

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill further to amend the Employees' Provident Funds Act, 1952, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up the clause by clause consideration of the Bill.

Clauses 2 to 6 were added to the Bill.

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

SHRI ABID ALI: Sir, I move:

"That the Bill be passed."

The question was put and the motion was adopted.

THE REPEALING AND AMENDING BILL, 1960

THE MINISTER OF LAW (SHRI A. K. SEN): Sir, I beg to move:

"That the Bill to repeal certain enactments and to amend certain other enactments be taken into consideration."

Sir, it is a formal measure the objects of which have been mentioned in the Statement of Objects and Reasons. Many of the Acts which are still on the Statute Book have become obsolete and are mentioned in the First Schedule. Many of them have become obsolete partially, the amendments in respect of which are given in the Second Schedule.

The object of the Bill is to repeal enactments which have become completely obsolete—mentioned in the First Schedule—and to amend them to the extent it is necessary with regard to those which have become partially obsolete or partially necessary. This is

really in accordance with the recommendations of the Law Commission.

The question was proposed.

DR. W. S. BARLINGAY (Maharashtra): Mr. Deputy Chairman, Sir, I rise to support the Bill and I completely endorse what the hon. Minister of Law has said in regard to this Bill, namely, that it is really more or less a formal Bill and nothing really need be said on it. Nonetheless, it seems to me that now that a Bill of this sort is before this House, certain questions of a very unorthodox and non-traditional nature may be raised. Sir, after having read the General Clauses Act with a certain amount of attention it seems to me that the General Clauses Act does require a good deal of amendment. And when we have before us a repealing and amending Bill of this sort, which virtually repeats some of the provisions of the General Clauses Act, that need seems to be almost imminent.

Sir, there is one question that I should like to ask, though I admit immediately that that may not be necessary from one point of view. As a matter of fact, as I said, I want to ask quite a non-traditional question. The question that I wish to ask is whether it is at all necessary to have a repealing Act of this sort. I will take one Act as an instance. You have the Government Officers Indemnity Act, 1860. Now this particular Act obviously, it is agreed, has no application to any present state of facts. It does not apply to our present conditions at all. That is quite clear. But it is also clear that it did apply to a certain state of conditions in those olden days. It was a good Act in those conditions and merely because those conditions do not exist now, I do not see why that particular Act should be repealed. Of course, I am not suggesting for one moment that that Act is any more useful but that Act did apply to those conditions and I do not see what is gained by a Repealing Act of this sort. I am raising this point, as I said, from

a perfectly non-orthodox view point. This point ordinarily will not be raised, I know, but why should we have this repeal? That Act has spent itself. When you have an Act which has spent itself in the sense that it has no application to existing conditions, is that a ground for repealing that Act? Suppose we do not repeal it, what do we lose? We lose nothing. Suppose we do repeal it, what do we gain? We gain nothing either. Why then should it not be allowed to continue on the Statute Book. After all, what is this concept of the Statute Book, really it does seem to me, it is a somewhat extraordinary concept. What is this Statute Book? Must a law be on the Statute Book only if it applies to existing conditions? Suppose it did apply to past conditions, has it no right to be on the Statute Book? I have no quarrel at all with this enactment. So far as it goes, this Bill is quite all right. I have no particular quarrel with it but I am raising, as I said, a more fundamental question. In certain cases undoubtedly the repeal of an Act certainly has meaning. A repeal shows that that Act which was alive for a time is now dead. When you say that that is now dead, is no more alive, then repealing has some sense. That way, if I may say so, a repeal really amounts to removal of the sections concerned, so to speak, from the Statute Book. In the case of an amendment, what do we do? We change the existing rule and we substitute it by another. What do we do by repeal? We simply brush aside the entire provision. That is what a repeal does. Now that sort of method, it seems to me, ought not to apply to an Act which has spent itself. Because that Act was good in the old days, it would be good if those conditions did occur—of course they do not occur—but if they do occur, that will be a perfectly valid Act. In those cases, what is the point in trying to repeal it? Why flog a dead horse? Why waste the time of the Legislature in trying to repeal something which is already dead, or

which nobody is going to use? That consideration applies to many Acts which are contained in the First Schedule. I have no quarrel so far as the Second Schedule is concerned. It is perfectly all right and I have tried to examine the various provisions in relation to the original enactments and I say that there is no objection to the Second Schedule at all. But with regard to the First Schedule, I do want to raise this point. We need not always go in a traditional way merely because this has been a common procedure—repealing spent up Acts—and because we have been following this procedure in the past, that is no reason why we should follow it now. That is the first point I wish to raise.

The second point is this. If you will look at clause 4 and read it in relation to Section 6(c) and (d) of the General Clauses Act, you will see that virtually those provisions in the General Clauses Act are repeated here. The explanation which has been given as to why this clause 4 has been included in the Bill is this. That is given in the Statement of Objects and Reasons. They say:

“Clause 4 of the Bill contains a precautionary provision which it is usual to include in Bills of this kind.”

So far as the first para of clause 4 is concerned, there is no quarrel, because that is not covered by any provisions in the General Clauses Act. It says:

“The repeal by this Act of any enactment shall not affect any other enactment in which the repealed enactment has been applied, incorporated or referred to”

This provision is certainly not covered by any provisions of the General Clauses Act. That is quite true; but so far as the latter paragraphs of this clause are concerned, they are simply repetitions of section 6 (c) and (d) of the General Clauses Act. Now I do

[Dr. W. S. Barlingway]

not see any point in repeating a provision which is already there. What do you gain? That is another reason for suggesting that this entire General Clauses Act may be redrafted and reframed because it is not adequate to meet all the needs of legislation.

Then I come to the last paragraph in clause 4 which begins with:

“nor shall the repeal by this Act of any enactment revive or restore any jurisdiction, office, custom, liability, right, title, privilege, restriction, exemption usage, practice, procedure or other matter or thing not now existing or in force.”

Now it seems to me that this is completely covered by section 6 (a) of the General Clauses Act and this is simply a repetition of the same thing. Suppose in this clause we omitted all the subsequent paragraphs except the first, we will be none the worse for it. Therefore, I suggest that either the frame of the General Clauses Act should now be redrafted and more provisions be made in it so that it may be more generally applicable or, otherwise, these paragraphs in clause 4, namely, second, third and the fourth, might be deleted. Why repeat the same provisions?

Next I come to clause 5. Here I may say that I myself may be a little confused about this particular provision I do not deny that. But it does seem to me that when you read this clause 5 along with the explanation that is given in respect of it in the Statement of Objects and Reasons, you will find that the whole thing is most confusing. This explanation is probably all wrong. Please read this clause, clause 5.

“For the removal of doubts, it is hereby declared that where this Act repeals any enactment by which the text of any other enactment, not being a Central Act, Ordinance or Regulation, was amended by the

express omission, insertion or substitution of any matter, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the commencement of this Act.”

Sir, apart from the extremely clumsy wording of this clause, and also, if I may say so, the clumsy wording of section 6-A of the General Clauses Act, I feel that the explanation given of this particular clause is quite wrong

Let us analyse it and see what it means. If you analyse clause 5, you will see that first of all it talks of the Central Act, the Amending Act. And then it talks of the repealed Act which in turn repeals something else. As a matter of fact there are three Acts with which we are concerned, both in clause 5 of this Bill and in section 6-A of the General Clauses Act. If you compare them you will find three stages. First of all there is the Central Act. In both the cases you will find that the repealing Act is the Central Act. So that is common to both clause 5 of this Bill and section 6-A of the General Clauses Act. I will not take much time of the House and will only say here that either this clause 5 is wholly unnecessary or in the alternative, what I feel is that the explanation as given in clause 5 here is entirely wrong. One has merely to compare this clause with the explanation and read it along with section 6-A of the General Clauses Act to see that this explanation is quite wrong.

Except for these remarks, I have nothing more to say, Sir, and I commend this Bill for the approval of the House.

SHRI A. K. SEN: Sir, this is a point which is raised from time to time and the answer is always the same, that we do not want to depart from the tradition of repealing former Acts which are obsolete and for which there are other Acts. There is no use saddling the Statute Book with obsolete Acts

and so why should we not repeal those Acts? It is done in every country.

With regard to clauses 4 and 5, I have only to say this. So far as clause 5 is concerned, it is clear that the General Clauses Act does not expressly cover Central Acts or Regulations and so on. Therefore, clause 5 is necessary. So far as clause 4 is concerned, it is the usually drafted clause in a Bill of this nature. May I, therefore, recommend this Bill for the acceptance of the House?

MR. DEPUTY CHAIRMAN: Now I shall put the question.

SHRI ROHIT M. DAVE (Gujarat): Sir, before you put the question and take votes, let us see if there is quorum in the House. I don't think there is quorum.

MR. DEPUTY CHAIRMAN: Ring the quorum bell.

(The quorum bell was rung.)

MR. DEPUTY CHAIRMAN: Now we have quorum.

The question is:

"That the Bill to repeal certain enactments and to amend certain

other enactments be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up the clause by clause consideration of the Bill.

Clauses 2 to 5 were added to the Bill.

The First Schedule and the Second Schedule were added to the Bill.

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

SHRI A. K. SEN: Sir, I move:

"That the Bill be passed."

The question was put and the motion was adopted.

MR. DEPUTY CHAIRMAN: There is no other business before the House. The House stands adjourned till 11-00 A.M. tomorrow.

The House then adjourned at forty-seven minutes past three of the clock till eleven of the clock on Friday, the 2nd December, 1960.