

Title: Discussion on the Forfeiture (Repeal) Bill, 2000.(Bill passed)

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI I.D. SWAMI): Mr. Chairman, Sir, I beg to move:

"That the Bill to repeal the Forfeiture Act, 1859, as passed by Rajya Sabha, be taken into consideration. "

This Bill meant to repeal the Forfeiture Act of 1859, a very archaic Act, was introduced in Rajya Sabha and was unanimously passed by voice vote on 21st August.

Sir, it is evident from the Bill itself that certain powers were given at that time, during the British Raj, to some of the officers who were appointed as Commission when there was no Cr.P.C., no rule or procedure code, etc. Those officers used to frame their own rules of procedure and such actions of officers who had taken actions of forfeiture of property/ seizure of property could not be challenged in a court of law. Some such provisions were there, but the coercive nature of the provisions, the very uncivilised nature of the provisions of this Act, which were not in consonance with any civilised society were repealed in the year 1868 itself.

The total Act, at that time, had contained only 20 sections and 16 sections were removed and repealed even in the year 1868. I do not know how these four sections were left out and they remained for some time. There was a purpose. They could remain because if certain officers had taken action under those provisions, they could be prosecuted and they were to provide that immunity. Now, in the year 2000, these provisions were still existing and this Bill is only meant for removing the vestiges of the obsolete Act, which were coercive in nature. The history of this Forfeiture Act of 1859 goes back to 1857 and that predates even the Cr. P.C.

Sir, with these few words, I commend this Bill for consideration of this august House and I am sure this House would unanimously pass it. If they like, they can discuss it. But this is only an old Act of 1859 which is being abrogated, which is being repealed at this time, that also when it is toothless.

The main provisions, the substantive provisions of this Act had been removed long back during the British Raj. Now, with the new Constitution, with a civilised society, with our own laws, we do not have anything to do with it. A Commission was appointed to study all such archaic laws, irrelevant and baseless laws should be removed from the statute book. This is one of the efforts to attain that objective and this redundant thing is being removed by this Bill.

Sir, with these few words, once again, I commend that this House may consider and pass this Bill unanimously.

MR. CHAIRMAN: Motion moved:

"That the Bill to repeal the Forfeiture Act, 1859, as passed by Rajya Sabha, be taken into consideration. "

MR. CHAIRMAN : No Member can have any objection to repealing of this Bill. I think we can straightaway pass it.

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Sir, I am not raising any objection but it is a matter of regret thatâ€¦*(Interruptions)*

MR. CHAIRMAN: Okay, I shall call you, though you have not given your name.

SHRI E.M. SUDARSANA NATCHIAPPAN (SIVAGANGA): Sir, this is a truncated Act which is having only Sections 16 to 20, with other Sections already repealed as early as 1868. My submission is only to draw the attention of the hon. Minister that even today, Section 18 is relevant. Even though it is a colonial law giving too much power to the Executive, the relevancy of this particular Section is still there. There should be an Act to satisfy the ingredients of this Section 18. I shall just read out the Section, which will give the answer:

"18. Whenever any property shall have been attached or seized without either conviction or an adjudication of forfeiture by any officer of Government as property forfeited or liable to be forfeited to Government for an offence for which, upon conviction, the property of the offender would be forfeited, the validity of such attachment or seizure shall not be called in question by any Court or other authority in any suit or proceeding, unless the offender or alleged offender shall, within one year after the seizure of his property have surrendered himself for trial" – this is the main point I want to stress – "and upon trial before a competent Court shall have been or shall be acquitted of the offence, and shall prove to the satisfaction of the Court that he did not escape or keep out of the way for the purpose of evading justice."

This principle should be brought in by some other amendment in the Criminal Procedure Code or any other such law so that the people who are evading justice by escaping the warrant, or escaping from the arrest, jumping the bail, etc., should be facing this forfeiture clause. For example, the share market had crashed but the accused could not be caught immediately. In the same way, now the LTTE is a banned organisation. They are having a lot of things in Tamil Nadu. But nobody's property can be forfeited. Pirbhakaran is the first accused in the assassination case but he could not be caught and his property cannot be forfeited. In the same way, a lot of things are happening. Many secessionists are there, many terrorists are escaping, but their property is not forfeited. They are not coming before the court. Even the country is not having faith upon the court when they are jumping the bail and are going away. Now in Thailand, that famous person is escaping from the clutches of the law. Then how are we going to face the situation? How are we going to create confidence among the people that the law is protecting the law-abiding citizens and not those who are evading the law? This particular Section which is having a spirit behind it, should be brought in by some other way on the Statute Book. That is my submission.

श्री गिरधारी लाल भार्गव (जयपुर) : माननीय सभापति जी, मुझे इस संबंध में मुझे कोई विशेष बात नहीं कहनी है। यह अंग्रेजों के समय का बना कानून है। इसका अब कोई औचित्य बाकी नहीं रह जाता है। यह क्रिमिनल लॉ नहीं था और कोर्ट की भी इस संबंध में अजीब दशा थी। प्रॉपर्टी कैसे छोड़ी जाए, इसके संबंध में भी कोई नियम नहीं था। इसलिए मैं कहना चाहूंगा कि 1859 का जो कानून यह लाए हैं जिसका अब कोई औचित्य नहीं रह गया है। माननीय मंत्री जी जो बिल लाए हैं मैं उसका समर्थन करता हूँ। इसमें और कोई विशेष बात मुझे नहीं कहनी है। इसलिए इस बिल को पारित किया जाए और दूसरे आने वाले बिल को लाया जाए।

डा. रघुवंश प्रसाद सिंह (वैशाली) : सभापति महोदय, इसमें फोरफीचर का हिन्दी अनुवाद समपहरण है। यह समपहरण है या अपहरण। इसका हिन्दी अनुवाद भी कैसा बना दिया जाता है? 1859 का यह बिल अंग्रेज सरकार ने बनाया था। उस समय आई.सी.एस. के लोग हाई कोर्ट में होते थे। वह ऑनरेरी मजिस्ट्रेट होते थे। वे कानून नहीं जानते थे लेकिन उन्हें इस पोस्ट पर बहाल किया जाता था जबकि वे केस ट्रायल करते थे। बिहार में दारोगा चीफ मिनिस्टर थे। यशवंत बाबू को याद होगा। हमने अपने यहां इस कानून को खत्म कर दिया। केन्द्र सरकार भी इसके पीछे पड़ गई और सन् 2000 में यह कानून खत्म करने के लिए लाई है। (व्यवधान) वह हमारे यहां आज से 15-20 साल पहले खत्म हो गया। आप इसे देर से लाए हैं। अंग्रेजी राज में उसे कमीशन को दी जाने वाली पार्लिस दी गई और मजिस्ट्रेट बना दिया। इसमें ट्रायल होता था। सी.आर.पी.सी. के अनुसार दी गई सजा दी जाती थी। इसे रीपिल करने का जो बिल आया है, वह ठीक है लेकिन आप इसे देर से लाए हैं। अंग्रेजी राज में ऐसा प्रावीजन क्यों था? ऐसा इसलिए था कि केस जल्दी से जल्दी निपटें। इस कारण उन्होंने जहां चाहा पावर दे दिया। अब केस इतने बढ़ गए हैं कि उनका निपादन नहीं हो रहा है। इसके उमर सरकार को बताना चाहिए। जिन बातों के चलते अंग्रेजी सल्तनत ने इस कानून को बनाया था तकनीकी दृष्टिकोण से यह उचित नहीं समझा गया और व्यवहार में भी उचित नहीं समझा गया लेकिन इसका क्या विकल्प होगा? आज गरीब आदमी न्याय पाने के लिए दर-दर भटक रहा है। इसके बारे में सरकार स्पष्टीकरण दे। मैं रीपिल किए जाने का समर्थन करता हूँ। जिन बातों के लिए यह बिल था, उनका अंजाम क्या होगा? प्रशासनिक विधि पुनर्विलोकन आयोग ने जब कहा कि यह नाजायज बिल है। तब इनकी आंख खुली। बहुत से ऐसे विधेयक आ रहे हैं जिन्हें वापस लिए जाने की बात है। 1997 में पुनर्विलोकन आयोग बना था। जो कानून नाजायज हैं, पुराने हैं, व्यवहार में नहीं हैं, उन सब को रीपिल किया जाए, ऐसी उसने सिफारिश की। अब इनका पालन किया जा रहा है। आपको इसका विकल्प बताना पड़ेगा। जिन बातों के लिए उन्हें अधिकार दिए गए, उनका क्या अंजाम होगा? क्या आपने इस बारे में सोचा है? आबादी बढ़ रही है और केंसों की संख्या बढ़ रही है। उनका निपादन समय पर नहीं होता। आप इसे देखें। यही मेरा सुझाव है।

SHRI I.D. SWAMI: Mr. Chairman, Sir, two or three hon. Members have given some useful suggestions. I am grateful to them. For their information, I may add that so far as the spirit of Section 18 of the archaic law is concerned, that has already been incorporated in the Cr.P.C. and the Cr.P.C. was amended twice. All these things have already been included in that. So, there is no fear on that count.

So far as the other objection about the ISI activities and the bandits going through and roaming about etc., on all those things, the Government has always been keen to have some federal laws to try the federal crimes which have repercussions all over the country concerning the Central Government or the federal Government. Activities like smuggling of narcotic drugs, fake currency notes, ISI activities etc., have ramifications all over the country.

For this, the thinking of the Government has been to prepare a consensus in consultation with Chief Ministers of States because unless and until they agree we cannot do it. Because of the scheme of the Constitution as it prevails today, we have to consult them and we have to prepare a consensus. I would request the hon. Members to prepare a consensus in this country so that if TADA has been repealed, we can have some other such law whereby we can meet the exigencies of such situations.

Of course, an hon. Member has pointed to the pendency of cases in different courts. That is also in the view of the Government.

SHRI G.M. BANATWALLA (PONNANI): TADA is a lawless law.

SHRI I.D. SWAMI: It has been allowed to lapse. Shri Banatwalla, with due respect, I am only saying that that lawless law, which was very much set to be abused and misused, has been allowed to lapse by this hon. House.

SHRI G.M. BANATWALLA : They should not think in the same direction.

SHRI I.D. SWAMI: We are not thinking in that direction.

MR. CHAIRMAN : Shri Banatwalla, you must get prior permission of the Chair. What is the use of my sitting here?

SHRI G.M. BANATWALLA : Sir, I thought that I had that permission.

MR. CHAIRMAN: You must take prior permission.

कुंवर अखिलेश सिंह (महाराजगंज-उ.प्र) : स्भापति महोदय, मैं आपके माध्यम से मंत्री जी से जानना चाहता हूँ कि सरकार में बैठे हुये लोग

MR. CHAIRMAN: You have not spoken. Kindly take your seat.

Nothing will go on record. What the hon. Member is speaking will not go on record.

(Interruptions) ❗

SHRI I.D. SWAMI: All those suggestions will be taken care of so far as pendency of cases in various courts is concerned. Most of the recommendations of the Law Commission are there. The Government has been thinking over them. For that also, criminal justice system needs to be reformed. For that, as and when such a thing comes before this House, these suggestions would, of course, be kept in view.

Once again, I thank you.

PROF. RASA SINGH RAWAT (AJMER): Sir, I want to bring one thing on record. Please permit me.

MR. CHAIRMAN: No.

PROF. RASA SINGH RAWAT : Sir, it is a very important thing.

MR. CHAIRMAN: Prof. Rasa Singh Rawat, you have not participated in the debate.

Nothing will go on record.

(Interruptions) ❗

MR. CHAIRMAN: The Minister will not answer and he should not answer.

...(Interruptions)

MR. CHAIRMAN: Nothing will go on record.

(Interruptions) ❗

** Not recorded*

MR. CHAIRMAN: It is not recorded.

PROF. RASA SINGH RAWAT : Sir, I want to bring all these things on record.

MR. CHAIRMAN: It will not be recorded. The Minister will not reply to the unrecorded speech.

PROF. RASA SINGH RAWAT : Kindly allow it to be recorded.

MR. CHAIRMAN: If you raise anything without prior permission, it will not go on record.

Now, we will take up motion for consideration of the Bill.

The question is:

"That the Bill to repeal the Forfeiture Act, 1859, as passed by Rajya Sabha, be taken into consideration. "

The motion was adopted.

MR. CHAIRMAN: The House will now take up clause-by-clause consideration of the Bill.

The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

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

SHRI I.D. SWAMI: Sir, I beg to move:

"That the Bill be passed."

MR. CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.
