MR. DEPUTY CHAIRMAN: The House stands adjourned till 3 P.M.

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

The House reassembled after lunch at three of the clock, MR. DEPUTY CHAIRMAN in the Chair.

THE DADRA AND NAGAR HAVELI BILL, 1961

THE MINISTER OF LAW (SHRI A. K. SEN): Mr. Deputy Chairman, on behalf of the Prime Minister, I beg to move:

"That the Bill to make provision fop the representation of the Union territory of Dadra and Nagar Haveli in Parliament and for the administration of that Union territory and for matters connected therewith, as passed by the Lok Sabha, be taken into consideration."

Sir, this follows logically fiom what the Parliament did by amending the Constitution and incorporating formally the territory of Dadra and Nagar Haveli and the present Bill seeks to provide for the administration of this territory preserving as much of the old set-up which prevailed in this territory immediately before integration with the Indian Union as is possible under the altered circumstances. The House will recall that there was an Administrator who helped to administer this territory with the aid and advice of the Varishta Panchayat. The Varishta Panchayat and the Administrator have done exceedingly well in administering this territory so much so that this House was unanimous in congratulating the old administration on the manner in which they carried on their duties. Tt is therefore proposed to preserve the Varishta Panchayat and the Administrator. Clause 4 of the Bill provides for the Varishta Panchayat dealing with matters of administration involving general policy and schemes of development and any other matter which may be referred to it by the Administrator. Sub-clause (2) provides that the functions of the Varishta Panchayat will be advisory. It is necessary to explain what is meant by advisory function because when this Bill was before the other House many speakers apprehended that this might convert the Administrator into a sort of an autocrat and might enable him legally to disregard and ignore the advice of the Varishta Panchayat. Some also characterised it as having the effect of conferring a sort of inferior status to the Varishta Panchayat. I would like to repeat today what I said in the other House in answer to these two points. I pointed out article 74 of the Constitution to the other House which makes the Council of Ministers of the President in the Union also advisory. The function of the Council of Ministers is only to aid and advise the President and yet nobody ever can suggest that that function is either inferior or is impotent or that normally the President can ignore that advice under the constitutional provisions under which he acts. It is not proposed, therefore, while giving the same status to tha Varishta Panchayat, to allow the Administrator to act in matters of general policy and administration as an autocrat ignoring the advice which may be given by the Varishta Panchayat. On the contrary it is expected that the same convention will be allowed to develop there as in the other States and the Centre, namely, that the Administrator would be bound by the advice given by the Varishta Panchayat.

Then *e have provided for the judicial and other authorities which have been functioning in Dadra and Nagar Haveli before integration to continue and for the existing laws which prevail there also to continue and we have also provided for extending any law in force in other States to Dadra and Nagar Haveli with such modifications as may be necessary in order to carry out the purposes of this Act. This is, therefore, the provision for the administrative set-up and with these words I would commend the motion for the acceptance of this House.

SHRI J. S. BISHT (Uttar Pradesh): I just want one point to be clarified. In clause 11 it has been said that the jurisdiction of the High Court at Bombay shall extend to Dadra and Nagar Haveli but I believe that these two enclaves are within the Gujarat State area geographically.

SHRI A. K. SEN: The High Court of Bombay was fixed solely from the point of view of administrative con venience and the convenience of the people there. As is known to this House, all these provisions were pre pared and the Bill was introduced after close consultation with the Varishta Panchayat and the members thereof. An objection was taken in the other House as to why the Bombay High Court should have been chosen and not the Gujarat High Court. So far as we are concerned and so far as the House is concerned, every High Court is the same and we are equally jealous in preserving the dignity and status of every High Court, equally. If we have chosen the High Court of Bombay it is not because one is better than the other or one more worthy than the other, but because administratively and from other points of view this is a more convenient court foi these people to approach than any other High Court. Ami as I have said, the people of these areas have not raised any point on this and it is, therefore, best to leave it to them and leave it to the Bombay High Court which from the point of view of these people is the most convenient forum for them to approach.

The question was proposed.

SHRI SURESH J. DESAI (Gujarat): Mr. Deputy Chairman, Sir, I wholeheartedly welcome the Dadra and Nagar Haveli Bill which is before this House. This Bill is consequential to the Constitution (Tenth Amendment) Bill which we adopted the other day and it seeks to make the necessary arrangements for implementing the stitution (Tenth Amendment) Act wiiich incorporated the territories of Dadra and Nagar Haveli into the Indian Union. The arrangements which this Bill seeks to make are more or less temporary or provisional till more permanent arrangements are made and we have to view this Bill from that angle that this may be changed some day later on when more permanent arrangements will be made and the territory of Dadra and Nagar Haveli will be linked up with any adjoining State.

Coming to the provisions of the Bill, Sir, I would first refer to clause 4(2). This clause provides that:—

> "The functions of the Varishta Panchayat referred to in this section will be advisory only but due regard shall be given to such advice by the Administrator in reaching decisions on the matter in relation to which the advice is given."

I wish that more powers should have been given to the Varishta Panchayat. The Varishta Panchayat so far was the supreme body in the territory of Dadra and Nagar Haveli. The Varishta Panchayat has been doing very good work also. In fact, in a small territory like this, with only about 50,000 inhabitants, the Varishta Panchayat has even got a five-year plan. Their five-year plan would cost about Rs. 80 to Rs. 85 lakhs. They have levied their own cess, taxes and fees and have got a surplus budget also. The laws which were prevalent when the Portuguese authorities were in power, some of them, were repugnant to our Constitution, to civil liberties, to our conception of democratic liberties. Thev have amended some of these laws. And they have administered their territory well with a surplus budget. So, on the whole we can say that all these seven years the Varishta Panchayat has been really doing very good work. Now, when the Varishta Panchayat is made into merely an advisory body, the whole position is completely reversed. Now, it is the Administrator

[Shri Suresh J. Desai.] who is in charge of everything. The Varishta Panchayat has mereiy to give advice. Their advice may be accepted or their advice may be rejected. Now, when we are giving in the Indian Union so much power to our municipalities, so much power to our panchayats, a body like the Varishta Panchayat, which has been doing such really good work, should have been given some more powers. I wish a provision had been incorporated in this Bill providing that il the Varishta Panchayat, by a two-thirds majority passes a scheme of development—of course within the resources of the territory—the Administrator should accept it. The provision in the Bill, as embodied in clause 4(2j puts the Varishta Panchayat in a very embarrassing position. They may want to do something, but the Administrator may not like it. If there is harmony between the Administrator and the Varishta Panchayat, so far sc good. But occasions may arise when the Varishta Panchayat and the Administrator may not see eye to eye. In that case, the Varishta Panchayat will be put in a very embarrassing position. Now, Sir, We want to attract people in Goa, people in Diu and in Daman to come to India. In fact, it is not as if we are incorporating this territory into the Indian Union, The people of Dadra and Nagax Haveli, as mentioned in the Statement of Objects and Reasons, out of their free will are coming to us. They want their territory to be incorporated into the Indian Union. Now, at this juncture when we want to attract the people of Diu, Daman and Goa, if we had given more powers to the Varishta Panchayat, it would have been desirable. I do not say that powers of legislation and all that should be given, but such powers as we always entrust to municipalities and panchayats should have been given to the Varishta Panchayat, The Varishta Panchayat, under this clause, merely becomes an advisory body, whose advice may be rejected or accepted at the pleasure of the Administrator. That is not a very c'esirable provision.

Then, Sir, coming to clauses 8 and 9, clause 8 says:—

"Save as otherwise provided in this Act all laws in force in Free Dadra and Nagar Haveli immediately before the appointed day shall continue to be in force until repealed or amended by Parliament or other competent authority."

Clause 9 says:—

"All taxes, duties, cesses or fees which, immediately before the appointed day, were being lawfully levied in Free Dadra and Nagar Haveli or any part thereof shall continue to be levied and to be applied to the same purposes, until other provision is made by Parliament or other competent authority."

The Bill does not define the competent authority. The competent authority should have been defined in the Bill. For instance, there are two other provisions also. Clause 10 says: —

"The Central Government may, by notification in the Official Gazeite, extend with such restrictions 0: modifications as it thinks fit, to Dadra and Nagar Haveli any enactment which is in force in a State at the date of the notification."

This is merely a provision for extension of Indian statutes to the territory of Dadra and Nagar Haveli. It does not mean that the Central Government will have any power of repealing or amending existing laws in force in Dadra and Nagar Haveli.

Then, clause 13 (1) says:—

"If any difficulty arises in giving effect to the provisions of this Act or in connection with the administration of Dadra and Nagar Haveli, the Central Government may, by order, make such further provision as appears to it to be necessary or expedient for removing the difficulty."

This is only for removing any difficulty. It does not exactly confer on the Central Government any power to repeal or amend any law prevalent at present in Dadra and Nagar Haveii. I will again refer t_0 th_e question of competent authority and the definition of that. Let me first deal with clause 11. Now, clause 11 says:—

"As from such date as the Central Government may, by notification in the Official Gazette, specify the jurisdiction of the High Court at Bombay shall extend to Dadra and Nagar Haveli."

As far as extending the jurisdiction of the High Court of Bombay to Dadra and Nagar Haveli is concerned, the Prime Minister in the other House mentioned that it was a matter of convenience only because one could reach the Bombay High Court more conveniently. The $Prim_e$ Minister also assured the other House that as far as -the ultimate question of linking Dadra and Nagar Haveli with any adjoining State is concerned, this provision did not prejudice that question at all. That will be decided later on. So, after the assurance which the Prime Minister has given I do not want to dwell further on this point whether this High Court should have jurisdiction or that High Court should have jurisdiction because after all to my mind, it should be left to the people of Dadra and Nagar Haveli whether they want to go to Gujarat or whether they want to go to Maharashtra. It should be left to them. At this happy juncture, when so many people from Dadra and Nagar Haveli are willingly coming forward to be incorporated into the Indian Union, to indulge in a linguistic controversy that this territory belongs to Gujarat or to Maharashtra, or that the spoken language is this or that, is not proper. I think to raise a controversy at this happy juncture will not only be in-snnropriate, but it will be out of good form. There have been Press comments s- to why the jurisdiction of the Bombav High Court has been extended to Dadra and Nagar Haveli. There have been comments both [5]n the Gujarati Press and in the Marathi Press. After all the Press people can comment like that. But in this House to raise such a controversy at this hour when Diu, Daman and Goa are still awaiting incorporation into the Indian Union, will not be, to my mind, quite appropriate. Moreover, what will the people of Goa, Diu or Daman think? The small territory of Dadra and Nagar Haveli is being incorporated into the Indian Union and Maharashtra and Gujarat are quarrelling. One wants to incorporate this territory in Maharashtra and the other wants to incorporate it in Gujarat. It will'look very unseemly also to the people of Diu, Daman and Goa if we indulge in any such controversy. So, not only I want to keep out that question, but the other speakers who follow me also, I may suggest, should keep out that question, because that will not be in good form. But this provision raises another question, namely, the question of the jurisdiction of ihe Bombay High Court or any High Court being extended to Dadra and Nagar Haveli. Now, the existing laws there may not provide for any appeal. There are some laws there. Thay have been administering these laws for seven years. These laws may not be providing for any appeal to any High Court, because that territory has been more or less independent or independently administered. So, if they do not provide for any appeal, then these laws will have to be repealed or amended to mak" a provision that an appeal will lie with a particular High Court or so. Now, who will repeal or amend those provisions? It is provid-ed, as I pointed out, in clause 8 that it will be Parliament or any competent authority. But th_e competent authority is not defined. Then the position will perhaps arise that for every small thing, whether a cess is levied or whether a tax is levied and if there is need for a_n appeal, there might not be any provision for appeal. We may desire that provision for appeal should be incorporated. But if every such provision will have to com_e to Parliament, that will be also a cumbersome process. I wish a provision should have been made here and the

[Shri Suresh J. Desai.] competent authority should have been denned in this Bill. The Law Minis try can look into all their laws and see whether the appeal is provided for or not, and wherever the appeal is not provided and if we feel that it is desirable to make a provision for appeal to the High Court, then the President can be empowered to make it by Ordinance. But that does not come about in the Bill as it stands at present. The Bill seems to have been rather hurriedly drafted. In the Bill as it is both in clause 8 and in clause 9 it is mentioned that Parliament or any competent authority may do so, and there is no other competent authority except Parliament which can make, repeal or amend legislation in the Union Territory. It should after all be the Parliament, but if Parlia-ment is not to be bothered with all these cumbersome pieces of legislation, then the competent authority should have been defined or the President should have been empowered. That is my point.

Then, I come to clause 12. It provides:

> "For the purpose of facilitating the application of any law in Dadra and Nagar Haveli, any court or other authority may construe any such law with such alterations not affecting the substance, as may be neces sary or proper to adapt it to tne matter before the court or other authority."

This is really a very queer provision. It is one of the fundamental principles of our judicial system that the courts only interpret the law and apply the law. In no part of the country the courts have any power to alter or change any law or to construe any law. It is one of the fundamental principles of our judicial system. Our judiciary has been doing very good work and I would like to pay a compliment to our judiciary. They are Independent, intelligent and impartial, and are really doing good work. So I many precedents are being laid down. The courts interpret the law and then the precedents are laid down. The law has a growth. In this system of our judiciary, to introduce a new principle—because the Bill may have been hurriedly drafted, because we might not have any other remedy just now, that is a different matter—but still to incorporate, to bring into our judicial system a principle that the judiciary may construe with alteration any law is not a desirable thing. I am strongly opposed to that.

Then, Sir, coming to the general side of the question, we are certainty glad and we congratulate the people of Dadra and Nagar Haveli for the de cision they have taken and for the valiant fight they have given against Portuguese colonialism, and this is really a happy moment when we pass this Bill and incorporate the territory of Dadra and Nagar Haveli in the Indian Union. At the same time, Sir, let us not forget that there are more Portuguese enclaves, Goa, Diu and Daman, in our country. The other day when we were discussing the Constitu tion (Tenth Amendment) Bill, the Prime Minister was good enough to clarify the policy of the Government on the question of Goa. He said, and I welcome his statement, that,he did not completely rule out military inter vention. At the same time I do ap preciate the difficulty which the Prime Minister pointed out that we should not resort to any precipitate action in the present tense inter national situation. I also appreciate that—after all there are enclaves not only in our country but in several other countries. There is Gibralter, there is Aden, there is Macao, and there are enclaves in several other countries also. Perhaps we should not take any action which would set a precedent in the present tense inter national situation of resorting to force in settling the question of these enclaves. I also ap preciate that it is only a ques tion of time. After all within a few years this question is bound to be settled whether the Portuguese authorities are willing or not. We have only to wait for a few years. I certainly appreciate the position in the statement which the Prime Minister made when we were discussing tne Constitution (Tenth Amendment) Bill. At the same time, Sir, I would also like to draw the attention of the hon. Law Minister, and through him of the Prime Minister, to the fact that there is a human question, that there is a human aspect of the question also. There are so many people in Daman, Diu and Goa—and I have visited these territories' also—who are all our kith and kin—our own people They are not aliens, they are our own people who are there in Goa, Diu and Daman. We find that they are subjfcled to atrocities—of course, the atiou'.ti^s ?rc not as barbarous as the atrocilies in Angola where more than 50,000 people have been massacred. They might not be so much, but they are subjected to atrocities, subjected to a sort of barbarous and inhuman treatment, the people in Goa, Daman and Diu. We know that these are very smal[1] territories and if we want to resort to military action, we can take them in one day. But when we know this and find that our kith and kin are being subjected to oppression and that the 'Portuguese colonialists are not only g'oating ever this oppression but are proud of it, it is an affront to our sense ci seF-r-JS-pect and it also hurts our national conscience. So I wish that ttu- Prime Minister would pay more urgent attention to the question of ill-treatment of our kith and kin, our bretheren, in these three Portuguese enclaves and would take early steps to solve the problem as best as he can.

SHRI K. SANTHANAM (Madras): Mr. Deputy Chairman, over the general purpose and princip^ underlying the Bill I do not think there will be any difference of opinion. I certainly endorse the idea that the people of Dadra and Nagar Haveli should be allowed to rule themselves a- far a? possible, but, I think, there are some points relating to this Bill which deserve more careful consideration. Let us take, for instance, the question ot representation of Dadra and Nagar Haveli. It is said that there shail be allotted one seat for the Union Territory of Dadvn and Nagar Haveli in the House of the People. Now. Sir, the House of *he People is built on two fundamentii principles. One is that it should be by direct election, and the second is that representation should be in proportion to population. Of course, I know there have been one or two exceptions, but if we go on adding to these exceptions and if every territory or small enclave which comes over to India is to Le represented by a nominated Member, then the character of the House of the People is likely to be altered. I think that is not desirable. But then I agree that the people of Dadra and Nagar Haveli should also have their representation. The simplest way would have been to add this territory for purposes of election to the House of the People to the nearest district. It will give them as much right of representation as is given to the other citizens of India. If temporarily a further representation was needed, it is open to the President, who has got the power of nomination of twelve seats to the Rajya Sabha, to select one person from this area and send him to the Rajya Sabha. Otherwise we are creating vested interests which are likely to be harmful to the country in the long run. And once this is done, if at any time in future this territory is to be incorporated into the neighbouring territory, then this right of representation will be lost and so there will be a great resistance to any kind of amalgamation. I do not think that this is a desirable precedent. It Tiot only comes in the way of the general structure of the House of the People but to bring in more and more nominated elements into the House of the People will destroy its fundamental character. Of course, there may be only one seat today, but tomorrow there will be Karaikkal, Pondicherry, Daman, Goa ....

SHRI LALJI PENDSE (Maharashtra): At the most it will be five.

SHRI K. SANTHANAM: It is wrong even then. I took part in the deliberations of the Constituent Assembly, and we were anxious that no nominated element should enter there and even to the extent the nominated element was allowed, there was the provision that it should be dropped as soon as possible. Therefore, my objection is on principle. I do not object to Dadra and Nagar Haveli having any kind of representation but we should not give any such representation at the expense of the fundamental principles of our Constitution.

Then again, I do not agree with my friend, Mr. Desai, about the advisory capacity of the Varishta Panchayat. What the Law Minister said is quite correct—it is the only correct form—and I do not think that when the provision is in this form, the administrator will lightly go against the wishes of the Varishta Panchayat. It is almost the provision made for administering a particular State. To that extent, it is satisfactory. But 1 do not know what exactly is tho Varishta Panchayat. Is it a legislative body or is it only an executive body? Has it got the right to make laws itself? I suppose hitherto during the interregnum when this area was neither a Portuguese territory nor an Indian territory, it was a sovereign body; it had full rights to make laws for itself, to levy taxes and to alter the existing laws. It had all such powers. Does it continue to have all such powers? It is not clear here. It is only said in clauses 8 and 9 that the existing laws will continue in force and that the existing taxes will be continued. Now, can this Varishta Panchayat alter any tax which exists today? Before integration it had the power to vary the laws because there was no authority to prevent it from doing so. But what is its position? Can it levy a new tax now' The position ought to be madp clear otherwise there will be much confusion. If for any change in the land revenue or anything only Parliament has got the power, it will be a very anomalous position. And it is not said here that that power is being taken away. So the position is left in a very obscure or rather anomalous fashion.

Then there is a provision in the last clause about the manner in which casual vacancies in the Varishta Panchayat ma$_v$ be filled. That is, there is no power for the Administrator to dissolve the Varishta Panchayat and constitute it by a general election. We do not know how long this transitional constitution will continue. It is right and necessary that at the end of three or five years or whatever the period may be, their should be the power of dissolution and general re-election. Sir, I remember the anomalous position in which the old Constituent Assembly was left. There was no power to dissolve it, and we were all anxious that it should not perpetuate itself as the Pakistan Constituent Assembly did, when it prepetuated itself. And so here, unless the Law Minister thinks that he is going to bring in an amending Bill, soon, the position of the Varishta Panchayat will be a sort of perpetual body. I do-not think it is intended to be a perpetual body. Therefore, the powers, whether it is a legislative body or only an executive body, should be defined. If it is a legislative body, the limits of its legislative power also should be laid down and so far as taxation is concerned, its power of taxation also should be defined. Unless it is done, there will be a great deal of confusion.

I shall now come to clause 8. What exactly are the laws in force there? As I said, there has been an interregnum between the Portuguese rule and the Indian rule. Between the two, what was the juridical position? Probably, it was something of a vacuum and the laws in force may technically mean the entire body of Portuguese laws. The

Portuguese Government hithereto claimed to pass laws for these areas also and all the laws of Portugal may technically be applicable there. I do not know the position. I want the Law Minister to clarify the position whether the laws in force which are applicable to Goa and Daman and which were originally applicable to Dadra and Nagar Haveli, will be applicable now also. Therefore, especially when it goes to a court like the Bombay High Court, they will have to interpret this according to the normal rules of jurisprudence. I won't be surprised if they rule that all the laws which were applicable in Goa should also be apphcable here unless amended by Parliament.

My friend pointed out that there is no definition of the competent authority. I think that under the present circumstances, unless something, is said, the Varishta Panchayat will be the competent authority because it has not been deprived of such legislative powers as it had during the transition.

Then speaking about taxes, duties and cess, what happens to income tax or excise duty? Presumably, the income-taxes and the excise duties applicable to the rest of India will be applicable to this area also. Probably, there is already an income-tax which has come down from the Portuguese rule. I do not know whether the two taxes will co-exist together. I have no idea of the position. I think that it is something which has to be examined and I suppose the Law Minister will be able to give us some idea about the position there.

Coming to clause 12, I cannot see how a learned lawyer like our Law Minister should have allowed it to' be drafted like this—"any court or other authority may construe any such law with such alterations" without affecting the substance. How can any court in India be authorised to make any alteration. whether it is in substance or otherwise of any law? I can understand the Administrator being empowered or some other executive authority being empowered to adopt laws or to alter laws but you ask any court to do this—in fact, all courts in India as it were, because if there is a case, it may come up before any court in India. To authorise any court of India to make alterations in any law and then interpret it accordingly is, I think, probably the first instance of such a power being given in any legislation so far as I am aware. I do not know if it is intended to be so. I think that it is a wrong provision that has been made. I do not know if the Law Minister will be prepared to amend it and again go through the process in the other House. But I think that he must take the earliest opportunity to get rid of this obnoxious provision.

Again, Sir, the Centra] Government has taken power to make rules in regard to "any other matter which has to be, or may be prescribed". We have got that saving clause and I hope many of the things which have been mentioned by me and which may be mentioned by other speakers will be dealt with under this clause. Therefore, with these observations I support this'Bill.

Thank you, Sir.

SHRI LALJI PENDSE: Mr. Deputy Chairman, Sir, I hasten to reciprocate the good feelings of my worthy friend here in not raising any contentious issue or not touching upon anything that would tend to suggest the ultimate destination of these newly freed and integrated parts of our country. To that extent I agree with his sentiments and respect them. The other part of his pleading that in the present context of the world situation we should not precipitate the action of freeing other territories but wait for that time to come, I do not agree with, and I will advance my reasons.

SHRI SURESH J. DESAI: That was not my contention. On the other hand, I appreciated the statement of the Prime Minister. But I suggested something more.

SHRI LALJI PENDSE: The Prime Minister said something more also, bul if that is not your contention, I am satisfied.

Now it is good I am not a lawyer, neither a constitutionalist, to go into these sections one by one. That the experts here will look into. But I dc feel that this nomination business is not very satisfactory for this reason that, as the practice goes, it is the ruling party which advises the President to nominate a person, and that person is nominated. It is conceivable that such a person, as often happens, may not °e truly representing the feelings and the sentiments of the areas proper, but then I have my own doubts about the suggestion of tha other friend here that for purposes of election, rather than nomination being resorted to, these areas which have a small population should be joined with some other areas for the delimitation purpose. Now unfortunately, in the present set-up, such a thing gets immediately an exterior colour, and we had the sad experiment with regard to the Dangs. We tossed about that small pocket every now and then. The Congress Working Committee examined it, a Select Committee of Parliament sat on that issue and tribunate were set up, all to see whether to join it with the Gujarat area or the Maharashtra area. And ultimately it was joined with the Maharashtra area. So if this suggestion were to be taken up immediately, the question that we want to postpone at present, namely, the linguistic affinity, would crop up, and that is a great danger.

Now, Sir, as far as this Bill goes, I have no doubt that it will have 'he full support of this House; it is in consequence of the earlier Bill that ve passed for integrating these areas into the great family of the Indian Union. I Now having got them back home, by this Bill we are bestowing upon them I the right to representation. I am not at the moment concerned with the nature of the representation but with the right of representation to these people, and by conceding it, we will have placed them on an equal footing on an equal status, under the Constitution. It is needless to go into past history, as to how these small pockets were ceded to the Portuguese 150 years or so ago. Of great consequence is the present fact that the people, unaided though by the power surrounding them, rose in revolt and liberated themselves. This fact is of more importance and to be reckoned with. They freed themselves seven years ago and tried for being admitted to the Indian Union. They were kept waiting in the cold for seven long years. The gates ultimately opered on the 11th day of this month, and they are back in the paternal fold of *ine* Indian Union.

We are certainly happy, S?r, that a delegation of the representatives of the Varishta Panchayat were enabled to be present in the capital and in the other House when the Bill seeking to integrate Dadra and Nagar HaveK was gone through. I wish that the other principal actors in the drama were also included in the delegation. Mr. Desai, the leader of that delegation, must have felt the poorer because of the absence of his colleagues who took the principal burden upon them to liberate these areas, Mr. Kajrekar, Mr. Karambelkar, Mr. Lawande and their heroic comrade of the Azad Gomantak Dal, Mr. Naravne, who compiled the 14-language dictionary and it was recently presented to the Prime Minister, who appreciated it very much, and I understand the Education Ministry has lent him a helping hand. It is our good fortune that that man—I know what he did there--was spared to complete such useful work. I do not know how these people *cov*ld have been ignored. The Finance Minister, who was the Chief Minister of the composite Bombay then, could not have forgotten all of them. There are reasons for him to remember some of them, and yet they were ignored. I want lo tell you, Sir, that they feel slighted because they bore the brunt. And they are ignored within the small space of these ?even years.

Now, Sir, I am happy that there could not be any opposition either to the merger or to providing measures in the manner the Bill seeks But I was sorry, Sir, that friends :n Gujarat should have indulged in some rccKkss thinking. A representation was made through the Chief Minister of Gujarat. Reference was made by the friend here and resentment was expressed about the extension of the jurisdiction of the Bombay High Court to this area, and demand was made for ii's transfer to the Ahmedabad High Court. It was also contended that since these areas belonged to Gujarat, their proper destination, and jurisdiction over tnem were in Gujarat. The Chief Minuter was wiser than those wl *n* made the representation. He said *thtt* meaning did not necessarily follow from a single fact that the jurisd'etion of the Bombay High Court was extended to this area, and r,e tried to shut out that matter. I pleaded with those friends to keep their lips tight for a while and see that the newly freed areas are stabilised to an extent. Of :curse, when these ar^as were sought Jo be placed under the Centre, it was not the ultimate destination that this Government or th; framers of tho Bill had in mind. Something will have to be done, and when that 'Jiing hed to be done, that would be the picper moment to consider th^ various aspects as to which part would go to this part and which would go to the other part, and so on and so forth, but net outside India at any rate. For fbc information of the House and for those who have started clamouring for it out of tune, to our great regret, according to the Portuguese Ce.uur Report, 95 per cent, of the Nagar Haveli population was Marptbi-speaking and the combine of the five villages, according to the leader of the delegation, comprises only 2,000 Gujarati-speaking people. But I do not want to go into it and I wish that nobody goes into it at the moment. The main pemt is not so much the finding of the ultimate destination for this area or that area. Ultimately the people are powerful enough to find their own destination. I trust them. 3ut th^ *mi>hi* thing is the stern warning, namely, tn<2 existence of three foreign pockets still which are shouting for liberation. Daman, which is hardly three miles from the area which has been freed is still under the Portuguese hands, Goa is about 300 miles away and Diu perhaps an equal distance. They are still held by the Portuguese and they have to be freed. W'ler it is going to ccrne about—I should like to know. We cannot wait for the time to come of own accord because nothing happens by itself unless it is given a jfrrk. After the sentiments expressed by the Prime Minister in connection with the Constitution (Tenth Amendment) Bill, where he did not rule out the possibilities of other measures, I would try to impress upon him, through the Law Minister who is preieiiting the Bii' before us, not to creat*' impediments in the ways of those who might seek to follow in the footsteps of the Dadra and Nagar Haveli people who, through their own initiative, freed themselves. Though the Indian Umon with all its might and power, was there surrounding them, we did not rire so mum as to give them anv help and allowed the people to do it by themselves.

But then ther^ was some experiment about Goa. Three or four years ago, to our utter disappointment, our Government intervened and did not allow the volunteers to go the-e The Government did not allow any help to bp given to the fighters who were facing bullets and taking even worse. I suppose that will not do henceforth and that policy must change. If we bold fast to the policv of non-alignment 01 non-commitment, then we have no moral right to be jubilant over the integration of Dadra and Nagar Haveli. We have no right to reap the fruits of the labour of other people. We have to be a common partner to reap the fruits jointly.

[Shri Lalji Pendse.]

Sir, so far as this Bill ia concerned, the Varishta Panchayat has come in for some discussion. I would suggest its re-election in the manner it is done in India. I do not want to sound any discordant note, but I would tell you this much that it is far from satisfactory in spite? *of the* flattering remarks made about it. If you see the composition of it as I gave you 2,000 of the Gujarati-spjakir-g population on the one hand and 50.000 of the Marathi-speaking population on the other, the Varishta Panchayat :'s hardly a representative organisation of the two communities. Could you imagine that fantasy in the presunl context of Indian politics, a majority preferring to elect members of the minority belonging to other languages? There have been Assaras and there have been Pun jabs to prove it to the contrary.

SHRI P. D.' HIMATSINGKA (West Bengal): This shows their generosity.

SHRI LALJI PENDSE: You extend that generosity in your own State. It is all good to say that but I know that for nothing you would light in the most wretched manner. People have been doing that all over India. Therefore, the picture itself is fantastic. I am not casting any aspersion but my contention is that now that the Constitution has been extended to that area . . .

SHRI A. K. SEN: Mr. Himatsingka has been elected by the majority community.

SHRI LALJI PENDSE: I would come to that also, if you like. There can be snags in the manner and method ....

SHRI SURESH J. DESAI: May I point out to the House, when my hon. friend, Mr. Pendse, is giving all these figures, that the figures given by him are according to ihs Portuguese census, which was nothing but false, which was a census carried out by the Portuguese authorities, not by Indian authorities, and that these figures are all trumped up? i did not want to refer to all this, but now 1hat he has raised this controversy, let me inform the House t.iat all the figures which the hon. Member is quoting are absolutely fajse.

SHRI A. K. SEN: May I only appeal through you that on this solemn occasion let us not mar our proceedings by these unfortunate facets?

SHRI LALJI PENDSE: I was only asking about the justification . . .

MR. DEPUTY CHAIRMAN: Please avoid these controversial remarks.

SHRI LALJI PENDSE: I will not go into that. I was giving an argument in favour of my contention il at the Panchayat should bo re-elected on the basis on which elections in this part of India an> held. That was my point.

MR. DEPUTY CHAIRMAN: You may drop it now.

SHRI LALJI PENDSE: I do not think you would resent my making that suggestion. That was my point and in justification of the point I gave certain figures. Now, this is wholly untrue. I would respect your feelings and would not go into it. Bui; I had a mind to remind my hon. friend of their own doings fifteen months back. He is clever enough to follow what I mean.

With these remarks I support the Bill and I am nappy that though late it has come about.

SHRI GOPIKRISHNA VIJAIVARGIYA (Madhya Pradesh): Mr. Deputy Chairman, Sir, I stand to support the Bill presented by our Law Minister, the Dadra and Nagar Haveli Bill. After having passed the Constitution (Tenth Amendment) Bill incorporating ihlo area in our Union, it i_s but a natural corollary that we should pass this Bill also which provides for the administration and other things for this area. The first Bill received unanimous support from all parties in the House, and though there might be certain reservations, still I think that all parties are going to support the Bill. Therefore, ir, is a Bill unanimous in its character.

Sir, there is no doubt that fie people of this area were wave., They rose and revolted against the Portuguese authority. The i .vcumstance and the geography also helped them and thus they became a free area. Having remained neither in Portugal nor in India for -en long years they are now being incorporated in our territory. We are all happy about this. I think the other affairs, linguistic and others, need not be raised at this time. They shall all receive due consideration and will be solved in proper ways when they aiise. The provisions in this are according to facilities. The Bombay High Court Jurisdiction is extended to it. That is also, as the Law Minister said, according to the facilities for these people. In the Parliament there shall be one Member. At present he will be a nominated one. but I think much time will not pass when we shall provide by some other amendment that there be a duly elected Member from this area.

4 P.M.

Regarding the status- of the Vari-shta Panchayat, very many Members have spoken. Really that was the supreme body in that area and it must be given some, good status and it jnust receive appreciation. If, as the Law Minister says the word 'advisory' is not bad—after all the State Cabinets and the Central Cabinet are also advisory bodies—I shall not object to it but in fact, the Varishta Parishad is the popular body and the most supreme body. It has been there. So I think there will not be any conflict between the Administrator and the Varishta Parishad a^d due regard will be had for the advice given by that Varishta Parishad. I fully support this Bill. I may add that it is quite possible that Portugal may fly over our territory and create difficulties. They may try to go to Dadra and Nagar Haveli or enter this area through some waterway?. Some creeks etc. are there. So our Government must take some extraordinary precautions and guard all the routes very well so that in this area, the people may not have any tiouble and Portugal may not create any trouble for us.

There are the other areas, namely, Goa, Diu and Daman. About them we have had enough discussion on the Constitution (Tenth Amendment) Bill as well as during the Foreign Affairs Debate. I think that need not be debated here. There are problems and some time will be taken before-all these enclaves can come into India but at present we are happy that this Bill is coming. It is before us and we are providing for the management and administration of this area. I support this Bill.

SHRI M. S. GURUPADA SWAMY (Mysore): Mr. Deputy Chairman, Sir, it is customary and natural to welcome a Bill of this nature, .a Bill which seeks to bring about a reunion of people and territory separated for centuries and generations. Naturally, the House will have nothing but to lend its unanimous support to such a Bill. While doing this, the Government has taken a right attitude and has been able to, at least after 7 years, to bring peace and comfort to the anxious minds of the people in Dadra and Nagar Haveli. I too do not like to raise controversies on this occasion. It is a very happy occasion indeed but this happy occasion, this cheerful mood, would have been more realistic if there had been a little more information available *to* us. I expect on such an occasion like this, when such a historic event is taking place, perhaps we are not very much conscious of the historic and memorable integration of the people who had been separated for four centuries—a small note describing the life and

[Shri M. S. Gurupada Swamy.] conditions of these enclaves and giving us a short picture at least in regard to the laws, the previous administrative institutions and the various problems that face them. It would have helped us very much to appreciate the situation in those areas. It is a very sad omission on the part of the Government.

One or two hon. Members who did not like to start controversies, who said that they should not do that, perhaps unknowingly started little bit of contention. It is not an edifying spectacle to see controversies arising on an event which is welcome to all, about which there is no difference. There has been the linguistic problem. We have been at it but at this juncture, I think it will be meaningless and absurd to analyse and to know the various colours and contours of the society and their feelings in regard to their merger with this area or with the other area. Even though it is a suggestion, this should have been avoided. It is unfortunate that this thing has been imported into the discussion.

In regard to the Bill itself, some of my.hon. friends have made certain criticisms. One of the criticisms which I also consider as important, is about the nomination of a Member of this area to Lok Sabha. It has been contemplated, just as a provisional thing, but when the whole of India and all the people in the land have been given the right to elect their own representatives to the Parliament and the Assemblies, why should this small area be denied this opportunity? Even while thinking that it is provisional, I feel that if an attempt had been made, on the basis of the present voting list available, it would have been possible to get an elected Member to the Lok Sabha. If the Government considers that it is not at all possible at the present moment, then alternatively I would suggest that they may nominate a Member to Lok Sabha selected by the Varishta Panchayat .and it should not be left either to the sweet will of the Administrator or to the sweet will of the Central Government. The wishes of the people in this regard should be taken into consideration because there will be only one Member to the Lok Sabha and that Member should, as far as possible, represent the feelings of the representative agency that is there, that is, the Varishta Panchayat.

My friend, Mr. Santhanam, while criticising this question of nomination to the Lok Sabha committed an error by suggesting that the same Member might be nominated to the Rajya Sabha.

SHRI K. SANTHANAM: I am afraid my friend did not understand. The President has got the power to nominate 12 Members. One of these may be from that area instead of a fresh nomination.

SHRI M. S. GURUPADA SWAMY: That is what I meant, instead of a Member being nominated to the Lok Sabha, he might be nominated to the Rajya Sabha.

SHRI K. SANTHANAM: It is already here.

MR. DEPUTY CHAIRMAN: Nomination is already provided for the Rajya Sabha.

SHRI M. S. GURUPADA SWAMY: He wanted nomination to the Lok Sabha to be avoided and nomination to the Rajya Sabha made instead. It means that there will be no Member for the Lok Sabha at all.

SHRI K. SANTHANAM: This area should be added on to some other electorate, incorporated in some other electorate.

SHRI M. S. GURUPADA SWAMY: If we accept this, then there will be no Member for the Lok Sabha for the present and there will be a Member in the Rajya Sabha. I certainly agree with the hon. Member that the people of this area should have an opportunity to send an elected representative, but in the present circumstances this has not been provided. In that case; I would urge that the person to be nominated to the Lok Sabha should be a person who reflects the views and opinions and wishes of this body. He should not be nominated at the sweet will of the Administrator or the sweet will of the Government.

Sir, reference has been made to the various laws and taxes prevalent there. We do not know what types *oi* laws and what kinds of taxes are prevalent there, and perhaps we are passing this measure in a blind manner. We are just stating here that whatever be the laws there, whatever be the taxes there, will be more or less continued hereafter. What happens if there are taxes which are very bad or regressive or not progressive enough? Under the changed circumstances, new taxes might have to be introduced and the old laws also might require to be changed. In such a situation, it would be difficult to give a continuation to all these things that are prevalent in those areas. I think steps should have been taken already to review the whole thing, the tax system, the legal system and the like, and Members should have been provided with enough information in regard to these matters.

Lastly, Sir, I wish to add a few tvords about Goa. I do not like to repeat what I said in regard to this subject in the other debate on the Constitution (Tenth Amendment) Bill. The Prime Minister made a reference to this problem in the course of the debate on foreign affairs, and I am glad to say that we really appreciate this new-born realism on his part in regard to Goa. We are, however, Sir, apprehensive whether this new-born realism in respect of Goa would be sustained and, in what form, in what way, how, and when it would be implemented. He has said, and I think the House will also agree with him, that military action may be contemplated if other things fail. It is a real and positive approach. It is a definite

stand that has been taken after many years but the question is, when is he goi.ig to implement this promise, when is he going to take action? When are we going to get the other areas, Goa, DJU and Daman? Sir, the House is naturally exercised in this respect and we would very much like the Prime Minister to tell us, if not today at least after some time, when this action is going to take place, when he proposes to move in the matter, whether there is any plan or time schedule and whether the Portuguese Government would be told that unless they vacated this area, if would be taken by the Government of India even by force.

Sir, these are some of the doubts that are in my mind. I would be very happy indeed, and *my* Party particularly would feel immensely happy, if this positive attitude of the Prime Minister, this new policy on Goa, is clarified further and a full picture is given to us and to the House.

With these words, Sir, I thank you for the opportunity given to me.

SHRI A. K. SEN: Mr. Deputy Chairman, it was only expected that this House would accord unanimous support to this measure though I must say that I was a little pained when a different strain was introduced in the speech by some hon. Members, which was quite out of tune with the solemnity and happiness of the occasion. I would not say anything more with regard to this aspect of today's debate.

Certain points have been raised, while support has been forthcoming, with regard to particular provisions in this Bill which I conceive, Sir, it is my duty to answer. The first point made by Mr. Desai was concerning the application of clause 11 of the Bill providing fcr appeal to the Bombay High Court by notification in the Official Gazette. The question was naturally asked as to how far an appeal would lie when the local laws did not nee ssarily provide for an ap-

[Shri A. K. Sen.] peal to the High Court. The point is a valid point and naturally needs an answer, and that is the reason, amongst others, why we have provided in clause 10 for th • extension of any law in force in an.- State to this particular territory wiih such modifications and restrictions as may be necessary. For instance, while providing for an appeal to the Bombay High Court, we must create the appellate jurisdiction of the Bombay High Court from tribunals of this territory. That is why we will have to extend the Civil Procedure Code with such modifications, minor modifications, so as to apply to the local tribunals because the Civil Procedure Code applies so far as our district courts and other subordinate courts are concerned. Modifications would be necessary if these provisions have to be applied to the tribunals, by whichever name they may be called. Clause 10 is, therefore, designed to meet not only this situation but any situation which would call for an extension of any of the laws in force in British India. Sorry, Sir, Union of India. British India because in the olden days the Civil Procedure Code applied to British India and with the integration of the Princely States, we have had to extend the Civil Procedure Code and other laws to those territories.

Mr. Santhanam raised several points. The first poin:—and I certainly anticipated it would be raised here—was in connection with the provision for a representative of this territory in the Lok Sabha being nominated by the President. Objection has been taken by him and several other speakers regarding the method of selection of this representative by nomination. While the point is a valid point, I certainly must repel the suggestion made by some speakers that this is a possible design to lielp the ruling party to have one representative from this territory by nomination. Not that I am very much enamoured of this system of nomination, nor is it intended that this nomination should be a permanent feature for this territory, I shall certainly resist any insinuation that the President has used his power of nomination in any unfair manner or in a partisan spirit. If any example was necessary to repel that contention, Dr. Kunzru is an example.

PANDIT HRIDAY. NATH KUNZRU (Uttar Pradesh): What? I am not a nominated Member.

SHRI A. K. SEN: I am saying that in the sense that you are regarded here not as belonging to any party and yet you have been fearlessly criticising not only the Government but very many others and there have been others following that example, though nominated by the President. I am saying it as an example.

DR. R. B. GOUR (Andhra Pradesh): But he came with the Congress support all right.

PANDIT HRIDAY NATH KUNZRU: Thar is not right.. You should be ashamed of making allegations which you know to be untrue.

DR. R. B. GOUR: Do you mean Congressmen in UP. did not vote for you?

PANDIT HRIDAY NATH KUNZRU: Certainly. Can you point out one Congressman who voted for me?

SHRI A. K. SEN: Anybody would be proud to vote for Dr. Kunzru and we are proud that we have amongst us in this House a Member of the calibre and quality of Dr. Kunzru.

SHRI BHUPESH GUPTA (West Bengal): You were saying something about nominations.

SHRI A. K. SEN: What I was saying was that he is an example of the fact that though he does not belong to any particular party, yet he is capable of maintaining a completely impartial attitude and a critical attitude for all, and as I said—I do not want to name persons—persons who have been nominated to this House have followed his example. That is what 1 was trying to say.

Sum BHUPESH GUPTA: Do you follow the example of the right type when nominating?

SHRI A. K. SEN: When nominating, you do not consult anybody else.

AN HON. MEMBER: Except yourself.

SHRI A. K. SEN: No consultation is necessary. But the person nominated gives a completely different picture.

Anyway, what I was saying is that it is impossible to have elections for a representative in the next general elections. So many things are necessary before the Representation of the People Act can be extended to a new territory and we presume that it will be done as quickly as possible. But this cannot be done before 1962 and what the Prime Minister said in the ether House may be repeated here, that this is intended to be a temporary measure and that the people of this territory who have not only made their mark as valiant in the fight for freedom but have also proved their ability in other ways deserve representation by election as much as any other people in the Union of India. Therefore, this apprehension that this method of selection is going to be a permanent feature is unfounded and 1 may say with complete assurance that this is only a temporary measure, as it must be, before the apparatus of election under the Representation of the People Act can be extended.

The next point made by Mr. Santhanam was about the powers of the Varishta Panchayat to alter an existing law that is in force in that tenitory or to pass new laws. I am afraid, Sir, with the integration of this territory, this Varishta Panchayat will not have any legislative competence, unless we give it power of legislatirn as and when necessary, and that is also not ruled out, but on the contrary it is under contemplation. But until legislative powers are given to the Varishta Panchayat, legislative competence in this territory will belong to Parliament, to the President, under article 240 of the Constitution. Therefore, even laws originally passed by them which are now continued by virtue of this Act would not be alterable or amendable by the Varishta Panchayat. Therefore, the question of their varying these laws in a manner which will be in conflict with the Parliamentary policy, does not arise. Similarly, the question of varying the taxes which are in force in this territory would only arise if Parliament thought of altering them. So far as taxation measures in force in the rest of India are concerned, if it is thought necessary to extend any of them, it will be extendable under clause 10 of this Bill. I conceive Sir that many of the all-India measures of taxation would be extendable as and when it is found necessary to do so, like the Excise Acts, for example, as also the Customs Laws and so on.

With regard to the question of dissolving the existing Panchayat, I am afraid there is a little bit of misunderstanding on this point. We continue the structure of the Varishta Panchayat as it is. That naturally incorporates the Panchayat as it is constituted by the method of election which is in vogue with all the other incidents which are connected with it. The Varishta Panchayat today is elected by the universal adult suffrage, and they arc elected for a term of, I think, three years. Therefore, the question of it being a permanent body, of its continuing for ever by reason of an initial and original election does not really arise. It is there, the Varishta Panchayat. which is continued under this Act until it is altered by law. Nothing has happened to change the structure and the method of election of the Varishta Panchayat. If such a necessity is felt in the course of the future administration of this territory, I have no doubt that we shall bring hi before Parliament such other amendments in the structure of and

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election to the Varishta Panchayat as may be felt necessary.

The next point that was made by many hon. Members including Mr. Santhanam was about the continuance of the existing laws and a fear was expressed that by this omnibus clause we might be continuing certain obnoxious Portuguese laws which may be in conflict with our basic laws. Well, nothing can be continued which is in conflict with the Constitution. That is quite clear. And anything which is repugnant to the Constitution would be off from the very moment this becomes part of India. At the samo time, fur'her examination of some of the laws may reveal provisions which may be repugnant to our ideas as to what a law should be—not that any has come to our notice up till now. What is continued is not the old Portuguese law but what was continued by the Varishta Panchayat after they attained independence. So it is not that we continue the old Portuguese laws. We are continuing such of the old Portuguese laws and such of the new ones which were adopted by the old Varishta Panchayat which attained independence and which ran the territory until the integration on the 11th August last as were found suitable for application in this territory and, therefore, I am not inclined to believe that these people who attained freedom by their own efforts and ran their territory so well would have continued any obno-x·ous laws taken from the Portuguese. We have found ourselves after detailed examination that many of the old British laws are still in operation and we are repealing them gradually. This House will remember that we brought bunches of them together and had them repealed. The Law Commission examined many of tin obsolete laws, both Indian and British, which held the field bv seme process or other and which we had to either repeal or amend. And today there is no British law holding the field except one of the extradition laws with which we will be dealing very soon. The House will remember that while we brought in a series of old laws for repeal a question was asked about the old British Extradition Act and I told then that we were contemplating bringing in a fresh extradition law. Therefore, it may be that as and when we examine the different laws in force in this territory, we might come acruss seme lawr which may be in conflict with our basic laws and we shall then certainly remove them and make them inoperative. Therefore, there is really no practical possibility . . .

SHRI K. SANTHANAM: I wish to ask only oiie question. If the Varishta Panchayat is constituted and its elections are regulated by the existing law, what, is the need for a provision about filling of casual vacancies? Casual vacancies must also be dealt with by the existing law as there should be a provision for filling casual vacancies. If there is already a law for constituting the entire Panchayat and for its g>ing out of office at the end of three years, there should be a provision for filling casual vacancies also. Why should there be a special provision made here in the last clause frr filling casual vacancies?

SHRI A. K. SEN: You mean clause 5?

SHRI K. SANTHANAM: No it is in the last clause, clause 14.

SHRI A. K. SEN: That is rule-making power. That does not mean that we are immediatslj passing a rule.

SHRI K. SANTHANAM: But if the existing rules provide for election to the Panchayat against casual vacancies why should there be a special provision here now?

SHRI A. K. SEN: Th·s clause pro-v·des for giving powers to the Central Government tc make rules. Surely, the Varishta Panchayat could not have provided for rule-making powers being vested in the Central Government.

MR. DEPUTY CHAIRMAN: His point is in the Varishta Panchayat laws as prevalent there now there is provision for election of members to the Varishta Panchayat; there should also be a provision for election against casual vacancies. Why do you want to provide for it here?

SHRI A. K. SEN: It is for this that if we have to change it at any time, it could be done only by an act of Parliament whereas this will enable the Central Government to do that. That is the whole purpose. A rulemaking power is a rule-making power and . . -

SHRI K. SANTHANAM: I am rather •surprised at the reply of the hon. Minister. In clause 14(2) it is said here—

"the manner in which casual vacancies in the Varishta Panchayat may be filled;"

Already the manner is there. Why does he want to change the existing position? If he wants that the election to the whole Panchayat should be as it has been there, then why does he want a special rule for only casual vacancies?

SHRI A. K. SEN: The meaning is quite clear, with due respect to the hon. Member, that in future if that provision requires a change it will not be necessary to have a law passed by both the Houses for that purpose but a rule made by the Central Government would be sufficient to alter the existing position. That is the whole point.

SHRI M. S. GURUPADA SWAMY: I do not know why this is necessary because according to him there are rules already made for electing members to this Panchayat and I do not know why the Central Government wants the power to change those rules. Why is this rule-making power required? And you say the whole Bill is temporary.

SHRI A. K. SEN: The whole Bill is not temporary. I never said so; I am very sorry. Certain of the provisions are intended to be temporary. Now, Sir, the existing law could not have provided for the Central Government of India altering the law relating to the filling of casual vacancies. The existing law must apply to the territory as it was kept then. Now we are trying to appropriate for the Central Government the power to make rules and that can only be given by this Parliament so that in future if any particular power is thought appropriate for filling of casual vacancies we do not have to come up every time to this Parliament but a rule made by the Central Government will be sufficient for the purpose. That is the whole reason. The hon. Member will appreciate that the existing law cannot give the Central Government the power to make rules in this behalf.

PANDIT HRIDAY NATH KUNZRU: Are you sure that you will not find it necessary later to alter the present law with regard to the election of members to the Varishta Panchayat

SHRI A. K. SEN: That will only be found necessary if the people there themselves fee' that the law requires change or un^ss some patent defect S discovered which possibly may be regarded as sufficiently important to warrant a change. Otherwise if the Panchayat has been functioning so well and so efficiently I personally do not see any reason just now to alter the method of election. The method of election is really on the basis of adult suffrage. All that is necessary is the extension of the Representation of the People Act for the election of representatives to Parliament but that is a different matter.

Now, Sir, the next point raised was about income-tax and excise tax. Until those Acts are extended they would not be applicable to this territory and it will be for the Finance Ministei to inform the House whether the Cen. tral Government would like th(Income-tax Act as applicable to th<

[Shri A. K. Sen.]

rest of India and the Excise laws as applicable to the rest of India to be extended to this territory and if iso with what modifications or restrictions.

There was another point raised about clause 12 and Mr. Santhanam said that it was an extraordinary provision without a parallel in the history of legislation. May I humbly point out to him that in the past whenever new territories had been added to India and along with it their own laws and various other rules regulating rights and obligations and various other matters in those territories had been continued in a body as in this present case we have always inserted such a provision as for example in the Union Territories (Laws) Act of 1950 or Part B States (Laws) Act of 1951 when the old Prince?' States were integrated with India along with their laws and so on. The reason is very simple because when under the new set-up you bring in Indian authorities, Indian institutions and various other things and yet you keep on the old laws which were originally applicable to a different setup, some adaptation is absolutely necessary. The principle is to adapt them as far as applicable under i^he formal power of adaptation. Where old laws ire continued the method of interpretation is to apply them *mutatis mutandis* which means so far as applicable. For instance we may have certain laws applicable to local authorities, let us say, to District Courts or Zila Courts, Zila Parnbads and so on. But there may be no District Courts; there may be no authority answering the description which we have in the rest of India. Yet when the law is made applicable you apply it so far as applicable with such adaptation as may be necessary. Therefore, the power of adaption must necessarily be taken which power *is* restricted to adapting the laws and applying them to a different set of circumstances and social relationships and other relationships without altering the substance of the laws so that those who apply the law apply it in the changed set-up and changed circumstances with such adaptations as the changed circumstances and the changed set-up require. That is why when Part B States were created and the laws were applied we had similar provisions and we had also similar provisions in the Union Territories (Laws) Act of 1950 and we are having the same provision here. Otherwise if the existing laws are applied to the changed set-up there will be difficulty. Everything will now become changed and the courts and other authorities which will have the duty of applying the existing laws must naturally have the right to adapt them to the changed set-up. Otherwise it will be difficult of application unless we give that power of adaptation. In some extreme cases, the courts have even gone to the extent of implying that power of adaptation and holding that a continuance of the laws under changed circumstance^ carried the necessity of applying it *mutatis mutandis.* But since we do not have to depend upon such implied power of adaptation, it is better to provide for adaptations specifically, as we have done in clause 12.

With these words, I commend the motion for the acceptance of the House.

MR. DEPUTY CHAIRMAN: The question is:

> "That the Bill to make provision for the representation of the Union territory of Dadra and Nagar Haveli in Parliament and i^or the administration of that Union territory and for matter,; connected therewith, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up the clause by clause consideration of the Bill. There are no amendments.

' to 14 *were* added to *the Bill.*

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

SHRI A. K. SEN: Sir. I move:

"That the Bill be passed."

The question was proposed.

SHRI BHUPESH GUPTA: I would like to speak on only one pc'.nt and it is with regard to the manner in which the place in Lok Sabha will be filled. I was listening to the hon. Minister and he was trying to make out how fair the Government had be in in the matter of such nominations.

SHRI P. D. HIMATSINGKA: Docs it arise in the third reading?

SHRI BHUPESH GUPTA: Yes. That is very relevant. I am suggesting how it should be done. Do not get upset. Therefore, I will only give my suggestion. Naturally accepting the principle, I support it. The question is how it should be implemented with regard to that particular law. I do not accept his claim that the Government has been very impartial in this matter, because by a coincidence, an interesting coincidence almost, nominations bring people of th; Congress side. We have seen what happened with regard to Jammu and Kashmir. A gentleman came there. I have no quarrel with that individual, but he landed himself in the opposite Benches. Similarly, we find that there is a tendency, when a nomination is made, that only the Congress Party decides things. Now, as has been pointed out in the course of the speeches, the principle itself is not very sound. Tn this casL! perhaps we cannot avoid it. I understand it. This is all the more-reason why the Government should be particularly careful in making the selection or advising the President as to who should be nominated. My fear is this. They are guided by narrow party interests in this matter. I am not saying that they do not make some departure from that party interest. Sometimes they do. Sometimes they land one or two people near Dr. Kunzru. It is true, but generally . . .

PANDIT HRIDAY NATH KUNZRU: Sometimes they do what? What did the hon. Member say?

SHRI EHUPESH GUPTA: Not you, but near you. Nominations bring soma neighbours of yours. That is what I said. One has gone. That I agree. For errimple, we have every two years three people or four people nominated. We are fortunate to have some independent p.ople. I do not k.iow to what extent they are independent, but technically they are. *When* you had nominations from the Magdland, what happened? I do not iuve any quarrel with individuals. 1'he Congress Party decides, so to say, as to who must come. He had to resign his office from the Administrative Service, he was nominated and he came. He is a bright young-man. I like him. That is how it is done. In Jammu and Kashmir it has been done like that. In other cases also like that. And in Rajya Sabha we have this thing. Now, therefore, my submission here is that the Government should not try to get away with the impression that they have succeeded in convincing us that their nomination is very upright. I say it in this case, especially the House of the People. In Rajya Sabha we get all types of people. We are all honourable people, ex-Governors, ex-Ministers and so on. We get them. That is not the point. But in Lok Sabha it is supposed to be an elected body and Mr. Santhanam pointed out very rightly that such a body should his character even in point of principle. It is not that out of 500 members you have got two or three people. Even if there are four or fiv_ people as nominated elements, well, it is not acceptable. But now we have to accept in certain special instances. Having accepted it temporarily, it is the task of the Government to get the nomination properly done. My suggestion, therefore, especially in this case would be this. Let a break be made from the past. And if I may venture to communicate a suggestion to the ruling party through the Law Minister, it would be like this. Let them make up their mind as ! n whom they want to recommend to the President for nomination. Then on their own if

[Shri Bhupesh Gupta.] they like, I would suggest, let them call a meeting of all the leading representatives of the parties concerned in Parliament, in Lok Sabha if they like, and then discuss, say, a panel of name:-, as to who should be recommended by the Government to be nominated to Parliament, to Lok Sabha. That would be the right course. Democracy should not be just one-way traffic, It should take others into account. Therefore, I strongly submit in this case that the Prime Minister should consult his party and other parties and as far as possible— again *mutatis mutandis* i'f I may say so, but there will be little left of details—he should make an effort to have a name agreed to by all the parties. We know all the major parties in the country. That should be the approach. And we shall watch and see how this particular nomination is made and in that light we shall be judging the claim of the hon. Law Minister that he has been very fair, that his Government has been very fair in this matter. So far the record is disappointing, partisan and narrow.

SHRI A. K. SEN: I am only saying what the Prime Minister has said in the other House, that this is intended, by the very nature of the circumstances, to be a temporary measure, in order to allow these people not to go without representation. It is only a temporary thing. As soon as posfsi-ble, it is under contemplation of the Government to extend the Representation of the People Act for the election of representatives to the Lok Sabha from this area also.

SHRI BHUPESH GUPTA: My point is not answered.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

THE EXTRADITION BILL, 1961

THE MINISTER OF LAW (SHRI A. K. SEN) : Mr. Deputy Chairman, I beg to move:—

"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, namely :-

(1) Shri Akhtar Husain
(2) Shri Suresh J. Desai
(3) Shri N. M. Lingam
(4) Dr. A. Subba Rao
(5) Shri K. K. Shah
(6) Shri Vijay Singh
(7) Shrimati Lakshmi Menon."

This is a completely non-controversial Bill. The present law is in a rather nebulous condition. The field is covered by three different laws, *viz.,* the British Parliamentary law called the Extradition Act, then another Parliamentary law called the Fugitive Offenders Act applicable to Commonwealth countries and an Indian Act called the Indian Extradition Act. So far as the first law is concerned, it has been doubted whether it is still in force in India though it is very difficult to say confidently whether it is or it is not. So far as the Fugitive Offenders Act is concerned, the British courts have held that it is in force in India and in England . . .

SHRI BHUPESH GUPTA (West B:ngal): You admit the anomaly.

SHRI A. K. SEN: . . . and in one of the leading cases which is now reported, where a gentleman from Hyderabad had fled and he was sought to be apprehended on the ground of his being proceeded against in India for cheating, the British Court of