

more time so that we can really consider it. There are some mistakes which have been admitted by responsible people and all of them should be corrected so that the measure may not have to come back again for further amendments.

MR. DEPUTY CHAIRMAN: The Business Advisory Committee has fixed the time as seven hours,

SHRI K. SANTHANAM; I would like to know if the Business Advisory Committee have read through this Income-tax Bill.

MR. DEPUTY CHAIRMAN: They had the Bill before them.

SHRI AKBAR ALI KHAN (Andhra Pradesh): We should allot more time for it.

SHRI P. N. SAPRU (Uttar Pradesh): Sir, I wish to submit that the Income-tax Bill is a complicated Bill. We have had very heavy work in the last two weeks, and it has not been possible for us to go through the Bill and the Select Committee Report with that care and thoroughness which is expected of Members of this House. Therefore, some consideration in regard to this matter might have been shown. I think the Business Advisory Committee should have taken this factor into consideration, and I hope, Sir, you will take this factor into consideration.

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MR. DEPUTY CHAIRMAN: I have taken all factors into consideration and fixed the time available. We will go to the next item, the Extradition Bill. Dr. Kunzru is not here. Mr. Gurupada Swamy.

THE EXTRADITION BILL, 1961— *continued*

SHRI M. S. GURUPADA SWAMY (Mysore): Sir, the other day this

Bill has been discussed fairly well and some hon. Members have made useful suggestions. Sir, I am glad that this Bill is being referred to a Select Committee. It is very necessary that careful consideration should be given to the various clauses *at* the Bill.

Sir, this Bill has been brought forward after a long time. So long there has been a considerable amount of vagueness and confusion in regard to extradition matters. Sir, we have before us the extradition treaties of other countries, and these date back to the 18th century when Belgium for the first time passed the Extradition Act after it was separated from the Netherlands. Since then the extradition matter has assumed more importance in the international community. As you are aware, Sir, during the French Revolution a new concept was introduced in France, namely the concept of political crime. During the French Revolution the revolutionaries thought that it would be desirable and necessary to give shelter and refuge to all political fugitives from countries which were ruled by despotism of some kind or other. So they declared that political crimes should be treated separately and that political refugees or criminals should be accorded a different treatment. Accordingly they even introduced a clause in the French Constitution after the Revolution—I think it was in the year 1791,—stating that those people who wage battle or war or carry on a struggle on behalf of liberty should be accorded shelter or protection in their country. So, that was the starting point for this famous concept of political crime being treated on a separate footing. We know, Sir, how later our own national, Shri Savarkar, who once tried to escape in 1910 from a British ship to the French mainland was accosted and was caught hold of by the French Police, and without knowing the consequences of their act, they surrendered him to the British authorities on board the ship. That wrong surrender led to a case before the International Arbitration

[Shri M. S. Gurupada Svamy.] Court at The Hague in 1911, and they held that a wrong surrender cannot be remedied by the return of the man who had been already surrendered. When once a wrong thing was done, it could not be remedied under the international law. But the Court said that it was a very wrong thing on the part of the French Police to have surrendered a man who happened to be a political criminal according to the international law. That way, Sir, the concept of political crime developed and it had undergone considerable changes later on with the efflux of years. Why I am pointing out this fact is that in the Schedule of this Bill political treason has been included. It has been included under ordinary crimes. If you consider political treason as an ordinary crime, a crime of an ordinary character, then it will change the entire concept of this new theory on political crimes in international law. Sir, even in international law occasionally doubts arose whether a rebellion against the head of a State would be considered as treason and whether conspiracy or incitement or murder could be categorised as such. They can come under political crimes if the motive is political and the purpose is political. In many cases it has been held that if a crime has got a political motive and also a political purpose, that should be regarded as a political crime notwithstanding the fact that it may mean murder or some conspiracy or incitement or participation in all these things. I think that international law is clear on this. Mr. Oppenheim, that great authority on international law, has categorically stated that in such cases the interpretation should be to include all these crimes under political crimes, and treason also should come under political crime. Here, to my astonishment, treason has been included as an ordinary crime, and treason, obviously and naturally, could be against the existing authority in the State, against the government, maybe sometimes against the head of the State even,

and it may involve so many activities. Sir, it may involve murder, it may involve violence and bloodshed and even conspiracy and all these things. So, I do not know how treason can be classed along with ordinary crimes and be treated as such. The International Court has amply made it clear—I have got cases with me but I do not like to take up the time of the House by quoting them. There are so many honourable political criminals or there are very many cases of political crimes wherein we find all these misdeeds or whatever they are called—conspiracy or violence. So, I feel that this inclusion of treason in the Third Schedule is unnecessary. That should be deleted.

Sir, there are some other aspects of the Bill which require considerable attention. Here are some clauses which are vague. We do not know whether a particular country which enters into extradition treaties will have to surrender its own nationals who commit crimes abroad. For instance, I think in France and Germany, they have adopted a principle that if a subject of their own commits a crime abroad and gets back to the native country, then that subject should not be extradited, but should be tried in the country itself for the crime committed abroad. And the Bill does not make any provision to deal with such categories of people.

Then again, the criminal should be punished for the crimes mentioned in the extradition treaties or arrangements. Suppose a criminal escapes from Pakistan and comes to India after committing a big crime there. When he is extradited to Pakistan, he should be tried and punished only for such crimes which are mentioned in the extradition treaties or according to the arrangements agreed to between Pakistan and India, and not for any other crime. He might have committed one hundred odd crimes but the warrant might be issued for a particular crime and he might be

extradited on that assumption. If he is tried for a different crime altogether, then that will be going against the extradition arrangement or the extradition law itself. So, there is nothing in the Bill to suggest that only such crimes that find a place in the extradition treaties or arrangements would be punished in such cases.

THE DEPUTY MINISTER OF LAW (SHRI R. M. HAJARNAVIS) : What about clause 22?

SHRI M. S. GURUPADA SWAMY: Sir, clause 22 reads like this:—

"Whenever any person accused or convicted of an offence, which, if committed in India would be an extradition offence, is surrendered or returned by a foreign State or Commonwealth country, that person shall not, until he has been restored or has had an opportunity of returning to that State or country, be tried in India for an offence committed prior to the surrender or return, other than the extradition offence proved by the facts on which the surrender or return is based."

Here I think the clause does not make it very very clear that when a person commits other crimes, they should not be included in the trial of that person. I think that position has to be clarified. Even this clause I do not think will go as far as it is desired.

Then, Sir, there are other sets of people and it is my doubt whether they will be covered by any provision in this Bill. Suppose there are military deserters. Suppose a person who is serving in the Indian military deserts the military and leaves the country, such an offence, I do not think, has been contemplated in the Bill. In the world there are many people who desert their armies, go about and escape, and it is very necessary that there should be some provision to deal with such cases.

Sir, there are many offences included in the Second Schedule and there are some ' offences included in the Third Schedule. I want to know why in the Second Schedule there are a large number of offences included but the same number of offences are not included in the Third Schedule. I want to know whether there should be different arrangements regarding extradition matters in regard to crimes in respect of one set of countries and a different set of arrangements in regard to crimes in respect of another set of countries. They have made a distinction between commonwealth countries where arrangements are made and other countries with whom we have got extradition treaties. But the list of crimes provided in these Schedules differ widely. In the Second Schedule all sets of crimes which are found in the Indian Penal Code have been included and in the Third Schedule these crimes have been reduced and they deal only with piracy, treason, smuggling, immoral traffic and the like. But in the Second Schedule, they include everything, from culpable homicide to theft, extortion, rape and unnatural offences and the like. So a whole list of offence* has been included. Suppose a man, according to the Second Schedule, commits a small theft in Pakistan some time and crosses into this country, do we take it as a serious offence, and on that account should he be extradited to that country? Sir, it is a serious matter. It is easy to find fault with a man who is wanted by any country, but would it be advisable in a small offence like this where extradition is sought, that the extradition is granted? Sir, I do not think it would be desirable. And further I am not able to understand why this distinction between two different sets of crimes has been made in relation to different sets of countries. I want uniform extradition arrangements and uniform extradition treaties. Well, crimes are crimes whether they are committed in a Commonwealth country or in a foreign country. Theft is theft anywhere, or, culpable homicide is culpable homicide in any part of

[Shri M. S. Gurupada Swamy.] the world. When that is the case, why should we not have a uniform type of extradition law? I do not know why this artificial distinction is brought out or made between crimes to be dealt with with Commonwealth countries and crimes to be taken up with other countries. Also, in relation to other countries more crimes are provided for, and in relation to Commonwealth countries very few crimes have been listed and in the latter, treason is provided for. So, Sir, it is a very artificial distinction to make, and to my mind this has to be done away with, and there should be uniform arrangement and uniform law for this purpose.

Sir, I do not like to take much time of the House, but I may make one suggestion in the end. The law that has been with us till now was very vague and nebulous, and the Government had not taken early steps to bring the law before Parliament, and I am glad they have done so now and I wish the Select Committee go into all these things carefully and see that all the anomalies are removed and that a proper basis, a correct basis and a precise basis for extradition law is provided so that in future at least this vagueness and doubts or suspicions on this question may not arise.

Thank you, Sir.

SHRI G. S. PATHAK (Uttar Pradesh) : Mr. Deputy Chairman, Sir, extradition is an old branch of the law and has assumed special importance in these days because we find crime committed sometimes on an international scale.

Sir, there are two points which I wish to mention and which, in my view, should be considered by the Committee which is going to be appointed. According to the scheme of this Bill, countries have been divided into two classes—foreign States and Commonwealth countries belonging to one category, and Commonwealth countries which are specially treated

belonging to the other category. Now it is open to the Government to apply Chapter III to certain Commonwealth countries and not to others, and the Third Schedule is the Schedule of extradition offences in reference to such Commonwealth countries as are put on a special footing—that may be the reason why you find different offences put in these two lists—the Second Schedule and the Third Schedule.

Now, Sir, the main principle which has been recognised, mostly on humanitarian grounds, is contained in clause 4, sub-clause (a):

"If the offence in respect of which his surrender is sought is of a political character or if he prove* 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 punish¹ him for an offence of a political character",

he shall not be surrendered. Now, Sir, this being the general principle, namely, if there is a person who has committed an offence of a political character or, if it is not an offence of a political character, it is pointed out by the person concerned to the magistrate that surrender has been demanded with a view to trying him for an offence of a political character, then there will be this exemption. Sir, the point to which I wish to draw the attention of the House is the Third Schedule which contains, as has already been pointed out by the speaker before me, the offence of 'treason'. Now, Sir, treason, essentially, is a political offence. Is it the policy of the Government that only one of the political offences would be an extradition offence when we are concerned with some of the Commonwealth countries? If it is true that there are other political offences—maybe of a less serious character—was there any reason why those political offences were not mentioned and only treason

was mentioned? That is one point which deserves the consideration of the Committee. The other point is that when we have in the Commonwealth a country like Pakistan which can try—if I am not wrong in my information—in camera a military officer of another country belonging to the Commonwealth, and which can try such a person in the circumstances that we know, have we not to be very careful when we are considering the question of what offences shall be political offences and what offences shall be extradition offences? Now, Sir, to make 'treason' an extradition offence is to depart from the general rule that there will be no extradition where clause 4 applies, that is to say, where either the offence is of a political character, or the accused satisfies the magistrate or the Government of the country that the intention was to try him for an offence of a political character. Sir, this question deserves very serious consideration on both the aspects of the question namely: (1) Why is it that you have picked out treason as a political offence which is to be put an extradition offence and leave out other offences of a political character, and (ii) Whether it would be right to put treason in the list in the Third Schedule where we are concerned with specially treated Commonwealth countries. Now, it is open to the Government, I admit, to relax section 4 and to say that section 4 would not apply to such Commonwealth countries as the Government may choose to fix upon, or may choose to select. But on merits and on principle the question deserves very serious consideration.

Sir, the other point which also deserves consideration is whether in view of the difficulties which the Judges have experienced while administering section 4—this has been really borrowed from the English law almost verbatim; there is a corresponding section in the English law and the English Judges have experienced difficulty in administering it—it would be expedient to give some

sort of definition, may not be an exhaustive one but a definition which may be a workable definition and which the courts may apply. This question also deserves consideration. Now, the question may be whether the test for defining a political offence or an offence of a political character is subjective—in other words, it depends on the motive of the offender—or it is objective depending on the facts proved before the court. The court can decide the question whether it is an offence of a political character.

It may be said that they can put down in a modified form section 4 in the extradition arrangement contemplated by Chapter III. Still the question would remain as to how this expression is to be defined. The two countries may interpret it in different manners according to the occasions suitable to them.

Again, there may be another question whether the Indian court should decide that the offence for which the accused may be tried in a foreign court, would be an offence of a political character according to the law of the foreign country or an offence according to the Indian law.

Sir, a few years ago a question arose in a court where a certain person had left his country and where leaving the country itself was an offence which had to be met with severe punishment. The offence for which extradition was claimed was not an offence of a political character. The court had to say in that case that although the reason for claiming extradition was to try him for an offence which was not of a political character, yet the court would take into consideration the question whether really he was going to be tried for an offence of a political character. Although ostensibly he was going to be tried for an offence of a non-political character, yet he would be punished as if he was tried for an

[Shri G. S. Pathak.] offence of a political character. Therefore, this aspect whether there should be a definition of an offence of a political character deserves the consideration of the Select Committee.

Sir, in principle I agree and everyone of us, I think, agrees with the Bill, and we can only say what are the matters which should be duly considered by the Committee. Thank you.

THE MINISTER OF LAW (SHRI A. K. SEN): Mr. Deputy Chairman, Sir, as I expected, the Bill has been welcomed from every section of the House and the points made by the honourable speakers have been extremely valuable, and I have no doubt that due consideration will be paid by the Select Committee to these matters.

Mr. Gupta has again succeeded in introducing life into an otherwise technical subject and he has brought in the past memories of victimisation for political offences and various other matters into this discussion. I think we have taken good care to see that no person is extradited from this country on political considerations. As I said in my opening remarks, we shall have to consider very carefully as to how far we should allow persons to be extradited on the ground of treason. I have personally my own apprehensions about this matter and, as I indicated to the House, the Government's mind is open on the point. In fact, it is not a measure at all on which the mind of anyone should be closed; it is not at all a controversial matter. It is a matter for the purpose of enabling fugitives . . .

SHRI AKBAR ALI KHAN (Andhra Pradesh): Treason is excluded everywhere. Is it not?

SHRI A. K. SEN: The English law did not exclude treason though the English courts have scrupulously refused to allow persons to be handed over for political considerations. As

you know, in England treason is treated on a different footing but we have to see that we have to deal with countries like Pakistan.

But, it should be borne in mind again that Pakistan does not get any advantage automatically because part 3 will have to be applied to a Commonwealth country before Pakistan can expect its warrant to be executed as if it was a warrant of this country. I agree entirely with those hon. Members who have expressed their apprehensions on the ground that Pakistan might be, by some process, allowed the same advantage as other countries which possess a liberal judicial system. We consider all countries in the context of our Extradition Law on the basis that these countries follow a civilised system of law, in which there are free courts, independent courts functioning, the Judges there are not military officers or officers whose existence depends upon the fiat of the authorities and upon a system of law which gives the firmest of guarantees to all persons accused before the courts, and the presumption of innocence is not only observed as a matter of form but as a matter of faith in the case of accused who are brought before courts charged with criminal offences. I am extremely reluctant to see—and I agree with the hon. Members who have voiced their concern equally—a country like Pakistan, which allows persons to be charged by military courts or military tribunals, trials to be held in camera and the accused getting not even the ghost of a chance of proving their innocence before independent tribunals, having the same floor or the same forum as other countries having civilised forms of law and legal systems. We ourselves know and only this morning we read how one of our officers was kidnapped from the Indian soil and is being tried by a military court.

SHRI P. N. SAPRU (Uttar Pradesh): He is not a military officer of the Pakistan Government. How can an Indian citizen be tried by a court martial?

SHK: A. K. SEN: I have no doubt that if it was an independent court of law, as our courts are, even if anyone kidnapped a man from Pakistan, our courts would have functioned with the traditions with which they are functioning. They would have condemned those who would have kidnapped the officers of other Governments and brought them to justice here, because our courts are not afraid to call to book the highest of authorities in the State, and that has been the tradition of our judiciary and we are proud of it. We are anxious that this system continues for all times to come because it not only gives fairplay and justice to all our citizens but gives an atmosphere of fairplay and justice to every foreigner on the soil of India so that none is condemned without the strictest proof required by our law and by an adjudication of persons trained in the art of adjudication and observing that independence and impartiality which we associate with our judges. Unfortunately, as I was referring to this unfortunate case, an officer was kidnapped from our soil, charged before the military tribunal and we hear that the trial is proceeding in camera and even his request for an adjournment, which is most reasonable, is not granted.

SHRI P. N. SAPRU: Even an Indian counsel will not be allowed.

SHRI A. K. SEN: If this is the system of trial and justice our neighbour is going to follow, it is not necessary for us merely to condemn. I have no doubt that the whole world will condemn them and those who have seen a better system of law at least being followed for a few years in Pakistan since independence there, would be shocked to find this state of affairs having taken place and all that we can do is to express quite firmly that this House at least will not countenance any law which gives the same recognition to this barbarous system of trial and justice which Pakistan seems to follow. Therefore, it is not necessary for this House to

repeat how concerned the country is and our Parliament is about the system of law that prevails today in the neighbouring country of Pakistan and which sometimes even affects our own citizens and we shall certainly take the utmost of care to see that they do not get the same floor or the same forum as other respectable legal systems.

Now with regard to the other points raised, I do not think it is necessary really to go into the details because all those points would be discussed in the Select Committee and I do not want to indicate either in one way or the other on behalf of the Government what we think would be proper in the circumstances because, as I said, on such a measure like this, the mind of no one should be closed, and that is the reason why, when a demand was made for a further and better consideration of this measure, I readily agreed to the setting up of a Joint Select Committee and I think it will be better if the Government do not express its own mind before the Select Committee goes into these matters in detail.

I need only say that much of the apprehension expressed on the floor of this House possibly would not be sustained if there is a closer perusal of the provisions of the Bill and much of the criticism regarding the artificial division between the Commonwealth countries and the non-Commonwealth countries would also be removed if we bear in mind that only those countries will be given the facilities as give the same facilities to us. Therefore it is a question of reciprocities which have, as I said, due to historical reasons, grown between countries within the Commonwealth.

SHRI BHUPESH GUPTA (West Bengal): What is that history that we must have similar reciprocal arrangements between ourselves and Australia?

SHRI A. K. SEN: The history of having the same Sovereign legally.

[Shri A. K. Sen.] We cannot brush aside that history however shameful it is, the history of this country being ruled for nearly 200 years by what is known as the British Empire, at the head of which was the British Crown.

SHRI BHUPESH GUPTA: We flourish on that history.

SHRI A. K. SEN: I do not think it follows. Does it?

SHRI BHUPESH GUPTA: You have forgotten at least the nightmares.

SHRI A. K. SEN: It is necessary to remember history occasionally as we remember it when we talk of national integration, because if there is national disintegration, then that history becomes purposeless. Therefore, occasionally a reminder even of the shameful part of our history is necessary in order to make us wiser

SHRI BHUPESH GUPTA: Not by embracing and hugging.

SHRI A. K. SEN: The hon. Member and we will never see eye to eye with regard to certain things.

SHRI BHUPESH GUPTA: It is quite clear

SHRI A. K. SEN: I think this country has reached a stage when it can rid itself of inferiority complex and treat itself as equal and share in certain common things which we accept on the basis of voluntary agreement

SHRI BHUPESH GUPTA: That we saw when the British Queen came, in the hon. Minister's circle.

SHRI AKBAR ALI KHAN: He is allergic to Britain.

SHRI BHUPESH GUPTA: I did not go anywhere near.

SHRI A. K. SEN: I think it is better not to discuss the Heads of States

1 SHRI BHUPESH GUPTA: Better not.

SHRI A. K. SEN: ... as our Head of the State should not be discussed. Whatever feelings we have for the Heads of the States of other countries, we should not really discuss them here.

These are my submissions and I therefore once again commend this motion for the acceptance of the House. There is only one alteration which I propose to the motion which I move. Mr. Lingam, whose name was originally included in the motion as one of the Members of the Bajya Sabha to the Joint Select Committee, is unfortunately away and he will be away for some time to the U.N. In place of his name, I propose the name of Shri Govinda Reddy to be in the Committee.

MR. DEPUTY CHAIRMAN: I will put the motion as amended. The question is:

"That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill to consolidate and amend the law relating to the extradition of fugitive criminals and resolves that the following members of the Rajya Sabha be nominated to serve on the said Joint Committee:—

1. Shri Akhtar Husain
2. Shri Suresh J. Desai
3. Shri M. Govinda Reddy
4. Dr. A. Sabha Rao
5. Shri K. K. Shah
6. Shri Vijay Singh
7. Shrimati Lakshmi N. Menon."

The motion was adopted.