

LOK SABHA

THE EXTRADITION BILL, 1961

Report of the Joint Committee

(Presented on the 30th November, 1961)



LOK SABHA SECRETARIAT
NEW DELHI

November, 1961

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1.	The Maternity Benefit Bill, 1961	17-2-1961
2.	The Indian Railways (Amendment) Bill, 1961	7-8-1961
3.	The Income-Tax Bill, 1961	10-8-1961
4.	The Representation of the People (Amendment) Bill, 1961	19-8-1961
5.	The Extradition Bill, 1961	30-11-1961

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THE EXTRADITION BILL, 1961

Composition of the Joint Committee

Lok Sabha

Sardar Hukam Singh—*Chairman.*

MEMBERS

2. Bakshi Abdul Rashid
3. Shri Joachim Alva
4. Shri Frank Anthony
5. Shri Dinesh Singh
6. Pandit Jwala Prasad Jyotishi
7. Shri Nemi Chandra Kasliwal
8. Shri Khushwaqt Rai
9. Shri Hirendra Nath Mukerjee
10. Shri Shivram Rango Rane
11. Shri J. Rameshwar Rao
12. Shri Sadath Ali Khan
13. Shri N. Siva Raj
14. Shri Asoke K. Sen.

Rajya Sabha

15. Shri Akhtar Husain
16. Shri Suresh J. Desai
17. Shri M. Govinda Reddy
18. Dr. A. Subba Rao
19. Shri K. K. Shah
20. Shri Vijay Singh
21. Shrimati Lakshmi N. Menon

DRAFTSMEN

Shri R. C. S. Sarkar, *Secretary, Legislative Department,
Ministry of Law.*

Shri V. N. Bhatia, *Additional Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

REPORT OF THE JOINT COMMITTEE

1. The Chairman of the Joint Committee to which the *Bill to consolidate and amend the law relating to the extradition of fugitive criminals was referred, having been authorised to submit the report on their behalf present their Report with the Bill as amended by the Committee annexed thereto.

2. The Bill was introduced in the Lok Sabha on the 7th August, 1961. The motion for the consideration of the Bill was moved by Shri Asoke K. Sen, Minister of Law on the 17th August, 1961, which was discussed on the same day. On the 18th August, 1961, the Minister of Law moved a fresh motion in substitution for reference of the Bill to a Joint Committee of the Houses which was adopted on the same day.

3. The Rajya Sabha discussed the motion on the 23rd and 24th August and 1st September, 1961 and concurred in the said motion on the 1st September, 1961.

4. The message from the Rajya Sabha was read out to the Lok Sabha on the 4th September, 1961.

5. The Committee held five sittings in all.

6. The first sitting of the Committee was held on the 4th September, 1961, to draw up a programme of work. The Committee at this sitting also decided to issue a press communique advising public bodies, associations and individuals desirous of presenting their suggestions or views in respect of the Bill to send written memoranda thereon.

7. No memorandum on the Bill was received by the Committee.

8. The Committee considered the Bill clause by clause at their second, third and fourth sittings held on the 1st, 2nd and 25th November, 1961, respectively.

9. The Report of the Committee was to be presented by the first day of the Fifteenth Session i.e. on the 20th November, 1961. As this could not be done, the Committee requested for extension of time on the 20th November, 1961, which was granted upto the 30th November, 1961.

10. The Committee considered and adopted the Report on the 29th November, 1961.

*Published in Part II, Section 2 of the Gazette of India Extraordinary, dated the 7th August, 1961.

11. The observations of the Committee with regard to the principal changes proposed in the Bill are detailed in the succeeding paragraphs.

12. *Clause 2(1) sub-clause (a).*—The Committee feel that the Central Government should be empowered to add by issue of a notification to the list of commonwealth countries specified in the First Schedule as and when it becomes necessary to do so, otherwise the Act will have to be amended by Parliament, for that purpose.

(2) *sub-clause (c).*—The Committee consider that there should be no separate list of offences with regard to the commonwealth countries to which Chapter III applies and that the list applicable to foreign States should apply also to the commonwealth countries.

(3) *sub-clause (d).*—The amendment made in this sub-clause is of a drafting nature.

The clause has been amended accordingly.

13. *Clause 3(1) sub-clause (1).*—The amendment made in this sub-clause is of a drafting nature and is consequential upon the adoption of new clause 32.

(2) *sub-clause (4).*—Sub-clause (4) has been omitted as being unnecessary in view of clause 35.

14. (*original clause 4*).—The clause has been re-numbered as clause 31.

15. *Clause 4 (original clause 5).*—The amendment made in the clause is of a drafting nature.

16. *Clause 8 (original clause 9).*—The Committee are of the view that the warrant issued under this clause for the surrender of a fugitive criminal should also specify the person to whom the fugitive criminal is to be delivered.

The clause has been amended accordingly.

17. *Clause 9 (original clause 10).*—The Committee have omitted in sub-clause (1) the words “or complaint” so as to remove the possibility of an action being taken on filing of a mere private complaint.

The amendment made in sub-clause (2) is consequential.

18. *Clause 12 (original clause 13).*—The amendments made in the clause are of a clarificatory or drafting nature. Sub-clause (3) has been omitted as being unnecessary in view of clause 35.

19. *Clause 16 (original clause 17).*—The amendments made in this clause are of drafting nature.

20. *Clause 17 (original clause 18).*—The Committee feel that a magistrate should be empowered under this clause to hear evidence in order to determine whether the offence committed is an extradition offence and also whether the warrant for the apprehension of the fugitive has been duly authenticated. Power is also conferred on the magistrate to release the fugitive criminal on bail if he is not satisfied on either of the two aforesaid points.

The Committee are also of the opinion that written submissions, if any, made by a fugitive criminal to the magistrate, should be forwarded to the Central Government.

The clause has been revised accordingly.

21. *Clause 18 (original clause 19).*—The clause has been amended for the same reasons as are adduced in regard to clause 8 (original clause 9).

22. *Clause 23 (original clause 24).*—The Committee are of the view that the scope of this clause should be widened to cover offences committed in the air.

The clause has been amended accordingly.

23. *Clause 24 (original clause 25).*—The Committee consider that a period of three months' detention after which a fugitive criminal, awaiting his return to another State, is entitled to move a High Court for this discharge, is excessive and should be reduced to two months.

The clause has been amended accordingly.

The other change made in the clause is of a drafting nature.

24. The Committee in this regard recommend to the Government that in the extradition treaties that might be entered into by it, a provision should be made that if a surrendered fugitive criminal is not prosecuted within a specified time limit, he would be returned to the country which had surrendered him.

25. *Clause 25 (original clause 26).*—The amendment made in this clause confers on the magistrate the same powers regarding bail as vest in the court of sessions under the Code of Criminal Procedure.

26. *Clause 32 (New Clause).*—The Committee feel that the provisions of clauses 29 and 31 should apply to every foreign State as well to a commonwealth country.

The new clause has accordingly been added.

27. *Clause 34 (New Clause).*—The new clause is consequential to an amendment accepted by the Committee to the definition of "commonwealth country" in clause 2 and is of a drafting nature.

28. *Clause 35 (original clause 33).*—The Committee consider that all notifications should be placed before Parliament.

The clause has been amended accordingly.

29. *First Schedule.*—The Committee have omitted Federation of Rhodesia and Nayasaland from the Schedule.

30. *Second Schedule (original Second and Third Schedules).*—The Committee feel that the list of offences contained in the Second Schedule should apply to a foreign State as well a commonwealth country and accordingly they have omitted the Third Schedule. They further feel that offences committed in the air should also be enumerated in the Second Schedule and that piracy and treason need not be enumerated as extradition offences.

The Schedule has been revised accordingly.

31. The Joint Committee recommend that the Bill, as amended, be passed.

NEW DELHI;
The 29th November 1961.

HUKAM SINGH,
Chairman
Joint Committee.

THE EXTRADITION BILL, 1961

[AS REPORTED BY THE JOINT COMMITTEE]

ARRANGEMENT OF CLAUSES

CLAUSES

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2. Definitions.
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CLAUSES

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THE EXTRADITION BILL, 1961

(AS REPORTED BY THE JOINT COMMITTEE)

[Words side-lined or underlined indicate the amendments suggested by the Committee; asterisks indicate omissions.]

A

BILL

to consolidate and amend the law relating to the extradition of fugitive criminals.

BE it enacted by Parliament in the Twelfth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5 1. (1) This Act may be called the Extradition Act, 1961.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title,
extent and
commence-
ment.

2. In this Act, unless the context otherwise requires,—

Definitions.

10 (a) "commonwealth country" means a commonwealth country specified in the First Schedule and such other commonwealth country as may be added to that Schedule by the Central Government by notification in the Official Gazette and includes every constituent part, colony or dependency of any commonwealth
15 country so specified or added;

* * * *

(b) "conviction" and "convicted" do not include or refer to a conviction which under foreign law is a conviction for contumacy, but the term "person accused" includes a person so convicted for contumacy;

(c) "extradition offence" means—

5

(i) in relation to a foreign State, being a treaty State, an offence provided for in the extradition treaty with that State;

(ii) in relation to a foreign State other than a treaty State or in relation to a commonwealth country * * * 10
* * * an offence which is specified in, or which may be specified by notification under, the Second Schedule;

* * * * *

(d) "extradition treaty" means a treaty or agreement made 15
by India with a foreign State relating to the extradition of fugitive criminals, and includes any ** treaty or agreement relating to the extradition of fugitive criminals made before the 15th day of August, 1947, which extends to, and is binding on, India; 20

(e) "foreign State" means any State outside India other than a commonwealth country, and includes every constituent part, colony or dependency of such State;

(f) "fugitive criminal" means an individual who is accused or convicted of an extradition offence committed within the 25
jurisdiction of a foreign State or a commonwealth country and is, or is suspected to be, in some part of India;

(g) "magistrate" means a magistrate of the first class or a presidency magistrate;

(h) "notified order" means an order notified in the Official 30
Gazette;

(i) "prescribed" means prescribed by rules made under this Act; and

(j) "treaty State" means a foreign State with which an extradition treaty is in operation.

35

3. (1) The Central Government may, by notified order, direct that *** the provisions of this Act other than Chapter III shall apply— ^{Applications of Act.}

(a) to such foreign State or part thereof; or

(b) to such commonwealth country or part thereof to which Chapter III does not apply; as may be specified in the order.

(2) The Central Government may, by the same notified order as is referred to in sub-section (1) or any subsequent notified order, restrict such application to fugitive criminals found, or suspected to be, in such part of India as may be specified in the order.

(3) Where the notified order relates to a treaty State,—

(a) it shall set out in full the extradition treaty with that State;

(b) it shall not remain in force for any period longer than that treaty; and

(c) the Central Government may, by the same or any subsequent notified order, render the application of this Act subject to such modifications, exceptions, conditions and qualifications as may be deemed expedient for implementing the treaty with that State.

* * * * *

CHAPTER II

EXTRADITION OF FUGITIVE CRIMINALS TO FOREIGN STATES AND TO COMMONWEALTH COUNTRIES TO WHICH CHAPTER III DOES NOT APPLY

4. A requisition for the surrender of a fugitive criminal of a foreign State or a commonwealth country may be made to the Central Government— ^{Requisition for surrender.}

(a) by a diplomatic representative of the foreign State or commonwealth country at Delhi; or

(b) by the Government of that foreign State or commonwealth country communicating with the Central Government through its diplomatic representative in that State or country;

and if neither of these modes is convenient, the requisition shall be made in such other mode as is settled by arrangement made by the Government of the foreign State or commonwealth country with the Government of India.

Order for
magisterial
inquiry.

5. Where such requisition is made, the Central Government may, if it thinks fit, issue an order to any magistrate who would have had jurisdiction to inquire into the offence if it had been an offence committed within the local limits of his jurisdiction, directing him to inquire into the case.

5

Issue of
warrant for
arrest.

6. On receipt of an order of the Central Government under section 5, the magistrate shall issue a warrant for the arrest of the fugitive criminal.

Procedure
before
magistrate.

7. (1) When the fugitive criminal appears or is brought before the magistrate, the magistrate shall inquire into the case in the same manner and shall have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by a court of session or High Court.

(2) Without prejudice to the generality of the foregoing provisions, the magistrate shall, in particular, take such evidence as may be produced in support of the requisition of the foreign State or commonwealth country and on behalf of the fugitive criminal, including any evidence to show that the offence of which the fugitive criminal is accused or has been convicted is an offence of political character or is not an extradition offence.

20

(3) If the magistrate is of opinion that a *prima facie* case is not made out in support of the requisition of the foreign State or commonwealth country, he shall discharge the fugitive criminal.

(4) If the magistrate is of opinion that a *prima facie* case is made out in support of the requisition of the foreign State or commonwealth country, he may commit the fugitive criminal to prison to await the orders of the Central Government, and shall report the result of his inquiry to the Central Government; and shall forward together with such report, any written statement which the fugitive criminal may desire to submit for the consideration of the Central Government.

Surrender
of fugitive
criminal.

8. If, upon receipt of the report and statement under sub-section (4) of section 7, the Central Government is of opinion that the fugitive criminal ought to be surrendered to the foreign State or commonwealth country, it may issue a warrant for the custody and removal of the fugitive criminal and for his delivery at a place and to a person to be named in the warrant.

35

9. (1) Where it appears to any magistrate that a person within the local limits of his jurisdiction is a fugitive criminal of a foreign State or commonwealth country, he may, if he thinks fit, issue a warrant for the arrest of that person on such information ** and on such evidence as would, in his opinion, justify the issue of a warrant if the offence of which the person is accused or has been convicted had been committed within the local limits of his jurisdiction.

Power of
magistrate
to issue
warrant of
arrest in
certain
cases.

(2) The magistrate shall forthwith report the issue of a warrant under sub-section (1) to the Central Government and shall forward the information, * and the evidence or certified copies thereof to that Government.

(3) A person arrested on a warrant issued under sub-section (1) shall not be detained for more than three months unless within that period the magistrate receives from the Central Government an order made with reference to such person under section 5.

10. (1) In any proceedings against a fugitive criminal of a foreign State or commonwealth country under this Chapter, exhibits and depositions (whether received or taken in the presence of the person against whom they are used or not) and copies thereof and official certificates of facts and judicial documents stating facts may, if duly authenticated, be received as evidence.

Receipt in
evidence
of exhibits,
depositions
and other
documents
and authen-
tication
thereof.

(2) Warrants, depositions or statements on oath, which purport to have been issued or taken by any court of justice outside India or copies thereof, certificates of, or judicial documents stating the facts of, conviction before any such court shall be deemed to be duly authenticated if—

(a) the warrant purports to be signed by a judge, magistrate or officer of the State or country where the same was issued or acting in or for such State or country;

(b) the depositions or statements or copies thereof purport to be certified, under the hand of a judge, magistrate or officer of the State or country where the same were taken, or acting in or for such State or country, to be the original depositions or statements or to be true copies thereof, as the case may require;

(c) the certificate of, or judicial document stating the fact of, a conviction purports to be certified by a judge, magistrate or officer of the State or country where the conviction took place or acting in or for such State;

(d) the warrants, depositions, statements, copies, certificates and judicial documents, as the case may be, are authenticated by the oath of some witness or by the official seal of a minister of the State or country where the same were respectively issued, taken or given.

5

Chapter not to apply to commonwealth countries to which Chapter III applies.

11. Nothing contained in this Chapter shall apply to fugitive criminals of a commonwealth country to which Chapter III applies.

CHAPTER III

RETURN OF FUGITIVE CRIMINALS TO COMMONWEALTH COUNTRIES WITH EXTRADITION ARRANGEMENTS

10

Application of Chapter.

12. (1) This Chapter shall apply only to any such commonwealth country to which, by reason of an extradition arrangement entered into with that country, it may seem expedient to the Central Government to apply the same.

(2) Every such application shall be by notified order, and the Central Government may, by the same or any subsequent notified order, direct that this Chapter and Chapters I, IV and V shall, in relation to any such commonwealth country, apply subject to such modifications, exceptions, conditions and qualifications as it may think fit to specify in the order for the purpose of implementing the arrangement.

* * * * *

Liability of fugitive criminals from commonwealth countries to be apprehended and returned.

13. Where a fugitive criminal of any commonwealth country to which this Chapter applies is found in India, he shall be liable to be apprehended and returned in the manner provided by this Chapter to that commonwealth country.

Endorsed and provisional warrants.

14. A fugitive criminal may be apprehended in India under an endorsed warrant or a provisional warrant.

Endorsed warrant for apprehension of fugitive criminal.

15. Where a warrant for the apprehension of a fugitive criminal has been issued in any commonwealth country to which this Chapter applies and such fugitive criminal is, or is suspected to be, in India, the Central Government may, if satisfied that the warrant was issued by a person having lawful authority to issue the same,

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endorse such warrant in the manner prescribed, and the warrant so endorsed shall be sufficient authority to apprehend the person named in the warrant and to bring him before any magistrate in India.

16. (1) Any magistrate may issue a provisional warrant for the
5 apprehension of a fugitive criminal from any commonwealth country to which this Chapter applies who is, or is suspected to be, in or on his way to India, on such information and under such circumstances as would, in his opinion, justify the issue of a warrant, if the offence of which the fugitive criminal is accused or has been
10 convicted had been committed within his jurisdiction and such warrant may be executed accordingly.

Provisional
warrant for
apprehen-
sion of
fugitive
criminal.

(2) A magistrate issuing a provisional warrant shall forthwith send a report of the issue of the warrant together with the information or a certified copy thereof to the Central Government, and the
15 Central Government may, if it thinks fit, discharge the person apprehended under such warrant.

(3) A fugitive criminal apprehended on a provisional warrant may, from time to time, be remanded for such reasonable time, not exceeding seven days at any one time, as under the circumstances
20 seems requisite for the production of an endorsed warrant.

17. (1) If the magistrate, before whom a person apprehended under this Chapter is brought, is satisfied on inquiry that the endorsed warrant for the apprehension of the fugitive criminal is duly authenticated and that the offence of which the person is accused or has
25 been convicted is an extradition offence, the magistrate shall commit the fugitive criminal to prison to await his return and shall forthwith send to the Central Government a certificate of the committal.

Dealing with
fugitive criminal when
apprehended.

(2) If on such inquiry the magistrate is of opinion that the endorsed warrant is not duly authenticated or that the offence of which
30 such person is accused or has been convicted is not an extradition offence, the magistrate may, pending the receipt of the orders of the Central Government, detain such person in custody or release him on bail.

(3) The magistrate shall report the result of his inquiry to the
35 Central Government and shall forward together with such report any written statement which the fugitive criminal may desire to submit for the consideration of that Government.

18. The Central Government may, at any time after a fugitive
40 criminal has been committed to prison under this Chapter, issue a warrant for the custody and removal to the commonwealth country concerned of the fugitive criminal and for his delivery at a place and to a person to be named in the warrant.

Return of
fugitive
criminal by
warrant.

CHAPTER IV

SURRENDER OR RETURN OF ACCUSED OR CONVICTED PERSONS FROM FOREIGN STATES OR COMMONWEALTH COUNTRIES

Mode of requisition or form of warrant for the surrender or return to India of accused or convicted person who is in a foreign State or commonwealth country.

19. (1) A requisition for the surrender of a person accused or convicted of an extradition offence committed in India and who is or is suspected to be, in any foreign State or a commonwealth country to which Chapter III does not apply, may be made by the Central Government—

(a) to a diplomatic representative of that State or country at Delhi; or

(b) to the Government of that State or country through the diplomatic representative of India in that State or country; and if neither of these modes is convenient, the requisition shall be made in such other mode as is settled by arrangement made by the Government of India with that State or country.

(2) A warrant issued by a magistrate in India for the apprehension of any person who is, or is suspected to be, in any commonwealth country to which Chapter III applies shall be in such form as may be prescribed.

Conveyance of accused or convicted person surrendered or returned.

20. Any person accused or convicted of an extradition offence who is surrendered or returned by a foreign State or commonwealth country may, under the warrant of arrest for his surrender or return issued in such State or country, be brought into India and delivered to the proper authority to be dealt with according to law.

Accused or convicted person surrendered or returned by foreign State or commonwealth country not to be tried for previous offence.

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

CHAPTER V

MISCELLANEOUS

Liability of fugitive criminals to be arrested and surrendered or returned.

22. Every fugitive criminal of a foreign State or commonwealth country shall, subject to the provisions of this Act, be liable to be arrested and surrendered or returned, whether the offence in respect of which the surrender or return is sought was committed before or after the commencement of this Act, and whether or not a court in India has jurisdiction to try that offence.

23. Where the offence in respect of which the surrender or re-
 turn of a fugitive criminal is sought was committed on board any
 vessel on the high seas or any aircraft while in the air outside India
 or the Indian territorial waters which comes into any port or aero-
 drome of India, the Central Government and any magistrate having
 jurisdiction in such port or aerodrome may exercise the powers con-
 ferred by this Act.

Jurisdiction
 as to
 offences
 committed
 at sea or in
 air.

5

24. If a fugitive criminal who, in pursuance of this Act, has been
 committed to prison to await his surrender or return to any foreign
 State or commonwealth country is not conveyed out of India within
 two months after such committal, the High Court, upon application
 made to it by or on behalf of the fugitive criminal and upon proof
 that reasonable notice of the intention to make such application has
 been given to the Central Government, may order such prisoner to
 be discharged unless sufficient cause is shown to the contrary.

Discharge
 of person
 apprehended
 if not surren-
 dered or re-
 turned with-
 in two
 months.

25. In the case of a person who is a fugitive criminal arrested or
 detained under this Act, the provisions of the Code of Criminal
 Procedure, 1898, relating to bail shall apply in the same manner as
 they would apply if such person were accused of committing in
 India the offence of which he is accused or has been convicted, and
 in relation to such bail, the magistrate before whom the fugitive
 criminal is brought shall have, as far as may be, the same powers
 and jurisdiction as a court of session under that Code.

Release of
 persons
 arrested on
 bail.

5rf 1898

26. A fugitive criminal who is accused or convicted of abetting
 any extradition offence shall be deemed for the purposes of this Act
 to be accused or convicted of having committed such offence and
 shall be liable to be arrested and surrendered accordingly.

Abetment
 of extradi-
 tion
 offences.

27. It shall be lawful for any person to whom a warrant is direct-
 ed for the apprehension of a fugitive criminal to hold in custody
 and convey the person mentioned in the warrant to the place named
 in the warrant, and if such person escapes out of any custody to
 which he may be delivered in pursuance of such warrant, he may
 be re-taken as a person accused of an offence against the law of
 India may be retaken upon an escape.

Lawfulness
 of, and
 retaking
 on escape
 from, cus-
 tody under
 warrants.

28. Everything found in the possession of a fugitive criminal at
 the time of his arrest which may be material as evidence in prov-
 ing the extradition offence may be delivered up with the fugitive
 criminal on his surrender or return, subject to the rights, if any,
 of third parties with respect thereto.

Property
 found on
 fugitive
 criminal.

Power of
Central Go-
vernment to
discharge
any fugitive
criminal.

29. If it appears to the Central Government that by reason of the trivial nature of the case or by reason of the application for the surrender or return of a fugitive criminal not being made in good faith or in the interests of justice or for political reasons or otherwise, it is unjust or inexpedient to surrender or return the fugitive criminal, it may, by order, at any time stay any proceedings under this Act and direct any warrant issued or endorsed under this Act to be cancelled and the person for whose arrest the warrant has been issued or endorsed to be discharged. 5

Simulta-
neous requi-
sitions.

30. If requisitions for the surrender of a fugitive criminal are received from more than one foreign State or commonwealth country or from any foreign State and any commonwealth country, the Central Government may, having regard to the circumstances of the case, surrender the fugitive criminal to such State or country as that Government thinks fit. 10 15

Restrictions
on surren-
der.

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

(a) if the offence in respect of which his surrender is sought is of a political character or if he proves to the satisfaction of the magistrate or court before whom he may be produced or of the Central Government that the requisition or warrant for his surrender has, in fact, been made with a view to try or punish him for an offence of a political character; 20

(b) if prosecution for the offence in respect of which his surrender is sought is according to the law of that State or country barred by time; 25

(c) unless provision is made by the law of the foreign State or commonwealth country or in the extradition treaty with the foreign State or extradition arrangement with the commonwealth country, that the fugitive criminal shall not, until he has been restored or has had an opportunity of returning to India, be detained or tried in that State or country for any offence committed prior to his surrender or return, other than the extradition offence proved by the facts on which his surrender or return is based; 30 35

(d) if he has been accused of some offence in India, not being the offence for which his surrender or return is sought, or is undergoing sentence under any conviction in India until after he has been discharged, whether by acquittal or on expiration of his sentence or otherwise; 40

(e) until after the expiration of fifteen days from the date of his being committed to prison by the magistrate.

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

Sections 29 and 31 to apply without any modification thereof.

31 of 1946. **33.** Nothing in this Act shall affect the provisions of the Foreigners Act, 1946, or any order made thereunder.

Act not to affect the Foreigners Act, 1946.

10 **34.** The provisions of this Act shall apply in relation to the Republic of Ireland in the like manner and subject to the like conditions as they apply in relation to a commonwealth country.

Application of Act to Republic of Ireland.

35. Every notified order made or notification issued under this Act shall, as soon as may be after it is made or issued, be laid before each House of Parliament.

Notified orders and notifications to be laid before Parliament.

15 **36.** (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

20 (a) the form in which a requisition for the surrender of a fugitive criminal may be made;

(b) the form in which a warrant for the apprehension of any person in a commonwealth country to which Chapter III applies may be made;

25 (c) the manner in which any warrant may be endorsed or authenticated under this Act;

30 (d) the removal of fugitive criminals accused or in custody under this Act and their control and maintenance until such time as they are handed over to the persons named in the warrant as entitled to receive them;

(e) the seizure and disposition of any property which is the subject of, or required for proof of, any alleged offence to which this Act applies;

35 (f) the form and manner in which or the channel through which a magistrate may be required to make his report to the Central Government under this Act;

(g) any other matter which has to be or may be prescribed.

(3) Every rule made under this section shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two successive sessions, and if before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Repeals and savings.

37. (1) The Indian Extradition Act, 1903, and any law corresponding thereto in force at the commencement of this Act in the territories which, immediately before the 1st day of November, 1956, were comprised in Part B States and the North East Frontier Agency and Tuensang District (Extradition) Regulation, 1961, are hereby repealed.

(2) The Extradition Acts, 1870 to 1932 and the Fugitive Offenders Act, 1881, in so far as they apply to and operate as part of the law of India, are hereby repealed.

15 of 1903.

15

3 of 1961.

33 and 34
Vict. c. 52;
36 and 37
Vict. c. 60;
6 Edw. 7, c.
15; 22 and
23 Geo. 5,
c. 39.
44 and 45
Vict. c. 69.

THE FIRST SCHEDULE

[See section 2(a)]

The following are commonwealth countries:—

1. Commonwealth of Australia.
- 5 2. Canada.
3. Ceylon.
4. Cyprus.
5. Federation of Malaya.
- * * * * *
- 10 6. Ghana.
7. New Zealand.
8. Nigeria.
9. Pakistan.
10. Sierra Leone.
- 15 11. Singapore.
12. United Kingdom.

THE SECOND SCHEDULE

[See section 2 (c) (ii)]

Extradition offences in relation to foreign States other than treaty States or in relation to commonwealth countries. * * *

The following list of extradition offences is to be construed according to the law in force in India on the date of the alleged offence. Wherever the names of the relevant Acts are not given, the sections referred to are the sections of the Indian Penal Code (45 of 1860):—

1. Culpable homicide (sections 299 to 304).
2. Attempt to murder (section 307). 10
3. Causing miscarriage and abandonment of child (sections 312 to 317).
4. Kidnapping, abduction, slavery and forced labour (sections 360 to 374).
5. Rape and unnatural offences (sections 375 to 377). 15
6. Theft, extortion, robbery and dacoity (sections 378 to 402).
7. Criminal misappropriation and criminal breach of trust (sections 403 to 414).
8. Cheating (sections 415 to 420).
9. Mischief (sections 425 to 440). 20
10. Forgery, using forged documents and other offences relating to false documents (sections 463 to 477A).
11. Offences relating to coins and stamps (sections 230 to 263A). * * * * * 25
12. Sinking or destroying a vessel at sea or attempting or conspiring to do so.
13. Damaging or destroying an aircraft in the air or attempting or conspiring to do so.
14. Assault on board a vessel on the high seas or an aircraft in the air outside India or the Indian territorial waters with intent to destroy life or to do grievous bodily harm. 30

15. **Revolt or conspiracy to revolt by two or more persons on board a vessel on the high seas or an aircraft in the air outside India or the Indian territorial waters against the authority of the master or the pilot in command.**
- 5 16. **Smuggling of gold, gold manufactures, diamonds and other precious stones or of any narcotic substance [section 167, entry 8 in column 2 of schedule, Sea Customs Act, 1878 (8 of 1878)].**
- 10 17. **Immoral traffic in women and girls [sections 4, 5, 6 and 8 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (104 of 1956)].**
- 15 18. **Any offence which if committed in India would be punishable under any other section of the Indian Penal Code or *any other law, and which may, from time to time, be specified by the Central Government by notification in the Official Gazette either generally for all foreign States or for all commonwealth countries or specially for one or more such States or countries.**

* * * * *

APPENDIX I

(Vide para 2 of the Report)

Motion in the Lok Sabha for reference of the Bill to a Joint Committee

“That the Bill to consolidate and amend the law relating to the extradition of fugitive criminals, be referred to a Joint Committee of the Houses consisting of 21 members; 14 members from this House, namely:—

1. Bakshi Abdul Rashid
2. Shri Joachim Alva
3. Shri Frank Anthony
4. Shri Dinesh Singh
5. Sardar Hukam Singh
6. Pandit Jwala Prasad Jyotishi
7. Shri Nemi Chandra Kasliwal
8. Shri Khushwaqt Rai
9. Shri Hirendra Nath Mukerjee
10. Shri Shivram Rango Rane
11. Shri J. Rameshwar Rao
12. Shri Sadath Ali Khan
13. Shri N. Siva Raj
14. Shri Asoke K. Sen,

and 7 members from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the first day of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of members to be appointed by Rajya Sabha to the Joint Committee.”

APPENDIX II

(Vide para 3 of the Report)

Motion in the Rajya Sabha

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

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

APPENDIX III

MINUTES OF THE SITTINGS OF THE JOINT COMMITTEE ON THE EXTRADITION BILL, 1961.

I

First Sitting

The Committee met from 15.00 hours to 15.15 hours on Monday, the 4th September, 1961.

PRESENT

Sardar Hukam Singh—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Joachim Alva.
3. Pandit Jwala Prasad Jyotishi.
4. Shri Hirendra Nath Mukerjee
5. Shri Shivram Rango Rane.
6. Shri Sadath Ali Khan.

Rajya Sabha

7. Shri Akhtar Hussain.
8. Shri M. Govinda Reddy.
9. Shri Vijay Singh.

DRAFTSMAN

Shri V. N. Bhatia, *Additional Draftsman, Ministry of Law.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. The Committee had a discussion about their future programme.

3. The Committee considered whether it was necessary to issue a press communique advising public bodies, associations and individuals desirous of presenting their suggestions or views before the Committee in respect of the Bill to submit written memoranda thereon.

4. It was decided that a press communique might be issued advising public bodies, associations and individuals who are desirous of presenting their suggestions or views in respect of the Bill to send written memoranda thereon to the Lok Sabha Secretariat by the 16th October, 1961.

5. The Committee desired that copies of the following documents might be circulated to the members of the Committee:—

1. U.K. Extradition Act.

2. A note on the Extradition Laws in India and other Countries.

3. Extracts from important treaties entered into by India with other Countries on the subject.

6. The Chairman suggested that notices of amendments to the Clauses of the Bill might be sent to the Lok Sabha Secretariat by the 31st October, 1961.

7. The Committee then adjourned to meet again at 15.00 hours on Wednesday, the 1st November, 1961.

II
Second Sitting

The Committee met from 15.00 hours to 17.00 hours on Wednesday, the 1st November, 1961.

PRESENT

Sardar Hukam Singh—Chairman.

MEMBERS

Lok Sabha

2. Shri Joachim Alva
3. Shri Dinesh Singh
4. Pandit Jwala Prasad Jyotishi
5. Shri Hirendra Nath Mukerjee
6. Shri Shivram Rango Rane
7. Shri Sadath Ali Khan
8. Shri N. Siva Raj

Rajya Sabha

9. Shri Akhtar Hussain
10. Shri Suresh J. Desai
11. Shri M. Govinda Reddy
12. Dr. A. Subba Rao
13. Shri K. K. Shah
14. Shrimati Lakshmi N. Menon.

Shri R. M. Hajarnavis, *Deputy Minister of Law, was also present.*

DRAFTSMEN

Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*

Shri V. N. Bhatia, *Additional Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

Shri D. A. Kamat, *Law Officer, Ministry of External Affairs.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. The Committee took up clause by clause consideration of the Bill.

3. *Clause 2.*—The following amendment was accepted:—

In page 1,

for lines 10—15, substitute—

‘(a) “Commonwealth country” means a commonwealth country specified in the First Schedule and such other commonwealth country as may be added to that Schedule by the Central Government by notification in the Official Gazette and includes every constituent part, colony or dependency of any commonwealth country so specified or added;’

The clause, as amended, was adopted.

4. *Clause 3.*—The following amendment was accepted:—

In page 3,

omit lines 15-16.

The clause, as amended, was adopted.

5. *Clause 4.*—The clause was adopted without amendment and the Draftsman was directed to insert that clause after clause 31.

6. *Clause 5.*—The following amendment was accepted:—

In page 4, line 16,

after “State” add “or country”.

The clause, as amended, was adopted.

7. *Clauses 6—8.*—The clauses were adopted without amendment.

8. *Clause 9.*—The following amendment was accepted:—

In page 5, line 19,

after “place” insert “and to a person”.

The clause, as amended, was adopted.

9. *Clause 10.*—The Draftsman was directed to re-draft the clause so as to make its intention clear.

The Committee further felt that the Draftsman should examine whether High Courts are empowered to release fugitive criminals on bail.

Subject to above the clause was adopted.

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10. *Clauses 11 and 12.*—The clauses were adopted without amendment.

11. *Clause 13.*—The following amendments were accepted:—

(a) In page 6, line 34,
after "subsequent" insert "notified".

(b) In page 7,
omit lines 3—5.

The clause, as amended, was adopted.

12. *Clause 14.*—Consideration of the clause was taken up but discussion thereon was not concluded.

13. The Committee then adjourned to meet again at 10.00 hours on Thursday, the 2nd November, 1961.

III

Third Sitting

The Committee met from 10.00 hours to 11.30 hours on ~~Thursday~~, the 2nd November, 1961.

PRESENT

Sardar Hukam Singh—*Chairman*

MEMBERS

Lok Sabha

2. Shri Joachim Alva
3. Shri Dinesh Singh
4. Pandit Jwala Prasad Jyotishi
5. Shri Hirendra Nath Mukerjee
6. Shri Shivram Rango Rane
7. Shri Sadath Ali Khan
8. Shri N. Siva Raj

Rajya Sabha

9. Shri Akhtar Husain
10. Shri Suresh J. Desai
11. Shri M. Govinda Reddy
12. Dr. A. Subba Rao
13. Shrimati Lakshmi N. Menon

Shri R. M. Hajarnavis, *Deputy Minister of Law*, was also present.

DRAFTSMEN

Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*

Shri V. N. Bhatia, *Additional Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

Shri D. A. Kamat, *Law Officer, Ministry of External Affairs.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. The Committee resumed clause by clause consideration of the Bill.

3. *Clause 14 (contd.)*.—The clause was adopted without amendment.

4. *Clauses 15—17*.—These clauses were adopted without amendment.

5. *Clause 18*.—The draftsman was directed to examine whether the magistrates should be empowered under this clause to hear evidence as has been provided under clause 8.

The Committee felt that it should be provided in the clause that written submissions of fugitive criminals made to the court, if any, should be forwarded to the Central Government by the magistrate along with his report.

Subject to above, the clause was adopted without amendment.

6. *Clause 19*.—The following amendment was accepted:—

In page 8, line 13,
after "place" insert "and to a person".

The clause, as amended, was adopted.

7. *Clauses 20—23*.—These clauses were adopted without amendment.

8. *Clause 24*.—The Committee felt that this clause should also provide for offences committed in the air.

Subject to above, the clause was adopted.

9. *Clause 25*.—The following amendment was accepted:—

In page 9, lines 24-25,
for "three months" substitute "two months".

The clause, as amended, was adopted.

The Committee felt that a recommendation should be made in the report to the effect that in the extradition treaties it should be provided that if the surrendered fugitive criminal was not prosecuted within a specified time limit he would be returned to the country which had surrendered him.

10. *Clauses 26—32*.—These clauses were adopted without amendment.

11. *Clause 32A (New clause)*.—After clause 32, the following new clause was adopted:—

"32A. The provisions of this Act shall apply in relation to the Republic of Ireland in the like manner and subject to the like conditions as they apply in relation to a commonwealth country."

Application
of Act to
Republic of
Ireland.

12. *Clause 33.*—The following amendment was accepted:—

Page 10, line 30,

after "order" insert "and notification".

The clause, as amended, was adopted.

13. *Clauses 34-35.*—These clauses were adopted without amendment.

14. *The First Schedule.*—The Draftsman was asked to examine whether Federation of Rhodesia and Nayasaland should be included in this Schedule.

Subject to above, the Schedule was adopted without amendment.

15. *The Second Schedule.*—The Committee felt that offences committed in the air should also be enumerated in this Schedule.

Subject to above, the Schedule was adopted.

16. *The Third Schedule.*—The following amendment was accepted:—

Page 15,

omit line 8.

The Schedule, as amended, was adopted.

17. The Committee directed the Draftsman to examine whether the Second and the Third Schedules could be amalgamated.

18. The Committee decided to ask for an extension of time for the presentation of the Report upto the 30th November, 1961 and the Chairman and in his absence Shri Shivram Rango Rane was authorised to move the necessary motion in the House.

19. The Committee then adjourned to meet again at 09.30 hours on Saturday, the 25th November, 1961.

IV

Fourth Sitting

The Committee met from 09.35 hours to 10.12 hours on Saturday, the 25th November, 1961.

PRESENT

Sardar Hukam Singh—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Joachim Alva
3. Shri Dinesh Singh
4. Pandit Jwala Prasad Jyotishi
5. Shri Shivram Rango Rane
6. Shri Sadath Ali Khan

Rajya Sabha

7. Shri Akhtar Husain
8. Shri Suresh J. Desai
9. Shri M. Govinda Reddy
10. Dr. A. Subba Rao
11. Shri K. K. Shah
12. Shrimati Lakshmi N. Menon

Shri R. M. Hajarnavis, *Deputy Minister of Law*, was also present.

DRAFTSMEN

Shri R. C. S. Sarkar, *Secretary, Legislative Department, Ministry of Law.*

Shri V. N. Bhatia, *Additional Draftsman, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

Dr. K. Krishna Rao, *Deputy Secretary, Ministry of External Affairs.*

Shri D. A. Kamat, *Law Officer, Ministry of External Affairs.*

SECRETARIAT

Shri A. L. Rai—*Deputy Secretary.*

2. The Committee resumed clause by clause consideration of the Bill.

3. *Clause 3 (vide para 4 of the minutes of the second sitting).*—The Committee reopened discussion on the clause. The following further amendment was accepted:—

Page 2, line 34,

omit "all or any of".

The clause as amended was adopted.

4. *Clause 10 (vide para 9 of the minutes of the second sitting).*—The Committee reopened discussion on the clause. The following amendment was accepted:—

Page 5, lines 24-25,

omit "or complaint".

The clause as amended was adopted.

5. *Clause 17 (vide para 4 of the minutes of the third sitting).*—The Committee reopened discussion on the clause and the following amendment was accepted:—

Page 7, line 25,

after "is accused" insert "or has been convicted".

The clause as amended was adopted.

6. *Clause 18 (vide para 5 of the minutes of the third sitting).*—The Committee reopened discussion on the clause and the following revised clause in substitution of the original clause 18 was adopted:—

Page 8,

for lines 1—8, substitute

"18. (1) If the magistrate, before whom a person apprehended under this Chapter is brought, is satisfied on inquiry that the endorsed warrant for the apprehension of the fugitive criminal is duly authenticated and that the offence of which the person is accused or has been convicted is an extradition offence, the magistrate shall commit the fugitive criminal to prison to await his return and shall forthwith send to the Central Government a certificate of the committal. Dealing with fugitive criminal when apprehended.

(2) If on such inquiry, the magistrate is of opinion that the endorsed warrant is not duly authenticated or that the offence of which such person is accused or has been convicted is not an extradition offence, the magistrate may, pending the receipt of the orders of the Central Government, detain such person in custody or release him on bail

(3) The magistrate shall report the result of his inquiry to the Central Government and shall forward together with such report any written statement which the fugitive criminal may desire to submit for the consideration of that Government."

7. *Clause 26 (vide para 10 of the minutes of the third sitting).*—The Committee reopened discussion on the clause. The following amendment was accepted:—

Page 9, line 34,

after "convicted" insert—

"and in relation to such bail, the magistrate before whom the fugitive criminal is brought shall have, as far as may be, the same powers and jurisdiction as a court of session under that Code".

The clause as amended was adopted.

8. *Clause 31A (New clause).*—After clause 31, the following new clause was adopted:—

Page 10,

after line 27, insert—

"31A. Notwithstanding anything to the contrary contained in sub-section (3) of section 3 or sub-section (2) of section 13, the provisions of sections 4 and 30 shall apply without any modification to every foreign State or commonwealth country."

Sections 4
and 30 to
apply with-
out any
modification
thereof.

9. *The First Schedule (vide para 14 of the minutes of the third sitting).*—The Committee reopened discussion on the Schedule. The following amendment was accepted:—

Page 12,—

omit line 9.

The Scheduled as amended was adopted.

10. *The Second Schedule (vide para 15 of the minutes of the third sitting).*—The Committee reopened discussion on the Sche-

dule. The following further amendment were accepted:—

Page 13,

omit lines 26-27.

The Schedule as amended was adopted.

11. *The Third Schedule (vide para 16 of the minutes of the third sitting).*—The Committee reopened discussion on the Schedule. The following further amendments were accepted:—

Page 15,

(i) *omit line 7.*

(ii) *omit lines 16—19.*

The Schedule as amended was adopted.

The Draftsman was directed to amalgamate the Second and the Third Schedules.

12. *Clause 1.*—The clause was adopted without amendment.

13. *Long Title and Enacting Formula.*—The Long Title and the Enacting Formula were adopted without amendment.

14. The draftsman was authorised to carry out corrections of consequential nature and patent errors.

15. The Committee decided to consider the draft report and the Bill as amended at their next sitting.

16. The Committee then adjourned to meet again at 10.00 hours on Wednesday, the 29th November, 1961.

Fifth Sitting

The Committee met from 12.15 hours to 12.20 hours on Wednesday, the 29th November, 1961.

PRESENT

Sardar Hukam Singh—*Chairman.*

MEMBERS

Lok Sabha

2. Pandit Jwala Prasad Jyotishi
3. Shri Shivram Rango Rane
4. Shri J. Rameshwar Rao
5. Shri N. Siva Raj

Rajya Sabha

6. Shri M. Govinda Reddy
7. Shri K. K. Shah
8. Shri Vijay Singh

DRAFTSMAN

Shri V. N. Bhatia, Additional Draftsman, Ministry of Law.

REPRESENTATIVES OF THE MINISTRIES AND OTHER OFFICERS

Dr. K. Krishna Rao, Deputy Secretary, Ministry of External Affairs.

Shri D. A. Kamat, Law Officer, Ministry of External Affairs.

SECRETARIAT

Shri A. L. Rai—Deputy Secretary.

2. The Committee adopted the Bill as amended.
3. The Committee thereafter considered the draft report and adopted the same.

4. The Committee decided that the Minutes of Dissent, if any, may be sent so as to reach the Lok Sabha Secretariat by 10.00 hours on the 30th November, 1961.

5. The Committee authorised the Chairman and in his absence Shri Shivram Rango Rane to present the report on their behalf.

6. The Committee authorised Shri M. Govinda Reddy and in his absence Shri Vijay Singh to lay the Report on the Table of the Rajya Sabha.

7. The Chairman announced that the Report would be presented to the Lok Sabha on the 30th November, 1961 and laid on the Table of the Rajya Sabha on the same day.

8. The Committee then adjourned.
