

**GOVERNMENT OF INDIA
FINANCE
LOK SABHA**

UNSTARRED QUESTION NO:3121

ANSWERED ON:12.08.2005

COFEPOSA

Reddy Shri Karunakara G.

Will the Minister of FINANCE be pleased to state:

(a) Whether the Associated Chambers of Commerce and Industry of India (ASSOCHAM) has demanded repeal of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) ;

(b) If so, the details and reasons given by the ASSOCHAM for the same; and

(c) The reaction of the Government thereon ?

Answer

MINISTER OF STATE FOR FINANCE (REVENUE) (SHRI S.S. PALANIMANICKAM)

(a): Yes, Sir.

(b) An extract from the letter of ASSOCHAM which inter alia contains the detailed reasons for repeal of COFEPOSA Act is attached at Annexure-'A'.

(c) The powers under the COFEPOSA Act are invoked in rare cases keeping in view the need to strike a balance to curb the prejudicial activities of smugglers and to ensure that the preventive detention under the COFEPOSA Act is resorted to only in rare and deserving cases. A Committee headed by Shri D.S. Solanki had examined the question whether the COFEPOSA Act should be repealed and it had recommended in its report that the COFEPOSA Act is still relevant. A Statement showing the number of detention orders issued since 1993 is attached at Annexure -'B'. It will be seen therefrom that the number of detention orders issued has come down from 228 in 1994 to 16 in 2004.

ANNEXURE-'A'

Extract from the letter of ASSOCHAM dated 26-04-2005 COFEPOSA –Repeal.

What is required, not repeal of FEMA, but the old laws which were made compatible to FERA at that time have not since been repealed and they have no relevance and in fact, such laws are a retrograde step. For example, FERA, 1973 came into operation on 01-01-1974 and corollary during that period, legislation was made, which was known as COFEPOSA, (Conservation of Foreign Exchange and Prevention of Smuggling Activities Act) and it was because of those stringent regulations that COFEPOSA envisaging preventive detention without trial, without bail of a person for about one year could be ordered and what was the purpose? Purpose was for the activities prejudicial to the conservation and augmentation of the foreign exchange resources of the country.

Now, that law has not been repealed till date and it is more misused than used. In fact, the whole law was made for combating smuggling and conserving the foreign exchange. As on today, smuggling is also reduced, custom duties have come down from 200% to 20%. So, this antique law needs to be repealed forthwith because this law is affecting exporters and other persons. As on today in the FEMA regime a person can be put on under COFEPOSA. Since COFEPOSA has not been repealed as yet. So if there is any problem that provision can also be utilized.

There is absolutely no justification for retaining COFEPOSA for the purpose of FERA activities after the repeal of FERA where the power of imprisonment and arrest had been abolished. FERA regime got a name, everybody feared FERA and the Directorate because of the powers of arrest and once the powers of arrest went away, under FEMA in adjudication they still continue imposing heavy fines but where is the recovery, there are no recovery.

It seems very ridiculous that the person is not even heard and this preventive detention is one year. The argument is why don't you try him under the normal law. FEMA, which is a civil law, the Enforcement Directorate even today is recommending COFEPOSA against offenders of FEMA, which is not justified at all.

Appeal to the Government and the Finance Minister to abrogate not only COFEPOSA but hundreds of notifications of Central Excise and Customs which are not relevant at all.

ANNEXURE -'B'

DETENTION ORDERS ISSUED UNDER COFEPOSA ACT, 1974

Year Total No. of detention orders issued
by the specially empowered officer of Central Government.

1993 135

1994 228

1995 140

1996 121

1997 88

1998 42

1999 71

2000 69

2001 52

2002 60

2003 35

2004 16