may be specified for the purpose of implementing the treaty arrangements with regard to the Commonwealth countries. I submit that the Central Government has assumed too much power under delegated legislation. The Memorandum says that the powers delegated here are of a normal character. Of course, I appreciate the difficulties and do not grudge the powers, but I feel that they should have provided some elaborate details and specific points regarding these modifications and conditions which may be required at the time of entering into a treaty with another State.

I have got a very serious misgiving regarding clause 3, sub-clause (2), under which power is sought by the Central Government to restrict the application to fugitive criminals found in a specified part of India only and make it effective only in relation to

certain parts of India. That means the Act will not be applicable to some parts of India. I think it is arbitrary, discriminatory and also unjust. I strongly disapprove of any part of India harbouring any fugitive criminal. I think the law should be applied to any and every part of India.

I also beg to submit that the powers delegated to the Central Government under clauses 3, 13 and 34 should be clearly defined in the notified orders and the rules, and Parliament should scrutinise from time to time those rules and the points specified in the orders as and when they are laid before Parliament.

Then, I find a significant omission in this Bill. That is with regard to the extradition of our nationals. Suppose one of our nationals commits some offence in a foreign country and seeks refuge in India; when the foreign country demands his extradition, should we surrender him, should we deliver him to the jurisdiction of the foreign courts? I do not think there is any express provision in the Bill regarding this matter. Of course, this is a very complicated thing and complications have arisen in many cases. Even Great Britain had not delivered its nationals when so demanded by other countries. Great Britain is devoted to the principle of free and unrestricted extradition of criminals and has opposed the principle of non-extradition of criminals who are nationals of the state of refuge. Yet in practice they have not followed it. The primary cause, of course, is quite well known: because there is the question of national solidarity, and no country likes to deliver its criminals to the foreign criminal jurisdiction. That is why I feel that we should have some express provision in this Bill to the effect that no national should be delivered to foreign States even if there is a re-

quisition for their surrender on an alleged offence

Lastly, I beg to submit that there is no provision here for the filing of Habeas Corpus petitions and things like that. In section 7 of the British Act there are elaborate provisions under which the alleged criminal can file Habeas Corpus petitions in an appropriate court. We have given fifteen days, of course, under clause 4, so that he might file something like that. But an elaborate provision is laid down under the British law and it will be desirable for us to provide some such procedure in our Bill.

I hope the Joint Committee will take into consideration the points raised by me and by other Members of this House. With these words I support the Bill.

Mr. Chairman: Any other Member wishing to speak? I find there is no one. The hon. Minister.

Shri A. K. Sen: In any event I shall not be able to finish today. And since I am moving the motion tomorrow, the motion for reference to a Joint Committee, subject to your permission, I shall speak tomorrow; because I shall move that motion and say a few words. Not much is necessary, because the whole matter will be dealt with by the Joint Committee and long speeches will not be necessary.

Mr. Chairman: Then shall we adjourn the House now?

Some Hon. Members: Yes.

Mr. Chairman. The House now stands adjourned till 11 A.M. tomorrow.

16.55 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Friday, August, 18, 1961|Sraavana 27, 1883 (Saka).