

REPORT NO

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PARLIAMENT OF INDIA
RAJYA SABHA

DEPARTMENT-RELATED PARLIAMENTARY STANDING COMMITTEE
ON PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE

SEVENTY-THIRD REPORT

The Repealing and Amending Bill, 2014

(Presented to the Rajya Sabha on December, 2014)

(Laid on the Table of Lok Sabha on December, 2014)



Rajya Sabha Secretariat, New Delhi
December, 2014/ Agrahayana 1936 (Saka)



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ACRONYM

EEZ

Exclusive Economic Zone

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* To be appended at printing stage.

COMPOSITION OF THE COMMITTEE
(As Constituted on 1st September, 2014)

1. Dr. E.M. Sudarsana Natchiappan — *Chairman*

RAJYA SABHA

2. Ms. Anu Aga
3. Shri Majeed Memon
4. Shri Parimal Nathwani
5. Smt. Rajani Patil
6. Shri Sukhendu Sekhar Roy
7. Shri Ramchandra Prasad Singh
8. Dr. Abhishek Manu Singhvi
9. Shri K.T.S. Tulsi
10. Shri Bhupender Yadav

LOK SABHA

11. Shri Suwendu Adhikari
12. Shri Subrata Bakshi
13. Adv. Sharad Bansode
14. Shri P.P. Chaudhary
15. Shri Abu Hasem Khan Chowdhury
16. Shri Innocent
17. Choudhary Mehboob Ali Kaiser
18. Shri Shanta Kumar
19. Shri Santosh Kumar
20. Shri S. Bhagwant Mann
21. Shri Anoop Mishra
22. Shri B.V. Naik
23. Shri Vincent H. Pala
24. Shri V. Panneerselvam
25. Shri Vithalbhai Hansrajbhai Radadiya
26. Dr. A. Sampath
27. Shri Bharat Singh
28. Shri Udhayakumar M.
29. Shri Varaprasad Rao Velagapalli
30. Dr. Anshul Verma
31. Shri Tariq Anwar

SECRETARIAT

Dr. D.B. Singh, Additional Secretary
Shri K.P. Singh, Director
Shri Ashok K. Sahoo, Joint Director
Smt. Niangkhanem Guite, Assistant Director

INTRODUCTION

I, Chairman of the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, having been authorised by the Committee on its behalf, do hereby present the Seventy-third Report of the Committee on the Repealing and Amending Bill, 2014.

2. In pursuance of the Rules relating to the Department-related Parliamentary Standing Committees, the Hon'ble Chairman, Rajya Sabha, in consultation with Speaker, Lok Sabha referred the Bill, as introduced in the Lok Sabha on the 11th August, 2014 to the Department-related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on the 19th September, 2014, for examination and report to Parliament within three months *i.e.* by the 19th December, 2014.

3. The Committee heard the presentation of the Secretary, Legislative Department, Ministry of Law and Justice on various provisions of the Bill in its meeting held on the 7th October, 2014. The Committee also heard the views of Secretaries of Ministry of Agriculture (Department of Animal Husbandry, Dairying & Fisheries), Ministry of External Affairs, Ministry of Consumer Affairs, Food & Public Distribution (Department of Food & Public Distribution) and Ministry of Social Justice & Empowerment on the 9th December, 2014 on the justification of the Acts pertaining to their Ministries proposed to be repealed by the Bill.

4. While considering the Bill, the Committee took note of the following documents/information placed before it:-

- (i) Background note on the Bill submitted by the Legislative Department, Ministry of Law and Justice;
- (ii) Presentation made by the Secretary, Legislative Department, Ministry of Law and Justice on the Bill before the Committee on 7th October, 2014;
- (iii) Brief note on the Indian Fisheries Act, 1897 submitted by the Department of Animal Husbandry, Dairying & Fisheries, Ministry of Agriculture;
- (iv) Brief note on the Foreign Jurisdiction Act, 1947 submitted by the Ministry of External Affairs;

- (v) Brief note on the Sugar Undertakings (Taking over of management), Act,1978 submitted by the Department of Food & Public Distribution, Ministry of Consumer Affairs, Food & Public Distribution; and
- (vi) Brief note on the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act,1993 submitted by the Ministry of Social Justice & Empowerment.

5. The Committee considered and adopted its Report in its meeting held on the 18th December, 2014.

6. For the facility of reference and convenience, the observations and recommendations of the Committee have been printed in bold letters in the body of the Report.

(Dr. E.M. SUDARSANA NATCHIAPPAN)

*Chairman,
Department-related Parliamentary Standing
Committee on Personnel, Public Grievances, Law and Justice*

New Delhi
18th December, 2014

REPORT

The Repealing and Amending Bill, 2014 (**Annexure-I**) seeks to repeal thirty-six Acts listed in First Schedule to it. Out of thirty-six Acts, only following four principal Acts have been proposed for repeal :-

- A. The Indian Fisheries Act, 1897 (pertaining to Department of Animal Husbandry, Dairying and Fisheries, Ministry of Agriculture);
- B. The Foreign Jurisdiction Act, 1947 (pertaining to Ministry of External Affairs);
- C. The Sugar Undertakings (Taking over of Management) Act, 1978 (pertaining to Ministry of consumer Affairs, Food & Public Distribution); and
- D. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (pertaining to Ministry of Social Justice & Empowerment).

2. The other thirty-two Acts are amending Acts pertaining to Ministry of Law and Justice. In addition to repeal of the aforesaid Acts, two Acts pertaining to Ministries of Social Justice and Empowerment and Personnel, Public Grievances and Pensions listed in the Second Schedule to the Bill have been proposed for amendments to rectify patent errors or inadvertent mistakes therein.

3. The Statement of Objects and Reasons to the Bill mentions that the Bill is one of those periodical measures by which enactments which have ceased to be in force or have become obsolete or retention whereof as separate Acts is unnecessary are repealed or by which the formal defects detected in enactments are corrected.

4. The Secretary, Legislative Department in his deposition submitted that since the year 1950, ten Repealing and Amending Acts have been enacted through which as many as 1291 enactments have been repealed. The last Repealing and Amending Act was enacted in 2001 by which 357 redundant Acts from the year 1985 to 1998 were repealed. The proposed legislation intends to repeal thirty-two amending Acts pertaining to the period from 1999 to 2013 in addition to repealing four principal Acts. Attention of the Committee was invited to Section 6A of General Clauses Act, 1897 in accordance of which repeal of a statute does not repeal such portions of the statute which have been already incorporated into another statute. In other words, the repeal of amending Act does not affect the textual amendments which stand

incorporated in the principal Act. As such the effect of Repealing and Amending Act is to remove dead matter from the statute book, such practice is otherwise known as the 'scavenging of the statute book'.

5. The four principal Acts mentioned in para 1 *supra* for repealing were deliberated by the Committee at length particularly as the repeal of other 32 Acts does not have any impact on the existing law of the land and their repeal only removes what is already dead. The concerned Secretaries of the Ministries administratively concerned with these Acts, in their deposition offered their reasoning for the repeal of such Acts which is narrated in the succeeding paras.

A. Indian Fisheries Act, 1897

6. The Indian Fisheries Act, 1897 was enacted in British era with the limited objective to prevent the killing of fishes by poisoning of water or using of explosive in inland water or on coast in India. Sections 4 and 5 of the said Act provide punishment for such unlawful activities; while Section 6 of *ibid* empowers the State Governments to make rules for regulation of fishing.

6.1 The Secretary, Department of Animal Husbandry, Dairying and Fisheries in his deposition offered following justifications in support of repeal of the said Act.

- (i) After coming in force of the Constitution of India, the subject 'fishing' is now under the State List (Item No. 21) while the 'fishing and fisheries beyond territorial waters' is under the Union List (Item No. 57). The State Legislature is, therefore, competent to enact law relating to fisheries in inland water as well as territorial water (upto 12 nautical miles from the coast of sea) and the Union Parliament is competent to make law on the issues relating to fisheries in Exclusive Economic Zone (from 12 to 200 nautical miles). The Act proposed for repeal is a central Act which cannot be applied to States in view of aforesaid constitutional position;
- (ii) Many of the provisions of the said Act have been covered under the Marine Fisheries (Regulations) Acts enacted by Coastal States/UTs;
- (iii) The Act has been repealed by many coastal States viz Karnataka in 1955, Maharashtra in 1961, and Union Territory of Puducherry in 1965.
- (iv) It has never been be evoked since its enactment.

The Secretary has, therefore, pleaded for its repeal in view of its redundancy.

6.2. The Secretary apprised the Committee that there is no law to regulate fishing in Exclusive Economic Zone (EEZ). However, various regulations have been made by the Department under its inherent power to honour international obligations and conventions. He added that a comprehensive legislation, namely, the Marine Fisheries (Regulations and Management) Bill for regulations and management of fisheries in Exclusive Economic Zone and international waters is in the process of drafting.

6.3. Incidentally, the Maritime Zones of India (Regulations of Fishing by Foreign Vessels) Rules, 1982 framed under the Maritime Zone of India (Regulation of Fishing by Foreign Vessels) Act, 1981 pertains to the Department of the Animal Husbandry, Dairying and Fisheries, Ministry of Agriculture. Rule 13 of the aforesaid Rules especially prohibits possession or carrying of explosives, poisonous or other noxious substances or apparatus for killing, stunning, disabling or catching fish by any foreign vessel or person, regulating certain aspects of fishing in Exclusive Economic Zone (EEZ). **The Committee in view of the reasons offered by the Secretary, Department of Animal Husbandry, Dairying and Fisheries, recommends repeal of Indian Fisheries Act, 1897.**

B. Foreign Jurisdiction Act, 1947

7. The Secretary (ER & DPA) in her deposition submitted that the Foreign Jurisdiction Act, 1947 was enacted on 24th December, 1947, with the repeal of Extra-Provincial Jurisdiction Ordinance, 1947 which empowered the Union Government to exercise extra provincial jurisdiction over the areas which remain outside the jurisdiction of the Provinces created by the Government of India Act, 1935, under any treaty or agreement. In 1950, the Extra Provincial Jurisdiction Act, 1947 was amended to replace the words 'Extra Provincial' by the word 'Foreign' and deleted the reference to the word 'provinces' in the Act. The Act is titled as Foreign Jurisdiction Act, 1947 since then. The Act was last used on 16th August, 1962, during the exchange of Instrument of Ratification by India and France in respect of Treaty of Cession signed between India and France in May, 1956 under which France ceded full sovereignty over Pondicherry, Karaikal, Mahe and Yanam which were French settlements at the time of enactment of Indian Constitution. However, after commencement of Constitution of India and State Reorganization Act, 1956 the said Act has lost its relevance as all territories with native States have been fully integrated

into Union of India. That Ministry was of the view that the Act was enacted for the Indian territories under the control of colonial power and lost its relevance as those territories have since been integrated with Indian territory.

7.1. A point was raised whether the repeal of the Foreign jurisdiction Act, 1947 would have any adverse affect on the Instrument of Accession signed between Government of India and Tribal Kings of North Eastern States, the Secretary averred that the Act is meant for those territories which was under the control of colonial powers while the territories which were integrated to Union of India in North Eastern States were of Assam Province and the repeal is not related to the Instrument of Accession signed between Union of India and Tribal Kings in North Eastern States. Thus, it would not affect the provisions of those Instruments of Accession.

7.2. The Committee understands that all laws enacted prior to the commencement the Constitution of India except those repealed by the Constitution itself continue to remain in force unless and until repealed by Indian Legislature in view of provisions of Article 372(1) of Constitution of India. Foreign Jurisdiction Act, 1947 was last used in 1962. It is no longer required as no territory of India is under control of any colonial power. The said Act is, therefore, recommended for repeal.

C. Sugar Undertakings (Taking over of Management) Act, 1978

8. The Sugar Undertakings (Taking over of Management) Act, 1978 was enacted after decontrol of sugar in 1978 empowering the Union Government to assume temporary management of defaulting sugar undertakings for a maximum period of seven years to avoid undue hardship to sugar cane growers as well as to protect the interest of consumers. As intimated to the Committee by the Department of Food and Public Distribution, Ministry of Agriculture, in the early years of its enactment, management of some sugar mills were taken over by the Central Government and loans were extended to those sugar mills to keep their operations running. Though the management of such Mills was subsequently handed over to the respective sugar mill owners, an amount of rupees 19.5842 crores was to be recovered from the following six sugar mills :-

| Sr. No. | State | Name of the Sugar Mills | Balance loan liability (Principal*) |
|---------|-------|-------------------------|-------------------------------------|
|---------|-------|-------------------------|-------------------------------------|

| | | | (Rs. In Lakh) |
|----|-------------|--|----------------------|
| 1. | UP | Deoria Sugar Mills | 362.87 |
| 2. | UP | Shri Sitaram Sugar Co. Bithalpur | 347.53 |
| 3. | UP | Raja Bulam Sugar Ltd., Rampur | 105.85 |
| 4. | UP | Ajudhia Sugar Mills (Rajaka-sahaspur) | 555.88 |
| 5. | Maharashtra | Jijamata SSK, Buldana | 406.09 |
| 6. | Rajasthan | Keshoraipatan Patan Shah, Sugar Mills Ltd. | 180.20 |

** Interest/default interest is chargeable on the principal amount of loan.*

8.1. It was also submitted to the Committee that there has been no occasion in last three decades to exercise the provisions of the said Act. The interest of sugar cane farmers by sugar mills have been statutorily supported and enforced by the respective State Governments. Moreover, since 2013 sugar sector has been decontrolled; levy obligation on sugar mills have been removed, and regulated release mechanism of open market sale of sugar has been dispensed with. Therefore, the Act is not relevant in the present scenario. Even otherwise, the Act was a temporary measure taken way back in 1978.

8.2. As regards recovery of loan amount by the Central Government from the sugar mills, the legal opinion of Department of Legal Affairs was obtained. The initial opinion of that Department was that repeal of the said Act may prejudice the interest of the Government to recover the dues from the sugar mills. However, subsequent reference by the nodal Ministry as to whether the Act could be repealed by inserting the requisite saving clauses in the Repeal Act so as to safeguard the interest of the Government in terms of recovery of principal amount of the loan alongwith interest and penal amount, the advice of the Department of Legal Affairs is awaited by them. However, the Legislative Department has included the Act for repeal in the Bill.

8.3. The Committee enquired the legal position from the Legislative Department in the meeting. The Additional Secretary of the Legislative Department clarified that a saving clause has been provided (Clause 4) in the Bill to protect the interest of Union Government for recovery of loans from the defaulting sugar mills. He also referred to provisions of Section 6A of the General Clauses Act, 1897 in accordance of which repeal of any Act will not affect any right, privilege, obligation or liability acquired or

accrued or incurred under any enactment so repealed. The repeal will not also affect any investigation or legal proceedings in respect of such rights, liability or obligation.

8.4. A point was raised that the mill owners owned by cooperatives have been suffering losses whereas the sugar mills owned by private parties are making profits and in such scenario, interest of cooperative sugar mills and the interest of the sugar cane growers is also required to be protected. The Secretary, Department of Animal Husbandry, Dairying and Fisheries clarified that the State Governments have enacted their respective legislations to protect the interest of the sugar cane growers as well as cooperative mills in such situations. The instant legislation was evoked only as a temporary measure enabling the Union Government to take over defaulting sugar mills which is not the case now.

8.5. The Committee being satisfied with the reasoning adduced by the Secretary, Department of Food and Public Distribution, Ministry of Agriculture and Additional Secretary, Legislative Department recommends for repeal of the Sugar Undertakings (Taking over of Management) Act, 1978.

D. Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993

9.0. The Act was enacted by Parliament in 1993 under Article 252 (1) of the Constitution upon the receipt of Resolutions of State Legislatures of Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura and West Bengal to prohibit manual scavenging of dry latrines in the country. Subsequently, it was adopted by various States, except the States of Himachal Pradesh, Jammu & Kashmir and Rajasthan who have enacted their own Acts. The said law was substituted by the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 which was enacted by the Union Parliament under Entry No. 97 of List-I (Union List) of Constitution of India wherein stringent punishment has been provided for the inhuman practice of manual scavenging. The Secretary, Ministry of Social Justice Empowerment in his deposition mentioned that the Employment of Manual Scavenging and construction of Dry Latrines (Prohibition) Act, 1993 has become redundant with the enactment of the Act of 2013. Therefore, it was proposed for repeal to the Legislative Department.

9.1. The Committee enquired from him whether resolution from the six States (Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura and West Bengal) have been received for repeal of 1993 Act. The Secretary submitted that they have requested Chief Secretaries of all States except Himachal Pradesh, Jammu & Kashmir and Rajasthan to send their Resolutions adopted by their respective legislatures. However, they have been able to get Resolution of State Legislature of West Bengal on 20th November, 2014 for repeal of said Act.

9.2. The Committee observes that manual scavenging is an inhuman practice and are affront to human dignity. It is heartening to note that a comprehensive law has been enacted by Union Parliament to prevent manual scavenging of dry latrines by providing stringent punishment therein. The Committee is, however, surprised to note that the repeal of such Act has been initiated without receiving Resolutions from the concerned States which appear to be violative of Article 252 (2) of the Constitution.

9.3. The Committee while agreeing to the rationale offered for its repeal by the Secretary, Ministry of Social Justice and Empowerment does not recommend repeal of the Employment of Manual Scavenging and construction of Dry Latrines (Prohibition) Act, 1993 unless the Union Government receives Resolutions from the concerned State Legislatures as mandated by Article 252(2) of the Constitution. More so the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (No. 25 of 2013) reads-

"5. (1) Notwithstanding anything inconsistent therewith contained in the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, no person, local authority or any agency shall, after the date of commencement of this Act,—

(a) construct an insanitary latrine; or

(b) engage or employ, either directly or indirectly, a manual scavenger, and every person so engaged or employed shall stand discharged immediately from any obligation, express or implied, to do manual scavenging....."

The Committee could come to the conclusion that Government should amend Section 5 of the Prohibition of Employment as Manual Scavengers

and their Rehabilitation Act, 2013 (no. 25 of 2013) while repealing the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 so as to bring the clarity in the statute. The Committee also feels that, when doing so, the recent judgment dated March, 27, 2014 of the Supreme Court in Writ Petition (Civil) No. 583 of 2003 with Contempt Petition (c) No. 132 of 2012 in writ petition (civil) no. 583 of 2003 Safai Karamchari Andolan & Ors. Versus Union of India & Ors., should be taken into consideration.

9.4. The Committee, in light of its observations at para 9.3 above, recommends that the Repealing and Amending Bill, 2014 may be passed after omitting repeal of the Employment of Manual Scavenging and Construction of Dry Latrines (Prohibition) Act, 1993 from it.

9.5. The Committee notes that out of the 36 Acts proposed for repeal, as many as 32 are amending Acts, repeal of which does not affect the continuance in force of the amendments which have already become part and parcel of the parent Acts. These 32 amending Acts though dead have continued to remain on the statute book in absence of their formal repeal and thus have unnecessarily been congesting the statute book. The repeal of such amending Acts does not reduce the plethora of applicable law in any way and therefore their repeal is not on the same footing as the repeal of a law that though obsolete has been a cause of unnecessary hardship to the people. Government should lay more emphasis on identifying such laws and take early steps for identification and repeal of such laws to provide real relief to people from obsolete and archaic laws. As regards amending Acts, Government should examine feasibility of providing in such amending Acts a sunset clause for their automatic

repeal so that these do not remain on statute book after their purpose is achieved. Such a provision will do away with the need of bringing a repealing Act every now and then to repeal amending Acts.

9.6. The Committee was apprised that legislative scavenging is a periodic exercise to cleanse the statute book. The exercise was last undertaken in 2001 to repeal as many as 357 Acts which were found to be redundant. Thereafter, no attempt was made between 2002 to 2014 to cleanse the statute book. The Committee feels that simple periodic scavenging of statute book will not suffice the need of the globalised economy. It is the need of the hour to have easy and understandable codification of the law. The Government should endeavor in that direction to make the laws simple while reviewing the existing enactments on the statute book.
