

Mr. Deputy-Speaker: The question is:

"That the Bill be passed."

The motion was adopted.

14.29 hrs.

OFFICIAL TRUSTEES (AMENDMENT) BILL

The Deputy Minister in the Ministry of Law (Shri Jaganatha Rao): On behalf of Shri A. K. Sen, I beg to move:

"That the Bill further to amend the Official Trustees Act, 1913, as passed by Rajya Sabha, be taken into consideration."

This Bill seeks to give effect to the recommendations of the Law Commission in its Sixteenth Report. India was the first country to appoint a public trustee in 1864. Thereafter, in 1913 the Official Trustees Act came into existence. This Act has been in force for over 45 years. The Law Commission examined the working of the Act, and in its Sixteenth Report observed, and I quote:

"It is on the whole a comprehensive and well-drafted piece of legislation, and it does not require any substantial changes."

No difficulties have been felt in the interpretation of the various sections of the Act, and therefore, they say they are of the opinion that the Act does not require any substantial changes. However, the Law Commission suggested some formal amendments. In pursuance of those recommendations this Bill was introduced in the Rajya Sabha and was passed by the Rajya Sabha.

Clause 2 of the Bill seeks to omit the preamble in the parent Act. The present practice is not to have preambles in the Acts. To bring it in conformity with the present practice

the preamble in the original Act is now sought to be omitted.

In clause 3 of the Bill, clause (2) of section 2 of the Act is sought to be omitted. Clause (2) of section 2 defines "High Court". "High Court" is already defined in the General Clauses Act of 1897. Therefore the definition in this Act is superfluous, and so its deletion is sought.

Clause 4 of the Bill seeks to re-introduce section 3 of the original Act which was omitted by the Adaptation of Laws Order, 1956. In practice, difficulty was found that where the properties which were being administered by an Official Trustee were situated in various parts of the State we had to approach various District Courts. Therefore, the jurisdiction of the High Court is now sought to be provided, and at the same time the jurisdiction of the District Court is retained.

Clause 5 is an important clause which seeks to prescribe minimum qualifications for an Official Trustee. This clause would be on a par with the similar section, section 3, in the Administrators-General Act, 1963. This qualification is required to be fixed, because in many States the same person is Administrator-General and also Official Trustee. Under that Act the qualifications of the Administrator-General are fixed. So also, similar qualifications are now being prescribed for a person to be appointed as Official Trustee.

Clause 6 refers to the qualifications of a Deputy Official Trustee. This, again, would be on a par with the qualifications prescribed for the Deputy Administrator-General in the Administrators-General Act of 1963.

The other clauses are merely formal. In clause 13 it is now sought to delete the word "interest" and substitute it by the word "income", because income is more comprehensive than interest.

Clause 14 is the usual clause where-
in it is said that the rules framed
by the Central Government have to
be laid on the Table of the House.

This in brief is the substance of
the Bill.

Sir, move.

Dr. M. S. Aney (Nagpur): The
whole Bill, as a matter of fact.

Mr. Deputy-Speaker: Motion
moved:

"That the Bill further to amend
the Official Trustees Act, 1913, as
passed by Rajya Sabha, be taken
into consideration."

One hour is the time allotted.

Shri Solanki (Kaira): Sir, while
welcoming this Bill, I would like to
ask the hon. Minister for one clarifica-
tion.

Here, in the qualifications for ap-
pointment as a Deputy Official
Trustee, a certain period of experi-
ence as advocate has been laid down,
as has also been done in the case of
the Official Trustee himself. And if
the Deputy Official Trustee has to
qualify for the office of the Official
Trustee, he has to put in five years
experience, besides the usual quali-
fications as an advocate. That is to
say, if the Deputy Official Trustee is
appointed to the post of Official Trust-
tee, he has to put in this five years
experience in addition to the period
of three years practice as an advoca-
te. This would make it rather
difficult as he is putting 8 years ex-
perience, a year more than others
who are not even attached to this
department. Generally an advocate
has to put in seven years practice to
become an Official Trustee. But if
this gentleman has remained in posi-
tion for five years as a Deputy Offi-
cial Trustee—and he has already had
three years practice as an advocate—
that makes it eight years for him.
On that point I would like to have a
clarification from the hon. Minister
as to why he has to put in an extra
year to qualify for this post.

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Secondly, in clauses 5 and 6 it is
provided that appointments to these
posts can also be of High Court Judges
and from the judicial service of a
State. In regard to this I would like
to point out that no advocate or
attorney who is connected with a
political party or who has any lean-
ings towards any political ideology
should be appointed to such a posi-
tion, because it is liable to affect the
work that we have before us. There-
fore I would like to suggest that ap-
pointment which is made to this post
should be observed in this light that
no person or authority, judge, advoca-
te or attorney who has any lean-
ings towards a political ideology
should be appointed to this post.

Shri Ranga (Chittoor): Hear, hear.

Shri Solanki: And finally, as re-
gards the accounts which are submit-
ted by the Official Trustees, there is
a delay in it. And I think it is
necessary that some efficiency should
be introduced in this Department, so
that there is no mismanagement or
misuse of the position of Official
Trustee or the Trust as a whole.

Dr. M. S. Aney: May I ask one
question of my hon. friend, whether
he means to say that any person who
is going to be appointed, if he hap-
pens to be a member of any political
party, should be debarred from such
appointment? Is that what he
wants?

Shri Solanki: That is right.

Dr. M. S. Aney: That, after such
appointment, he should have no con-
nection with any political party, is
a different thing.

Shri Solanki: That is what I would
suggest.

Dr. M. S. Aney: That is a different
thing.

Shri M. P. Swamy (Tenkasi): As
has been pointed out by the previous
speaker, in the qualifications for ap-
pointment as Official Trustee there is
some anomaly. For instance, if a
person is directly recruited to that

[Shri M. P. Swamy]

post, only seven years' standing at the Bar is necessary. But if a Deputy Official Trustee is to be appointed as Official Trustee, he has to put in a service of five years as Deputy Official Trustee and a period of three years' practice at the Bar. That means eight years. So, as compared to the man who comes by direct recruitment, the man who comes by promotion from the service has to put in one year more. The hon. Minister will kindly throw some light on this matter and explain this position.

The other matters in the Bill are merely consequential. Clause 14 makes a new rule here. According to the parent Act, as soon as a rule was published in the Official Gazette it became a part of the law and it came into force. But now, Parliament is given the power to scrutinise the rules framed under the Act and given power to make modifications, so that we can check the activities of these persons.

With these observations I support the Bill.

Shri Jaganatha Rao: Sir, the hon. Members wanted some clarification. I may submit at the outset that under the principal Act of 1913 there is no provision for a Deputy Official Trustee being promoted as Official Trustee. Now we are giving him an opportunity to be promoted. Now, minimum qualifications are laid down for the post of Official Trustee and for the post of Deputy Official Trustee. If a person is appointed as a Deputy Official Trustee he has to put in a minimum of five years service in that post to be promoted as Official Trustee. So it may so happen that a person who is qualified, who has got three years' standing at the Bar, if he chooses to apply for the post of Deputy Official Trustee and he is appointed, has to take the consequences; whereas a person who is directly appointed has that advantage over him. For instance, a graduate becomes an IAS officer

direct, and another joins the Secretariat service and he has to wait for promotions. That difficulty or hardship is there.

There is another point. A person belonging to the State Judicial Service has to put in a minimum service of ten years to qualify as Official Trustee, whereas the Deputy Official Trustee will have to put in only eight years—three years at the Bar initially and five years experience as Deputy Official Trustee; the total is eight years. Therefore, the condition in this clause is not more onerous than that in clause 5. Therefore there is no hardship to a person who is appointed as Deputy Official Trustee. There is no difficulty in that.

Regarding the political affiliations of a person to be appointed as Official Trustee or Deputy Official Trustee, may I submit that in respect of any person who enters government service his antecedents are taken into account before he is appointed. Therefore, political affiliations cannot come into play where a person is appointed in government service.

Mr. Deputy-Speaker: The question is:

"That the Bill further to amend the Official Trustees Act, 1913, as passed by Rajya Sabha, be taken into consideration."

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That Clauses 2 to 14 stand part of the Bill."

The motion was adopted.

Clauses 2 to 14 were added to the Bill. Clause 1, the Enacting Formula and the Title were added to the Bill.

Shri Jaganatha Rao: Sir, I move:

"That the Bill be passed."

श्री हुकम चन्द कछवाय (देवास) :
उपाध्यक्ष महोदय, इस समय हाउस में कोरम नहीं है। बिना कोरम के बिल को पास नहीं करना चाहिये।

Mr. Deputy-Speaker: The Bell is rung—now there is quorum. I must again remind the House that this is the third time that the Bell is being rung in the last 40 minutes. The question is:

“That the Bill be passed.”

The motion was adopted.

श्री रामसेवक यादव (वाराणसी) : उपाध्यक्ष महोदय, इस कोरम के बारे में मैं कहना चाहता हूँ कि आज अब तक 6 बार कोरम की घंटी बज चुकी है। अब यह जिम्मेदारी सरकार की है कि वह कोरम को रक्खे। लेकिन जब इतनी गैर जिम्मेदारी से इस सदन का कार्य चल रहा है तो मैं आप से निवेदन करूँगा कि आज की बैठक को स्थगित कर दिया जाये।

उपाध्यक्ष महोदय : हर एक मँम्बर की जिम्मेदारी है कि वह कोरम रक्खे।

श्री रामसेवक यादव : यह आप की जिम्मेदारी नहीं है बल्कि यह तो सरकार जिसे कि अपना बिजनेस पास कराना होता है उसकी जिम्मेदारी है कि वह उसके लिए ज़रूरी कोरम बनाये रक्खे।

14.4 hrs.

REPEALING AND AMENDING BILL

The Deputy Minister in the Ministry of Law (Shri Jaganatha Rao): Mr. Deputy-Speaker, on behalf of Mr. A. K. Sen, 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.”

Sir, this is a formal measure which is periodically brought before the House to bring the statute book up-to-date because some of the enactments have spent themselves out and are no longer required. The enactments which are proposed to be amended are enumerated in the

Second Schedule while the enactments sought to be repealed are in the first Schedule. The enactments sought to be repealed have ceased to be in force or have become obsolete or their retention has become unnecessary. The notes on the Schedules give the reasons why certain legislation is sought to be repealed or why certain laws are sought to be amended. The amendments that are sought to be made are merely of a formal nature and they do not go to the root of any matter. This a routine measure and I move.

Mr. Deputy-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 Solanki (Kaira): Mr. Deputy Speaker, I only want some clarifications on this Bill. On page 9, line 9 on the Second Schedule they want the figure 225 to be substituted for the figure 226. I had correspondence with the Chartered Accountants Association and they wrote to me that figure 224 was to be put there. I would like to know whether it is a mistake on the part of the Government that for 224 they have put here 226. Because the item 224 is again missing from this Bill.

श्री शिवमूर्ति स्वामी (कपिल) : उपाध्यक्ष महोदय, इस रिपीनिंग एण्ड एमंडिंग बिल के बारे में मुझे केवल यह निवेदन करना है कि खास तौर पर स्वतन्त्रता प्राप्ति करने के पश्चात् बहुत से ऐसे क़वानीन और रूल्स जो कि हमारे मूलभूत हक़ और अधिकारों के खिलाफ़ जाते हैं उनको रिपील करने के लिए सरकार एक विशेष कमेटी नियुक्त करे या फिर इसी ला कमीशन के जिम्मे यह सब देखने का काम सुपुर्द करे ताकि ऐसे सारे इनएक्टमेंट्स रिपील किये जा सकें। मुझे मालूम है कि ऐसे बहुत से क़वानीन हमारी स्टैच्यूट बुक्स में हैं जो कि हमारे फंडामेंटल