

**16.53 hrs**

Title: Discussion on the Repealing and Amending Bill, 2001. (Bill passed)

MR. SPEAKER: The House will now take up item No.13 – 'Repealing and Amending Bill, 2001'.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS AND MINISTER OF SHIPPING (SHRI ARUN JAITLEY): Sir, I beg to move:

"That the Bill to repeal certain enactments and to amend certain other enactments, as passed by Rajya Sabha, be taken into consideration."

I also beg to move that the Bill be passed.

This is a legislation seeking to repeal 357 different legislations that have been occupying the Statute Books. This exercise is repeatedly done in order to find out which are the obsolete and redundant statutes that are still on the Statute Books though they still may not be required for several circumstances on the Statute Books. This compilation of 357 Bills comprises of two different kinds of legislations. The first is a large number of amendment laws. Once an amendment law is passed seeking to amend a parent legislation, the amendment gets incorporated and becomes a part of the parent legislation. Once it is a part of the parent legislation, the amendment law itself is not required on the Statute Book. Section 6A of the General Clauses Act requires that 'if repeal does not, in any way, affect the parent legislation' This is an exercise the Government regularly conducts in order to find out that these legislations are no longer required on the statute books.

The second is a category of a number of legislations which had a life which was limited by virtue of the legislation itself. The legislation was for a limited period of time. That period of time is over. The legislation has lapsed. It no longer has the force of law. But unless it is specifically repealed it does not come out of the statute book itself. There are 357 laws to this effect.

We also conduct an exercise from time to time with regard to certain errors on account of typographical errors or other reasons which may have come as part of certain legislations. There are two different laws which are contained in the second Schedule – one relates to the Indian Succession Act and the other relates to the Code of Criminal Procedure. Certain errors have crept in those Schedules and during the implementation of those legislations it so transpired that these errors were noticed and are being sought to be corrected by amending the Second Schedule.

Sir, the Departmentally related Standing Committee has already gone into this, on each of the legislations which are to be either repealed or amended and has supported the proposal for repeal or amendment of these legislations.

I propose to this hon. House that this Bill as placed before the hon. House be passed. .

MR. SPEAKER : Motion moved:

"That the Bill to repeal certain enactments and to amend certain other enactments, as passed by Rajya Sabha, be taken into consideration."

SHRI G.M. BANATWALLA (PONNANI): Mr. Speaker, Sir, please bear with me for some time. The Bill seeks, at one stroke, to repeal – wholly or partly – as many as 367 different legislative enactments. The hon. Minister has enlightened us and given us the reasons for the repeal saying that these are obsolete Acts. Now, the House will remember that there was a Commission on Review of Administrative Laws, popularly known as Jain Commission. This Commission recommended repeal of 315 amending Acts. None of the Acts included in the present Bill has been recommended by this Review of Administrative Laws Commission or the Jain Commission.

On the one hand we have the Jain Commission's report which does not include or does not tell us that these 367 laws need to be repealed, and on the other hand the Government has come forward with a Bill to amend 367 Acts. Not a single Act here has been recommended for repeal by the Jain Commission. Therefore, one is faced with this particular situation. I think this House should be enlightened about this situation as to why the Jain Commission did not consider it necessary to include any of these Acts in its report for repeal.

I may also mention that there are laws that are struck down by the courts but are not included in the Bill. There are so many laws struck down by the courts. Now, they are redundant. They cannot be implemented. The Standing Committee, on this Bill, in its report has pointed out this particular fact. One would like to know as to why the laws that have been struck down by the courts are not in this particular Bill for the purpose of repeal. One would also like to be enlightened as to how many such laws are there which are struck down by the courts and still not repealed and why the present Bill does not include them.

**17.00 hrs**

Sir, I have a suggestion to make. The hon. Minister has pointed out that this is a routine exercise, this Bill is brought pursuant to a routine exercise to scavenge, to cleanse the Statute Book of obsolete laws. For example, there are amending Acts which are already incorporated in the parent Acts and then, they need to be wholly repealed. Secondly, there are Acts which are of temporary nature. They may get renewed, but then finally, they lapse. After their lapse, they have to be removed. Thirdly, there are Acts for particular purpose only and with the fulfilment of that particular purpose, the Act outlives its purpose. Now, scavenging has to be done.

I make the suggestion to the Government to have an enactment which may take care of such situations by itself, to have an enactment which may provide that that an amending Act which gets incorporated in the parent Act, then gets automatically repealed. This House need not consider, need not go through the entire exercise of repealing such amending Acts which get incorporated in the parent Acts, lose their separate identity and are not required forthwith. A permanent measure, a permanent Bill can be passed and we can have a permanent enactment to say that under at least these three categories which I have mentioned, the scavenging is done pursuant to the permanent measure. Sir, I therefore suggest that some permanent legislation may be taken up to take care of legislative scavenging, without coming to the House and without this elaborate procedure.

Mr. Speaker Sir, various questions are involved. You have just given a ruling with respect to an earlier Bill on points of order raised by hon. Member Shri Shivraj Patil, but here, in this case also, there are so many questions that come up, though they may not be raised in the form of a point of order. However, every student of parliamentary democracy must apply his mind to this particular situation. The situation has been highlighted by the Standing Committee in its Report on the Bill. The question is whether such a repealing Bill needs or does not need Cabinet's approval. The Legislative Department is of the opinion that it does not need Cabinet's approval. Perhaps what is called the Department of Legal Affairs seems to think that it does require the sanction of the Cabinet. The Standing Committee has highlighted this particular point because the Department of Legal Affairs, to whom the Legislative Department had sent this Bill for comments, had advised that they concur in the draft note for the Cabinet. Sir, the Legislative Department says that the Cabinet's nod is not wanted; the Department of Legal Affairs says that the Cabinet's nod is wanted for this particular Bill.

The Standing Committee says that it was not clear on the subject. Then, where are we? How do we proceed? On the Cabinet's approval, there seems to be a lot of differences.

MR. SPEAKER: Please conclude.

SHRI G.M. BANATWALLA : Sir, I have hardly commenced and there are so many other important points with respect to the Bill.

MR. SPEAKER: Only 30 minutes have been allocated for this Bill.

SHRI G.M. BANATWALLA : I am sorry to say that the hon. Minister while piloting the Bill has definitely omitted to reply to any of the points raised by the Standing Committee in its Report. In bold letters, the Standing Committee has referred to various important points and has stressed that when the hon. Minister pilots the Bill, the matter must be clarified and, yet, no clarification seems to have come. There is no clear thinking on the part of the Government and one would like that this situation should get resolved.

Sir, the Standing Committee in its Seventy-sixth Report on the Bill raised certain queries that there were Bills which were never implemented. Now, they are being repealed. Why were they not implemented was the question asked. The Legislative Department simply shrugged or washed their hands off by saying that it was for the respective Ministry to explain and not the Legislative Department. Then the Standing Committee has pointed out that that was not proper. The Standing Committee was not convinced. The Standing Committee wants the Minister to take care of this point while piloting the Bill, and there has been no reference whatsoever to these aspects. One wonders whether the Government ever takes note of the strong sentiments and the observations expressed by the Standing Committees. The Standing Committee pointed out that the provisions, which were never implemented, are now being sought to be repealed and the matter must be explained by the Minister while piloting the Bill rather than washing his hands off by saying that the matter goes to the Ministry concerned.

I may refer to item No. 42 in the First Schedule and that is with respect to 'Places of Worship (Special Provisions) Act, 1991'. It repeals not the whole Act, but section 8. We all know that because of this Act, the religious character of a place of worship existing on 15<sup>th</sup> August, 1947 is protected and shall continue to be so. Then, section 6(1) and (2) provide that, "Whoever commits this offence or attempts to commit this offence or moves in the direction of committing this offence is punishable." Section 8 which is being repealed today because it is incorporated in the parent Act says that, "A person who is convicted of this offence is disqualified even for being elected to the Assembly or to the Parliament." It is such an important thing, but we find that in all these years no action whatsoever

has ever been taken on the implementation of the Bill. There are several instances of an attempt to convert one religious place into a religious place of another denomination. I will not exploit this occasion to give you all those things.

Sir, I would like to know as to what is being done in order to see that such provisions are duly implemented and those who try to commit this offence or move in the direction of committing this offence are convicted. It is because they are not prosecuted, it is because they are not convicted, section 8 that is being repealed now, because it has already been incorporated in the Act, does not come into operation at all -- and the persons who, day in and day out flout the provisions of the law continue without any punishment. So, this is an important point to which the Government must not tell us as the Standing Committee has been told that the responsibility for the repeal, the responsibility for clarification lies with the Home Ministry.

Sir, in deference to your restlessness, I would make my last point.

MR. SPEAKER: Shri Banatwalla, you have taken 16 minutes.

SHRI G.M. BANATWALLA : Sir, I am not only raising substantial points but also making concrete suggestions.

Sir, other pieces of amending Acts that are being repealed today concern the infamous TADA. So many TADA amending Acts are being repealed. The Government may repeal them. I am not taking objection to that. All I would like to say is that in spite of the fact that the parent TADA got lapsed in May, 1995 but a large number of legal proceedings under the Act are still continuing. Now, why was this principal Act allowed to be lapsed? It was allowed to be lapsed because there was a large-scale misuse and abuse of the Act resulting into limitless sufferings of a large number of people. It is because of the abuse of the Act that the Act was sought to be repealed. Therefore, with the repeal of the Act, these legal proceedings ought to have gone. I can understand the application of sub-Section 4 of section 1. It is because of this, the legal proceedings are continuing. But there is a need for the Government to come forward with a Bill in order to say that with the expiry of the Act, the legal proceedings under the Act shall also collapse because there have been allegations of misuse and abuse of the Act. If anyone is considered guilty, then he could be tried under the ordinary law of land. The Government can proceed against them under the ordinary law of land rather than holding people under this undemocratic, infamous and atrocious Act.

Sir, I hope, that these matters would receive consideration of the Government. The legal proceedings under the TADA have been continuing for so many years and there seems to be no end to this. Therefore, I would like to submit that let these legal proceedings under the TADA also come to an end. If anyone is considered guilty, then he can be proceeded against under the ordinary laws of the land.

**डॉ. रघुवंश प्रसाद सिंह (वैशाली) :** अध्यक्ष महोदय, माननीय कानून मंत्री जी ने जो विधेयक प्रस्तुत किया है और प्रस्तुतीकरण में जो इन्होंने सदन को अन्धकार में, धोखाधड़ी में रखने का काम किया है, मैं साफ कर देना चाहता हूँ। (व्यवधान)

**श्री अशोक प्रधान (खुर्जा) :** यह क्या शब्द है? शुरुआत ही धोखाधड़ी शब्द से कर रहे हैं। (व्यवधान) सभापति जी भी हैं, उसके बावजूद भी ये ऐसे शब्दों का इस्तेमाल कर रहे हैं। (व्यवधान)

**डॉ. रघुवंश प्रसाद सिंह :** माननीय विद्वान सदस्य बनातवाला जी ने जो जिक्र किया है, (व्यवधान)

**श्री शंकर प्रसाद जायसवाल (वाराणसी) :** यह तो पीठासीन पदाधिकारियों की भी क्लास ले लें। (व्यवधान)

**डॉ. रघुवंश प्रसाद सिंह :** इसका मतलब है, क्या क, ख, ग से शुरु करेंगे। (व्यवधान)

अभी जैसा माननीय सदस्य, बनातवाला जी, ने जिक्र किया कि 1998 में जैन आयोग बैठा था और उसने कहा है कि देश भर में 25,000 कानून हैं, जिसमें से प्रति राज्य 700-800 कानून हैं और केन्द्र के 2500 कानून हैं। इन कानूनों में से 1324 कानूनों को निरस्त करना चाहिए। अध्यक्ष महोदय, अभी रेलवे के दो कानूनों को निरस्त किया गया और एक कानून गन्ना उपकर निरसन विधेयक अलग से निरस्त किया गया है। एक विभाग के दो कानून और एक विभाग के एक कानून को अभी निरस्त किया गया है। कानून मंत्री बतायें कि 397 कानून किस-किस विभाग के हैं? एक साथ कह रहे हैं कि कानूनों का निरसन करना है, इसलिए इनको पास करिए। एक तरफ कह रहे हैं कि निरसन भी करिए, और दूसरी तरफ तीन-चार कानूनों में संशोधन ले आए हैं। अभी तो कानून में दो शब्दों का भी संशोधन करना होता है, तो विभाग के लोग संशोधन करने के लिए यहां उपस्थित होते हैं। कानून मंत्री स्पष्ट करें, इस अंधकार को दूर करें और बतायें, क्या कारण है कि एक ही विधेयक में संशोधन भी लाए हैं और निरसन का भी एक ही विधेयक में लाए हैं। एक कानून नहीं, तीन कानून निरस्त किए हैं। एक कानून फूट से संबंधित और दो रेलवे के कानून अलग-अलग लाए हैं। मंत्री जी बतायें कि क्यों खारिज होना चाहिए? अन्य 397 कानूनों के बारे में कहते हैं कि एक ही कलम से इनको खारिज करिए। धोखाधड़ी, जो मैंने कहा, उसके बारे में बता रहा हूँ। (व्यवधान) पृष्ठ-6 पर एक कानून का जिक्र है, आवश्यक वस्तु विशेष उपबन्ध अधिनियम, 87, यह कानून ब्लैक मार्केटिंग से संबंधित है। इस कानून को क्यों खत्म करने जा रहे हैं? (व्यवधान) मैं सभी कानूनों के बारे में पढ़ कर बताता हूँ। अनेक विभागों के 397 कानून हैं। सदन में अलग-अलग विभागों के कानून निरस्त करने के लिए आए और सदन में उन पर बहस हुई। इसी प्रकार पृष्ठ-2 पर भारतीय उत्तराधिकार अधिनियम, 1985 में संशोधन और दंड प्रक्रिया में भी संशोधन इसी में लाए हैं। धारा 377 में भी संशोधन इसी में लाए हैं। उद्देश्य बताकर कानून में संशोधन लाए हैं। लेकिन एक ही में संशोधन और एक ही में निरसन, अनेक विभागों के कानून और आयोग ने भी इसका जिक्र नहीं किया है। क्या आयोग ने आपको सभी कानूनों के बारे में सुझाव दिया है, लिखा-पढ़ी की है कि सभी को खत्म करिए। इस तरह से जब अक्षर-अक्षर पर विचार होता है। आवश्यक वस्तु अधिनियम उपबन्ध, 87, जो ब्लैक मार्केटिंग, प्रोफिटियरिंग से संबंधित है, इस एसेंशियल कमोडिटीड कानून को भी खत्म कर दिया है, लेकिन इसके प्रास एंड कान्स क्या होंगे, उनका कोई वर्णन नहीं किया है। सभी के लिए एक ही कलम से कह रहे हैं कि इनके खत्म करिए। सदन में बात को स्पष्ट करिए, नहीं तो यह बहुत ही खतरनाक बात होगी। 1324 कानूनों में ऐसे

कितने कानून हैं, इस बारे में स्थिति स्पष्ट करिए। ब्रीफ लेकर सदन में उपस्थित हो जाते हैं और उस दिन वित्त मंत्री जी तरफ से उपस्थित हुए, उनका केस खराब हो गया। आज अपने केस को लेकर उपस्थित हुए हैं। सदन में बिल से संबंधित ब्रीफ लेकर उपस्थिति हो जाते हैं। हम चाहते हैं कि कानून मंत्री स्थिति को स्पष्ट करें।

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS AND MINISTER OF SHIPPING (SHRI ARUN JAITLEY): Mr. Speaker, Sir, two-three questions have been raised in the course of the debate by the hon. Members. One of the issues is that the Government had appointed a Committee headed by Shri P.C. Jain which had recommended the repeal of about 1,324 laws, to be precise. That exercise is in relation to substantive laws which have become redundant or obsolete. That is a process that the Government is undertaking. A large number of those legislations have been repealed and some are in the process of being repealed. Comments of the Administrative Department and in certain cases, comments of the State Governments in regard to those laws are taken. After an opinion is formed by the Government that these laws have actually become redundant, one by one, each of those laws is being brought before this hon. House.

This exercise is completely independent. The hon. Members who spoke are right that from the exercise which was undertaken by the P.C. Jain Committee, there is an exercise which the Legislative Department does periodically. This exercise has taken place 11 times in the past; the last being in 1988 where the Legislative Department has undertaken a review of all laws, and whatever are redundant on account of statutory provisions, are sought to be repealed. And, if during that course, some errors have crept in to some laws which are intended to be continued on account of procedural reasons, then those minor errors are sought to be corrected.

In fact, the first repeal and amending Act, which is a regular feature was brought before the then Dominion Legislature in 1949, and then later during 1950, 1952, 1953, 1957, 1960, 1964, 1974, 1978 and 1988. The precedent and practice which have been followed on each case have also been followed in this case. This is brought by the Legislative Department and on each of these cases, a repealing and amendment Act wherein a process of scavenges takes place and a process of correction of any minor lapse which has taken place in the process, also takes place.

That is why this is an exercise which is completely independent. The last such exercise was done in 1988 and for the last 13 years, this exercise has not been undertaken.

Dr. Raghuvansh Prasad Singh asked: "Why are you bringing these under one head?" This has been the consistent practice on all occasions that this repeal takes place on account of operations of the provisions of Section 6A of the General Clauses Act. The Essential Commodities Act is not being repealed.

उस एक्ट को समाप्त नहीं किया जा रहा है, वह एक्ट ब्लैक मार्केटिंग के खिलाफ रहेगा। इस एक्ट के तहत जो संशोधन किया गया था वह संशोधन पुराने कानून का एक अंग बन गया है और जो संशोधन का कानून था, वह डुप्लीकेशन है, वह कानून की किताब पर चला आ रहा है। उसकी आवश्यकता नहीं है।

The principle Act is incorporated in it. It is a part of the principle Act. It remains there. It is only the amending Act which has now become redundant because of Section 6A. It is these sets of legislations which are sought to be repealed.

As far as the second question as to what do we do about Acts which are struck down by courts is concerned, well, that is an independent exercise, independent of this repealing and amendment Act which goes on. The Legislature then steps in, either it accepts the verdict of the court; the struck down legislation goes out of the Statute Book if an alternative is proposed, then the alternative in that event is accepted.

As far as the detail of enforcement of these 357 laws is concerned, I have a complete list with me along with the reasons. If any hon. Member wants to share this list – it was given to the Standing Committee also – it is available with me even today.

Now, with regard to certain specific provisions, two illustrations were given here. Take, Section 8 of the Places of Worships Act, 1991. It is only the amending Act which is sought to be repealed. The principle Section 8 remains there. As long as section 8 is a part of the principle Act, it is for the law enforcement agencies who are to enforce that Act.

Sir, there was also a point made with regard to the TADA that TADA was a time-bound legislation which lapsed on account of expiry of that time but it continues in the Statute Book. We are only taking it off the Statute Book in this particular case. On the question of what will happen to the prosecutions filed under TADA, they are going to be governed by the provisions of TADA, and also the provisions of the General Clauses Act.

It provides that all acts undertaken or all cases which are brought in under a particular legislation, prior to the date of lapse of the Act, will continue. They do not get lapsed by virtue of the Act being repealed. That is a separate legislation, which has nothing to do with this particular legislation.

SHRI PRIYA RANJAN DASMUNSI (RAIGANJ): Sir, the other day the hon. Home Minister was told by the hon. Members of his own Party that during the curfew situation, had there been any Act like TADA in its hand, it could

have dealt with the situation properly. Now, you are conceding that there is no relevance of this Act any more and you can handle it properly!

SHRI ARUN JAITLEY: No, Sir. I am not conceding that. I am not conceding that for a moment and he has no reason to understand it that way. All that I am saying is that TADA was an Act which was brought in for a period of time, and since that period lapsed, for technical reasons it has to go out of the Statute Book. Whether it is required again or some other law is required again, it is independent of the scope of the discussion that we have today, completely.

SHRI G.M. BANATWALLA : It is not so simple because it was allowed to be lapsed because of widespread complaints of large-scale misuse of the Act. That is the point that he must address and he should be realistic.

SHRI ARUN JAITLEY: We must address ourselves when the debate of any law of that kind comes up. Today we are only on a limited question that the Act having lapsed, should it occupy the Statute Book or should it be scavenged out of the Statute Book. This is a scavenging exercise, which is done as I rightly pointed out; and I propose to the august House that the Bill, as moved, be approved by the august House.

MR. SPEAKER: The question is:

"That the Bill to repeal certain enactments and to amend certain other enactments, as passed by Rajya Sabha, be taken into consideration."

*The motion was adopted.*

MR. SPEAKER: The House shall now take up clause by clause consideration of the Bill.

The question is:

"That clauses 2 to 4 stand part of the Bill."

*The motion was adopted.*

*Clauses 2 to 4 were added to the Bill.*

*The First Schedule was added to the Bill.*

*The Second Schedule was added to the Bill.*

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

SHRI ARUN JAITLEY: Sir, I beg to move:

"That the Bill be passed."

MR. SPEAKER: Motion moved:

" That the Bill be passed."

SHRI SHIVRAJ V. PATIL (LATUR): Thank you, Sir. I just want to make only two points. One point is that a large number of Bills are tried to be repealed or tried to be removed from the Statute Book. If we are considering 357 Bills to be removed from the Statute Book, it is a very big number. The hon. Minister has rightly said that they are of a technical nature and they need not be gone into in detail; we all accept that point. But if the Government is coming before this House to remove these Bills from the Statute Book, it should not come before the House in this manner. This kind of omnibus legislation does not help. This is the first point that I wanted to make.

Moreover, probably the Government was in a hurry to see that this Bill is passed within 30-35 minutes . We are dealing with 357 amendments at least, if not the entire Bill. Now in 35 minutes, 357 Bills are to be considered by the House. When we make a law, we create an obligation and we create rights and duties. Sometimes, the rights are given to the individuals; if such Bills are removed from the Statute book, those rights are nullified. Sometimes duties are imposed on the Government and if one such Bill goes out of the Statute book, the Government is not duty-bound. So, this kind of legislation should not be considered in 30-35 minutes' time.

These are the only two submissions that I wanted to make.

SHRI ARUN JAITLEY: I quite appreciate the suggestion that Shri Shivraj Patil has made. May I just clarify one thing? Each legislation is separately introduced in the House; each deals with a specific subject.

The repeal of each legislation, which deals with a specific subject, is also being separately brought into the House. This hon. House also has a precedent where the repeal is on account of a technical requirement of law. We are not taking away the right created by law. That we do in the kind of separate repeal legislation we are passing. These are those laws which have already, by virtue of amendment, become part of a parent legislation. The amending legislation is unnecessarily occupying the statute book. Therefore, the technical requirement of law itself requires that this having become a part of the principal Act, the amending Act itself goes. That is the reason that I have cited, that there are eleven precedents in this House where this has been collectively brought into the House in this manner. I shall, however, keep your suggestions in mind as far as the future events are concerned.

MR. SPEAKER: The question is:

"That the Bill be passed."

*The motion was adopted.*

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