

Enacting Formula

Amendment made:

Page 1, line 1,—

for "Thirteenth" substitute
"Fourteenth". (1)

(*Shri Manubhai Shah*)

Mr. Deputy-Speaker: The question is:

"That the Enacting Formula, as amended, stand part of the Bill".

The motion was adopted.

The Enacting Formula, as amended, was added to the Bill.

The Title was added to the Bill.

Shri Manubhai Shah: Sir, I beg to move:

"That the Bill, as amended, be passed".

Mr. Deputy-Speaker: The question is:

"That the Bill, as amended, be passed".

The motion was adopted

14.36 hrs.

**UNION TERRITORIES DRAMATIC
PERFORMANCES (REPEAL) BILL**

The Minister of State in the Ministry of Home Affairs (Shri Hajarnavis): Sir, I beg to move:

"That the Bill to provide for the repeal of the Dramatic performances Act, 1876, in force in the Union territories of Delhi, Himachal Pradesh and Manipur, be taken into consideration."

There is at present extended to the Union territories a Central Act under the title Dramatic Performances Act, 1876. The purpose of the Bill which I am now moving and which I am requesting the House to take into consideration is to repeal that Act on its substitution by another Act, namely

the Madras Dramatic Performances Act, 1954. The earlier Act, that is the Dramatic Performances Act, 1876, was extended to the Union territories by a notification under the Union Territories (Laws) Act. So far as the extension of the Act is concerned, it can be done by a notification under the Union Territories (Laws) Act. But it has been ruled by the Supreme Court, in the reference under the Delhi Laws Act, interpreted by subsequent decision of the Supreme Court in the Patna case, that whereas a clear field can be occupied by an extension of an Act by notification, where an Act already holds sway its repeal can only be done by the Legislature. Therefore, if we want to repeal the Dramatic Performances Act, 1876, the approval of the Legislature is necessary. We have therefore come before the House asking for its repeal. And when we repeal it we do not want to leave the area vacant, but we want to substitute the repealed Act by another Act called the Madras Dramatic Performances Act, 1954.

The reason why the Central Act of 1876 is sought to be repealed is that it *ultra vires* of article 19 of the Constitution; it is the considered opinion of at least three High Courts that the 1876 Act offends the freedom of speech guaranteed under the Constitution. The main features of the earlier Act are that firstly whether a dramatic performance is objectionable or no was left to be determined by the subjective determination of the authority prescribed; secondly, there was no opportunity given to the person against whom an order was sought to be made to show cause against the proposed order; and thirdly, there was no appeal to any judicial tribunal against such a subjective determination by the executive authority. When the matter went up for decision before the High Courts, the High Courts struck it down as contravening the freedom of speech guaranteed under the Constitution. Now under the Madras Dramatic Performances Act,

[Shri Hajarnavis].

1954, the subjective determination is now replaced by objective conditions. It is no longer left to the executive authority making up its mind as to whether in its opinion the performance is objectionable. Certain criteria have been laid down, and those criteria have got to be objectively satisfied before an adverse order can be made against the performance under the Dramatic Performances Act.

Secondly, an opportunity is provided to a person to show cause why such an order should not be made and, most important of all, there is a right of appeal to the High Court. If an adverse order is made against a person, it can be taken up by way of an appeal to the High Court, where the appeal will be heard by a bench of two judges. It has been held by the High Court that the procedure is in conformity with the freedom guaranteed by the Constitution. In doing this we are carrying out the fundamental rights which we all of us so much treasure. I commend this Bill for the acceptance of the House.

Mr. Deputy-Speaker: Motion moved:

"That the Bill to provide for the repeal of the Dramatic Performances Act, 1876, in force in the Union territories of Delhi, Himachal Pradesh and Manipur, be taken into consideration."

Shri Prabhat Kar (Hooghly): Mr. Deputy-Speaker, so far as the repeal of the Act of 1876 is concerned, we welcome that, because by that enactment certain restrictions were imposed on dramatic performances at a time when the British rule was here. That enactment took away the rights of the artists to perform or stage dramas at a time when it was necessary for social and political reform and information. There were lots of agitation against that measure of the Government. Therefore, so far as

that enactment goes, its repeal is all right.

But, after repealing that Act, the Madras Dramatic Performances Act, 1954, is being extended to Delhi. Just now, the hon. Home Minister stated that the Act of 1876 contravenes the provisions of article 19 of the Constitution, as held by three High Courts and that under the new enactment certain objective conditions have been laid down, certain norms have been fixed which have to be applied before the State can refuse to grant permission for the staging of the drama or performance. May I, in this connection, draw the attention of the House to section 3(1) of the Madras Dramatic performances Act, which says:

"Whenever the State Government are satisfied that any play, pantomime or other drama performed or about to be performed in a public place is an objectionable performance, they may, by order stating the grounds on which they consider the performance objectionable, prohibit the performance".

Since the words used are "whenever the State Government are satisfied", it is the subjective satisfaction of the Government, save except the reason will be given as to why they consider it necessary. Of course, it is stated in sub-section (2):

"No order under sub section (1) shall be passed without giving reasonable opportunity to the organizer or other principal persons responsible for the conduct of the performance or to the owner or occupier of the public place in which such performance is intended to take place to show cause why the performance should not be prohibited."

No doubt, an opportunity will be given. But, the decision will be that of Government. If they are satisfied

that according to them it is objectionable, the permission will not be granted. The only improvement is that certain grounds are to be given if permission is to be refused. The hon. Minister has further stated that there is an appeal to the High Court. Of course, it is true. But, so far as the performance as such is concerned, Government will permit or prohibit it according to their understanding.

May I also draw attention to section 8, which is almost the same as section 4 of the old Act? It says:

"For the purpose of ascertaining character of any intended play, pantomime or other drama, the State Government, or such officer as they may empower in this behalf, may by order, require the organisers or other principal persons responsible for the conduct of, or other persons about to take part in, such play, pantomime or other drama or the author, proprietor or printer of the play, pantomime or other drama about to be performed, or the owner or occupier of the place in which it is intended to be performed, to furnish such information as the State Government or such officer may think necessary."

Coming from a State where drama and the stage had been part and parcel of the national movement, to restrict which the then British Government passed many statutes against which there was country-wide agitation, a State where even recently there has been an attempt to restrict performances by the present national Government against which there was agitation by the writers and stage actors everywhere as a result of which it was dropped for the time being, a Bill which says that if Government is of opinion that certain things may be objectionable, either the author or organisers or the proprietor of the stage will be required to furnish such information to the State Government or to such officer as they may deem necessary does, in my opinion, smack

of the same restrictions which were imposed by the earlier Act of 1876. For example, read section 9, which says:

"If the State Government or in the Presidency town the Commissioner of Police or elsewhere the District Collector, have or has reason to believe that an objectionable dramatic performance is about to take place, they or he, as the case may be, may, by order, direct that no such dramatic performance shall take place in any public place within any area, unless a copy of the piece, if and so far as it is written, or some sufficient account of its purport, if and so far as it is pantomime has been furnished, not less than seven days before the performance, to the State Government, the Commissioner of Police or the District Collector aforesaid."

It means that so far as art and culture are concerned, it will be decided by police officers as to whether they are in the interest of the country or nation. It is a position which we cannot accept under any circumstances. These are restrictions against which there has been agitation in West Bengal by dramatists and producers only very recently.

Therefore, I hope and trust that the hon. Minister will consider this matter from that point of view. So far as the repeal of the Act of 1876 is concerned, it is most welcome, but, so far as the imposition of almost the same restrictions under the name of the Madras Dramatic Performances Act, 1954 to which objection has been taken, is concerned, I would request him to reconsider the matter.

Dr. M. S. Aney (Nagpur): This Bill is really very interesting in my opinion. It is probably for the first time—I do not know; I may be wrong—that the Central Legislature is enacting a law for its own territory by adopting a law made by a State. Of

[Dr. M. S. Aney].

course, they have powers under the law to adapt such laws as they deem fit for enforcement in the Union territories. Under those powers, they have adapted the Madras law. Now they have come here to repeal an old law. By repealing the old law, a legislation which is now existence in a State becomes the law of the Union territory.

I would have very much liked that the new law which has come in force in the Union Territories should have been given *in extenso* here for the information of hon. Members of this House. We understand that it has already become the law. It is for the first time that indirectly this House is called upon to accept that as the law for these Territories by repealing the law which was applicable to those Territories. Had that law been present before us, some of the objections which my hon. friend has just now taken to certain provisions would have been very much intelligible to us. Today in the absence of that law we do not understand the precise nature of the criticism and the force behind that criticism. We are in a way endorsing that law without knowing the provisions of that law. This difficulty could easily have been obviated had the Law Ministry taken the care of giving the provisions of that law which becomes the law of these Territories along with the repealing Bill which is placed before us. That is the only complaint that I have to make. Otherwise, so far as the Bill goes, once the whole law is to be repealed, the other provisions are all consequential and there is no harm in our supporting the repealing Bill. My complaint is that indirectly we are supporting a law without knowing what it is. That is my only point.

श्री बड़े (खारगोन) : माननीय उपाध्यक्ष महोदय, दि यूनियन टैरिटरीज ड्रामेटिक परफार्मेंसिज (रिपील) बिल, १९६२ में

जो कि इस सदन के सामने रखा गया है, "रिपील" शब्द को देख कर पहला इम्प्रेसन यह होता है कि दिल्ली, हिमाचल प्रदेश और मनिपुर में जो ड्रामेटिक परफार्मेंसिज एक्ट लागू था, उसको रिपील किया जा रहा है। लेकिन इस बिल को पढ़ कर यह मालम होता है कि उक्त एक्ट को रिपील करने के साथ साथ मद्रास ड्रामेटिक परफार्मेंसिज एक्ट, १९५४ को एक नोटिफिकेशन के द्वारा इन यूनियन टैरिटरीज में एक्सटेंड किया जा रहा है। मेरा कहना यह है कि जहां तक १८७६ के एक्ट को रिपील करने का प्रश्न है, हम उसके सम्बन्ध में शासन से सहमत हैं। वह रिपील होना चाहिए।

जहां तक मद्रास ड्रामेटिक परफार्मेंसिज एक्ट, १९५४ को एक्सटेंड करने का सम्बन्ध है, इस बिल के स्टेटमेंट आफ आवजेक्ट्स एंड रीजन्स में कहा गया है कि चकि मद्रास, इलाहाबाद और पंजाब हाई कोर्ट्स ने १८७६ के एक्ट के कुछ प्रावजनज्ज को अल्ट्रा वार्यस ठहराया है, इसलिए मद्रास एक्ट १९५४ को दिल्ली, हिमाचल प्रदेश और मनिपुर की यूनियन टैरिटरीज में एक्सटेंड किया गया है। शासन से मेरी विनती य है कि १८७६ के एक्ट को जो रिपील किया गया है वह तो ठीक है लेकिन मद्रास के एक्ट को एक्सटेंड करना उचित नहीं है। इस सदन ने एक कानून पास करके हिमाचल प्रदेश और मनिपुर को लेजिस्लेटिव एसेम्बलीज दी हैं। इसलिए उन एसेम्बलीज को हम बात का अवसर देना चाहिए कि वे अपने यहां की सामाजिक परिस्थितियों आदि को दृष्टि में रख कर चाहे तो मद्रास एक्ट को अपना लें, अथवा कोई और एक्ट पास कर लें। मैं निवेदन करना चाहता हूं कि मद्रास लेजिस्लेटिव एसेम्बली ने अपने यहां की परिस्थितियों पर विचार करके अपने लिए एक कानून बनाया। उसी कानून को दिल्ली, हिमाचल प्रदेश और मनिपुर

में लागू करना किसी भी प्रकार उचित नहीं कहा जा सकता है। यह कानून पाम कर के सरकार मद्रास के पानी को दिल्ली में लाना चाहती है। मनिपुर और हिमाचल प्रदेश में जो माहिल्य है और जो सामाजिक परिस्थितियां और नैतिक आदर्श हैं, उन पर विचार करके वहां की एम्बेम्बलीज अपने लिए कोई कानून बना सकती हैं।

अगर इस बिल के प्राविज्ञन्त्र को देखा जाये, तो इसका नाम वास्तव में दि यूनियन टेरिटरीज ड्रामेटिक परफार्मेंसिज (रिपील) एंड एक्सटेंशन आफ मद्रास ड्रामेटिक परफार्मेंसिज एक्ट बिल रखा जाना चाहिए, ताकि यह मान्य हो सके कि इसके प्राविज्ञन्त्र का अर्थ क्या है। जैसा कि मैंने अभी निवेदन किया है, जब हमने मनीपुर और हिमाचल प्रदेश को लेजिस्लेटिव एम्बेम्बलीज दी हुई है, तो यह उचित ही है कि उनको यह विचार करने का अवसर दिया जाय कि वे अपने यहां मद्रास एक्ट को लागू करना चाहते हैं या कोई दूसरा कानून पाम करना चाहते हैं। जब कि यह कहा जाना है कि हमारे मंत्रिधान के अनुसार प्रान्तों को आटोनोमी दी गई है तो केन्द्र की ओर से साहित्य और ड्रामा जैसी छोटी छोटी बातों में हस्तक्षेप करना ठीक नहीं है। हमारे कांस्टिट्यूशन में यूनियन लिस्ट और स्टेट लिस्ट दी गई हैं। अगर केन्द्र स्टेट लिस्ट के विषयों के बारे में भी कानून बनाने लगेगा और स्टेटस के मामलों में हस्तक्षेप करने लगेगा तथा हिमाचल प्रदेश और मनिपुर आदि यूनियन टेरिटरीज को मद्रास एक्ट लागू करने के लिए बाध्य करेगा, तो साधारण जनता पर यह इम्प्रेसन पड़ेगा कि प्रान्तों की एटोनोमी केवल कागज पर है, केवल शब्दों में है और वास्तव में केन्द्र छोटी छोटी बातों में हस्तक्षेप कर सकता है।

इन शब्दों के साथ मैं कहना चाहता हूँ कि १८७६ के एक्ट को जो रिपील किया गया है, वह तो ठीक है, लेकिन मद्रास ड्रामेटिक

परफार्मेंसिज एक्ट, १९५४ को एक्सटेंड करने का मैं विरोध करता हूँ।

Shri Gauri Shankar Kakkur (Fatehpur): Mr. Deputy-Speaker, Sir, it is something very surprising that this very old Act of 1876 is being repealed on the basis of certain pronouncements of High Courts, but then, as has just now been said by my hon. friends, Shri Bade and Dr. Aney, what was the necessity for extending an Act which was passed in 1954 by the Madras legislature. The social environments of each State are quite different as compared to other States. Secondly, very recently we have given full powers to Manipur etc. and a legislative assembly is coming up there. These are very petty matters and it should have been left to the Manipur Legislative Assembly to enact its own law.

It shows some sort of an incompetency on the part of the Law Ministry of the Government of India that we are going to adopt an enactment of 1954 and that after mature consideration we have not been able to find out such enactments which are properly suited to particular States keeping in view their social environments and other conditions prevalent there. I quite agree with my hon. friend, Dr. Aney, that probably it is a unique feature in this particular enactment that we are not having a separate enactment but are simply giving sanction or power by this measure to enforce that Act which was passed by the Madras Legislature as early as 1954.

By virtue of certain pronouncements of the High Courts we are compelled to repeal the old Act. Let that stand repealed, but there is no use in extending any such Act which is prevalent in the southernmost portion of India, specially to those States which are quite different as regards social environment and other matters. So, I think, it would not at all be desirable and it will not do justice.

[Shri Gouri Shankar Kakkar]

If we look into the provisions of the Act of 1954 of the Madras Legislature, we find that there are certain sections in it which are just on equal footing with the old Act. Now we are independent. We have our Constitution. We have our freedom of speech and everything. Keeping that in view there should be a new measure altogether. It will not be desirable to introduce those old things which were not in accordance with the provisions of the Constitution and in accordance with the independence which has been given to this country. I think, the hon. Home Minister will look into this matter and will postpone this measure. Let the Manipur Assembly or the Himachal Assembly have its own Act according to the conditions prevalent in those States.

15 hrs.

Shri Hajaranavis: Sir, some of the observations made, I believe, have not taken into consideration the structure of the Union Territories (Laws) Act. As a constitutional provision obtains, this Parliament is responsible for legislation in respect of Union Territories primarily and in the last instance. Now it is not possible for this Parliament, among its multifarious duties, to find time for laws in respect of Union Territories. There has been for a long time on the statute book a law called the Union Territories (Laws) Act which enables a law from anywhere, a State law or a Provincial law as it was previously called, to be applied by notification with or without modifications to the Union Territories. Whether this was valid or invalid was debated at great length in the Supreme Court in a celebrated case called the Delhi Laws Act case where the powers of delegated legislation were examined by the Supreme Court. The finding on issues of this case were again pronounced upon by the Patna case to which I alluded earlier. It was ruled that instead of coming to this Parliament, a law can be extended by notification. But there

in the same decision the Supreme Court said, "If a law is already applied and if you want to displace that law, then you must go to the legislature and repeal it." Therefore, the repealing Act was necessary. Here, of course, we are not only displacing the Act which has been pronounced upon as invalid by the courts but we are also substituting in its place a very good Act and nothing adverse has been pointer out in the debate so far about the provisions of this Bill except, of course, the criticism of Mr. Prabhat Kar to which I will come in a moment.

The salient features of the judicial procedure are incorporated in the Bill: firstly, issuing of notice to a party against whom the order is made; secondly, prescribing of objective conditions which may be satisfied before any action is taken and thirdly, providing of review before the High Court. Even if we ourselves were to frame the Bill, I do not think its form would have been in any way different from the form in which it has come. I do agree with what has fallen from our senior colleague Dr. Aney about providing the text of the Madras Act. It would have been easy to refer to that if it were printed with the Bill. If the demand had been made earlier, we would certainly have done it. The Bill was introduced during the last session. If the demand had been made earlier, we would have certainly circulated it. But I assure the House that next time if any such occasion arises, we will keep in the Bill itself all the Acts, the Act to be displaced and the Act which will take its place.

Now, coming to the objection which has been raised by Mr. Prabhat Kar, he thinks that the subjective determination still continues and he probably relied on the words "is satisfied". If we were to consult the decision of both the Privy Council and of the Supreme Court upon the expression that has been used, Lord Radcliffe in a Ceylon case which was decided by

the Privy Council in 1951 said, "Nothing turns upon the expression 'is satisfied'." He is of the opinion that nothing turns upon this expression. You have got to see the whole scheme of the Act as to whether what is provided is subjective satisfaction or objective determination. If he reads the whole of the clause, he will find that what section 3 provides is certainly the satisfaction of the various conditions given in the clause before which an order can be made.

Another quite a very potent argument which I would like to give in favour of my submission to the House would be, if what is provided is subjective determination, an appeal to the High Court will be obviously illusory. If the only fact that has to be provided is, did or did not the authority acting come to that subjective state of mind, if this is the condition of exercise of power, then there is no question of any other authority coming to a different decision because it is for the authority to say, which acts upon subjective satisfaction, "Well, I am satisfied". That is the state of mind. There is no question of appeal. I might remind him as well as other Members of the House who are lawyers that the word 'satisfied' is nearly always used to describe objective satisfaction, fulfilment of objective conditions. If a suit is dismissed and if it is to be restored, I believe—I am quoting from memory—Order 9, Rule 30 says: if the Court is satisfied that there is sufficient reason for the non-appearance, then the suit is restored to file. I believe, in the whole of the Civil procedure Code, wherever the condition of objective conditions is prescribed, the expression that is used is 'is satisfied'. It may be, as Lord Radcliffe said in the Privy Council case that even though the expression used is 'is satisfied', yet it may lead to subjective determination. But I do not think the mere use of expression would entitle Mr. Prabhat Kar to raise any doubt as to the condition on

which the power under section 3 can be exercised.

With these words, I move that the Bill be taken into consideration.

Mr. Deputy-Speaker: The question is:

"That the Bill to provide for the repeal of the Dramatic Performances Act, 1876, in force in the Union territories of Delhi, Himachal Pradesh and Manipur, be taken into consideration."

The motion was adopted.

Mr. Deputy-Speaker: We shall now take up clause-by-clause consideration of the Bill.

Performances Act, 1876)

Clause 2— (Repeal of Dramatic Amendments made:

(i) "Page 1, lines 7 and 8,—

for "to any of the Union territories of Delhi, Himachal Pradesh and Manipur"

substitute—

"to the Union territory of Delhi."

(4).

(ii) "Page 1, line 9,—

for "such" substitute "the. (5).

(Shri Hajarnavis).

Mr. Deputy-Speaker: The question is:

"That Clause 2, as amended, stand part of the Bill".

The motion was adopted.

Clause 2, as amended, was added to the Bill

Clause 3 was added to the Bill

Clause 1— (Short Title)

Amendment made:

"Page 1, lines 3 and 4,—

for "Union Territories Dramatic Performances (Repeal) Act, 1962".

[Mr. Deputy-Speaker].

Substitute—

“Dramatic Performances (Delhi Repeal) Act, 1963”. (3).

(Shri Hajarnavis)

Mr. Deputy Speaker: The question is:

“That Clause 1, as amended, stand part of the Bill”.

The motion was adopted.

Clause 1, as amended, was added to the Bill

Enacting Formula

Amendment made:

Page 1, line 1,—

for “Thirteenth” substitute—
“Fourteenth”. (2).

(Shri Hajarnavis)

Mr. Deputy-Speaker: The question is:

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

The motion was adopted

The Enacting Formula, as amended, was added to the Bill

Long Title

Amendment made:

Page 1, in the Long Title,—

for “Union territories of Delhi, Himachal Pradesh and Manipur”. (1).

substitute—

“Union territory of Delhi”.

(Shri Hajarnavis)

Mr. Deputy-Speaker: The question is:

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

The motion was adopted.

The Long Title, as amended, was added to the Bill

Shri Hajarnavis: I move that the Bill, as amended, be passed.

Mr. Deputy-Speaker: The question is:

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

The motion was adopted.

15:10 hrs.

LLIMITATION BILL

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

“That the Bill to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith, as passed by Rajya Sabha, be taken into consideration”.

I do not propose to waste the time of the House by repeating all that I said while moving the motion for reference of the Bill to the Joint Committee. I would only remind the House that the most important recommendations of the Law Commission were with regard to the articles of the Indian Limitation Act. So far as the articles are concerned, the Law Commission's recommendations were threefold. Firstly, they suggested that the articles should be arranged according to their subject matter. The second suggestion was that the period of limitation should be the same, as far as practicable, for the same class of suits. The third suggestion was that the starting point or the period of limitation should be the accrual of the cause of action.

So far as the first suggestion is concerned, namely that the articles should be classified according to the subject-matter, that recommendation has been accepted, and it will be seen that broadly the articles have been