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17.24 hrs.

REPATRIATION OF PRISONERS BILL,2002

Title: Discussion on the Repatriation of Prisoners Bill, 2002. (Not concluded).

MR. SPEAKER: Now we go to item No. 15. Shri I.D. Swami.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI I.D. SWAMI): Sir, on behalf of Shri L.K. Advani, I beg to move:

"That the Bill to provide for the transfer of certain prisoners from India to country or place outside India and reception in India of certain prisoners from country or place outside India, be taken into consideration."

I request that this Bill may be considered and passed.

MR. SPEAKER: Would you like to say something on this?

SHRI I.D. SWAMI: This has already been introduced in May in the Lok Sabha.. But this is a very beneficial Bill to the extent to most of the prisoners on humanitarian ground and otherwise also because of the countries entering into treaties and agreements. India has also entered into treaties and agreements with three countries, and more are in the line. Negotiations are going on. But the difficulty that we do not have is enabling law whereby our Indian prisoners who are in the jails in other foreign countries where we have or we will have treaties in future, can be repatriated to India so that in the remaining time of their imprisonment, they may be able to spend in the jails nearer to their homes in the better social and harmonious climate. Similarly, those prisoners of other countries who are in India will like to go back to their countries, to their own region on repatriation.

For this, an enabling Bill was needed. We have made an effort. This Bill has already gone through the Standing Committee and the Committee has already agreed with almost all the clauses of the Bill. I, therefore, request that this may be considered and passed.

MR. SPEAKER: Motion moved:

"That the Bill to provide for the transfer of certain prisoners from India to country or place outside India and reception in India of certain prisoners from country or place outside India, be taken into consideration."
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SHRI E.M. SUDARSANA NATCHIAPPAN (SIVAGANGA): Sir, this is a very important Bill and we support it. Till now there was no statutory provision for repatriation. At the same time, the Statement of Objects and Reasons says:

"Foreign convicted nationals were transferred to their home countries to serve their remaining jails terms, it would take care of the human aspect inasmuch as the said convicts would be near their families and have better chances of social rehabilitation. Further, it would also take care of the problems which the Indian jail authorities are facing in keeping these prisoners."

So, these points are focussed in the Bill and the procedure has also been laid in clauses 2 to 11.

Many ignorant people, who go to foreign countries for seeking job without knowing the procedure to enter into the job, are being convicted to prison. In Maldives, African and other Arabian countries a number of Indians are being imprisoned for various reasons. A number of Indian citizens are suffering in jails in Maldives. In my constituency itself about 20 people have been imprisoned there without any reason. Since there is no need for getting visas, they can travel without passport, people go to these countries for job. But on landing at Maldives, the police is putting them in jail. These people cannot even send a communication to their families. There is no procedure for repatriation.

Earlier also we had requested the Minister of External Affairs in this regard but he had replied saying that they are not covered by any understanding with that country. We have got the information that many of them have been killed by the police while chasing them. We had even approached the Human Rights Commission for this torture

being committed on our people. But the Commission has also said that they are not the signatories of the Human Rights Commission, therefore, they could not be repatriated or compensated. Same is the case with Malaysia and Singapore, even though we have some agreement with them.

A number of Indians are suffering in jails in Arabian countries also. There are instances of their hands being removed. They are tortured like anything. But they could not be repatriated.

Very often, we have been sending communication through the External Affairs Ministry to the concerned High Commissions and Embassies but we have not been able to get any relief. Therefore, the portion covered in Clause 12 should be focussed much because a number of ignorant Indians, who have not committed any offence, are suffering in various prisons throughout the world. We are not asking something for the criminals. They can go through the legal provisions. We are asking for the ignorant people.

Therefore, this is a very important piece of legislation, especially for the southern part of the country from where a number of youth have gone to foreign countries for employment purposes. I request that the Home Ministry should concentrate upon such complaints and they should have some communication through the Ministry of External Affairs. At the High Commission level, contracting and non-contracting States should have some understanding. They should see that wherever Indian prisoners are there, it should be communicated to the Indian Embassy and to the concerned State so that we can try to help and repatriate them.

It is because this provision gives a lot of scope for that. The person who is aggrieved, has to initiate the petition through the concerned State or the concerned nation. That is the scope given by this Bill. But at the same time, I would request that many of the people are ignorant of this law itself. Now only this provision is being made. But when this Act is enacted, the Embassies and High Commissions should be asked to find out the data from every nation where Indian prisoners are there. They should also find out how best we can repatriate them and how best they could be allowed to join their families. This is the object which has been shown by the Government in the Statement of Objects and Reasons regarding the foreign convicts. The same thing should also be applicable to the Indian convicts who are suffering in the prisoners.

Finally, I would like to request that the people who are living in the rural areas should also be informed of this. Whenever they go outside the country, they should be told that this type of law is there so that they can use it whenever they are ending up with that type of consequences.

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Sir, the Bill is introduced to have an amendment of the Criminal Procedure Code, 1973 with regard to transfer of prisoners from a foreign State to India and *vice versa*. It also says that there shall be a State which is prepared to accept the prisoners. Now the condition required is that the rest of the sentence will have to be undergone in the transferred State. But the law prevailing in the two States must be similar in every respect.

Now in this case, I would like to draw the attention of the hon. Minister to some prisoners in India. They are really Indians. They are all Malayalis belonging to Calicut which is North of Kerala and who had migrated to Pakistan at the time of partition. They were residing there. They are doing business there. They are really the born citizens of India but due to the partition, they had become the citizens of Pakistan. Their mother is here and father is in Pakistan. Their son is here and the daughter is in Pakistan. They belong to the same family. Members of the same family reside in two different States. So, whenever the husband comes here to see his wife – who is domiciled in Kerala – if he remains here for some time, he would be imprisoned. Such a situation is there. They are not, in any way, affecting the security of India. They are really Malayalis and they speak Malayalam. They are really people who were born in India long before. It so happened that because of their business compulsions, they had to go to Pakistan and remained there for years together. After sometime they may return to see their wife or children in Kerala. If they come here, they are imprisoned. Such a peculiar situation has arisen because of the migration laws. So, this matter may be considered with a humanitarian approach. We all know that they were born in India but due to the circumstances beyond their control, they migrated to Pakistan. As a matter of fact, he is not at all interested in remaining in Pakistan forever. They want to join their wives and children in India. This is the situation. So, even if he is a prisoner in India, he is transferred to Pakistan. As a matter of fact, he is very reluctant to go there. Sending him back to Pakistan, is against all humanitarian considerations. They were born here and rest of their family is in Kerala. So, this situation will have to be looked into. I think the present amendment will help the Government in helping these prisoners who had born here but due to some reason had to migrate to Pakistan. Hitherto, there was no provision to help them. But by this amendment, the Government can help them. If Pakistan Government agrees, we can allow them to remain here. If somebody wants to go there, that can also be done.

Sir, there are other things as well. There are requests from foreign countries for release of prisoners, who have been convicted for offences against the State, who are detained in India. There was one such request from the United Kingdom to the Government of West Bengal for transfer of prisoners to that country. I do not know whether it has come out or not. But it was reported in the newspapers. This provision of the Act should not be misused. The

Government will get powers to do such mischief under the cover of this amended provision of the Act. When somebody is committing an offence against the State, this provision should not be misused for sending that person back to the country of his origin. There are chances of this provision being misused. It should be made crystal clear that there will not be any misuse of this provision when offences alleged is against the State. That must be made clear because the provision is very evasive in nature and there is every likelihood of a misuse of this provision. I would like to request the Government to make it clear that this provision would not be misused for somebody coming into India and committing a crime against the State. Suppose a foreign national visits our country and explodes a bomb here. In that case, he becomes an accused and convict, and he should not be allowed to make an escape under the provisions of this Act. This should not be a routine business. The Government should exercise abundant caution in dealing with this amended provision of the Act.

Sir, I hope the Government with enough caution and care would go ahead with this legislation in the best interest of the prisoners. We are a signatory to the Human Rights Commission and under that, all prisoners have to be treated with dignity and honour. We would have to treat the prisoners with dignity. But it should not be the case with prisoners who have committed crimes against the State, like the terrorists who are committing heinous crimes against the State. Such an attitude need not be shown to them.

The Government should consider all these aspects. I support the Bill with these limitations.

डॉ. रघुवंश प्रसाद सिंह (वैशाली) : अध्यक्ष महोदय, मंत्री जी ने रिपैट्रिएशन आफ परिजनर्स बिल आठ बातों के लिए सदन में पेश किया है। इसमें कहा गया है कि विभिन्न देशों में जहां हमारे लोग अपराधी हैं और जेल में हैं, उनको वापस देश बुलाया जाए। दो तरह के अपराधी होते हैं। एक वे जो सजायाफ्ता हैं, सजा पा चुके हैं, कंवीक्टिड हैं, दूसरे वे जो अंडर ट्रायल हैं, गिरफ्तार हो गए हैं तथा जेल में हैं। जो कंवीक्टिड हैं, जब हमारे देश का कोई आदमी वहां पकड़ा जाए, सजावार हो जाए या दूसरे देश का कोई आदमी यहां पकड़ा जाए और सजावार होगा तो उसके प्रत्यार्पण के लिए विभिन्न देशों से हमारी संधि है। अभी हमारे देखने में और सुनने में आया कि अबू सलेम और मोनिका बेदी पुर्तगाल में पकड़े गए। सरकार ने बड़ा दावा किया कि उस देश के साथ हमारी संधि है इसलिए हम उनको यहां ला रहे हैं। लेकिन पुर्तगाल ने कहा कि हम इनको यहीं सजा देंगे और बाद में इन्हें आपको देंगे। हम जानना चाहते हैं कि इस मामले में अद्यतन स्थिति क्या है ?

इस देश के 20 अपराधी पाकिस्तान में हैं। बार-बार सरकार की ओर से दावा किया गया और लिखा-पढ़ी भी की गई कि उनको यहां भेजा जाए। अमेरिका का भी दबाव पाकिस्तान पर पड़ा कि ये जो 20 नामी अपराधी हैं, जो भारत में उथल-पुथल मचाकर वहां चले गए, उनको वापस भारत भेजा जाए। हमारे देश के अपराधियों की प्रवृत्ति है कि वे यहां किसी न किसी रूप में अपराध करके दूसरे देश में चले जाते हैं। उसके लिए क्या उपचार किया जाए, इसलए सरकार ने यह बिल यहां पेश किया है। जो लोग अपराध करके यहां से चले गए, वहां सजावार बंदी हैं, उनको आप अभी तक दूसरे देश से यहां नहीं ला सके हैं। विदेश मंत्री जी का बयान आया कि सात देशों के साथ हमारी प्रत्यार्पण संधि हो गई है। हम जानना चाहते हैं कि वे देश कौन-कौन से हैं ?

पाकिस्तान में जो हमारे देश में अपराध करके लोग चले जाते हैं वे कैसे आर्येंगे, माननीय मंत्री जी स्पष्ट करने की कोशिश करें।

पुरुलिया में विभिन्न किस्म के हथियार विदेशियों द्वारा गिराए गये और एक विदेशी पकड़ा भी गया। अब वह छोड़ दिया गया या शायद जेल में है, इसको भी स्पष्ट करें। एके-47 से लेकर विभिन्न प्रकार के हथियार पुरुलिया में गिराये गये और कुछ लोग गिरफ्तार भी किये गये। सरकार बताए कि उनकी स्थिति क्या है? माननीय मंत्री जी सभी बातों को खोलकर स्पष्ट करेंगे, तभी हम इस विधेयक का समर्थन करेंगे। बगैर इसके हम कैसे इसको पास करा दें। सारी बातों को खोलकर बताएंगे तभी हम इसे पास कराएंगे।

मछरे लोग समुद्र में मछली मारते हैं और पाकिस्तान उन्हें धोखे से गिरफ्तार कर लेता है। ऐसे बहुतेरे लोग पाकिस्तान की जेलों में बंद हैं। पाकिस्तान की जेलों में हमारे नागरिकों की क्या स्थिति है सरकार बताए। वहां से कुछ लोग जो आये हैं उनके साथ हुए व्यवहार को सुनकर माथा खराब हो जाता है। महोदय, कहते हैं कि परिवार की संस्कृति जानी जाती है उसके पाखाने से और सरकार की संस्कृति जानी जाती है उसके पागलखाने से। किसी भी सरकार की सभ्यता और संस्कृति की पहचान बंदियों के साथ वह कैसा व्यवहार करती है उससे जानी जाती है। पड़ोसी मुल्कों की जेलों में हमारे देश के नागरिकों की क्या स्थिति है सरकार वह बताए। इस बंदी संप्रत्यावर्तन विधेयक-2003 के लाने से क्या होगा? विभिन्न देशों की जेलों में हमारे नागरिकों की क्या स्थिति है वह बताएं, तभी विधेयक पास होगा, नहीं तो रुक जाएगा।

DR.M.V.V.S. MURTHI (VISAKHAPATNAM): The Repatriation of Prisoners Bill, 2002 is a welcome sign particularly for a country like India because a large number of Indians working elsewhere are being imprisoned on very trivial charges. Recently, we had many cases of impounding the citizenship records of IT Services people. We do not know how much sentence will be given to them in future and how it could have a bearing on our Indian citizens who are working elsewhere.

People of other countries are also working here. They come here not for work; but may be for other reasons too. So, the amount of sentence we give to the foreigners or foreign tourists is a limited one, except in the case of the people of the surrounding countries who come here for fishing. They are being impounded or sentenced or are kept in India. In such cases, it is a welcome sign.

17.44 hrs. (Dr. Raghuvansh Prasad Singh in the Chair)

However, I would like to have a clarification that the transferring State which gives the permission should have the right to review the sentence. It should be very clearly stated because after getting repatriated to the other country, a prisoner should not be left out of the sentence according to their laws. You have stated that the laws of the country

to which these prisoners go will also apply to them. That means the sentence could be lightened and they may be let off according to their laws. This aspect should be taken care of.

The other point is, a convict who is being repatriated to the other State should be a natural citizen of that State. He could be a citizen in two countries. You have just said that he should be a citizen of that country, but you have not stated that he should be a natural citizen of that country. If there is an acquired citizenship, he can go to that country and easily get off the hook.

How could it be done? Where there is a dual citizenship, the convict should be sent to the State where he possesses natural citizenship. That is very important. Otherwise, the convicts, particularly the white-collared ones, will go scot free. Please ensure that the request for repatriation should be accepted by that country where the convict belongs as a natural citizen and not for dual citizenship. This thing should be taken into consideration by the hon. Minister. Of course, these laws are applicable to those countries which are having bilateral agreements. So, it can be worked out before repatriating the convicts to such countries, whether such country will really honour the commitment. Otherwise, we cannot have the monitoring system. Where is the monitoring system? If there is a request from that country and if he is a natural citizen, he will be sent to that country. We should see that the convict undergoes the imprisonment as is given in India, and we should see to it that whether that country honours the sentence that is given in India and kept imprisoned. Presently there is no monitoring system. But you have to believe and trust those countries. You must also be careful in repatriating convicts. Convicts who have committed those crimes which have very grave consequences should be kept in this country. There should be a clear-cut understanding and clear-cut bifurcation as to which convicts can be repatriated and which convicts cannot be repatriated. Those convicts who go to the receiving countries should be the natural citizen only.

I am sure the hon. Minister will take into consideration my observations. With these remarks, I support the Bill whole-heartedly.

SHRI P.H. PANDIAN (TIRUNELVELI): Thank you Mr. Chairman. I rise to support this Bill. At this juncture, I would like to say that I adopt the same points which were raised by my friends who spoke before me.

Why should we wait till a conviction is passed by a competent court in India? It is because after conviction, according to this Bill, after exhausting all the appeals that convict has to be repatriated to his country. It is waste of money and waste of time for prosecution, judge and the State Exchequer. Immediately after filing, why do you not directly transport them and transfer their cases to the International Criminal Court, which has been set up now? It has been set up recently. We can directly repatriate them there. It is an offence against the State. If he has committed an offence against the Union of India or the State Government, this Government should have the satisfaction of punishing him. If we have no chance of punishing him by putting him in our prison, then why do you allow him to undergo trial here? If he is going to service the sentence in his own country, why should the prosecution initiate prosecution in India? There are a number of sentencing policies that are working in different countries. All these repatriations are to be done in respect of foreign nationals. Normally, the offence committed by foreign nationals in India is regarding Narcotic Substance Prevention Act.

That entails life imprisonment and death penalty if he has committed the offence again. If he has committed it for the first time, then it is life imprisonment. If he has committed another offence, then it is death penalty.

In the United States, there is a periodical review of the Sentencing Policy, that is, the Proportionality Review. Once a death sentence is passed, after five or six years, they will review again all the death sentences. If a new fact comes in, if there is any non-appreciation of law on facts, then they will immediately commute the sentences. They will even order re-trial and set the accused free. That policy was in vogue in India as early as in 1922. We had the Criminal Law (Amendment) (Act 2 of 1955) wherein our Indian courts were vested with the power to veto their own judgement. But that power of veto has been taken away by the 1955 Act. Prior to that Ordinance, that was in vogue for three years only. (Interruptions) That Criminal Law was in vogue in India only for three years. After the delivery of the judgement, if it is a voidable trial, if there is any effect of nullity of the judgement, the convict was allowed to go free. Under the present set up, under the Indian Evidence Act, the last Section, Section 167 says that admission or rejection of any evidence after the disposal of a case is not entertained. If a new fact comes in, if there is any fresh appreciation of the evidence, it is to be adduced. It cannot be that the accused has to be proved guilty beyond reasonable doubt. After that, even if there is a real accused absconding somewhere, he cannot be brought to book for the same crime. The court becomes *functus officio* after the disposal of that case. So, in that view, I urge upon the hon. Minister of State for Home Affairs to look into this matter to revise Section 167 of the Indian Evidence Act as also Section 57 to date back to the Criminal Law (Act 8 of 1955) to make the trial voidable. The sentencing judge should have been given the power to veto his own judgement.

Now, at every stage, the judgement is a finality. If a Magistrate passes a judgement, it is final. He cannot review his

own judgement. He cannot alter the judgement except to correct the clerical errors. Section 362 of the Criminal Procedure Code provides for it. So, when these matters are being looked into, we have to be more careful because the accused has to undergo the sentence in his country. So, when he is allowed to go there, our nationals, who are languishing in foreign jails, have to be looked into. Had they been allowed to be there, they would have the periodical review of the sentences. In some countries like Greece, a person can buy a sentence. If you repatriate a prisoner from India to that country, after reaching Greece, he can buy that sentence. He need not go back to prison. In India, we do not have that provision for buying a sentence. At least, the Government may incorporate that provision here because it is costly. For putting a person in jail, the State has to suffer. He is not only suffering but also he is making the State suffer. So, the State can evolve a new Sentencing Policy to buy a sentence as it is in vogue in countries like Greece. In that way, you can reduce the work. Suppose a foreigner serves a sentence here. You ask him to pay money and release him. Instead of sending him back to his country, after having suffered in our State, he has to be punished here only. Because he has offended the law of our country, because he has committed an offence against our State and our State is wounded, he has to be punished here only.

But for repatriation, you can ask him to pay for the sentence and he can buy the sentence here. We can give that concession. He can be allowed to buy his sentence. If he wants to commute the sentence of life to four years, three years, that can be done, because trial here in India will take at least ten years. In death sentence cases, it takes about ten to twelve years. There are a number of reviews provided under articles 134 and 136 of the Constitution before the Supreme Court. So, in that way, this provision will not be of any use to a foreign national who is detained here in our country as a convict. In that way, the Government may look into the matter. I would like the Minister to look on that line.

Then, Sir, previously, the first provisions of law has now come into the Statute Books. In 1898, Section 367 Clause 2 of the Cr.PC. now comes to the aid of the present Section 354 Clause 3 of the Cr.PC. There, death sentence is given in exceptional cases and life sentence is a general rule. Section 367 Clause 2 of 1898 Act generally says now special reasons have to be given if death sentence has to be passed. There, special reasons have to be recorded on the death sentence was passed or not passed. Read the two Sections, Section 367 Clause 2 whether it is synonymous with Section 354 Clause 3 of the present Cr.PC and also the Parliament has not supplied guidelines to the sentencing judges. As you are aware, Sir, about twenty five years back a Bill called Indian Penal Code (Amendment) Bill, 1978, was introduced in Rajya Sabha. It was 25 years back. But it was not able to be introduced here with the dissolution of Lok Sabha. Till now, it has not been passed by our Parliament. Time and again, the Supreme Court has reminded the Parliament saying that you supply us with the guidelines to see which are the cases should fall under the general rule of life sentence. In the case of Bachan Singh vs. State of Punjab, 1980, Supreme Court AIR, it was recommended by the Supreme Court that the Parliament should supply guidelines. Now, there is a capricious and freakish exercise of unguided, unlawful and lawless sentencing policy is being adopted by different courts in our country. The Supreme Court has said that in different words.

Mr. Chairman, Sir, through you, I remind the Home Minister that in 1980 there were three persons namely, Kashmira Singh, Cheatah Singh and Harbans Singh who participated in killing of one person. They were jointly tried in Punjab and they were awarded death sentence. When they came to the Supreme Court, each case was heard by a different Bench. Luckily, two persons got their sentence commuted to life sentence. This is a reported judgement of Bachan Singh vs. State of Punjab. By the time the Registry called the other bundle to be heard by a Bench, he was executed. It was held by the Supreme Court that the Supreme Court has committed a judicial vagary. It is judicial vagary by exercising the judicial discretion.

18.00 hrs.

Sir, there was a famous actor called N.S. Krishnan in 1930s in Tamil Nadu. He, along with Tyagaraja Bhagavathar were convicted and sentenced to life imprisonment by the Madras High court based on the judgement in the case of Aathappa Gounder who was sentenced to death in Salem District of Tamil Nadu on the ground of admissibility of confessional statement under Section 27 of the Indian Evidence Act. That judgement in Aathappa Gounder case was passed in 1937 by the Madras High Court and he was sentenced to death. He was hanged to death and that judgement was being operated for 10 years. On the basis of that judgement, N.S. Krishnan and Tyagaraja Bhagavathar were sentenced to life imprisonment on the basis of the same line of judicial interpretation under Section 27 of the Indian Evidence Act. Then the matter was taken to the Privy Council. The Privy Council reversed it by saying that the Madras High Court's judgement in Aathappa Gounder case was wrong and all those people who were hanged to death were unfortunate. So, there is a possibility of judicial error. The judges are not having computers in their mind or floppies in their heart. So, I would say that the hon. Minister may issue guidelines for sentencing policy of the judges.

As far as this Bill is concerned, it is a welcome measure. It is going to yield good result. However, the Government has to see the proportion as to whether the repatriation of our nationals from foreign countries to India is going to be more or the thickly populated foreign national criminals who are operating in India are going to be benefited more.

The Government should be more careful in applying this provision because the sentencing policy differs from country to country. There is no uniform sentencing policy throughout the world. In the United States of America, for death sentence it is quite a simple appreciation of evidence, but here in India, we apply large yardsticks to the offence of murder.

Sir, I thank you very much for giving me this opportunity to participate in the debate. This is a very good measure. So, I support this Bill.

Mr.Chairman: The House stands adjourned to meet again at 11 a.m. tomorrow. .

18.02 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Thursday, July 31, 2003/Sravana 9, 1925 (Saka)
