

लोक सभा

**AN APPRAISAL REPORT OF  
THE WORK DONE BY THE  
NARENDRA MODI  
GOVERNMENT WITH RESPECT  
TO THE DELETION OF OLD AND  
OBSOLETE LAWS.**



By

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## Foreword

Law is the instrument through which the government governs people. Law necessarily is an integral part of the entire conception of rule of law. Without law a society cannot function. Without law there can be no economic progress. It is therefore very important that laws which are framed for the country reflect the will of the people. After a very long period of time today we have a government which reflects both the will of the people as well as a genuine spirit to bring in long-term changes for the betterment of every section of society. Under the leadership of our dynamic Prime Minister Shri Narendra Damodar Das Modi the nation and the country is on the verge of momentous change. The present government is committed to strengthening both the rule of law as well as bringing in economic progress. One of the pillars of a system which intends to strengthen both rule of law and bring in economic change is simplification of laws. In the run-up to the momentous elections of 2014 it was promised by the present Prime Minister that redundant laws would be removed from statute books.

All of us are further aware that this government is also a culmination of the movement led by the Bharatiya Janata party for a long period of time to make government and the legal system more accessible to the people. It is also been a continuous demand that those which do not serve a purpose or are which redundant should be removed from the statute books. The objective of the same is to simplify the legal system as well as reduce the redundancy which complicates the functioning of the legal system.

The government therefore has taken a very laudatory step of removing old laws which exist in statute books which are redundant. The said laws consist of two types of statutes, the first are the statutes which are redundant because they are in the nature of either amending statutes or in the nature of consolidating statutes, and the second are statutes which govern substantive provisions but which have due to a flux of time have become irrelevant or superfluous. Some of the provisions in the latter category also have an impact in the nature of highlighting the kind of governance that the government of the day wants to provide and the values of the existing government.

The process of amending laws and weeding out redundant laws have been done in different stages which has been described in detail in the present report by the present government. The amendment and removal of the laws themselves are a small thing no doubt but it reflects the thinking behind the government of living up to its promises leading to the election as well as providing governance which is simpler and more accessible to the people.

Profusion of laws and a jungle of statutes make the legal system and the rule of law in accessible to common people. The government by taking this problem head-on has shown a light on this problem. Even though the act of removal may be a simple step but it is predicated upon a deep application of mind as to the statute which is being removed. The problem which arises out of the and removing any provision is the knock-on effect which may have on other statutes and other provisions. The act of removal of statutes and deciding which one to remove is a cumbersome process requiring both a meticulous approach to find out which laws are redundant as well as a substantive policy thinking to decide which laws the government intends to keep in accordance with its policy and which laws it intends to remove.

The present project does not deal in detail with all the laws which were removed from the statute books by the present government but it highlights some of the important roles which were so removed. The intention behind the project is not only to talk about broader policy questions about how we used and simple laws make for clear governance were also to highlight some of the substantive policy imperatives which went behind amending laws which had become obsolete and in some cases even oppressive. This report highlights some of the oppressive laws which were removed out of the statute books by this government.

One of the major considerations of removing old laws has been that we have moved from a highly regulated and deeply nationalised economy to an economy which is substantially deregulated and which is open to market forces. However our statutory regime does not reflect the same being filled with statutes which are remnants of the old times of nationalisation and over regulation. It was important to apply one's mind to clearing out this jungle of laws , since it is well known that the larger number of laws which regulate the economy the larger the amount of oppression people have to face in their economic life. It is the small statutes which one finds irrelevant in today's date which gives the scope to local bureaucracy to harass small businesses and indulge in corruption. As anyone who goes through this report will realise that the thrust of the government has been to remove laws which could be misused

for such purpose.

However we all know that even though the government has lived up to its pre-election promises of clearing the statute book redundant laws, the said process is ongoing and needs to continue extensively in the future. The clearing of old laws is part of the process of good governance which has been exemplified by the steps taken under the leadership of our Honourable Prime Minister. It is also part of overhauling of the entire legal system so that the law actually benefits the common person and the entire system is accessible to the last person on the line. This is in accordance with the dreams of Pandit Deen Dayal Upadhyaya whose dreams this government is working hard to fulfil.

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## **Background**

It was exactly 2 years before that the BJP lead NDA government was formed at the centre. The firebrand leader of NDA coalition, Shri Narendra Modi became the Prime Minister of India. The new Prime Minister in his energetic campaign made several promises to the electorate, in the form of bringing back Black Money which was stacked in foreign banks and other tax heavens, ending policy paralysis, boosting the economy, clean governance and administration, besides a humane touch in the governance. The slogan given was “Ache Din Aane Wale Hai!” and two years down the line, Ache din have started to come. The policy paralysis in the government has ended; transparency in the government has increased; the economy is reviving day by day. The Prime Minister practices Sabka Saath, Sabka Vikas, a theory which all leaders of modern democracy preach, but do not practice. In order, to make a congenial atmosphere for clean governance and administration, several commitments were to the people, one of which was elimination of obsolete laws, regulations, administrative structures and practices.

For any democratic society, Rule of Law is of paramount importance, without Rule of Law, no society can exist and absence of Rule of Law will lead to ‘Matsya Nyay’. Rule of Law manifests the desire of the people to be ruled by law rather than whims and fancies of individual. Society is dynamic, for the society which we see today is the result of many years of transformation. For regulating the conduct of the persons living in the society law is needed, as the society changes, the law also needs to be changed from time to time, law cannot remain static, it must change according to the needs of the society, for law is needed for the society and not vice-versa. Law has to keep pace according to the society. Many laws outlive their life and turn obsolete. Many old laws are

amended from time to time to keep them updated with the present day scenario, however some fade away in the statute books themselves. Old and archaic laws lead to enormous confusion and chaos, for the general public is not expected to know each and every law enacted by the parliament, which does not serve their purpose. It leads to much more confusion for lawyers, because a judge is not expected to know the law, but an advocate in the court of law is expected to know the law, no matter how old or outdated it is. The need of reviewing these old laws has been reiterated time and again. Civil law jurisdictions provide for the principle of *desuetude*, allowing for the repeal of non enforceable legislation. This principle is not recognized in Common Law Jurisdictions and India is no exception.<sup>1</sup> One of the fundamental principles of Public Administration is that the administrative setup should not be heavy and burdened by unnecessary officials and red-tapeism. The government machinery should not be burdened with overstaffing and should be light so that it can take swift action when needed. The heavier the government machinery, the more time it will take to react; similar analogy can be drawn for old laws as well. Old and archaic laws, which continue to live in our statute book despite their shelf life being over, display the apathy which the previous governments have towards serving people through administration. The administration should be to serve the people and not to create hindrances for them. The administration should be for the people rather than being for the system for which it is supposed to be made. Society and people should be the fulcrum of any administrative set up. If any administrative set up does not cater to the needs of people, it should be pruned so as to cater to the needs of public. Keeping in mind the above mentioned objective, the BJP in its manifesto promised the elimination of obsolete laws, regulations, administrative structures and practices. The government, since then under the able and dynamic leadership of PM Modi, has repealed many laws. The Modi government has repealed as many as 1160 laws in its two year stint, whereas only 1301 laws were repealed by the previous governments, in around 64 years<sup>2</sup>. Since Independence, the following weeding exercises have taken place. It is pertinent to note that during the Nehru regime the exercise of weeding was carried out systematically. Thereafter, some weeding was also done during Indira Gandhi's, Rajiv Gandhi's tenure. After this, major weeding was carried out during the tenure of Shri. Atal Bihari Vajpayee. After NDAs rule the process of weeding was stopped and during the next 10 years of UPA rule no law was weeded. The then corrupt UPA did not have time to repeal old and obstructionist laws from the statute book.

<b>Sl no.</b>	<b>Name of the Act</b>	<b>Number of laws repealed</b>
1	The Repealing and Amending Act,1950	72
2	The Repealing and Amending Act,1952	72
3	The Repealing and Amending Act,1953	31
4	The Repealing and Amending Act,1957	160
5	British Statutes (Application to India) Repeal Act, 1960	258
6	The Repealing and Amending Act,1960	151
7	The Repealing and Amending Act,1964	73
8	The Repealing and Amending Act,1974	193
9	The Repealing and Amending Act,1978	112
10	The Repealing and Amending Act,1988	196
11	The Repealing and Amending Act,2001	307
12	Two Member Constituencies (Abolition) and other Laws Repeal Act, 2001	7
13	The Repealing and Amending Bill, 2014	36
14	The Repealing and Amending(Second) Bill,2014	88

To identify the laws to be repealed, the Law Commission of India prepared four reports in 2014 (248th, 249th, 250th, 251st), identifying old statutes that could be repealed. Subsequently, a Committee headed by R. Ramanujam was formed to identify Central Acts which are not relevant or no longer needed or require repeal/re-enactment. As per the Ramanujam Committee, 2781 Central Acts were in existence as on 15 October 2014. Out of these, it recommended the repeal of 1741 Central Acts. Of these 1741 Acts, 340 were Central Acts on State subjects that had to be repealed by the respective state legislatures. Earlier a similar exercise was carried on in 2001, by Atal Bihari Vajpayee Government, which repealed laws based on recommendations of PC Jain Commission. The repealing of old laws signifies that the present government unlike its predecessors is free from colonial hangover and has its priority to get freedom from old and archaic laws. The government is working on the direction shown by Hon'ble Prime Minister, Minimum Government and Maximum Governance and From Red Tape to Red Carpet and repealing old laws is definitely a milestone in this regard.

The government should build a system wherein such laws should die their natural death rather than they being killed by the legislature after consuming its precious time. In this context, the Australian Model can be looked upon, where repealing is done by an Act which provides for mechanism for repealing

old law, there is a shelf life for every law in Australia, after which the law automatically expires, thereby making the statute book less bulky and free from confusion.

### **Laws which have been repealed**

The following repealed laws will definitely prove to be a milestone in relieving the statute books of redundant laws:

**1. The Lepers Act, 1898:** The Act discriminated against persons suffering from leprosy. The Act segregated the affected persons by creating asylums at least 10 km away from main cities. The affected persons had no property rights or even marriage rights. Section 9 of the Act, provided, that

Section 9: Persons suffering from leprosy not to

(a) Personally prepare for sale or sell any article of food or drink intended for human use;

(b) Bathe, wash clothes or take water from any public well or tank debarred by any municipal or local bye-law.

(c) Drive conduct or ride in any public carriage except, railway

The Act, further provided for arrest of any pauper leper.

The Constitution of India came into force on 26<sup>th</sup> January 1950, although some of its provisions were enforced on 26<sup>th</sup> November, 1949. Part III of the Constitution deals with Fundamental Rights of the citizens. The impugned Act, violates Article 13(1), 14, 17, 19(1)(d), 21 of the Indian Constitution.

**Article 13(1)** states that any law in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions Part III, shall to the extent be void. Towing this line we see that the Lepers Act is unconstitutional since Independence.

**Article 14-** The state shall not deny to any person equality before the law or equal protection of the laws within the territory of India.

If we examine the impugned Act, on the touch stone of Article 14, it establishes the fact that the State is denying the persons suffering from leprosy, equality before law and equal protection of laws. That, the persons suffering from leprosy are treated in a different manner violates equality before law, moreover they are also not granted equal protection of laws, within the territory of India. An argument, that the persons against whom this sought of discrimination is being done form a distinct class or category cannot sustain as practicing such type of disability is serious offence against mankind. The 20th

Law Commission headed by Retired Chief Justice, AP Shah, in its 256<sup>th</sup> Report titled “Eliminating Discrimination Against Persons Affected by Leprosy” has recommended enacting a new law titled “Eliminating Discrimination Against Persons Affected By Leprosy (EDPAL) Bill, 2015” besides amending and repealing other laws which include the Lepers Act also. Other laws which have been recommended to be repealed are :

**(a) Section 27 (g) of the Special Marriage Act, 1954:** The section provides leprosy as a ground for divorce, if it has not been contacted from the petitioner.

**(b) Section 2(vi) of the Dissolution of Muslim Marriage Act, 1939:** The section provides leprosy as a ground for dissolution of marriage.

**(c) Section 13(1) (iv) of the Hindu Marriage Act, 1955:** The section provides leprosy as a ground for divorce.

**(d) Section 10 (1) (iv) of the Indian Divorce Act, 1869:** This section provides ground for dissolution of marriage, one among the various grounds listed is Leprosy.

**(e) Section 18(2)(c) of the Hindu Adoption and Maintenance Act, 1956:** This section gives right to women to live separately when their husband is suffering from leprosy.

Article 17 of the Constitution abolishes the abhorrent practice of Untouchability

**Article 17 - “Untouchability”** is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.

The impugned Act, practices untouchability in its worst form, as the person who is discriminated against is suffering from a chronic disease and needs medication, but instead of medication and treating him as a part of the society, he is secluded and is being subject to social discrimination.

**Article 19(1)(d):Protection of certain rights regarding freedom of speech , etc.**-(1)All citizens shall have the right-

(d) To move freely throughout the territory of India;

The impugned act prevents free movement of an individual throughout the territory of India, it says that the persons suffering from leprosy are not allowed to drive conduct or ride in any public carriage except, railway. Moreover section 56 of the Railway Act, 1989, gives power to the Railway to deny to carry any person affected by Leprosy. By providing for such provisions the Railway is denying a person suffering from leprosy, to exercise his freedom

of movement. A person suffering from leprosy is to be treated for his disease which may be treated at a place, which is located at a considerable distance from his place of residence, so for plying there he may need a public transport, and if this is not provided to him, this will be injustice, not only in terms of Article 19(1)(d), but also in terms of Article 21, as his life is being deprived from him. In the case of *Maneka Gandhi v. Union of India*<sup>3</sup>, it was held by the Supreme Court that any action which violates the Fundamental Right of any person has to be tested on the constitutional edifice of Articles 14, 19 and 21. The disability, thus imposed on the persons suffering from leprosy is violative of Fundamental Rights.

**Article 21-Right to Life and Personal Liberty** “No person shall be deprived of his life and personal liberty except according to the procedure established by law.”

Justice V.R. Krishna Iyer, has characterized Article 21 as “the procedural *magna carta* protective of life and liberty”. The right to life is undoubtedly the most fundamental of all rights. All other rights add quality to the life in question and depend on the pre-existence of life itself for their operation. Life’ in Article 21 of the Constitution is not merely the physical act of breathing. It does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to live with human dignity, right to livelihood, right to health, right to pollution free air, etc. Right to life is fundamental to our very existence without which we cannot live as human being and includes all those aspects of life, which go to make a man’s life meaningful, complete, and worth living. It is the only article in the Constitution that has received the widest possible interpretation.

Thus, The Lepers Act, 1898 is violative of above mentioned Articles and its removal is therefore a commendable step in making a discrimination free society, however at the same time extra care and caution should be taken of the people suffering from leprosy and an Act regulating the same should be made on the recommendations of the Law Commission.

**2. Continuance of Legal Proceeding Act,1948:** Section 3 of the impugned Act, is reproduced below

3.” **Continuance of legal proceedings.**- Any legal proceedings which, immediately before the appointed day,-

(a) were pending by or against the Secretary of State in any Court within the territories which as from the appointed day became the territories of India by virtue of sub- section (1) of section 2 of the Indian Independence Act, 1947

(10 and 11 Geo. 6, c. 30), and

(b) were in respect of any right of India or any part of India, shall-

(i) if the right in question was that of the Governor- General in Council be continued by or against the Dominion of India;

(ii) if the right in question was that of the former Province of Bengal or the Punjab, be continued by or against the Province of West Bengal or East Punjab, as the case may be; and

(iii) if the right in question was that of any Governor' s Province other than Bengal, the Punjab, the North- West Frontier Province or Sind, be continued by or against that Province”

The Act transfers the pending proceedings in the name of Secretary of State to Dominion of India and other respective states.

Article 299 and 300 of the Constitution of India confers juristic personality on the Government of India.

**Article 299** states that any contracts made in exercise of the executive power of the Union or of a state shall be expressed to be made in the name of President or Governor and these contracts are to be executed by such persons and in such manner as he may direct or authorize.

**Article 300** states that- (1)The Government of India may sue or be sued in the name of Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by the Act of Parliament or of the Legislature of such State as enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the cases like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or been sued if this Constitution had been enacted.

**(2) If at the commencement of this Constitution-**

(a) any legal proceedings are pending to which the Dominion of India is a party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and

(b) any legal proceedings are pending to which a Province or an Indian State is party, the corresponding State shall be deemed to be substituted for the Province or the Indian State in those proceedings.

From the provisions of Clause 2 (a) of Article 300 we see that since the commencement of the Constitution the pending legal proceedings in the name of Dominion of India were transferred to Union of India and that of other

provinces was transferred to respective states. Thus Article 300 (2) (a) gives any overriding effect to Continuance of Legal Proceeding Act, 1948, which was not needed since the commencement of the Constitution.

### **3. The Delhi Hotels (Control of Accommodation) Act, 1949:**

The impugned Act was enacted with a view to providing for the control of accommodation in certain notified hotels in the Union territory of Delhi. This Act was enacted immediately after the country attained independence as the requirement of such an Act was felt necessary on account of shortage of Government administered hotels and guest houses at that time. This Act was operational in the initial years of independent India and as the Government constructed or owned more hotels and guest houses, the requirement of the Act progressively declined. This Act empowers the Director of Estates, which is presently an attached office of the Ministry of Urban Development, to secure accommodation for the Government officials, by passing a written order and served on the owner or manager of the hotel and declare that a percentage of the accommodation in the hotel as may be specified in the order, not exceeding 25% of the total accommodation therein, to be controlled accommodation for the purpose of this Act. This Act provides that the Director of Estates may, by written order, direct the Manager of a hotel to book for the use of any Government allottee specified in the order, any controlled accommodation or part thereof in such hotel and thereupon the manager of the hotel shall forthwith comply with the order and shall accept the Government allottee so specified as resident in such accommodation or part thereof, as the case may be, and shall allow him to occupy the same for such period as may be specified in the order and for such further period or periods as the Director of Estates may, from time to time, direct, subject to the payment of the usual charges to be specified in the order of the Director of Estates. The Act, thus manifested the arbitrariness of the Directorate of Estates which could even fix the rate of payment which was to be given to the hotel, moreover the time limit was also to be specified in the order. The government, by this Act could harass the hotel owners by grossly underpaying them and using their services for a long time. However, with the passage of time and construction of suitable and adequate government accommodation, the provisions of the Act are not invoked by the Director of Estates. The arrangement for transit accommodation for the newly elected Members of Parliament is made in the State Guest Houses and India Tourism Development Corporation hotels only. Therefore, repealing the Delhi

Hotels (Control of Accommodation) Act, 1949, is justified.

**4. Newspaper (Price and Page) Act, 1956:** The contentious provision of this Act was Section 3, which provided for regulation of number of pages in a newspaper according to the price charged. The Act also provided for regulation supplements to be published and prohibit the publication and sale of newspapers in contravention of any order made under Section 3 of the Act. The Act also provided for regulation of the sizes and area of advertising matter in relation to the other matters contained in a news paper. Penalties were also prescribed for contravention of the provision. The impugned law was based on the recommendations Press Commission which was formed in the year 1952.

The constitutional validity of this Act was decided by the Supreme Court in the case of *Sakal Papers (P) Ltd. v. Union of India*<sup>4</sup>. It was contended on behalf of the petitioners that the impugned Act was designed to curtail the freedom of press thus is violative of the right guaranteed under Article 19(1)(a). It was also contended that the Act violated Article 14 of the Constitution in as much as their avowed object is to promote arbitrarily the interests of some newspaper at the expense of others. The respondents contended that the Act was passed to prevent unfair competition among newspapers and to prevent rise of monopolistic combines so that newspaper may have fair opportunities of freer discussion, hence the Act was in public interest for restrictions on their trading activities of the newspaper. It was further contended that the Act did not violate Freedom of Speech and Expression and on the contrary promoted healthy journalism. The measure was aimed at curbing free press and flow of information which are two essential requirements for a healthy democracy. It is here where we see the hypocrisy of the Congress government, who preach others what they could not do themselves, that is, maintain freedom of press. The move was aimed to socialize press in the country so that only limited news could reach people and all this was done under the garb of maintaining free and fair competition among the media houses.

The Supreme Court did not accept the contention of the Government. The court held that the freedom of expression includes freedom of circulation and to restrain the citizen from propagating his views to any other beyond the limit or number prescribed by the statute is void. The court also observed that the Act was enacted to affect the circulation and thus directly affect the freedom of speech. The court further observed that only those restrictions could be imposed on Article 19(1)(a) as provided by Article 19(2) and any other

restrictions would be void.

The Court, held Section 3(1) to be violative of Article 19(1)(a) and declared it to be unconstitutional. In fact whole of the Act was declared to be unconstitutional as Section 3(1) of the Act was the pivotal provision of the Act, and with it, being declared unconstitutional nothing remained in the Act.

Hence the Government was justified in repealing such unconstitutional Act. The presence of such Acts despite them being declared as unconstitutional represents our colonial mindset and our commitment to our colonial master's ideology, hence repealing such a law is a welcome step.

**5. The Elephant Preservation Act, 1879:** The Act was enacted with a view to provide for the preservation of wild elephants. Section 3 of the Act absolutely prohibited killing of wild elephants, however subject to some exceptions which were

- (a) In defence of himself or of any other person; or
- (b) When such elephant is found injuring houses or cultivation or upon, or in the immediate vicinity of, any main public road or any railway or canal; or
- (c) as permitted by a license granted under this Act.

Section 5 of the Act gave authority to the government to issue licenses for killing and capturing wild elephants. Section 7 provides for punishment in case a person is found to hunt an elephant without license or illegally. The fine extended to Rs. 500 per elephant on first conviction and on second conviction an imprisonment which may extend up to 6 months.

The impugned Act was replaced by a more comprehensive code for protection of wildlife namely, The Indian Wildlife (Protection) Act, 1972. The Act was to provide for the protection of Wild animals, birds and plants and for matters connected therewith or ancillary or incidental thereto. Section 9 of the The Indian Wildlife (Protection) Act, 1972, puts a complete ban on hunting of animals, subject to the exception provided in Section 11 and 12. The Act declares any wild animal to be property of the Central Government. Section 51 of the Act, provides for penalties. Any person violating Sections 9, 11 and 12 is liable to an imprisonment for a term of imprisonment which may extend to 3 years or a fine which may extend to Rupees Twenty Five Thousand. The Act also covers Elephants for which the Elephant Protection Act was made.

Moreover, section 428 and 429 of IPC also cover the offences of killing or maiming an animal.

Section 428 of IPC punishes a person who commits mischief by killing, poisoning, maiming or rendering useless any animal or animals of the value of Rs. 10 or upwards by a term of imprisonment which may extend to 2 years.

Section 429 of IPC punishes a person who commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule buffalo, bull, cow or ox or any other animal of the value of Rs. 50 or upwards shall be punished with an imprisonment for a term which may extend to 5 years.

Thus we see that there is a comprehensive code for protection of wildlife from the present day hunters and poachers, hence the impugned Act is no longer required and government is justified in repealing the The Elephant Preservation Act, 1879.

**6. The Railways (Local Authority Taxation) Act, 1941:** Before the Government of India Act, 1935 came into force with effect from the 1st April, 1937, Railway property could be subjected to tax by any local body upon issue of a notification by the Central Government under Section 135 of the Indian Railways Act, 1890, declaring the liability of the Railway Administration to pay such a tax. Under Section 154 of the Government of India Act, 1935, however, the property of Central Government was exempted from ail taxes imposed by a local body or by an authority within a State. But under the proviso to this section, the property liable to tax immediately before 1st April, 1937 was to continue to be so liable. In order to restore the position as it existed prior to 1st April, 1937, the Railways (Local Authorities' Taxation) Act, 1941 was enacted to provide that a Railway Administration would be liable to pay any tax in aid of the funds of a local authority, if the Central Government by notification in the official Gazette declared it to be so liable. The position once again underwent a change with effect from 26th January, 1950 due to Article 285(1) of the Constitution exempting the Central Government properties from all taxes imposed by a State or by any authority within a State. However, under Article 285(2), the Government were made liable for such taxes as were being paid prior to the commencement of the Constitution.

It was represented to the Government of India that notwithstanding the provisions of Article 285(1) of the Constitution, the Government should agree to pay charges for services rendered by the. local bodies. After careful consideration, and in the light of the recommendations made by the Local Finance Enquiry Committee, Government of India decided that with effect

from 1st April, 1954, payment of “service charges” should be made to local bodies in respect of Government properties which are exempt from all taxes. Service charges are payable for “specific services” rendered by the local authorities, not as payment of taxes but of compensation payable in quasi-contract. Specific services include direct services, such as water and electric supply, scavenging, etc., and also general services such as street lighting, town drainage, approach roads connecting the Central Government properties, etc. Items such as Educational, Medical or Public health facilities are excluded. The quantum of service charges is worked out in accordance with the instructions issued by the Government of India in the Ministry of Finance from time-to-time.<sup>5</sup>

Hence, the repeal of this law was justified on the above mentioned grounds.

**7. Children (Pledging of Labour) Act, 1933:** The Act made criminalises the pledging of children by their parents for labour. According to the Act, a child is anyone who is below 15 years of age. The Act penalised the act of pledging children for labour for Rs.50. The Act though was enacted for a noble cause but seems to have lost its relevance in the present day scenario. The founding fathers of the Constitution were fully aware of the Indian scenario; hence Article 23 was incorporated in the Constitution. Article 23 prohibits forced labour and makes it punishable under law. Article 23 is general meaning thereby that all classes of citizens are covered by it, irrespective of it being a man, woman or child. Article 24, specifically prohibits the employment of children of below 14 years for any hazardous work. The Supreme Court from time to time has issued elaborate guidelines to tackle the menace of child labour. The root cause of child labour is poverty and illiteracy. It is due to the poverty and illiteracy on the part of poor people that they seek to augment their meagre income through employment of their children. The Court has laid down that children are also entitled to all fundamental rights as are enjoyed by the adults. In the case of *Laxmikant v. Union of India*<sup>6</sup>, the Supreme Court, by reading together Articles 15(3), 24 and clause (e) and (f) of Article 39, has emphasised upon the importance of child welfare in the country. Committed, to abolish the menace of child labour the Parliament inserted a new Article 21A by way of 86<sup>th</sup> Amendment, the impugned amendment provided that the state shall provide free and compulsory education to all children of the age of six to fourteen. Presently the child labour is tackled by the Child Labour (Prohibition and Regulation) Act, 1986. The impugned Act puts a complete ban on

employment of children in any work. The Act also establishes a Child Labour Technical Advisory Committee to advise government on issues relating to Child Labour. The Act prescribes for a minimum incarceration period of 3 months, which may extend to 1 year and a fine of Rs. 10,000 which may extend to Rs. 20,000. Thus, the new law prescribes for a harsher punishment in case a person is found to have been utilising services of a child labour. Many other Acts, specifically provide for prohibition of employment of children below 14 years of age, such Acts are, the Apprentices Act, 1961, the Factories Act, 1948, the Mines Act, 1952.

Thus, we see that the above mentioned law had outlived its life and was no longer required. The law only added to the bulk of the statute book and increased its complexity and decreased its credibility.

**8. The Fisheries Act, 1897:** The Marine Ecosystem is the most volatile ecosystem amongst all ecosystems, even a small change of temperature, can destroy the entire ecosystem, hence special care needs to be taken, to avoid destruction of marine ecosystem. The Act provided for punishment for any person who destroyed the fish in water by using dynamite, or by poisoning water. The Act gave wide power to the police officers to arrest any person who destroyed fish, without any warrant. The Act was enacted to keep the marine ecosystem safe and to keep fish, which was an edible item free from any poisonous substances. The regulation to keep fish safe was a noble idea; the need for such regulation was more felt after the Minamata Bay disease in Japan, where many people died after consuming poisonous fishes. Hence, it was needed that the Act be replaced by a modern piece of legislation which covers aspects relating to liability for a person who poisons or destroys fishes. The Wildlife Protection Act, 1972 also covers under its ambit fishes, thereby, protecting fishes from unscrupulous fishermen and such persons who destroy fishes by poisoning water. The Marine Fishing Regulation Act, 1978 is a model Act, which provides guidelines to the maritime states to enact laws for protection to marine fisheries by regulating fishing in the territorial waters. The measures include: regulation of mesh size and gear, reservation of zones for various fishing sectors and also declaration of closed seasons. Laws framed and amended from time to time by different maritime states. The Forest Conservation Act, 1980 protects the Marine Biodiversity. Many other legislations also regulate the pollution in the sea, The Merchant Shipping Act, 1958 regulates the control of pollution from

ships and off-shore platforms , The Water (Prevention and Control of Pollution) Act, 1974 regulates the pollution from land-based sources includes tidal waters ,unlike many other countries and has jurisdiction up to 5 km in the sea. The law, as we see is sufficient and enough to protect the marine ecosystem and fishes from being wasted by pollution and poisonous substances.

**9. Foreign Persons (Recruiting Act),1874:** The relevant provisions of the impugned provisions are reproduced below:

**Section 3-** “Power to prohibit or permit recruiting. – If any person is, within the limits of (r) 1[India], obtaining or attempting to obtain recruits for the service of any Foreign State in any capacity, the Central Government may, by order in writing, either prohibit such person from so doing, or permit him to do so subject to any conditions which the Central Government thinks fit to impose.”

The Act punishes any person violating this Act with an imprisonment which may extend to 7 years and a fine. The Act also specifies the place of trial to be the place where the offender or violator is found.

Many citizens of India go abroad in search of work. Different private agencies recruit Indian citizens and send them abroad for working, especially in gulf countries. The agents usually, harass the workers and confiscate their passport and other important documents. The Emigration Act of 1983 was passed with a view to curb the malpractices of Agents who send people abroad. The Act makes it mandatory to register recruiting agents with Protector General of Emigrants, and prohibits anyone to start recruiting for foreign countries without a prior approval from the Protector General of Emigration. The Act also provides that no employer shall recruit any citizen of India for employment in any country or place outside India except –

(a) Through a recruiting agent competent under the Act to make such recruitment, or

(b) in accordance with a valid permit issued in this behalf.

The punishment in this regard is provided under Section 24 which provides for imprisonment for a period which may extend up to 2 years. The Act also fixes the liability of the company in this regard. All the offences in this Act are made cognizable. The Act has given wide powers to the Central Government to cancel emigration to other country when the need arises. One important

thing to note here is that Section 42, of the Act, clearly mentions the non applicability of the Emigration Act, to the Foreign Recruiting Act, 1874. Since the Foreign Recruiting Act, 1874 has been repealed all together, the saving clause provided by Section 42 of the Act, is of no use, and the impugned Act has no application to the Emigration Act, 1983. The Emigration Act, 1983, repealed the Emigration Act of 1922. The repealing of the Foreign Recruiting Act, 1874 is a welcome step, as it did not made registration of recruiting agents compulsory, which was done by Emigration Act, 1983. The nature of offences mentioned under Foreign Recruiting Act, 1874, are less comprehensive as compared to Emigration Act, 1983, which embarks a greater protection to the Emigrants and prevents unscrupulous agents from working on their clandestine agendas.

The UN formulated a multilateral treaty by the name of International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, to protect the migrant workers and their family. It was signed on 18<sup>th</sup> December 1990 and entered into force on 1<sup>st</sup> July, 2003, after 20 states ratified it. The primary objective of the Convention is to foster respect for migrants' human rights. Migrants are not only workers, they are also human beings. The Convention does not create new rights for migrants but aims at guaranteeing equality of treatment, and the same working conditions, including in case of temporary work, for migrants and nationals. The Convention innovates because it relies on the fundamental notion that all migrants should have access to a minimum degree of protection. The Convention recognizes that legal migrants have the legitimacy to claim more rights than illegal immigrants, but it stresses that illegal migrants must see their fundamental human rights respected, like all human beings. Article 7 of this Convention protects the rights of migrant workers and their families regardless of "sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth, or other status".

India, at present is not a signatory to this covenant.

**10. The Sugar (Regulation Of Production) Act, 1961:** Sugar has been declared an essential commodity under the Essential Commodities Act, 1955, and different legislations and control orders regulate almost every aspect of the industry, with the primary objective of increasing production and making available sugar at affordable prices to the consumers The impugned Act was

enacted with a view of regulate the production of Sugar in country. The preamble of the Act read as follows:

“An Act to provide for the regulation of production of Sugar in the interests of the general public and for the levy and collection of a special excise duty on sugar produced by a factory in excess of the quota fixed for the purpose.”

The Act empowered the Central Government to fix, from time to time, the quantity of sugar which may be produced in a factory during any year. It also provided for fine on the excess sugar produced against the issued license.

After Independence, the government treaded the path of Socialism and commanded a considerable amount of control on the affairs of the economy. This control decreased slowly and was completely over in the year 1991, when the, then government, opened the doors of the economy to the world. FDIs and FIIs started to flow in, exports helped to earn precious foreign exchange besides cutting license raj and red tapeism.

Sugar Industry forms one of our main earning sectors. India exports a large quantity of sugar to foreign countries thereby earning and preserving precious foreign exchange. The impugned Act was a manifestation of the license raj policy followed by the government, there was no laze faire and everything was dictated by the government. The Act, thus, was outdated and archaic and was needed to be done away with, as it was a hindrance in the development of Sugar sector, since the economy today is based on free market, the factories should not be told as to much sugar they have to produce.

Thus, the repeal of this Act was justified as this was a hindrance in the creation of a free market.

### ***11. The Drugs (Control) Act, 1950:***

The Act provides for the control of the sale, supply and distribution of drugs. It was enacted to ensure that certain essential imported drugs and medicines were sold at reasonable prices. It allowed the government to fix the maximum price that may be charged by a dealer or producer, maximum quantities that may be possessed by a dealer or producer, and the maximum quantity that may be sold to a person in one transaction. The Act also imposes penalties for the violation of these provisions. Presently, price control of drugs is carried out under Essential Commodities Act. The sale, supply and distribution of drugs are now controlled under the Essential Commodities Act, 1955 (EC Act), since drugs have been included under essential commodities. The Drugs (Prices Control) Orders of 1995 and 2013 have both been issued by the central

government in exercise of its powers under the EC Act. Thus, the Drugs (Control) Act, 1950 is now redundant, since no rules or orders currently operate under this Act. To avoid confusion with regard to the legal framework governing the pricing, supply and distribution of drugs, the Drugs (Control) Act, 1950 was rightly repealed. This would clear the air surrounding the pricing of drugs and assist stricter enforcement and prosecution of the Drugs (Control) Orders. The Essential Commodities Act (ECA) was enacted by the Central Government in 1955 to control and regulate trade and prices of commodities declared essential under the Act. The Act empowers the Central and state governments concurrently to control production, supply and distribution of certain commodities in view of rising prices. The measures that can be taken under the provision of the Act include, among others, licensing, distribution and imposing stock limits. The governments also have the power to fix price limits, and selling the particular commodities above the limit will attract penalties. Black marketing of essential commodities was a major problem in the past and this has now been controlled to a large extent. The Drug Price Control Order (DPCO) and such other orders have been issued under the powers of the ECA. The Act empowers the Centre to order states to impose stock limits and bring hoarders to task, in order to smoothen supplies and cool prices. Generally the Centre specifies upper limits in the case of stock holding and states prescribe specific limits. However in case there is a difference between states and the Centre, the act specifies that the latter will prevail. At present, section 7(1) a (1) specifies offences which include violations with respect to maintaining records, books, filing returns and so on. Such offences are punishable with a jail term of between three months and a year. Section 7(1) a (2) applies for major offences and embraces a large part of violations where punishment can extend up to seven years in jail.

## **12. The Indian Medical Degrees Act, 1916:**

The Indian Medical Degrees Act, 1916 came into force on 16<sup>th</sup> March 1916 for the whole of India. According to section 3 of the act the right to confer degrees, etc. – The right of conferring, granting or issuing in the States; degrees, diplomas, licenses, certificates or other documents stating or implying that the holder, grantee or recipient thereof is qualified to practice western medical science, shall be exercisable only by the authorities specified in the Schedule, and by such other authority as the State Government may, by notification in the Official Gazette, and subject to such conditions and restrictions as it thinks

fit to impose, authorize in this behalf.

This act was only for the western methods of Allopathic Medicine Obstetrics and Surgery but does not include the Homeopathic or Ayurvedic or Unani system of medicine which was the great setback for the Indian style of medical sciences. Further, Section 22 of the UGC Act, 1956, states that 22. (1) The right of conferring or granting degrees shall be exercised only by a University established or incorporated by or under a Central Act, a Provincial Act or a State Act or an institution deemed to be a University under section 3 or an institution specially empowered by an Act of Parliament to confer or grant degrees. The Act also prohibits any other person or authority to confer, or grant, or hold himself or itself out as entitled to confer or grant, any degree. Thus, Section 22 of the UGC Act, 1956 corresponds to the Medical Degrees Act, 1916 but is different on the context that it recognizes the fact that any university created by the legislature is competent to award degree in any discipline.

### **13. Indian Law Reports Act, 1875:**

Under this Act, an Indian Court of Law is not bound to hear the report of any case law other than ones published in a law report authorized by the State Government.

Today different types of law reports are cited and accepted in all the Courts. In fact, the Indian Law Reporter (ILR) is seldom used as a source of authority. This legislation was enacted at a time when ILR was the primary reporter for publishing case laws. Today, the Act is unnecessary since there are many good quality reporters like Supreme Court Cases, All India Reporters, Supreme Court Reporter, etc. Additionally, courts are also publishing their judgments and orders on their websites. The Act is prone to be abused and adversely impact administration of justice. By virtue of this statute, a lower judge bench can ignore the judgment of a higher bench solely because it was not reported in the official report. To avoid this situation it was necessary to repeal the act.

### **Conclusion**

“Bad laws are the worst sort of tyranny”, that was Edmund Burke, speaking in Bristol before the 1780 elections. Old and dysfunctional laws are often used to harass or prosecute.

In this reform era, some state intervention contemplated in these old statutes can be legitimately questioned. Does the government actually need to regulate everything in the public domain? The answer to this should be no, the

government should interfere minimum with the rights of the public. Prime Minister in his speech has said that there should be “Minimum government and Maximum governance”, which implies that the motive of the present government was clear from the very beginning that it wanted to repeal the laws which are no longer relevant or against the present day laws.

The government has done a commendable step by removing the obstructionist laws, however the majority of laws repealed are amendments to the Principal Acts and Appropriation Acts. There needs to be devised a system wherein any amendment automatically ceases to be in existence as soon as it is made a part of the main Act. As a consequence of not following this policy, the majority of laws repealed are either Amending Acts or Appropriation Acts. The government should build a system wherein such laws should die their natural death rather than they being killed by the legislature, thereby consuming its precious time.

The main problem in this exercise, lies in the fact that the Government is only repealing the Central Laws as it does not have power to repeal State Laws, the state governments should follow the model of the Central Government and repeal old and obstructionist laws, then only the fruits of this exercise will percolate to the lowest strata of the society. The fundamental principle of any legal system is that there should be minimum criminalization; old colonial laws were legislated on every aspect of the subject’s life, by removing such laws the government has clearly shown its intention of developing India, and the government is true to its slogan of “*Mera Desh Badh Raha hai Aagey Badh Raha hai*” .

### (Endnotes)

1. Bibek Debroy, Usher in a New Order, India Today, 2009-05-06
2. <http://timesofindia.indiatimes.com/india/1159-obsolete-laws-scrapped-by-Modi-govt-1301-junked-in-previous-64-years/articleshow/52333875.cms> accessed on 06/06/2016
3. AIR 1978 SC 597
4. AIR 1962 SC 305
5. This part is sourced from website of Ministry of Railways.
6. AIR 1984 SC 469



