

**THE EXTRADITION BILL, 1962—**  
*continued*

**SHRI BHUPESH GUPTA** (West Bengal): Mr. Chairman, Sir, this Extradition Bill was discussed earlier in this House and in the other House and we made a whole number of suggestions. In fact, the suggestions and criticisms emanated from both sides of the House with the result that the Government decided to have the matter thrashed out in the Select Committee, and we have the Bill now on the basis of the Report of the Select Committee. There has been some improvement in the Select Committee especially in regard to the provisions which discriminated the Commonwealth in relation to extraditable offences from those relating to other countries. Treason has been left out, and both lists fall in the same category. That, of course, undoubtedly is an improvement which I welcome. But, as we have pointed out before, the matter is extremely serious and for the first time after independence we are drawing up our laws of extradition. And naturally we should not be bound by what the British have done in the matter nor should we be interested in more or less carrying forward what they did when they were ruling the country. On the contrary, whatever the British did in this matter should be suspect in our eyes. And if I were to view this matter, then I would be inclined to reject generally the position taken by the British all the time. Anyhow, I would not give them the credit of having done the right thing and then on the basis of that, I shall proceed to examine the provisions on merits and also I will take into account our own experiences in the field in order to formulate and evolve a system of law of extradition for our country. I say this thing because of our experience in the past. Particularly we are well aware of the case of Mr. Savarkar. He was arrested in

Marseilles and illegally made over to the British. The matter then went up before the International Court of Justice at the Hague and the judgment in that case was that the French did an illegal act from the point of view of international law. In other words, they should not have handed him over to the British. But then the Court, mainly due to British advocacy there, came to the conclusion that since Mr. Savarkar had been already handed over to the British, nothing else could be done by the International Court of Justice or by anybody by way of giving remedy in that particular case. And the result was that Mr. Savarkar was brought to India and he was convicted and spent many years in prison. That particular case became the basis of an important case law in international law and anyone who is conversant with Oppenheim's International Law books or with various other books on International Law, would agree with me that this particular case occupies a special place in the context of even modern international law. Then, again the British at that time signed a Convention with certain other 26 powers, as to what should be the laws of extradition in different countries, looking to mutual obligations. The guiding line of the British in that matter was to make certain offences of violence extraditable so that they could demand the extradition of political fugitives from those countries like, shall we say, Chandernagore or Pondicherry, the French possessions. As you know, Sir, what they used to call, terrorist offences used to take place at that time in Bengal, and many people searched for by the police at that time took shelter in Chandernagore, and the British were in difficulty at that time to get at them, and naturally these were their considerations when they came to an agreement or came to sign that convention—that was done in 1937. Incidentally, no other Commonwealth country at that time except India—India was not a Commonwealth country at that time; it was part of the Empire—no other Commonwealth

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country, like Canada, signed that convention. That only shows that the British Government acted in its narrow interests, in the interests of its Empire and Imperialism in this matter so much so that even their kith and kin in Australia, and Canada, as I said, could not be got to sign that particular convention. That only shows how things were evolved in our country.

Here again recently we have had two examples. One is that of Mr. Bhupat. We have got the Maharaja of Jaipur from Rajasthan but we have got another gentleman called Mr. Bhupat; different people, entirely different. Now Mr. Bhupat went to Pakistan. Pakistan is part of the Commonwealth, and Pakistan, well inherited the same laws as we did from the British. Yet we could not get his extradition because certain other considerations came in; normally there should not have been any difficulty in getting the extradition of Mr. Bhupat through the Pakistan Government. But we did not succeed. The reasons were political, or certain other factors came in. Still recently we had the spectacle of Mr. Phizo. Now I do not say that we should be vindictive or any such thing; this is not at all my approach. With regard to the Naga question, if I were here yesterday, I would have also said something about it, but I suppose it had been made clear by our colleagues who spoke. I am not vindictive; I am just discussing it from the point of view of international jurisprudence. Now here is Mr. Phizo; he is a citizen of our country whether he likes it or not, and we consider that part of the Nagaland where hostile activities are going on, a part of India, and we also know that Mr. Phizo, who was all along there, is an Indian citizen. I may inform you that Mr. Phizo was at one time under the British in the Alipore Central Jail; many of our comrades

were there also. He was under the British; otherwise the British Government could not have caught him and brought him under their jurisdiction and put him in the Alipore Central Jail in Calcutta. Now that land did not either politically or constitutionally change; on the contrary that part also came to the Indian Union and merged with the rest of India. What internal arrangements we are making is a different matter. Now Mr. Phizo left the country. And what happened? He went to a Commonwealth country—Britain. Let alone seeking his extradition—I do not say that the Government should have done all the vindictive things because that does not help perhaps this matter—see how the British Government reacted. The British Government went out of its way to give him citizenship, that is to say, allowed him to discard Indian citizenship. I say, “discard”, because the British Government should have known from their own past actions taken against him, as rulers of this country, that Mr. Phizo was an Indian citizen, and they, having known all the implications, political and otherwise of the action, granted him their citizenship, and thereby allowed him at his convenience to give up his Indian citizenship and thus escape the Indian law. Now that had been done. It has been suggested that it had done by certain private parties. Not at all. The whole thing had been done directly by the British Government, and no amount of Commonwealth friendship can hide this fact that the thing had been done by the British Government. Mr. Phizo could not have possibly escaped from the Nagaland through Burma or through other parts without the connivance and support of the British Government. That is quite clear. He could not have possibly entered the United Kingdom or the London airport without the sanction and approval of the British Government. Private parties do not come in here. It was open to the British Government to ask him not to enter London or not to enter the United Kingdom. But they did not do so.

They gave him permission to enter. Therefore, the British Government is directly involved in this matter.

[THE DEPUTY CHAIRMAN in the Chair.]

I say this thing in order to bring out the bad faith of the British Government in the context of the whole thing, because we are still living in the days of the Commonwealth with regard to certain matters. Then what happened? Mr. Phizo was allowed to travel. He was certainly given the exist permit by the British authorities without which he could not have possibly boarded an aeroplane at the London airport, and he was allowed to travel to Pakistan, another Commonwealth country. Pakistan gave him shelter and allowed him to do certain things having known the things that he actually did, and whatever he wanted to do was allowed by the Pakistan Government, the Government of another Commonwealth country. There we could not do anything. We could not even lodge a protest properly with regard to this matter. I do not know what protest the Government of India lodged with the British Government for their bad faith and other objectionable behaviour in regard to this matter. This has certainly not been helpful to India. But I do know that Mr. Phizo's extradition is not possible even if you want it—I am not suggesting anything for his extradition; I am not suggesting it at all, because the Naga problem has to be solved politically; a military solution to this problem is something which I cannot think of whatever may the necessity to deal with certain hostile activities; the ultimate solution will have to be found on a political plane but here, in the context of the extradition law, I want to point out to the House that we stand where we have been standing with regard to the British Government. Now, therefore, we felt that the matter should be gone into *de novo* without having any bias for what the British did, and we

must do so in the context of the changing world today. I may in this connection refer to the Russian Constitution. There, anyone pursued for political offences or on religious charges is entitled to have asylum in the Soviet Union. England had also this thing at one time. As you know, the problem arose and certain countries had and England also had and such a problem arose with regard to very many important cases. International opinion was never unanimous in such matters. In the nineteenth century and in the beginning of the twentieth century countries had their own ideas with regard to laws of extradition depending on their political ideas, the forms of Government they had and their concepts of justice and democracy.

Now we have got our own Constitution. We have got our own concept. We have got our own ideas of shaping our Constitutional law. And why must we imitate in this hasty manner what the British had done? I cannot understand. Why should not we be in a position to negotiate with every single country in the world and see what kind of mutually acceptable extradition law becomes possible for us to incorporate in a Bill of this kind? Now this has not been done in that manner. We are going by the rule of the thumb. That is what we strongly object to in this matter. Therefore, Madam Deputy Chairman, we have got some complaint on this score.

Take, for example, this; things are happening in Nepal; we may or may not support that particular type of activities; I am not concerned with it at the moment. And suppose some people are here and they are charged with certain offences of violence, terrorist offences as they would be called in the court of law in Nepal, and suppose extradition is sought of them, what happens then? Now the Government seeking the extradition of such a person would not say, specially in view of this law, that he had committed a political offence; probably it

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will be made out that the person concerned had committed a dacoity or arson or robbery or murder and that on a criminal charge his extradition was being sought. Now what happens? The warrant will come here. Now the problem will arise. Are we in a position to go into the entire case and see that actually it is not on political grounds that the extradition is sought? The law, as it stands, comes in the way of a review by us. Therefore, it should be open to certain parties or certain governments to seek the extradition of political workers if they happen to be in India by charging them with having committed criminal offences which had nothing allegedly to do with politics. Now, what is the guarantee against it? There is no guarantee whatsoever that this will not be done and such offences will be covered by exemption, that is to say, will not come within the scope of extradition, we do not have the clear indication from the law as it has been conceived or formulated in this particular Bill. This is the position.

Take, for example, Pakistan. Pakistan is a Commonwealth country. You know that there is going on a democratic movement in Pakistan. People are agitating there for their democratic rights and so on, and even their important political leaders, including a former Prime Minister, have been put in jail. Suppose some people, who agitated there for democratic rights and liberties come here and they are sought by the Pakistan Government on charges of, shall we say committing a dacoity or committing a violent act, how are we to sit in judgment on the position taken by the Pakistan authorities before we decide whether these persons should be made over to the Pakistan authorities or not? In almost all cases now, when extradition is sought, it will be sought on the basis of certain criminal charges. I know what happened in the early years after independence. As you know, many of the laws dividing the two—building up barriers

between East Pakistan and West Bengal—had not come up by that time. Some workers came from Pakistan for very many reasons, family reasons and so on. In any case Calcutta was the centre of West Bengal. And the Pakistan authorities sought their extradition and things like that. Well, they did not seek it in the sense of sending a warrant and so on. They asked the policemen of India to see that they were arrested and made over to them. At that time relations were not so bad between the two Governments. As far as political workers were concerned, the two Intelligence services, the CID in Pakistan and the CID in West Bengal, having been divided, they came to a certain understanding because I know some of them since the time when some of us had been arrested. Some of them went to Pakistan and the others remained in India and in West Bengal. They came to an understanding as to how such cases should be tackled. It was an informal understanding, secret understanding. It may be a formal secret understanding between them. Now all this position remains vague. In this matter do I have absolute assurance that any one coming from Pakistan, if he says that he is being sought really for a political offence or for his political views and activities though certain other charges may be framed against him in Pakistan courts, he would not be handed over to Pakistan unless the Government of India is satisfied through its own investigation and agencies that this is a *mala fide* political case, and this is really not a criminal case, so to say. Where are all these provisions? Where are all these safeguards in this Bill? Yet, we have got on the one side Nepal and on the other side Pakistan where certain political activities are going on, and one may also expect that some people may come and seek shelter in our country. Why should we not give shelter to the people fighting for democratic rights and parliamentary institutions. We should consider it our honour and duty to

give them asylum and shelter. Every country did it. France after the Revolution did it. Russia did it. England, which followed certain liberal traditions in this matter, did it when certain political workers were sought by the German Government. They were in England and extradition could not be had. If I remember right, Karl Marx wrote his 'Das Capital' in England. When the German Government wanted him to be handed over to the German authorities in order to prosecute him, Marx was there. He was not interfered with for a long time. He used to go to the British Museum and write his 'Das Capital'.

SHRI K. SANTHANAM (Madras):  
Of which you are the consequence.

SHRI BHUPESH GUPTA: All his time was spent in England in writing that great book. You know the effect of that. Anyway, certain other countries did not do so. Where do we stand with regard to this matter? Therefore, this Bill, I say, has been hurriedly done because the Government thought that something should be done. They had the ready-made materials got from the British and they have formulated this Bill. They have given a little concession here and there but the material and substance is the same. We would have liked to have an ideal type of extradition law to tell the world that here India, after having attained independence and suffered in the old days, produces an Extradition Act which should be an example to the newly-liberated countries, to Asia, to Africa. That is what it should have been. Instead of that we go the routine way. I do not like it.

As far as the Commonwealth is concerned, I do not know when they would be giving up their love for the Commonwealth. I cannot simply understand why there should be a

Commonwealth. There is a tendency still to treat us on a different plane. I was in Australia, Madam Deputy Chairman. And do you know what happened when I wanted to register my name? When you land at an Australian airport for the first time, before you go to Sydney you are asked to disclose your nationality. When they asked me, I said I was an Indian. They would not accept it. They said that I was a British subject. The Australian Government had not yet known that India had become free, that Indians are now fully Indian nationals and they should accept the Indian nationality. They would not and I would not accept their idea. Ultimately, they had to accept it. Now what happened? When an Indian goes to Australia he is to have an entry visa from the High Commission for Australia. This is in pursuance of the White Australia policy. When I made enquiries in Australia from public men there, they said that they were opposed to it. This was in pursuance of the White Australia policy which creates difficulties in the way of, what they call black people, coloured people. This is the position. I had to go to the Australian High Commissioner here to get an entry visa; otherwise you cannot go to Australia. But when an Australian citizen comes to India he does not want any visa at all. He can walk in the same way as people can walk in certain Commonwealth countries, can walk in another Commonwealth country. But there we have got this restriction. I understand that similar restrictions are there with regard to Canada. In Canada also anyhow this discrimination is being made in pursuance of a policy which we abhor, which we condemn, which we strongly criticise. When they demonstrate all their vulgarity and nakedness in South Africa, at the same time we evolve and frame our laws having the Commonwealth law in our mind I do not know how long it will take this Government to understand that this is a law which is a wasted law. I do not

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know when they will understand it. Even today that spirit is there because the entire thing you are taking from the Commonwealth, keeping the Commonwealth in mind, keeping the needs and obligations that the British gave to other countries in your mind. You have not taken into account that something bigger and nobler is expected of a country like India which has to set an example in such matters in the East, at any rate. When we formulate such an extradition law, the law does not breathe the spirit of our people, the law does not breathe the traditions of our people, the law does not speak of other nations, it does not indicate that we are setting an extradition law which will be good for others to emulate and follow. No. We follow the beaten track with small, minor amends here and there. Therefore, Madam Deputy Chairman, we are not happy with regard to this whole matter.

The policy of extradition is a serious matter and the Government has dealt with it departmentally, ignoring the sentiments and views expressed in the second Lok Sabha when the matter came up for discussion, and hon. Members belonging to all parties opposed it. At that time, as you know, they wanted to pass it in one sitting. But then, when the Congress Members and others joined in very legitimate and strong criticism of the provisions of the Bill and also the approach of the Government in this matter, the Rip Van Winkles in the Ministry of Law woke up and realised that it needed special attention. Having made that concession, they went to the Select Committee again. It was done in a hurried way, not keeping in view what is expected of us and what is needed.

Finally, I would only like to add that India should never be a party to that system of laws which denies

asylum to people who are fighting for democracy, national independence, socialism or for the cause of peace. No matter from which part of the world he comes to our land, he will always receive kind and friendly reception among our people as a noble fellow-fighter for the common cause that we seek to promote in this world. That should be the declaration. Let the door of India be open to all those treat fighters for peace, progress, national independence and socialism all over the world. Let them come to our country and seek shelter and asylum and hospitality of the people who have risen after their independence, to make a new life and make this lustre of new life also felt by others. If other unfriendly nations, hostile countries or hostile systems of Government do not extend that protection to such people or make them leave their countries for shelter and safety of their lives, it is all the more the reason that we, who had suffered in the past, extend our hand of friendship and brotherhood in all sincerity and take them to our bosom and give them all the kindness and solicitude that we are capable of. That should be our approach, the approach of a big great nation. Unfortunately, the Ministry of Law, I see, is living in the old days, in the old tradition in this respect at any rate and does not feel the pulse of the nation, does not understand the strivings of our people, does not understand the sympathy that the Indian people have towards all those who are fighting for social, economic and political justice and who need our sustenance and help and, if necessary, care, should they come to our country. That is why you have this incomplete, somewhat misconceived in some respects, and anyhow a very partial and defective legislation before us. We are sorry that the Government should have taken this approach in this matter rather than listen to all of us and formulate an exemplary, good, democratic, inspiring extradition law for us to go by and for others to follow.

SHRI K. SANTHANAM: Madam Deputy Chairman, we have undoubtedly heard a very eloquent exhortation from our hon. friend, Mr. Bhupesh Gupta, but of course, it had nothing to do with the Bill which we have before us. As a matter of fact the Government of India have tried to meet the very points he mentioned. I propose to confine myself to two points. In this connection I wish to endorse the remarks of my friend, Shri B. K. P. Sinha, who made very many good points yesterday. I want to draw the attention of the House to clause 29 where it says:—

“If it appears to the Central Government that by reason of the trivial nature of the case or by reason of the application for the surrender or return of a fugitive criminal not being made in good faith or in the interests of justice ...” My friend may listen to this—

“... or for political reasons or otherwise, it is unjust or inexpedient to surrender or return the fugitive criminal, it may, by order, at any time stay any proceedings under this Act and direct any warrant issued or endorsed under this Act to be cancelled and the person for whose arrest the warrant has been issued or endorsed to be discharged.”

Then in clause 31, it says:

“A fugitive criminal shall not be surrendered or returned to a foreign State or commonwealth country—

(a) 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 court before whom he may be produced or of the Central Government that the requisition 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.”

Therefore, it is the intention of the Government that political offenders should not be surrendered. It should not come under this extradition law but my difficulty is that they have not tried to define or explain what is meant by an offence of a political character. All offences are of a criminal character but certain crimes may be committed with political motives or for the promotion of political movement. What exactly are the offences contemplated by the Government of India for which no extradition would be possible. Let us take for instance the assassination of Mahatma Gandhi. Was it an offence of a political character or not? Similarly Mr. Liaquat Ali Khan was killed by somebody. Suppose that murderer had come to India, would it be considered an offence of a political character? That should be clear because otherwise, how can a magistrate or judge decide whether it is an ordinary offence or whether it is an offence of a political character? In this connection, I may draw the attention of the House as well as of my hon. friend, Shri Gupta, that Karl Marx deplored the policy of individual terrorism. He did not think that terrorism was a legitimate political method but a terrorist act may be a political act. There are political murders going on in all places. If such a murderer comes to India and the extradition of that murderer is asked for, how is a magistrate to decide? There should be some criteria or definitions, some illustrations to show when exactly an offence is of a political character and when it is not.

SHRI BHUPESH GUPTA: A person may not be in a position to prove. Suppose I come from Dacca and the Pakistan authorities may charge me with having beaten a policeman and that it is a minor criminal offence. How am I to prove before a court of law that actually the Pakistan authorities are wanting me for my political activities? How am I to prove it?

SHRI K. SANTHANAM: The point is, if there can be a clear idea as to

[Shri K. Santhanam] what offence is of a political character and what offence is not of a political character, then any magistrate will be able to judge—it is not a question of proof and no proof is needed—whether *prima facie* a man is charged for a political offence or not, but that essential point is left vague and as a result, I do not know if the intention of the Government can be effectively carried out.

Then I come to clause 12 (2) where it says:

“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.”

This is practically giving to the Government of India absolute discretion to deal with clauses 29 and 31 through any such arrangement. It can come to an agreement with a Commonwealth country. The provision says that the Government can come to an agreement with a Commonwealth country, subject to such modifications, exceptions, conditions and qualifications. Therefore, it will be open to the Government of India to come to an arrangement with a Commonwealth country and clauses 29 and 31 will not apply and even an offender of a political character can still be extradited. This is the real point on which Mr. Bhupesh Gupta should have concentrated. Can we, or should we, give the Government of India complete discretion to come to an arrangement with a Commonwealth country that even a political offender shall be extradited? That exactly is the implication here.

SHRI BHUPESH GUPTA: I entirely agree with the hon. Member. I would

not have any arrangement on these lines with any Commonwealth country at all. The whole thing is misconceived.

SHRI K. SANTHANAM: If clause 2 was only for procedural matters, I would not have objected because as my hon. friend, Mr. Sinha, pointed out, the procedures and the jurisprudence and the juridical procedures in the Commonwealth countries are, more or less, allied and there is some justification for suggesting such a provision.

THE DEPUTY MINISTER IN THE MINISTRY OF LAW (SHRI BIBUDHENDRA MISRA): If I may make a small submission at this stage, Madam, I would like to point out that clause 32 of the Bill makes the position clear. It states that there cannot be any modifications of the provisions in sections 29 and 31 and that they shall apply to all States. The hon. Member will please read clause 32. It is stated there:

“Notwithstanding anything to the contrary contained in section 3 or section 12, the provisions of sections 29 and 31 shall apply without any modification to every foreign State or commonwealth country.”

Therefore, there is no question of the Government giving sections 29 and 31 the go-by.

SHRI K. SANTHANAM: Then what exactly is the scope of clause 12? I am glad the hon. Minister has pointed out that they have made this provision. But this provision should have come under clause 12 itself. But in view of this provision in clause 32 I am prepared to withdraw to some extent my remarks on this matter. At the same time, I would say that the position should be clear and we should know exactly what are the modifications, exceptions, conditions and qualifications contemplated. Otherwise it practically amounts to saying that so far as the Commonwealth countries are concerned, Chapters I, IV and V



may be re-written at the absolute will and discretion of the Government. I do not think that this comes within the fair scope of delegated legislation. They should be able to say, "In these particular matters we can make modifications to Chapters I, IV and V and we can make all kinds of modifications." This is practically taking away the power of legislation on extradition so far as the Commonwealth countries are concerned and giving it to the Government of India. I do not know why this clause has been drafted in such a broad fashion and I think this is altogether an objectionable method of legislating. These are the two points I wanted to make. Thank you.

SHRI D P SINGH (Bihar) : We know the Extradition Bill is a very important piece of legislation before Parliament and I believe that this measure should have come before Parliament even earlier. Madam, this Bill came before Parliament some time ago, but a number of objections were raised to the provisions of that Bill and it was, therefore, sent to a Joint Select Committee. It appeared in the beginning as if the Government of India was not very much inclined to refer the Bill to such a committee, because they in their wisdom thought that the Bill was a very properly drafted Bill even then. But when they found that in the House there was a lot of objection to many of the provisions contained in it, they agreed to refer the Bill to a Joint Select Committee. Madam, this Bill that is now before us and which has been passed by the other House has incorporated certain recommendations which were made by the Joint Select Committee. Some of these recommendations which have now been incorporated into it and which have altered the Bill to a certain extent are recommendations which I very much welcome.

Madam, I would like to make just a few observations, not many, for the simple reason that most of the points which I wanted to urge have already

been referred to by my hon friends, Shri Bhupesh Gupta and Shri Santhanam, and it would be hardly reasonable on my part to waste the time of the House dealing with those points over and over again.

I would like to point out at the very outset that I am not satisfied with the definition of "extradition treaties" which has been given in this Bill. Madam, on page 2 it has been stated

"(d) 'extradition treaty' means a treaty or agreement made by India with a foreign State relating to the extradition of fugitive criminals, and includes any treaty or agreement relating to the extradition of fugitive criminals made before the 15th day of August, 1947, which extends to, and is binding on, India."

This means that these extradition treaties which were entered into by the British Government on behalf of India, with other States, would all remain. I submit that it may not be possible for the Government to justify the continuance of all those treaties in a court of law if someone were to challenge it. I say this because I find that the Law Commission in their Fifth Report have said something on this point, to the effect that probably these treaties are of a kind that may not be binding and are ambiguous. Dr N C Sen Gupta, a member of the Law Commission, pointed out that at the time of the drafting of this Bill the Law Commission should be consulted so that an error of this kind might not creep in. I submit, Madam, that this is quite an objectionable feature of the definition. Some of the very reactionary agreements entered into by the British Government on behalf of India might have been fastened on us. Therefore, I would appeal to the Government and to the Law Minister in particular to look into this matter a little more deeply than they have done so far and try to replace these

[Shri D. P. Singh.]

treaties which are supposed to be binding on us, so that a difficulty may not arise in future.

Madam, I am glad that now there is only one list of extradition offences in the Bill, for both Commonwealth countries and non-Commonwealth countries. In the original Bill that came before us there were two lists and naturally we were dissatisfied. Now there is only one list and so that difficulty has been put an end to. I am particularly happy that one of the offences which was enumerated then has been taken out now, namely treason. I am surprised that this was put in the Bill at all. It should not have been put in it at all if we wanted to protect the political exiles, the political refugees.

Madam, going through the list of extradition offences in the Second Schedule, I find that a number of offences have been enumerated which are somewhat frivolous for a matter of this kind. These should not be considered to be offences for the purpose of securing the extradition of a fugitive. Take, for instance, theft. I cannot understand how theft is included in the list of offences which are to be treated as extradition offences. It is a minor offence for a matter of this kind. I do not say that thefts should be encouraged. Theft is a very reprehensible thing, but I should think that while enacting the law on the subject of such importance, an offence of this nature should not have been included. Then comes item number 9, 'Mischief'. This also seems to be rather unnecessary. I think this also should not have been included.

Madam, there is another point to which I would like to draw the attention of the House and of the Law Minister, that is, application of Chapter III to certain Commonwealth countries. Now, in order to secure the extradition of a criminal fugitive, a certain procedure has been prescribed, requisition, *prima facie* case being made out etc., but in respect of the Commonwealth countries to which

Chapter III applies, that procedure seems to have been done away with. A mere warrant from the country seeking extradition of the fugitive endorsed here is considered to be good enough and it is not necessary to establish that a sort of *prima facie* case has been made out. Let us see what happens. Some of the countries do not have a very developed legal system and all kinds of considerations are there to catch hold of certain individuals, political or otherwise. Now, in view of that fact, if we consider a mere warrant to be sufficient for the purpose of apprehending certain persons and for handing them over, I think this might lead to a lot of injustice being done. Is it fair, is it proper on the part of the Government of India to be a party to an injustice of this sort? I, therefore, believe, Madam, that this differentiation between the Commonwealth countries and others should be done away with. There is absolutely no justification for it. It is not only that. I find that even a Magistrate can issue a provisional warrant. The whole thing has been made so simple that it is easy to catch hold of any fugitive in India if he comes from a Commonwealth country to which this Chapter applies. I am not yet convinced; maybe the Government of India have some reasons which they are keeping up their sleeves, but so far as I am concerned, I am not able to understand this. Why can't we have the same kind of law for all the countries? Why should there be this discrimination in favour of or against, whatever you might call, the Commonwealth countries to which this Chapter applies? I very strongly urge that this differentiation should be done away with even at this late stage. We should not be in such a great hurry to pass this law. This law is so important from the point of view of the country, from the point of view of our prestige that it is absolutely essential that it should be some kind of model and nobody should be able to point a finger at us and say that while framing a law of this nature we made very foolish mistakes. I, therefore, suggest that this discrimination should

be done away with or else the Law Minister should elucidate it and explain the whole thing to us so that we are able to understand the reasons which have prompted the Government to have this kind of discrimination.

Madam, the most important point in respect of this Bill is the point which relates to the extradition of "politicals" because we find now that in most of the countries, our neighbouring countries, democratic forms of Government have already toppled down or they are toppling down. Judiciary in most of these countries is not advanced and is not even what it was. Judiciary is very much under the thumb of the executive in these countries. Now naturally, in most of these countries there would be agitations for the restoration of parliamentary institutions and democracy and democrats would naturally, under the whip of the dictator, be running away from those countries and would like to seek refuge—*asylum*—in our country. We have suffered, as most of the earlier speakers have mentioned, for political rights and economic rights. If these people come to our country, naturally the Governments of the neighbouring countries would try to secure the extradition of these people because they will be a source of inspiration to any resistance movement that may be going on. They would like to shut up these exiles in their prisons. I, therefore, feel that no loophole should remain, that all loopholes should be plugged, that it should not be possible for anyone to think of surrendering the political exiles who may come here from different countries. Only a few days ago, I read in the papers, Madam, that the Government of Nepal would try to secure the extradition of some of the political exiles who are in this country. As the House knows, in a most barbaric manner, the legal Government of Nepal was dismissed, the elected Government, and the Prime Minister and many other people were arrested. They are naturally fighting

for their rights. Some of the people escaped from that country and are now in our country. An attempt may be made to secure their extradition. I am not quite sure but this is what appeared in the papers. It may be that good sense will dawn on the Nepalese Government and they may not possibly seek their surrender but if they try to secure the extradition of these people, it should not be possible to surrender them. That is the point which I would like to emphasise. The point that arises, as my respected friend, Shri Santhanam, pointed out, is, what would constitute an offence of a political character and how can we establish that the offence is not an extradition offence? How can a political exile establish when there is a charge against him that he has committed an offence which is an extradition offence that the offence is not one of that character? How will he prove before a court of law or a magistrate or before the Central Government that he is really being wanted for a political offence or for political reasons? That is where the rub comes in and I do not think the Law Ministry has applied its mind to this problem in as keen a manner as it should have, because I personally am convinced that this is a real difficulty. Take for example, a case in which a man is wanted for a political offence. The charges which are being levelled against him are all "framed-up" and as I mentioned earlier, the judiciary in most of these countries has been undermined and is completely under the control and thumb of the executive . . .

THE DEPUTY CHAIRMAN: How much more time would you take?

SHRI D. P. SINGH: Just two or three minutes more . . . and is controlled and influenced by the executive.

1 P.M.

Now, so far as evidence is concerned, the law of evidence is entirely different. There are difficulties. I think what will happen is, they will be able

[Shri D. P. Singh.]

to give some kind of proof from their point of view that these people are properly accused and, therefore, they should be handed over. Now, most of these offences which have been referred to directly or indirectly, I find, can also be considered to be political offences. They can be offences of a political nature. Culpable homicide, attempt to murder, sinking or destroying a vessel at sea or attempting or conspiring to do so, assault on board a vessel on the high seas or an aircraft in the air outside India or the Indian territorial waters with intent to destroy life or to do grievous bodily harm, revolt or conspiracy to revolt by two or more persons on board a vessel on the high seas or an aircraft in the air outside India or the Indian territorial waters against the authority of the master or the pilot in command—all these offences can be committed for political reasons. There may be political motives for doing these things. Therefore, we would like that the Government should clarify their position to the satisfaction of the House. 'If a person makes a statement that he is wanted for a political offence and the Government do not feel strongly that he is not merely making an excuse', I think that also should not be there, because we do not know which government may be in power at any point of time or which Minister may be there. But if a statement of that kind is made, then the Government must satisfy itself completely. How can the Government satisfy itself? The statement may not be considered to be enough. Therefore, I am inclined to agree with what Mr. Bhupesh Gupta has said that our Government should satisfy itself on the basis of an investigation conducted by our agency. We have diplomatic relations with most of these countries and our Embassies are there and we can have an investigation made about the accuracy, about the truth of the allegations. It is only then that the whole thing can be made fool-proof, otherwise it will be dependent in most cases on the relationship existing bet-

ween our Government and the other Government concerned. If the relations are friendly the person may be handed over. That kind of thing must be stopped.

Madam, one thing more and I finish. Now, supposing, as has happened in the case of Nepal, some political exile *in absentia* is tried in his country and sentenced to a long term of imprisonment, what will be the position in regard to that? The sentence has been imposed by a court in the other country. What will be the position so far as extradition is concerned? How will the Government proceed in that?

Madam, these are my difficulties which I wanted to place before the House and before the Government, and I would like that the Government should apply its mind a little more keenly than what they have done so far and see that no loopholes are left, that each loophole is plugged so that the life of the political exiles who come to our country for asylum, to whom we should give shelter, is not put in jeopardy.

Thank you.

THE DEPUTY CHAIRMAN: We have a lot of business and as such I would like to cut down the lunch hour by half an hour. I hope the House will co-operate.

HON. MEMBERS: Yes, yes.

THE DEPUTY CHAIRMAN: The House stands adjourned for lunch till 2-00 P.M.

The House then adjourned for lunch at five minutes past one of the clock.

The House reassembled after lunch at two of the clock, the Deputy Chairman in the Chair.

SHRI BIBUDHENDRA MISRA: Madam, I think the most important

point that has been raised is, that there is not enough provision in the Bill that would separate political offences from extradition offences. It has been already met by Mr. Santhanam. I will point out that in three clauses at least, clauses 7, 29 and 31, it has been specifically stated in unambiguous terms that extradition offence does not cover political offence. I would first of all refer to sub-clause (2) of clause 7 which deals with enquiry by the magistrate. The last part of the sentence says:—

“...including any evidence to show that the offence of which the fugitive criminal is accused or has been convicted is an offence of political character....”

If he is satisfied that the offence is of a political character, then, of course, no extradition lies.

Then also under clause 29, if the Government is satisfied that the offence is of a political character, the Central Government has the power not to extradite the offender. Similarly also clause 31 places some restrictions on surrender. It says:—

“A fugitive criminal shall not be surrendered or returned to a foreign State or Commonwealth country—

(a) 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 court before whom he may be produced or of the Central Government that the requisition 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;”

Therefore, there is ample provision in the Bill which says that there cannot be any extradition if it is found out that the offence is of a political character.

Then, it has been stated that since there is no definition of ‘political character’ given in the Bill itself, it might result in hardship. It might become difficult to know what a political offence is. In no country in the world, so far as I know, where there are extradition Acts, has this term ‘political offender’ been defined anywhere, because any definition would not be complete by itself. I will point out an authority on the subject, which is Clarke upon ‘Extradition’. He has referred to an English decision in which attempt was made to define political offences and the Judge came to the conclusion that it was better to leave it as it was because any definition that he could give would not be complete by itself, and would leave scope for ambiguity. I am reading from page 184. It says:—

“Now what is the meaning of crime of a political character? I have thought over this matter very much indeed, and I have thought whether any definition can be given of the political character of the crime—I mean to say in language which is satisfactory. I have found none at all, and I can imagine for myself none so satisfactory, and to my mind so complete, as that which I find in a work which I have now before me, and the language of which for the purpose of my present judgment I entirely adopt.”

SHRI BHUPESH GUPTA: Who is that Judge and when was the judgment given?

SHRI BIBUDHENDRA MISRA: I am coming to it. He is Justice Hawkins of Great Britain. He goes on to say:—

“I think, therefore, that the expression in the Extradition Act ought (unless some better interpretation of it can be suggested) to be interpreted to mean that fugitive criminals are not to be surrendered for extradition crimes, if those crimes were incidental to and formed part of political disturbances.”

[Shri Bibudhendra Misra]

So, in a crime which is incidental to and forms part of political disturbances, there should not be any extradition. That is the general principle that they have evolved in Great Britain.

SHRI BHUPESH GUPTA: What would happen . . .

SHRI BIBUDHENDRA MISRA: I think you would have the patience to wait. I did not disturb you when you spoke. I may not be able to satisfy you because you are not easily satisfied. So, there has been difficulty experienced in all the countries to give a suitable definition to the words 'offence of a political character'. And that is why in no country in the world, in no Extradition Act, so far as I know, there has been any definition of the term 'offence of a political character'. Therefore, if it means any offence which is ancillary to or arising from that of a political character, there cannot be any extradition offence. It has been asked, "How can the court decide whether an offence is of a political character or not?" That is a logic which I could not follow, because there is ample provision in the Bill itself by which the court can come to such a finding. You will first of all note that under clause 7 the Court makes an enquiry to find out whether there is a *prima facie* case or not. Then, again, under sub-clause (4) the Court makes a report to the Government and the Government again satisfies itself whether the case is of a political nature or not. Then, again, under clause 29 the Government also has the power to see whether the case is of a political nature or not, whether extradition lies or not. The accused, under clause 10, has the right to file an affidavit, to file any objection before the court. If it is a question of having a *prima facie* case, it always means that the country which seeks extradition sends the warrant of extradition, must satisfy the court that the offence is an extradition offence. It is always open to the accused by a statement to say that it is not an extradition offence but a

political offence. It is according to the statements of both sides that the court comes to a conclusion whether a *prima facie* case is there or not. So, I do not think that there is any difficulty at all in coming to a finding whether the case is a political offence or an extradition offence, because there are ample safeguards in the Bill to determine that.

Then, it has been said that there should not have been any distinction between Commonwealth countries and the other foreign States. There is in substance no difference, except some difference as to procedure. It is not correct to say that as soon as the warrant is received by any Commonwealth country, the State Government or the Central Government has just to endorse it and to send the fugitive offender back. The Central Government has to satisfy itself that the warrant was issued by the proper authority. The Court has to satisfy itself that the offence is one which comes under the Schedule, that it is an extradition offence. Then only he can be sent back.

Then, again, it will be remembered that Chapter III is applicable only to those Commonwealth countries with which India will have extradition arrangements, not all Commonwealth countries. It will be done on a reciprocal basis and it will be open to this country not to enter into any extradition arrangements with any Commonwealth country that it does not choose to enter.

Of course, it is not very much necessary to state it here, but reference has been made to the Geneva Convention. That reference was made by Mr. Bhupesh Gupta. I would read out from one of the Russian books, viz., "International Law", which has been translated into English. It is not an English book or an American book. It was a treaty in which Russia also was a participant. Every Commonwealth country did not sign it, but India did. Russia was also a participant. The treaty was never ratified and it never

came into existence at all. I will read out the relevant portion:—

"In 1937 the Convention for the international prevention and punishment of terrorism was signed in Geneva by the representatives of 24 countries, including the Soviet Union.

The signatories undertook to punish persons guilty of terrorist activity, that is:

(a) of attacks upon the life and health of Heads of State, and official personages;

(b) of acts of sabotage directed against state or public property;

(c) of actions creating a danger to a number of human lives;

(d) of the preparation, storing or supplying of any person with weapons and other means of terrorism;

(e) of forging, importing and uttering false passports or similar documents;

(f) of the preparation of terrorist acts, incitement to terrorism or any form of assistance to terrorists.

Subsequent events showed that the major imperialist States which signed this Convention by no means intended to renounce terrorism as a means of imperialist intervention in the internal affairs of other States.

The Convention was not ratified and did not come into force."

SHRI BHUPESH GUPTA: You will understand that as far as the British Government was concerned, it was interested in suppressing, in dealing with such cases which formed part of our freedom movement also. There were non-violent movements, there were other movements also. This was the position I wanted to make out. The British Government was motivated in this matter by a desire to suppress the political activities or to apprehend

those who had sought asylum in other countries. Such things happened in Chandernagore. I gave examples.

SHRI BIBUDHENDRA MISRA: My point is that this Convention to which reference was made was never ratified, it never came into force. Supposing for the sake of argument it came into force, it will not hold good now in view of our Scheduled where we have specified the extradition offences. It will be remembered that this is not one of the offences which have been specified in the Schedule, that is terrorism. Terrorism has been taken out of the Schedule. Therefore, there is no question of the Government of India coming to any agreement with any foreign State on a matter which is not included in the Schedule itself.

SHRI BHUPESH GUPTA: I do not see any protection here. I can understand it in political terrorism when it is manifest. But suppose extradition is sought on the ground that he had committed, shall we say, dacoity or a raid on some police station, and it is sought to be passed off as an ordinary act and not a political act. If Liaquat Ali and others are involved, it is easy to understand it. But how will it be proved by the person here that that particular act was in the course of some political agitation or movement? Sometimes it may be impossible. This is not covered by it. This is what I wanted to say.

SHRI BIBUDHENDRA MISRA: I think this is sufficiently covered. As I said earlier, it is not a question of the accused proving something, because the onus of proof in a criminal case, as my friend knows, lies with the prosecution. Whenever a State issues a warrant that somebody is an offender, that he has committed an extradition offence, it has to satisfy the court, and the court has to make an enquiry to find out whether there is a *prima facie* case or not. It has to satisfy the court that an extradition offence has been committed, and the accused is also at liberty to say that

[Shri Bibudhendra Misra.]  
the offence is not an extradition offence but that it a corollary to some political offence. He can file a statement with the magistrate. Therefore, the magistrate has both the versions, and if he is satisfied that a *prima facie* case is not established, that an offence of an extradition nature is not committed, then he is at liberty not to extradite the person. But suppose the magistrate does hold that a *prima facie* case exists and sends a report, it is not final. It goes to the Central Government, and the Central Government again has the power, if it is satisfied that it is not an extradition offence but a political offence, not to extradite the person. Therefore, Madam, all these safeguards are there. No suggestion has been made as to how this can be improved. Except some bare criticisms, no suggestion has been made how the entire matter can be improved. Therefore, whatever safeguard is possible has been taken in the Bill itself.

SHRI BHUPESH GUPTA: The onus of proof may be completely shifted.

SHRI BIBUDHENDRA MISRA: Let me proceed.

SHRI BHUPESH GUPTA: Will you kindly yield? That will be good for you.

SHRI SONUSING DHANSING PATIL (Maharashtra): Madam, I want to say . . .

(Interruption)

SHRI BHUPESH GUPTA: Madam, on a point of order. I requested the hon. Minister to yield and he was good enough to yield. Therefore, as per rules I am allowed to make a little intervention. But just another hon. Member got up from behind. I do not know why he got up. It is a strange procedure.

SHRI SONUSING DHANSING PATIL: I may explain why I got up. It is not proper, nor is it the convenience of the House, that the hon. Member should have cross-questioning with the Minister. Let him finish the

whole explanation, and at the end of the explanation the hon. Member can clear any doubts.

THE DEPUTY CHAIRMAN: I do not want to deviate from the debate proper. Do you want any clarification?

SHRI BHUPESH GUPTA: That is what I was going to ask. If you want to accept the Government position, you can very well accept it. I sit down.

THE DEPUTY CHAIRMAN: If you have any clarification, you can ask.

SHRI BHUPESH GUPTA: Why did I get up if I did not have a clarification?

THE DEPUTY CHAIRMAN: Please put it.

SHRI BHUPESH GUPTA: I regret very much that the hon. Member opposite intervened. I understand the point of the Minister. The Government can come and prevent it. I can understand that. But the court will be in a handicap because the Government of Pakistan, for instance, will seek extradition and will produce plenty of materials to show before a court of law in India that he has committed such crimes. All I say is, when the accused will be called upon to say what he has to say against that, he may not be in a position to produce anything, except to make a bare statement that all that the party seeking extradition is doing is false or unwarranted. What happens in such cases? This is what I wanted to know.

SHRI BIBUDHENDRA MISRA: As I said, Madam, when it is a question of coming to a decision whether a *prima facie* case exists or not, the court has to take the versions of both the sides, and the accused is also at liberty to file his statement before the court. There is also the additional provision that for fifteen days he will not be extradited because he has the right of filing a petition of *habeas corpus*. All the provisions are there. The High Court can also enquire into the matter. All these provisions have been



incorporated there. I would like a single suggestion instead of putting the question in a negative way. It is not a question of the accused proving anything. It is a question of the prosecution, the foreign State concerned, proving that actually an extradition offence has been committed. But no suggestion has been made as to how the language could be improved or what in substance should have gone into the Bill itself.

Madam, these are the important points that have been raised. Mr. Bhupesh Gupta has said that we should have an ideal Bill, a Bill that we can show to the whole world. I think in fact after much labour we have now got an ideal Bill. That the Bill itself is ideal is proved by the fact that it went to a Select Committee in which Mr. Bhupesh Gupta's Party representatives were there, and there has not been a single note of dissent in the Select Committee as well. That the Bill has received the support of all sections and cross-sections of both Houses of Parliament itself shows that there cannot be any improvement on it and that it is an ideal Bill. Of course, he found it pleasant here and he has taken a delight to fling a word or two at the Law Ministry. I would not reply to him, having been his colleague in this House for four years I know him well. He understands the functions of different Ministries better than any one else. But if he has used certain words, it is because Mr. Bhupesh Gupta without flinging a sting or two at somebody else is not able to soar high, for then his words do not get winds.

THE DEPUTY CHAIRMAN: The question is:

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

*The motion was adopted.*

THE DEPUTY CHAIRMAN: We shall now take up the clause by clause

consideration of the Bill. There are two amendments to clause 2.

#### Clause 2—Definitions.

SHRI P. K. KUMARAN (Andhra Pradesh): Madam, I move:

1. "That at page 2,—

(i) lines 25 and 26 be deleted; and

(ii) after line 30, the following be inserted, namely:—

"(ii) 'sessions judge' means a sessions judge or an additional sessions judge as defined in section 9 of the Code of Criminal Procedure, 1898;"

2. "That at page 2, after line 28, the following be inserted, namely:—

"(hh) 'offence of political character' means an offence regarding which a fugitive criminal is either accused or convicted, for having committed or attempted to commit an extradition offence, either in his individual capacity or as a member of an organised movement, either by acts or omissions or by words spoken or written or by signs or by visible representations or otherwise, in violation of the laws of the State in his pursuit to achieve social justice or economic equality or liberty of the subjects or political freedom for his country or in the course of his efforts to prevent war or preparation for war;"

*The questions were proposed.*

SHRI P. K. KUMARAN: Madam, in the Extradition Acts which were in force in India up till now, when a fugitive criminal was produced before a magistrate, the magistrate was required to enquire into the case in the same manner as if it were a case triable by a Sessions Court or High Court. We have to take such evidence as may be produced in support of the charge as well as on behalf of the fugitive criminal including any evidence to

[Shri P. K. Kumaran.]  
show that the alleged crime was a political offence or a non-extradition crime. Generally if a rank criminal escapes from a country, such a country is likely to think that a nuisance is got rid of, and it will not be eager to claim the culprit back. Of course, if we arrest him and inform them, they usually take him back. But when they put forward a strong claim for a particular criminal, although they may charge him with extradition crimes, most likely he may be wanted for a political offence. That is why I say that such an enquiry should be a regular judicial enquiry. Hence my amendment seeks to replace the word 'magistrate' with 'sessions judge'. I will illustrate this by one example. Suppose a fugitive criminal, a Negro, comes here from South Africa and he is charged with taking food in the European wing of a hotel, he is wanted by that country according to its law. Suppose before coming here, he issues a leaflet and talks to some people that this is wrong and so on. What happens? According to that Government, they want him for an extradition crime. But our Government cannot surrender him in such cases. Therefore, my amendment is on that point. Such cases have to be properly tried here. Such things become political offences. Such cases cannot be surrendered. According to Chapter III also, countries like South Africa and Pakistan, can easily claim their fugitive criminals back. So, I think that in order to ensure a fair chance for the culprit or the fugitive criminal, it is better to replace the word 'magistrate' by 'sessions judge'.

SHRI BHUPESH GUPTA: I want to say something.

THE DEPUTY CHAIRMAN: Mr. Gupta, on which amendment, on the second one?

SHRI BHUPESH GUPTA: Yes.

We are not saying that this is a very complete or exhaustive definition. But this point should have been

better considered when you defined the offence of a political character. The hon. Minister is justified in asking us offhand what our definition is. Suppose I am not in a position to define it. Does it justify the Government to say that it should be left at what it is? Or does it prove that the matter needs more attention so that we can evolve, through mutual consultation, a proper definition? This is my complaint with regard to this matter. I understand the difficulty in it when you put this in the form of a particular statute or as a provision of a Bill. I understand it. But if we are clear in our minds exactly what we are aiming at, what kind of thing we must prevent, then we should be in a position to find out certain safeguards at least. The trouble is that the safeguard is there in the Bill but that again is left to the discretion of the Central Government and to the discretion of the court. Here there may be an act of political nature. I wanted to ask this question. Suppose a strike takes place, a strike in furtherance of a purely economic demand. What happens? Is it covered by the safeguards with regard to political acts or offences of a political nature or is it not? Anyhow, one could debate on it. Therefore, you should not have left it vague like that. Today, it is very difficult to separate certain economic activities from political activities. Here at least some suggestions is there that such activities should be given exemption from extraditable offences. Now, there is not even such a thing. Here is this amendment. So many other actions may take place. The problem is that a definition is needed, some such thing is needed, in order to safeguard them. Now, Mr. Santhanam was mentioning about the murder of Mr. Liaquat Ali Khan. In the case of Mr. Liaquat Ali Khan, no problem will arise because, in the nature of things, it would be assumed to be a political offence when it comes to a court of law normally. The problem would not arise normally. If the accused says that he is wanted for a political offence, the court would

be sympathetic to accepting his definition. But suppose somebody comes who is not known and who is sought to be extradited on a charge which, on the face of it, is a minor charge and does not involve big personalities and so on, what happens? Say, a kind of violent incident in some street or in some factory occurs. Then what happens? It is not covered by this. That is what I say.

Then the point is this. The hon. Minister was saying that the magistrate would go into it. Yes, the magistrate will go into it. But what will you have before him? The Government seeking extradition will place before him all the material. Now, the accused when he comes to this country would not be coming with all the documentary proof and so on, expecting that somebody would seek his extradition and he would have to counter it by producing documentary evidence. Therefore, he would be in a disadvantageous position compared to the Government. The government seeking extradition would always be in an advantageous position. How will the magistrate decide it? Then, two things can happen. One is purely political consideration. What will happen? Suppose the country is a hostile, unfriendly country, then generally the tendency will be not to admit or allow extradition. Suppose the country is a friendly country, then the tendency may be the other way round. Secondly, the problem may arise on ideological grounds. You are defining—I put it that way—a political offence in this manner, leaving it at this. Suppose the Pakistan Government says that they treat certain offences in a particular way. And if you do not treat them in the same way, a conflict arises. Suppose there are two violently anti-Communist Governments. Suppose one Communist of one country comes away to the other country and seeks asylum in the other anti-Communist country, then political considerations will come. Then an offence committed in pursuance of his activities would be regarded to be an ordinary criminal offence against that anti-Communist

Government and this Government will not intervene. The magistrate will also be influenced by the predisposition of the Government in this matter. Therefore, these things will arise. So, everything is left to chance. I say, if this Government remains here, I can understand that many of the things will not happen. When I say this Government, I have in mind Jawaharlal Nehru. I do not have much faith in this Government apart from Jawaharlal Nehru. As long as he is there, I understand that it will not be easy for the Government of Pakistan or of Nepal or for any other Government to get away easily with an extradition warrant and get extradition. We are passing the law not for the duration of the tenure of the office of Prime Minister Jawaharlal Nehru but as a permanent law. Suppose a very reactionary Prime Minister comes here—an utter reactionary Prime Minister. Then Pakistan can easily get it. Suppose a Communist of Pakistan comes and lives here, and it seeks his extradition. The violent anti-Communist Government will do it, saying that it does not recognise it as a political offence. Everything, therefore, is left to chance. The hon. Minister became eloquent for nothing; I did not understand his eloquence there at all when he said something about me. At least a person should understand. This is why I say this matter needed a little more thought in the light of experience in order that we are in a position to provide for contingencies. But that is not done. If he says that he will do something, I have to accept his assurance. But he may not be there. What is the guarantee then? To leave it to the magistrate. Therefore, in our amendment, in at least this amendment some kind of an attempt has been made to restrict the discretionary power of the magistrate or the Government in favour of the political fugitive. Some such attempt has been made. I do not say at all that it is perfect.

A lawyer comrade of ours, Shri Raghunatha Reddy has made it but along that line we should think over

[Shri Bhupesh Gupta] this matter. Here the hon Minister did not define it but he read out a judgment. When I asked "Whose judgment?" I did not get the thing cleared. Well, judges say so many things, and when that judge said it, how many years ago was it said? Things do change, and when we legislate we do not go by what a judge has said. We should exercise our own judgment and see whether we can define, at least negatively define what will be never covered. We could have done it. In connection with this clause I imagine that person, whose extradition is sought, makes a statement that the extradition is sought in bad faith and really it is sought for political victimisation or persecution. Then there should have been a provision here. At once the onus is shifted and he gets the clearance; the onus is shifted on to the country or Government seeking the extradition to refute the statement made by the person whose extradition is sought, on the strength of further evidence. But there is no such thing. Therefore, it is absolutely left to the discretion of the judge, and so on. The next point important here is this. Our definition here protects against it at least to some extent. Offences against whose law? It is not according to the Indian Penal Code, mind you. The extradition would be sought according to the laws of the country seeking the extradition. They will come and say that according to the law of Pakistan, for example this person has committed a crime. Therefore, he should be sent back. Now we do not formulate the laws there is Pakistan. It is open to Pakistan to modify their law, formulate any law they like, as indeed they have been doing. When the military administration came, they scrapped the old law, and they had all kinds of new laws. For not cleaning the road they had a provision in the law for whipping or ten years' jail and so on, and it is a very serious offence, it was treated as such by them. But we do not, in our country, treat such things as offences of that type. Pakistan will come and say, "He has

committed such an offence; send him." Then what will come to play here? Natural justice or something else? Where is the provision that if a certain law under which the extradition is sought, or for the alleged violation of which the extradition is sought is opposed to natural justice, concepts of democracy or concepts of fundamental rights as defined in our Constitution, we shall not extradite that person? Where is the provision? In our Constitution there are Fundamental Rights. Could we not have said in this thing, "provided extradition is not sought in pursuance of this kind of thing"? We could have said this thing. Even that is not there. I see these are negative safeguards but nonetheless they would be safeguards. But who bothers, Madam Deputy Chairman? I know that when we speak from the Opposition the hon Minister, even the Deputy Minister sometimes comes and tells us, "Oh, the Opposition is speaking, we know what they have been speaking for four years." But I can tell you these matters are not party matters. I can understand this kind of political speech and propaganda in an election meeting but over this we are all more or less agreed that the law should be good. Therefore, when I make a suggestion, at least credit us with some amount of intelligence and *bona fides* in this matter, that we may have something to say for you to consider, instead of trying to brush aside by saying, "I have heard Bhupesh Gupta." You have heard Bhupesh Gupta for four years, and if I am not dead, Madam, you will hear me for another year and a half also. It cannot be helped. Therefore, listen to such things. But I have to say that this is not a very responsible way of the Government treating suggestions in the House. Today it may be my suggestion, tomorrow it may be your suggestion. Suppose we are in the Government in some other State some day and we treat you in the same manner, would you like it? You would not like it. Why the Minister should not know how to reply to such things in such matters? I can understand his getting excited when politi-

cal heat is made over a controversial matter over which Government and we are fundamentally disagreed on questions of principle or policy. There heat is generated, but here we made in all good faith some suggestions with which Mr. Santhanam agreed to some extent, and even then we are treated in this manner. Well, that is all right. We know our weakness. Unless we are sufficiently strong we cannot make you understand, at least make the Ministers understand the points. Wherever we are strong, we know how to make them understand. Such statements would not be easily made in the West Bengal Assembly or in the Andhra Assembly or in the Kerala Assembly. I know it. But here we are weak. Treat us in this manner. Even a little Deputy Minister will treat us in this manner. But what I am saying, does it contain any sense? Is it not to be found in many books? The hon. Minister—may be a lawyer—has read books. So have I. I can produce before him books after books where the matter has been discussed, and here the problem is sought to be made complicated. It is a thing which needs discussion, deliberation and pooling up of each other's wisdom with a view to arriving at a solution, and when we try to do so, maybe we are wrong and perhaps they are right because the majority is on their side, and I do not know how long even the Deputy Minister will command the majority in this manner. There are more intelligent people in the Benches which are not Treasury Benches.

**THE DEPUTY CHAIRMAN:** Mr. Bhupesh Gupta, . . .

**SHRI BHUPESH GUPTA:** Nothing should be taken for granted. All that I have to say is: Thank you very much. I am very sorry at the manner he replied to the proposition that I raised.

The proposition that I raised was not raised in any partisan spirit or to discredit the Government. This is a matter on which we are in principal

agreed, but with regard to which we have not found a mutually acceptable or satisfactory solution.

**SHRI BIBUDHENDRA MISRA:** Madam Deputy Chairman, I am sorry that Mr. Bhupesh Gupta has generated heat for nothing. I never said that I do not care for his suggestions; on the contrary I tried to answer his suggestions.

So far as amendment No. 1 is concerned, my point is that since the magistrate has been invested with the powers of a sessions judge under sub-clause 7 (1) and he has the same powers also under clause 25 in the matter of granting bail and since the function of the magistrate is only to find out whether there is a *prima facie* case or not, it is not necessary to give the same powers, in place of the magistrate, to the sessions judge. If the whole purpose is only to find out whether a *prima facie* case is there or not, reference to a first class magistrate or to a presidency magistrate will serve the ends of justice, and therefore, I am opposed to this amendment.

So far as amendment No. 2 is concerned, Mr. Bhupesh Gupta has himself admitted that this is not an exhaustive definition. When I read out that judgment, what I wanted to stress was that in no Extradition Act in the world was there given any definition of "political offence", and I tried to point out that there was difficulty in giving the definition, because no definition would be exhaustive and that, therefore, it would be better to leave it to the general concept without restricting the scope by giving it a definition. That was my purpose. He himself has admitted that the suggested definition is not exhaustive. Of course, he has raised some point. Extradition is a law which is based on the reciprocity of the two States which come to an agreement. He has raised a point which is difficult for me to answer, which history has answered and which he can answer better than myself. "If there are two countries, say, Pakistan and

[Shri Bibudhendra Misra.] India," says Mr Bhupesh Gupta, "both with a strong anti-communist bias, and one wants the extradition of a communist from another country, what would you do?" Well, that is a political question not within the purview of this Bill. After all, the working of the law depends on the reciprocity and goodwill of both the countries, and if the two countries, for some reason or other, want to flout the law, as we experience in some communist countries—there are communist countries in the world which co-operate in many matters as between themselves—well, the same fate will befall the other countries also. That is a matter which you cannot by any legislation stop.

SHRI B K P SINHA (Bihar). May I just point out that there is a provision in the Bill itself that after a man is put into custody he gets 15 days before he is removed? In that period the Supreme Court or the High Court can be moved.

THE DEPUTY CHAIRMAN That has been mentioned.

SHRI BIBUDHENDRA MISRA. Then, again he says that the Pakistan Government can make any law and under the provision of that law they want an extradition there are we bound to do it? We should say that we are not bound if the law is opposed to public policy . . .

SHRI BHUPESH GUPTA. But where is it in the Bill?

SHRI BIBUDHENDRA MISRA: I am coming to it. Have some patience. My point is that only those offences which are specified in the Schedule or those offences on which an agreement is entered into between two countries can be the subject matter of extradition. Suppose the Pakistan Government passes a law and asks us under the provision of that law to extradite somebody, we will not do it because that is not covered by this law itself.

Again, about the definition itself, Madam, after all you have to rely on the judgement of somebody. He regrets that it is the judgement of the court or it is the judgement of the Central Government. An offence is an offence. Whether an offence is of a political nature or not, you have to rely on the judgement of somebody. There is no help, no escape from it. He has given certain examples. I would give you, Madam, one example. Take the example of the 1942 Movement. During the 1942 Movement when the Congress people or those who were in the freedom struggle, in the "Quit India" struggle, were dying in jails by hundreds, the Government of India accused them saying, "It is a group of gangsters." There were posters all around. There were advertisements on match-boxes putting them as "Gangsters." My Communist friends also joined them. According to them it was not a political offence.

SHRI BHUPESH GUPTA. Madam, he is introducing politics.

SHRI BIBUDHENDRA MISRA: Therefore, in matters like this it cannot be helped. You have to depend on the judgement of somebody, and it is a good thing that here we depend not only on the judgement of the court but also on the judgement of the Central Government. We have enough safeguards. It is better that we did not try to have any definition because in no country in the Extradition Act we have a definition. Let us not restrict it; let the scope be wider so that we will go by some general concept as is common in civilised countries and not restrict it by putting in a definition.

SHRI BHUPESH GUPTA. By the way, I do not want to speak. Only I should like to say . . .

THE DEPUTY CHAIRMAN. I know that. Are you pressing the amendment?

SHRI BHUPESH GUPTA: Yes. Anyway, I will speak at the time of the Third Reading.

THE DEPUTY CHAIRMAN: I shall put Amendments Nos. 1 and 2 to the vote. The question is:

1. "That at page 2,—

(i) lines 25 and 26 be deleted; and

(ii) after line 30, the following be inserted, namely:—

“(ii) “sessions judge” means a session judge or an additional sessions judge as defined in section 9 of the Code of Criminal Procedure, 1898;”.

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

2. "That at page 2, after line 28, the following be inserted, namely:—

“(hh) “offence of political character” means an offence regarding which a fugitive criminal is either accused or convicted, for having committed or attempted to commit an extradition offence, either in his individual capacity or as a member of an organised movement, either by acts or omissions or by words spoken or written or by signs or by visible representations or otherwise, in violation of the laws of the State in his pursuit to achieve social justice or economic equality or liberty of the subjects or political freedom for his country or in the course of his efforts to prevent war or preparation for war;”.

*The motion was negatived.*

THE DEPUTY CHAIRMAN: The question is:

• “That clause 2 stand part of the Bill.

*The motion was negatived.*

*Clause 2 was added to the Bill.*

*Clauses 3 to 37 were added to the Bill.*

*The First Schedule and the Second Scheduled were added to the Bill.*

*Clause 1, the Enacting Formula and the Title were added to the Bill.*

SHRI BIBUDHENDRA MISRA: Madam, I move:

“That the Bill be passed.”

*The question was proposed.*

SHRI BHUPESH GUPTA: Mr. Kumaran wants to speak.

THE DEPUTY CHAIRMAN: Are you making him speak, Mr. Bhupesh Gupta? I do not think Mr. Kumaran wants to speak.

The question is:

“That the Bill be passed.”

*The motion was adopted.*

## THE CHRISTIAN MARRIAGE AND MATRIMONIAL CAUSES BILL, 1962—continued

THE DEPUTY CHAIRMAN: Mr. Kumaran, you were speaking on the Christian Marriage and Matrimonial Causes Bill. You had not finished your speech.

SHRI P. K. KUMARAN (Andhra Pradesh): Madam, the other day I was suggesting that mixing up of religious and legal institutions was not desirable. I hope the Select Committee will consider this suggestion. If this suggestion is accepted, there will be no complaint from any group or denomination of churches that they are not recognised nor will there be any boasting from any group that while they are recognised their rival groups are not having that status.

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY) in the Chair]

Another point which I would like to refer to is the question of prohibited relationship. In the olden days the old system of joint families prevailed.