

MR. DEPUTY SPEAKER : The question is :

“That the Bill to amend the International Airports Authority Act, 1971, as passed by Rajya Sabha, be taken into consideration.”

The motion was adopted.

MR. DEPUTY SPEAKER : Now, we will take up clause-by-clause consideration.

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.

MR. DEPUTY SPEAKER : The question is :

“That Clause 1, the Enacting Formula and the Title stand part of the Bill.”

The motion was adopted.

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

SHRI JAGDISH TYTLER : I beg to move :

“That the Bill be passed”.

MR. DEPUTY SPEAKER : The question is :

“That the Bill be passed.”

The motion was adopted.

17.41 hrs.

#### DELEGATED LEGISLATION PROVISIONS (AMENDMENT) BILL

As passed by Rajya Sabha

[English]

MR. DEPUTY SPEAKER : Now, we go to item No. 18. Shri Bhardwaj.

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H. R. BHARDWAJ) : I beg to move :

“That the Bill to amend certain Acts to implement the recommendations of the Committee on Subordinate Legislation regarding publication and laying of rules and other delegated legislation and certain other matters, as passed by Rajya Sabha, be taken into consideration.”

Sir, hon. Members are aware of the recommendations of the committees of the Houses on Subordinate Legislation with regard to provisions providing for delegated legislation. Some of the Acts passed by Parliament in the past which provide for the making of rules, regulations and other forms of subordinate legislation, are not in consonance with these recommendations. Either they do not contain a provision for the laying of such rules, regulations or other forms of subordinate legislation before the Houses of Parliament or they do not expressly provide for the publication of the same and yet some contain provisions for laying on lines which are different from the latest formula on the subject as approved by the Committees on Subordinate Legislation. The Committees have, from time to time, been deprecating the delay in implementing their recommendations and have been emphasizing that the administrative Ministries concerned with different enactments should take necessary steps for amending the same suitably in conformity with their recommendations. In the past, when some Bills for amending individual Acts for implementing the recommendations of the Committees came up for consideration, suggestions were made by the members that it would be better to bring forward a comprehensive legislation covering various enactments which require similar enactments. A Bill to this effect covering 50 Acts had already been passed by Parliament in 1983. The Bill which is now before the House is the second one and is the result of the efforts made by my Ministry in this direction.

The Committee on Subordinate Legislation (Seventh Lok Sabha) has recommended that the provision which is, at present, contained in sub-rule (6) of rule 39 of th

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Conduct of Election Rules, 1961, should be incorporated in the Act itself. The sub-rule provides for cancellation of ballot paper issued to an elector in cases he refuses to adopt the procedure prescribed under rule. The present opportunity is being availed of to implement this recommendation also.

The Bill covers 92 enactments specified in the Schedule thereto. Nearly 115 enactments remain to be amended on similar lines. The matter has been taken up with the administrative Ministries concerned and efforts are being made by my Ministry to cover, as expeditiously as possible, the remaining enactments.

MR. DEPUTY SPEAKER : Motion moved :

“That the Bill to amend certain Acts to implement the recommendations of the Committees on Subordinate Legislation regarding publication and laying of rules and other delegated legislation and certain other matters, as passed by Rajya Sabha, be taken into consideration.”

MR. DEPUTY SPEAKER : Shri Suresh Kurup to initiate the discussion.

SHRI SURESH KURUP (Kottayam) : Respected Deputy Speaker, Sir, this is a Bill brought on the recommendations of the Committees on Subordinate Legislation. We wanted that a Bill be brought before Parliament and accordingly, 92 enactments are being amended under this one Bill.

I would like to raise one point and that is, in clause 31 of the Bill, as the Minister has mentioned, the Representation of the People Act, 1951 is sought to be amended. I do not know whether the Subordinate Legislation Committee has recommended for this thing. If so, what power the Committee on Subordinate Legislation has? It does not come under the purview of that Committee to recommend or frame such a thing. How the Minister moves this amendment amidst lot of amendments? About 92 Acts are being amended. This is brought with this also. A separate Bill should have been brought by the Government amending the Representation of People Act.

Here another Section 132A is added to the Representation of People Act. Once again I reiterate that this does not come under the purview of the Committee on Subordinate Legislation and it is completely wrong that this amendment is brought in this Bill. It is mainly intended for implementing the recommendation of the Subordinate Legislation Committee for framing rules. That is my main objection.

Regarding subordinate legislation, the present procedure is that the rules once framed are published in the Gazette and nobody knows about these rules. My point is this rule should be published at least through newspapers. Daily these rules are being laid on the Table of the House and nobody knows what rules are laid. We have got very efficient Secretariat and they should be entrusted with the job that the rules that are framed should be informed to the Members. At least we should know about them.

I want to add one more point. There should be specific provision that this delegated legislation will be completed within a specific period. Once a Bill is passed, the rules and other provisions should be framed within a specific period say, two months, three months or 5 months. It should not be extended. Undue delay should be avoided. That is my point.

These are the only few things I want to mention in connection with this Bill.

Once again I would like to say that Item 31 of the Schedule of this Bill, the present amendment of the Representation of Peoples Act does not come under the purview of this Bill.

SHRI HAROOBHAI MEHTA (Ahmedabad) : Mr. Deputy Speaker, I rise to welcome the Bill. It is a cardinal principle of delegated legislation that Parliament must retain the control over subordinate legislation. Normally, it is the Parliament which should exercise the sovereign power of making laws. However, in view of the exigencies of the modern times, the procedure of delegated legislation has been evolved. There, however, it has been specifically insisted always that two types of

controls should exist on delegated legislation. One is the Parliamentary control and the other is the judicial control. Parliamentary control is exercised in two ways: one, at the stage of passing the Bill when Parliament tries to ensure that there is no excessive delegation attempted through the Bill; and secondly, even after the delegated legislation is made. Parliament continues to retain its control in order to ensure two things: one, that the subordinate legislative authority, that is, the Government, or whichever authority it is, not exceeded the power granted by the Parliament through the Act concerned; and secondly, the rules that are made by the delegated authority do not violate the Act concerned or the Constitution. The Committee on Subordinate Legislation of the Seventh Lok Sabha has rightly recommended that such provisions to strengthen retention of Parliamentary control over subordinate legislation should be enacted in the various Acts.

My learned friend, Shri Suresh Kurup, has tried to raise a very important point, that is, that the recommendation regarding the provision contained in item 31 of the Schedule of the Bill (proposed section 132A) is beyond the purview of the Committee on Subordinate Legislation since what has been proposed does not pertain to rules. I wish my learned friend had gone through the recommendation before raising this point in the House. In fact, such a provision was in the rules, but the Committee pointed out that this penal provision could not be made through rules. It is not for the delegate authorities to make penal rules. It is important principle of subordinate legislation that penalty cannot be provided by rules unless the Act specifically authorises. In the present case, the rules intended to provide for penalty, and it was rightly pointed out by the Committee on Subordinate Legislation that such a provision should be made in the Act itself. It is very well within the purview of the Committee on Subordinate Legislation to say that such a provision should not be in the rules, but should be in the Act. Following that recommendation, the Government has brought forward this proposal through this Bill to ensure that the provision is made in the Act itself rather than in the rules. I hope, my learned friend, Shri Suresh Kurup,

will now agree that this recommendation cannot be said to be beyond the purview of the Committee on Subordinate Legislation. Ultimately, this is a Bill in order to ensure that Parliament continues to retain its power on subordinate legislation. Therefore, provisions have been made in several Acts.

We find three types of provisions here. One is regarding the rules made by the State Government. There it has been proposed that the rules should be placed before the State Legislature as soon as may be after they are made, and it is for the State Legislature to exercise control over the rules made by the State Government. So far as Parliament is concerned, a more exhaustive provision has been made; the rules should be placed before the Parliament for 30 days during the specified period. Of course, Parliament has the power to modify them.

The third is, whenever orders in the nature of delegated legislation are to be made by the Government, they should be made by means of publication through the Official Gazette. Take, for example, item 3 of the Schedule of the Bill; there, it is said:

“Section 59 shall be renumbered as sub-section (1) thereof, and—

(a) in sub-section (1) as so renumbered, after the words “The State Government may”, the words “by notification in the Official Gazette” shall be inserted;”

That is, whenever such an order is to be made by the State Government or the Central Government it should be ‘by notification in the Official Gazette’. This is also a very vital principle. After all, everybody is presumed to know law; nobody can plead ignorance of law as a defence. When we presume every citizen to be knowing law, it is but natural that it should be the obligation of the Government to make publication of the law before it is sought to be implemented or enforced against anybody.

The Subordinate Legislation Committee has therefore rightly insisted and the

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Government has rightly proposed that such orders should be made by notification in the official gazette.

My learned friends wanted some newspapers also to carry the publication of these rules. That is not practicable. In law also it is accepted that the firm and stable place of publication is the gazette. Every lawyer, every citizen will go for a gazette in order to find out whether some delegated legislation or some rules have been published or not. You cannot be sure whether it will be published in one newspaper or the other and that would not be practicable also.

In fact, even the newspaper coverage is not hundred percent. It is estimated that not more than 30% of the people in India are able to read from newspapers or hear the news. Therefore, the gazette has been accepted universally in law as the correct place of publication, so that the responsibility can be fixed on the citizens to have known the law on account of the publication in the gazette. Therefore, gazette publication has been provided and not the newspaper publication. It is all right that local rules may be published in the newspapers like the Municipal Rules. There the question is whether it should be published in two or one newspapers, whatever the case may be depending on the provisions. Therefore, there is nothing wrong in providing here that publication will be in the official gazette only.

Another important thing is that now we provided that there should be publication in the official gazette, the Government cannot pass orders of such nature giving it publicity in the official gazette.

The learned Law Minister has stated that there are still about 115 Acts remain to be amended. I am sure that he will agree that this is not a happy position. When the Committee on Subordinate Legislation wanted these Acts to be amended, we must have acted more promptly, I wish, therefore, that the Government will expedite amending the other Acts also.

May I suggest that it shall not be possible for the Government to consider

making a provision in the General clauses Act so as to cover all the Acts? The General clauses Act contains a provision that whenever it is stated that some rules will be made by previous publication, it means that the draft rules will be published, objections would be united and heard and thereafter the rules will be finalised. Could we also not think of adopting some such formula to be enacted in the General clauses Act itself that wherever any subordinate authority is empowered to make rules under a Central Act, then it will be necessary for the authority to lay these rules before the House in the manner proposed here?

I, therefore, suggest that this course might be simpler. This might be adopted in future. I would request that the Government may expedite proposing amendments to the remaining Acts also so that the recommendations of the Committee on Subordinate Legislation are fully and promptly implemented.

With these observations Sir, I welcome the Bill.

SHRI V. S. KRISHNA IYER (Bangalore South) : Mr. Deputy Speaker Sir. This Bill is based on the recommendation of the Committee on Subordinate Legislation. I welcome the Bill, no doubt.

In 1983, a comprehensive bill was brought forward.

SHRI MOOL CHAND DAGA (Pali) : It is not a mere Bill that could be passed in five minutes. I am telling this because I myself have given this Report. You can extend the time. You have already fixed one hour for this Bill.

MR. DEPUTY SPEAKER : We are not following strictly everything. Are you following the time limit when we allow two hours to other Bills? We don't stop there, we extend it to four hours and like that. Shri Krishna Iyer, Please continue.

SHRI V. S. KRISHNA IYER : In 1983, 53 Acts were brought under one Bill. Now you have brought 92. You say that there are still 115 Acts yet to be brought under the Act.

It is really surprising. You have stated in your statement that they have asked severa! Ministries to forward the Acts. It is really surprising. Can't you lay your hand and get all those Acts? By tomorrow, if you mind, you can get them. How many Acts are there? Is it difficult to get the Acts? It is there in the Parliament Library. A layman can get it. Is it difficult for the Law Ministry to get it? I am really surprised at the reply of the Minister. They could have brought a comprehensive Bill including all the Acts which require amendment.

18.00 hrs.

So far as the amendment is concerned, as I said, I welcome it. There is one point which has been made by the previous two speakers and that is with regard to the publication. In the olden days Gazette was acceptable to everybody and there were not many newspapers. Now you have got newspapers even in the villages. What I would suggest is that even though it is not possible to publish all the notifications or the rules in all the newspapers, such of the rules and notifications that affect the people should be published in the newspaper. Publication of certain notifications are obligatory like the building bye-laws or objections called under the Motor Vehicles Act. There it is obligatory. I suggest that such of the notifications or rules which affect the public shall be published in the newspapers. For that necessary amendment must be made.

Another point I would like to bring to your notice is: I have served in the Committee on Subordinate Legislation not here but in the Karnataka legislature. There were many occasions when we have amended the rules framed by the Executive. This Committee on Subordinate Legislation has a very heavy responsibility. This House has reposed confidence in that body so that that body can function very effectively. That body, that is, the Committee on Subordinate Legislation scrutinises every rule that is placed before the House. As already said by my friend, Mr kurup, we get notifications and rules one after another placed before the House and in one second so many notifications and rules are placed. What happens after that? Of course, that becomes

the law because it is a delegated law. So it becomes the law. But even the Member of Parliament are not supplied with copies of the notifications or the rules. I am really surprised. Whereas in the State legislature, whenever a rule is placed on the Table of the House, a copy of it is sent to the Members. In the Parliament I am surprised—for the part one year I have been observing—copies of the rules which are placed on the Table of the House—of course, I can understand if it is a bulky book because it involves costs—and even simple notifications and important notifications are not sent to the Members of Parliament. So I support the point made by Mr Kurup and I insist and here I request the hon. Speaker to direct the Parliament Secretariat to see that the rule copies and the notification copies whenever they are placed on the Table of the House are sent to the Members.

Finally, another point. There is another anomaly which I am sure the Law Minister must be aware of. Why do they place it before the House? Simply because once placed, they are deemed to have been accepted and if any Member wants a discussion on the rules, he can raise a discussion under the Rules of Procedure. But if the rules made by the executive and scrutinised by the Subordinate Legislation Committee are to be amended, this House has no power to modify it unless the other House also agrees. Am I correct, Sir, that unless both the Houses agree, these rules can be modified. I think this is a peculiar lacuna because we cannot sit on a joint session. Unless both the Houses agree, this rule cannot be amended, So I would request the Law Minister through you to ponder over this question and find a remedy. Though such a contingency has not arisen all these years, but it is possible and it may arise at any time. I would request the hon. Minister to ponder over it and if necessary, to bring an amendment to the Constitution.

With these words I once again request that important notifications should be published in the local newspapers, in the language newspapers and to this, I am sure, the hon. Minister will agree and he will take steps that the remaining Acts also are brought under one umbrella.

**SHRI MOOL CHAND DAGA (Pali) :** Sir, I am the Chairman of the Committee on Subordinate Legislation and I have been repeatedly requesting the Government to frame certain rules within limited time. It is not the first recommendation. I have been repeatedly telling them and called all the Secretaries and told them plainly that they must frame the rules and it must be published in the Gazette within three months and if there are objections and suggestions then they can take six months.

Sir, if you see certain Reports you will find they have taken eight years in below. The hon. Minister is not prepared to say how many Acts are still there where the rules have not been framed.

Sir, the Parliament does not abdicate its right or delegate its power. It only asks the subordinate officers to frame rules and regulations within the four corners of the Act. So, when we say Parliament abdicates or delegates its power, that is not correct. We only ask them to frame rules and regulations, bye-laws and notifications. What is happening today ! We generally put some principles in the Act and leave everything to the agencies and they make encroachments on the rights of Parliament. It is the duty of the Committee on Subordinate Legislation to safeguard. We have got Rule 34 but we seldom raise objection to whatever is suggested. As Chairman of the Committee on Subordinate Legislation my suggestion is whenever you pass a Bill or introduce a Bill along with the Bill you must introduce the rules so that we know how this Bill will be implemented because generally speaking after the Bill is passed the rules are framed after six months or even later. In States they take two-three years. Most of the hon. Members of this House may not be knowing what are the rules passed by the Railways Department regarding reservation. They may not be knowing because these rules were not published in draft form. So, the rules and regulations should be published in draft form first so that people who are affected thereby can raise objections and give their suggestions. What is happening today ! There are certain rules which are meant for farmers, weaker sections and agriculturists but they have not been published in the local newspaper in the local language. So, these people do not know what are the rules.

Today the hon. Minister at the far end of the day wants that this Bill be passed. But he will not admit that there are about 90 Acts for which rules have not been framed. Still there are about 450 Acts or so. This is what they say. Sir, can they tell us how many Acts which have been passed by the Parliament but have not come into force yet ? The hon. Minister can at least say that there are so many number of Acts which have been passed by Parliament but have not yet come into force.

Then, my second point is how many Acts are there for which you have laid down some procedure of rules and regulations ? Of course, we find that some rules have been laid down for some. But what about the regulations ? What about the notifications ? What about the byelaws ? There are certain undertaking like Electricity Boards. They pass regulations under some particular Act. But we are not in a position to do anything about it saying "oh, they have not been laid on the Table of the House and they have not been published and, therefore, we cannot examine them". Most of the regulations are passed by executive authority and I can tell you that we have been repeatedly requesting to frame the rules and regulations but they did not accede to our request. The Parliamentary Committee submitted its report to the House and the whole House knows about it. The reports were submitted in the Second Lok Sabha, Fifth Lok Sabha and in the Seventh Lok Sabha respectively. I have been repeatedly requesting the Law Department to frame the rules and regulations. But they have not yet done it. Today, Mr. Deputy-Speaker, Sir, you please verify how many Acts are still there which do not comply with this procedure. What are those laws for which they have forgotten to lay down the rules ? What about the regulations ? What about the Notifications ? What about the scheme ? Yesterday, I was talking about scheme ? What has happened to that ? That was regarding the DTC Act. It was not a statutory scheme. One employee drew Rs. 3,000 as medical reimbursement per month. The anomaly here is that it was not a statutory Act. So, these people make their own scheme and these people issue their own notifications. We, the hon. Members of this House, hardly any time to go through each paper of the Gazette.

We do not know when the rules have been published. As the Chairman of the Subordinate Legislation I told the Law Secretary that certain actions should be taken in this regard. So, Sir, I request through you, through the Minister of Parliamentary Affairs, through the Law Minister to see that the regulations are framed and laid on the Table of the House. I am glad that the Law Ministry has come forward with this Bill at least now. They may take some time, say six months to do this. But you should see that those regulations are framed and laid on the Table of the House positively.

**SHRI H. R. BHARDWAJ :** Mr. Deputy Speaker, Sir, I am grateful to Dagaji who has been exhorting all the Departments, as Chairman of the Committee on Subordinate Legislation, to frame their rules, to place them before the House and if they have not listened to such a strong voice, I would request all the hon. Members and the Ministers to listen to them and complete the formalities. But Dagaji is right.....

**SHRI MOOL CHAND DAGA :** It is not Dagaji alone, but the whole House has the right...

**MR. DEPUTY SPEAKER :** Dagaji represents the whole House.

*(Interruptions)*

**SHRI H. R. BHARDWAJ :** If you are allergic to listen to me, that is a different thing. I am saying so because you were the Chairman of the Committee and I am reminding the House that it is the Chairman of the Committee on Subordinate Legislation who has been exhorting all the administrative Ministries. It is not a question of the Law Ministry. Law Ministry is only taking up the old acts which were passed much before. We are now compiling lists of the old Acts. So far as the present Acts are concerned, the Administrative Ministries have to comply with the directives of the Subordinate Legislation Committee because at this moment the directives are before them. Whenever they bring this type of rules, they should place it before the House. That is the job of the Administrative Ministries. Pursuant to the directives of the Committee, we have compiled a list of 69

Acts earlier and after that we have brought now a second batch of 92 Acts. We have done a commendable job. With these 69 plus 92 Acts, we have so far covered more than half way and now about 115 or so remain. Here also, I can bring it up tomorrow, but the Administrative Ministries are not clearing them. So, the fault does not lie with the Law Ministry or with me.

**SHRI C. JANGA REDDY :** It is the fault of the Government and you should accept the responsibility.

**SHRI H. R. BHARDWAJ :** If you cannot, perceive the argument which I am making you should not make any comment. It is very easy to say something than to understand it. This is the job of the Administrative Departments. Unless they send their papers to us, we cannot place them before the House. The difficulty is that the Ministries concerned must understand the directives of the Committee because the Committee functions under the authority of the House. If the other Ministries send them as quickly as possible, it does not take any time for me to process them, along with this batch of 92 Bills. I am still pursuing all the Ministries myself and see that the rest of the Bills, about 50 or so are listed in a third batch and I will bring it before the House in the next Session of the Parliament. If a person works and does his job, you do not commend him. If the other Ministries do not work, why should I accept the blame? The fault should lie where it belongs actually.

The problem is this. I cannot touch these Bills unless the Administrative Ministry sends them to us. Today, I have brought 92 Bills. This is a significant task. We have pursued the matter with the Ministries. Therefore, I agree with the Committee's directives that rules should be framed immediately because rules are not something other than the law. They are themselves the law. Therefore if rules are not framed, the major part of the law, *i.e.* the spirit behind the law remains unfulfilled. So, rules must be framed simultaneously if possible. Otherwise they should be framed with maximum speed and minimum delay.

Therefore, Sir, this Bill is only a fulfilment of the directives of the Committee

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on Subordinate Legislation and when I bring such batches of Bills, the House should welcome it because I am doing my job. Therefore, there should not be any controversy on this. Shri Daga said that we should try to see that rules are not only framed quickly, but they should be brought to the notice of the Members of the House, concerned Departments and the public. So, a system should be evolved to fulfil the directives of the Subordinate Legislation Committee. I commend that this Bill be passed without any controversy.

MR. DEPUTY SPEAKER : The question is :

“That the Bill to amend certain Acts to implement the recommendations of the Committee on Subordinate Legislation regarding publication and laying of rules and other delegated legislation and certain other matters, as passed by Rajya Sabha, be taken into consideration.”

The motion was adopted.

MR. DEPUTY SPEAKER : 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.

The Schedule

Amendment made :

“Page 2,—

omit lines 5 to 11.” (1)

(Shri H. R. Bhardwaj)

MR. DEPUTY SPEAKER : The question is :

“That Scheduled, as amended, stand part of the Bill.”

The motion was adopted.

The Schedule, as amended, added to the Bill.

MR. DEPUTY SPEAKER : The question is :

“That Clause 1, Enacting Formula and the Title stand part of the Bill.”

The Motion was adopted.

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

MR. DEPUTY SPEAKER : Now the Minister.

SHRI H. R. BHARDWAJ : I beg to move :

“That the Bill, as amended, be passed.”

PROF. N. G. RANGA : I have just one word to say, to congratulate ourselves, *i.e.* the House, and the Speaker for having found a very good champion of the rights of the House and of the public in our friend Mr. Mool Chand Daga Ji; and particularly I wish to congratulate the Speaker for having spotted him as the right person to discharge these functions. I am also very happy that the Minister has found it possible to be entirely cooperative and make himself entirely one with the whole of the House—all the parties together. Thank you.

MR. DEPUTY SPEAKER : The question is :

“That the Bill, as amended, be passed.”

The Motion was adopted.