

substitute "the Bodoland Territorial Areas District" (23)

15.27 hrs.

Page 3, line 28,—

omit "Areas District" (24)

Page 3, line 40,—

omit "Areas District" (25)

Page 3, line 45,—

omit "Areas District" (26)

Page 4, lines 4 and 5,—

for "Territorial Council Areas District constituted under the proviso to sub-paragraph (3) of paragraph 2 of this Schedule."

substitute "Territorial Areas District." (27)

Page 4, line 9,—

for "Bodoland Areas"

substitute "Bodoland Territorial Areas District" (28)

(Shri Chinmayanand Swami)

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

SHRI CHINMAYANAND SWAMI: Sir, I beg to move:

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

MR. DEPUTY SPEAKER: The question is:

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

*The motion was adopted.*

OBSERVATION BY DEPUTY SPEAKER  
RE: CONSTITUTION (SCHEDULED TRIBES)  
ORDER (AMENDMENT) BILL

MR. DEPUTY SPEAKER: Now, we take up Item No. 14.

[Translation]

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI CHINMAYANAND SWAMI): Mr. Deputy Speaker, Sir, certain amendments are required to be made in it, so I request the House to postpone it to some subsequent date so that the necessary amendments may be made.

[English]

MR. DEPUTY SPEAKER: Hon. Members, the House has just passed the Sixth Schedule to the Constitution (Amendment) Bill, 2003 with certain amendments. Shri Chinmayanand Swami, Minister-in-charge of the next Bill, that is, the Constitution (Scheduled Tribes) Order (Amendment) Bill, 2003 has informed the hon. Speaker that certain amendments are also required to be made in the Constitution (Scheduled Tribes) Order (Amendment) Bill in view of the passing of the Sixth Schedule to the Constitution (Amendment) Bill, 2003 with certain amendments. He has, therefore, requested the hon. Speaker that the consideration and passing of this Bill may be postponed to some subsequent date. I hope the House agrees.

SEVERAL HON. MEMBERS: Yes.

15.28 hrs.

REPRESENTATION OF THE PEOPLE  
(AMENDMENT) BILL, 2003\*

[English]

MR. DEPUTY SPEAKER: Wee will now take up the next item, item No. 15. Shri Arun Jaitley has to move it. Since he is not here, Shri P.C. Thomas is to move.

\*Published in the Gazette of India, Extraordinary, Part-II, Section-2, dt. 6.8.2003.

SHRI SOMNATH CHATTERJEE (Bolpur): Sir, has he give notice?

MR. DEPUTY SPEAKER: Yes.

SHRI SOMNATH CHATTERJEE: Please check up. Mr. Minister, you take it for granted. This is the respect shown to the Lok Sabha...*(Interruptions)*

Sir, he can take the leave of the House now. I do not mind it. But this casualness should be resented. Mr. Minister, you can ask for leave. I can understand it. I am happy to infer that you are piloting it. But I wanted to accuse him...*(Interruptions)*

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI P.C. THOMAS): Sir, Shri Arun Jaitley is now engaged in a matter concerning some discussion. Some foreign delegates have come to meet him. So, I seek the permission of the Chair to move this Bill.

MR. DEPUTY SPEAKER: Yes. It is true that he ought to have given information to the Lok Sabha. It may please be taken note of. The hon. Minister of State Shri P.C. Thomas will move it.

SHRI P.C. THOMAS: Sir, I beg to move:

"That the Bill further to amend the Representation of the People Act, 1951, as passed by Rajya Sabha, be taken into consideration."

This Bill, which was passed by the Rajya Sabha, seeks to amend Section 3 of the Representation of the People Act and also Sections 59, 94 and 128 of the said Act. This is mainly with regard to these two aspects that the Bill has been brought forward. One is to do away with the residential qualification as to the qualification that the contesting candidate should be a resident of that particular State or that particular Union Territory.

This has been a matter which was commenced by the Election Commission also that many times senior leaders of our country have contested from other States also and so the real intent of the legislation is worth considering here. So, it has been found that a Bill of this nature to amend that particular section is apt and required.

Secondly, with regard to Section 59 and other concerned sections which deal with the secret ballot, the present amendment is to provide for an open ballot. The Ethics Committee of Parliament in paragraph 19 of its

Report submitted to both the Houses of Parliament on the 8th December, 1998 stated that the trend of cross voting is to be seriously considered. This has been again considered in the Supreme Court judgement in the case of Raghbir Singh Vs Gurcharan Singh Tohra in AIR 1980, Supreme court 1362, where they have also stated that secrecy was intended for holding of free and fair elections whereas now the very secrecy has gone against the very intent of having free and fair elections. This has been widely discussed in the Press as well as in various other fora.

Then, the use of money power has also been widely discussed and the Government has dealt with this aspect in this Bill. With regard to these two aspects, the Standing Committee held serious discussions and the Committee also felt the need to curb the use of money power.

MR. DEPUTY SPEAKER: I request the hon. Members to give the hon. Minister a patient hearing because this is his maiden initiative. I am presiding over the House and I also come from the same place as that of the hon. Minister. Let us have a patient hearing.

SHRI P.C. THOMAS: Sir, this aspect was deeply discussed by the Standing Committee and the Standing Committee has unanimously recommended that money power should be curbed. Of course, there were some differences of opinion with regard to the provisions of the Bill.

Sir, it has also been found that false affidavits have been given by many candidates and they felt that this should be avoided by bringing a Bill of this nature.

SHRI PRIYA RANJAN DASMUNSI (Raiganj): Is it being done with retrospective effect? If you kindly add that, it will clean up the whole system.

SHRI P.C. THOMAS: If the House so feels, it can be considered.

SHRI PRIYA RANJAN DASMUNSI: You are a young, dynamic and courageous Minister. I desire that you should bring it.

SHRI P.C. THOMAS: Sir, if the House so feels, we will consider that aspect also.

SHRI SOMNATH CHATTERJEE: His senior Minister has fled.

SHRI PRIYA RANJAN DASMUNSI: That is why, his senior Minister has left the job to him.

SHRI P.C. THOMAS: Sir, though this aspect appears to be very simple, it is very serious and as has been commented upon by the hon. Members from the Opposition, this Bill has to be seriously considered by the House. The absence of Shri Arun Jaitley, as I have already observed, is only because he had to urgently go for some discussion relating to the WTO with some foreign delegates. So, I was asked to be present here. In fact, he was also trying to come, but he could not reach in time. Since you have allowed me, I am proceeding further.

Sir, another aspect which was discussed in the Standing Committee was whether the federal structure will be affected by allowing candidates from other places to contest from a particular State. This has also been seriously dealt with by the Standing Committee. It can be seen that the persons who are voting are the MLAs of the State or the concerned Union Territory. Therefore, it cannot be said that the federal structure also affected.

As far as secrecy is concerned, sometimes we have had the occasions to have open vote in cases like a proxy vote on the Bill which was passed recently and also in cases of blind persons where others are allowed to vote.

I would, therefore, pray that the Bill might be taken up for consideration.

MR. DEPUTY SPEAKER: Motion moved:

"That the Bill further to amend the Representation of the People Act, 1951, as passed by Rajya Sabha, be taken into consideration."

The time allotted for this Bill is two hours. Shri Pawan Kumar Bansal.

SHRI PAWAN KUMAR BANSAL (Chandigarh): Mr. Deputy-Speaker, Sir, though the system of having bicameral Houses at the national level is almost a universal one in all the democracies, yet we have a very salutary and a unique provision in as much as the Upper House, that is, the Council of States or the Rajya Sabha, as well call it, is constituted by the States whereas in the case of Lok Sabha, it is directly the people who elect their representatives. So, over these years, we have had a very excellent system of constituting the Rajya Sabha.

We have also seen that people, statesmen and leaders, who have contributed their best to the political life of the country, have been picked up by different

parties to represent them in the Rajya Sabha. But over the years, slowly and gradually, the Rajya Sabha has also not been spared of various ills, of which we do not feel very proud to refer to today.

I would not like to dwell at length on all those aspects. This particular Bill covers two aspects. I would like to confine to those, though the Minister may have slightly tried to say, once again as is the wont of this Government, that electoral reforms is a subject dear to them. In practice, we find that this Government has miserably failed to cleanse the public life and has rather contributed immensely, as we see, of late, in one of the northern States, that this Government has been a party to this political harlotry and meretriciousness. It is to check political harlotry and to check what has been observed of late, that is, the role of big money even in elections to the Rajya Sabha, did we think of bringing a Bill like this. To that extent, I must say that I do support the provisions.

15.38 hrs.

[DR. RAGHUVANSH PRASAD SINGH *in the Chair*]

There is a deviation from the practice. So far, the elections have been held at all levels through a secret ballot. It is, for the first time, that we are confronted with a situation as to what do we really do to ensure that the purity of elections is maintained, that the elections continue to remain free and fair, and the probity in public life is further strengthened. What do we really do when we find that people with big money bags are able to find their way to the Rajya Sabha at the cost of many people who have an excellent record of service to the country? It has been observed, particularly about two years, back, that money did play a major role in the elections to Rajya Sabha. People, unfortunately in this matter, cutting across the party lines, chose to vote for people for consideration other than strengthening of democracy.

SHRI SOMNATH CHATTERJEE: I would request him not to say this.

SHRI PAWAN KUMAR BANSAL: Sir, it is to meet the situation like this that a provision, regarding election to Rajya Sabha, of open voting is sought to be incorporated. A view has been expressed outside and perhaps genuinely so from their point of view that this would violate the basic tenet of free and fair elections because, if you know as to who has voted for whom, this would demolish the very basis of a good election. This is not so.

In this context, I would only very briefly like to refer to the matter that came up before the Supreme Court many years back. But before I do that, let me also say that the Constitution, which is the fundamental and the basic document governing our polity does not talk of a secret or an open election.

Article 84, which is the relevant provision in this respect, which lays down certain qualifications for election to the Houses of Parliament, is completely silent on that. It is only the Representation of People Act, which we today seek to amend, which provides for secret voting. Many years back, in a different context, this matter came up before the Supreme Court in the case of Raghuraj Singh Gill v/s Gurcharan Singh Tohra where the Supreme Court, the Apex court of the country, emphasising that it was imperative that we maintain the purity of elections and also that it was desirable for maintaining the purity of elections and also that it was desirable for maintaining the purity of elections that a person should not be compelled to disclose as for whom he voted and therefore, felt that perhaps there was a desirability of having a system of secret ballot. But it finally came to a conclusion that where the free and fair holding of elections is the question, when that is the objective and where by a secret ballot if the very salutary objective of free and fair elections becomes the casualty then we must see and we must believe or hold that voting by secret ballot is neither an indispensable concomitant nor a *sine quo non* for free and fair elections. This is because, if we have to ensure that people vote fearlessly and the elections are free and fair, and for that it is necessary to disclose as to who voted for him, then we may have to go in for this second option.

In this context, kindly permit me to very briefly refer to the observations of the Supreme Court because I can do no better than to quote that:

"Secrecy of ballot undoubtedly is an indispensable adjunct of free and fair elections. A voter had to be statutorily assured that he would not be compelled to disclose by any authority as for whom he voted. So that a voter may vote without fear or favour and is free from any apprehension of its disclosure against his will from his own lips."

However, the Court further added:

"Secrecy of ballot was mooted to ensure free and fair elections. If the very secrecy of the ballot, instead of assuring free and fair elections, strikes at the root of the principle of free and fair elections, this basic postulate of democracy would be utilised for undoing

free and fair elections, which provide life blood to parliamentary democracy. If secrecy of ballot, instead of ensuring free and fair elections, is used to defeat the very public purpose for which it is enacted, this principle of secrecy of ballot will have to yield to the larger principle of free and fair elections."

This is what is important today. Since, we have seen that this seems to be the way out in the case of Rajya Sabha, we have opted for it and in fact, this provision, excepting for a few reservations here and there, at the meeting of the political parties convened by the Election Commission as elsewhere, this proposal to meet the situation has found favour and I accordingly favour this provision.

The second provision, which this Bill deals with, is again not free from controversy. That is again a major change from what has been the law so far. That is for representing a State in the Rajya Sabha, the candidate should ordinarily be the resident of any of the Parliamentary constituencies in that State.

Again, Sir, it is not the constitutional mandate. It is in the Rule under the Representation of People Act, 1951 that a provision like this was incorporated. Rightly so, perhaps, because, as I said, to begin with, the Rajya Sabha or the Council of States is a body representative of the States. Sir, that is where the interpretation actually varies. Today, when a provision is being made that we need not necessarily have that residential requirement as such, and if we do away with the requirement of being a voter in that particular State, would ultimately serve the purpose of democracy better and have better composition of Rajya Sabha. We could very well try that. That is what is sought to be done through this Bill.

Sir, as I said, this is not free from controversy. I have seen editorials on this. I know of comments by many many learned people and all bona fide, expressing their reservations, and even criticizing this particular provision. But, permit me to say, Sir, that is slightly misplaced.

Sir, the basic postulate is that the Lok Sabha is the House of the people where the people directly elect their representatives, and the candidate can be a resident, ordinarily a resident of any Parliamentary constituency in the country. If the people of Punjab wish to have a person coming from Tamil Nadu as their representative from a particular constituency, they can very well do it. When I say so, I have a case in mind. A gentleman belonging to the then Jan Sangh came all the way from Tamil

[Shri Pawan Kumar Bansal]

Nadu, settled in Punjab, got elected to the Legislative Assembly of Punjab. Sir, the wording used in the law is 'ordinarily resident of. It is a very complex word. Courts have failed to really define this word. We have not defined it. This is, in fact, an issue of contention, a point which always defies solution and defies proper definition. Since it defies proper definition, this provision, as I know, as you know, as anybody knows, has often been used over the years to show oneself as a voter of a particular State, and then come into Rajya Sabha from there. I suppose, rather that was playing with the legal provisions. Having seen a situation, in today's circumstances, when a large number of people would, perhaps, represent that State depending upon the view of the resident of that State, in this case the MLAs. If the MLAs of a particular State feel that "such and such gentlemen, though not belonging to our State, though not registered as a voter in our State, but who often visits our State or even is he does not visit, he is a person who has been championing our cause and is better suited to represent us in the Rajya Sabha." I think that we should really not stop them from sending him. We are not forcing them, we are only providing for an enabling provision.

Then what was really done by following not a righteous course in the past should be acceptable in law. A person may be a resident anywhere in the country, if the elected Members of Assembly of a particular State—we cannot doubt their *bona fides* and we cannot doubt their judgement—if they, in their collective wisdom, wish to send anyone from any other State to represent them in the Rajya Sabha, why should we come in the way?

Sir, a doubt is expressed that once you do this, this would rather open flood gates of sorts of activities and practices and people with all sorts of resources would, then, be able to find their way to Rajya Sabha.

Sir, I am sorry, I cannot agree with that provision. Rather I would feel sorry if that is the expression and if that is the reservation expressed against this because that is casting doubts, that is casting aspersions on the elected representatives all over the States in the various Legislative Assemblies.

Sir, this would be just an enabling provision, as I said. It would not open floodgates for people to come from other States to get elected from elsewhere. The local pressures would always be exerted. It is the leadership of the political parties who would choose their candidates seeing as to what the local conditions are, as to who should go there from that State. And above all, not just the political parties, finally when they go to the

election arena, it will be the Members of the Legislative Assemblies who will finally decide whether they want to choose that person or not. And for that reason, I think, this particular provision was rather necessary. It was many years back, when perhaps it was not being talked of thinking that it was necessary, I had moved a Private Member's Bill then but it lapsed, it could not be taken up, and, therefore, I am particularly happy that this proposal is being accepted today.

Sir, when I say so that this is being accepted and these two important provisions relating to Rajya Sabha are there, I want to now slightly go to one or two other points not directly covered by this Bill but which are of immense importance. The first one to which we should have drawn the attention of the Government certainly by now, is that over the years this biennial character of Rajya Sabha has been demolished. Why? It is because when a seat fell vacant in Rajya Sabha, say in a given case, and per chance the Legislative Assembly of that State was not in place, the elections would not be held. And when the Legislative Assembly came into being later—for whatever reason it was dissolved, it was under the President's Rule and, therefore, there were no elections held—the election, when held, to Rajya Sabha from that State should have been only treated as a by-election. I am using 'by-election' consciously only to make my point that the Member coming to fill that seat should have remained as a Member of Rajya Sabha only for the remaining period. And that is precisely the point which the Government today wishes to make for Lok Sabha when they call for a fixed term. Be that as it may, coming back to the point of Rajya Sabha, what really happens is that they gave him a fresh six-year term because that is what the Constitution talks of. So, slowly and slowly, today we have come to a position that when you have elections to Rajya Sabha every year, not every year rather every few months, that biennial character has gone which was consciously thought of and provided for in the Constitution to see that complexion of the Legislative Assemblies after every two years in every State is reflected in the Rajya Sabha so that it continues to have its perpetual existence and continues to remain a vibrant dynamic democratic body. It has ceased to be so in that sense. And the situation has come to such a pass. I will give you the examples of only two States; one is Punjab where all the seven seats now are filled after six years and the other is Delhi where all the three seats are filled after six years.

Another aberration, which has crept in, is that we are treating them on one day separate election and that

is because of the interpretation of the courts. And for different reasons, even if they are held at the same time, we issue different notifications for the same day, with the result that in the case of Delhi, if any Party has a majority of one Member in the Assembly, it will win all the three seats. Similar is the case in the case of Punjab. My dispute is not with any party winning all the seats. Any Party may win. But what I say is that these elections should have been held every two years—one seat to be filled every two years.

Now, if you ask me, the solution is still available today without touching the present term of the Members who are already in the Rajya Sabha. You can come with an amendment that henceforth this is the schedule which would be worked out, as it was done in 1952.

SHRI ARUN JAITLEY: Or, treat it as a bye-election.

SHRI PAWAN KUMAR BANSAL: I said so for that particular purpose. I used a word which is not a synonym for this to meet a situation like this. I said, it would be an important provision when we talk of election matters or matters relating to the Rajya Sabha. Therefore, I was not very elaborate on this point. I did want to touch this important point because this is the occasion when we can touch this. Therefore, I urge the hon. Minister that somehow we should see that a solution is found because even today a scheme could be worked out without touching the tenure of the present Members of the Rajya Sabha, that whenever a seat falls vacant hereafter it would be going back to the situation when this aberration crept in. That way, the term would be worked out and ultimately we would restore the biennial character of the Rajya Sabha.

Having said that, I am sorry if Shri Somnath Chatterjee objects to my deviating a little from the Bill but this is again very pertinent point because of the controversy raised by the statement of the hon. Deputy Prime Minister just two days ago about holding simultaneous elections to Parliament, that is, the Lok Sabha and all the Legislative Assemblies. This is not practical in the sense that this postulates that you have fixed terms for all the elected bodies and having a fixed term would again strike at the very root of democracy and at the very basic postulate of accountability of the Government to the people through their representatives. If that were to happen, any vote of no-confidence, any defeat of money Bill, would still save the Government from quitting. The Constitution provides for a maximum term of five years. If the House remains in office for five

years, it stands dissolved on the completion of five years. That is the end of the matter and the rest lies within the political dynamics of the House and it should remain as it is. I would not talk more about that. That is a very important subject on which much could be said but I do wish to add with all the emphasis at any command that particular statement is not really aimed to bring about any electoral reform. I know the hon. Deputy Prime Minister. I have known him for many years since we happened to be together in a committee when we talked of electoral reforms and his concern for electoral reforms. Sometimes one could be displaced in one's views. That particular provision would not usher in reforms but rather lead to a situation where democracy would be the casualty. It would lead to deformation of democracy. Therefore, we should not go for this.

When I entered the House—I was late by a minute—I heard the hon. Minister of State talk about proxy voting. That is a very vicious think if you try to introduce that in the system because today when you talk about it you would not know what would happen, if you have a particular class in mind. All of us what that all the people and all the serving personnel in the Defence Forces should be provided means of voting. Today, when you talk proudly of your IT achievements and developments, we have many ways of doing it so that the person sitting in Siachen also could vote back in his remote small village in Punjab. He could do it if you have the will to do it. So, please do not have proxy voting. This is something that you really need not do for them. If you really think of the Defence Forces, there are many issues about which you have to be really concerned. This is a very peripheral issue. Once you introduce it, there would be a floodgate of demands from all quarters asking for proxy voting and that would lead to a situation which we could never contemplate.

With these words, I support this Bill.

*[Translation]*

SHRI THAWAR CHAND GEHLOT (Shajapur): Hon. Chairman, Sir, I rise to support the Representation of the People (Amendment) Bill, 2003 moved by the hon'ble Minister and congratulate the Government for bringing it. People having money power and muscle power have started getting themselves elected to parliament and other elected bodies. After the formation of N.D.A. Government, persons with criminal records and those with money power and muscle power could not get themselves elected.

[Shri Thawar Chand Gehlot]

**16.00 hrs.**

In fact, the Government has enacted 3-4 Acts to ensure that only those persons can represent the public who want to serve people. Recently a law was made in regard to election. It prevents the persons with criminal bent of mind who have been sentenced, from contesting elections and getting elected. Another law has been made to facilitate the casting of vote by those soldiers and defence officers who are serving the country at different remote areas of the country. Prior to it, they were unable to cast their votes. Now, they have got the opportunity to do so. Earlier they used to cast their votes by postal ballot, but their ballots used to be kept separately and these ballots were not counted before the declaration of results. Sometimes, the postal ballots were received after the constitution of the House. So, a law has been made by the Government to play that loop-hole and to give that right to every citizen of the country under the democratic system of the country. The steps taken by the Government in this direction are praiseworthy.

Honourable Chairman, Sir, this bill had been passed by Rajya Sabha. All of us know it that there is no restriction of being a resident of a particular area for persons who want to contest election for Lok Sabha and Legislative Assembly, but in case of Rajya Sabha election the said restriction was there. So, they used to get their names entered in electoral rolls by getting fake domicile certificate. There is a provision in the rule that they must get their names enrolled at least six months prior to election. But it has been seen many times that many elected leaders of Rajya Sabha, who are prominent persons contested their elections even when they were not residents of that particular state. They got their names enrolled in the electoral rolls of the state from where they contested their election. If you have a look at the structure of Rajya Sabha, it can be seen that there are 5-7 per cent such leaders who are not the resident of that state from where they got elected to Rajya Sabha but they could win only when they got their names entered in the electoral rolls of that state.

In such cases, many a time writ petitions have been filed in the Supreme Court and High Courts. Owing to this a number of difficulties have been experienced. We feel that it would be better if the elected representative hails from the State where he resides. Because, in that case he will think about the welfare of that State. But the intelligent persons who lead the party and even the country do not wish to be elected for Lok Sabha as they are unable to give more time there. If they are elected,

they do not give that much time as is required for their Constituency. Such persons are required in Rajya Sabha. These people got their names included in the electoral rolls from a place where they intended to contest elections. Now, this law is being reviewed. Under this law, if any relaxation is given to the effect that a person is eligible to contest an election from any part of the country, it would be a welcome step because in that case if the legislators of that State are in his favour, then, he will win the election. If they are not in this favour, he will lose the election. In this way it is certain that he would work in the interest of his state and only the persons of legislator's choice will be elected. So, giving such relaxation in the Act is a good thing. I support this commendable step taken by the Government.

The second point is about the open ballot. It may have two aspects. Due to provision of open ballot, there is apprehension of breach of secrecy. On the other hand, if it happens so, then it goes against the very spirit of the Constitution of India which upholds the provision of secret ballot. In the present political scenario of the country, one can visualise in whose favour one has cast his vote. In the Lok Sabha elections, we see that people cast their votes as per choice of their party and its ideology. That is why, the Government has been compelled to enact a law for breach of secrecy. We have seen that the persons who had no political or independent existence, in last Rajya Sabha elections, got elected on the basis of money and muscle power.

Mr. Chairman Sir, I have seen such instances in the state to which you belong and in one or two other adjoining states. That is why we as well as the Government have to think about all those sincere persons who serve the public whole heartedly and do not have money and muscle power. If the persons having money and muscle power get elected, then what would be the future of those persons who are serving general public.

Secondly, legislators follow the ideology of the party only and the legislators of a particular party cast their votes as per the direction of their party. But, it has been observed in some past elections that some legislators have cast their votes after taking money and setting aside all their ideological policies. In this way, even those persons who had to desire to serve their people, got themselves elected to Rajya Sabha. This has changed the character of Rajya Sabha to such an extent that people with money and muscle power are getting themselves elected to this House and the number of intellectuals and party leaders is decreasing. This

compelled political parties to think about the option of open ballot. Although the provision of open ballot is also not the final solution because such unscrupulous persons will continue to vote according to their preference even in 'open ballot' system. But definitely, it will leave an impression on the mind of public that persons who get elected after giving money would not have good image about them among the people. It will help the political parties to discard and isolate those persons who have got themselves elected by giving money to other persons and who have not cast their vote in favour of their party's candidate. It will have positive effect in the sense that the persons who want to serve the people and who really believe in the policies of their parties would be able to cast their votes. When this happens, good people will be elected in Rajya Sabha.

How to cast open vote, for this, there may be various options. The voter may cast his vote either in presence of the polling agent of the candidate and declare it in the presence of all persons to whom he has cast his vote or the procedure for casting vote in Parliament may be followed. A member can push the button on his seat for casting his vote as 'AYES' or 'NOES' and in this way his or her choice is immediately known to the chair. Either of the two systems can be adopted. It is the duty of Election Commission and it will do it. But, when such a transparent system starts operating in which one can see to whom one has cast his vote and when it will come to know that wrong person has been voted by taking money or under pressure, then there is possibility that political environment may be improved upto some extent. As a result of that dishonesty and corruption can be reduced considerably in the country. As well all know that costly election system promotes dishonesty and corruption. People collect money by hook or by crook and use that money to win elections. It is natural that they may have sympathy with those persons who have given them money. There is a possibility that they not help them directly but they will certainly not try to take action against them even if they are doing something wrong. They will try to ignore their wrong deeds. By and large there are two or three amendments in the Representation of the People (Amendment) Act. They are necessary in the context of present political scenario. I congratulate the Government for the step taken and I also congratulate the Rajya Sabha for passing this motion unanimously. I would also like to urge the hon'ble members of Lok Sabha that they should enact such laws so that good political scenario could emerge in Lok Sabha and Rajya Sabha.

I would like to give a suggestion in this regard. Legislative Council elections are held, although it is a state matter, but it requires ratification of half of the states. But even in the Legislative Council elections more or less such situation is also emerging. Wherever such situation exists efforts should be made to enforce such type of election system there. I would urge the Government that efforts should be made to make arrangements for open voting system in Legislative Council elections too. If such type of arrangements are made, then it will be more beneficial.

I am thankful to you that you have given me opportunity to speak. I conclude my speech and support this Bill.

*[English]*

SHRI SOMNATH CHATTERJEE (Bolpur): Mr. Chairman, Sir, I am sorry that is the maiden venture of my very young, good and affectionate friend, the new Minister, he is piloting a Bill which is like trying to give birth to a deformed child. I think, it is a very sad day in the history of Parliament today. This Bill had been considered by the Standing Committee on Home Affairs headed by Shri Pranab Mukherjee. I am reading from the Report of the Committee. It says:

"There is, however, lack of consensus in the Committee on the issue."

There was unanimity that there was a difference. I am further quoting:

"In view of the divergent perceptions in the Committee on the subject matter of the Bill, it is of the considered view that the Government should explore the possibility of evolving a consensus on the issues before piloting the Bill in Parliament."

I would like to know from the hon. Minister what exploration was made to find out the possibility of evolving a consensus. Nobody can deny that this is an important Bill. Even with all the eloquence of Shri Bansal, he did not say that it was not an important Bill. There was no attempt made to evolve a consensus on this issue.

Sir, there is a total flouting, total ignoring of the unanimous recommendation of the Standing Committee. When there was a clear divergence of opinion in the Committee, I feel, my party feels that this is the most brazen facade attack on some of the basic features of our Constitution. The only justification which is put forward



[Shri Somnath Chatterjee]

by the two hon. Members who have spoken and the hon. Minister, who has piloted the Bill, is that there are some corrupt voters in the Rajya Sabha elections.

16.14 hrs.

[MR. DEPUTY SPEAKER *in the Chair*]

On the basis of trying to find out a solution to deal with corrupt activities of some Members of the Legislative Assemblies, this atrocious attempt is being made to dilute two very fundamental provisions of our Constitution, which the Supreme Court has laid down repeatedly to the basic features of the Constitution, namely, secrecy of voting as also the federal structure of the Constitution.

This Bill is a direct and blatant attack on these two very essential and ennobling, basic features of our Constitution. The Statement of Objects and Reasons is so naive and so cynical that it is nothing but affront so far as Parliament is concerned. The way this matter is being treated as if it is a question of just curing the corruption of the MLAs. This is an admission on behalf of the ruling party and—I am very very sorry to say—the Congress, with such a glorious tradition that they have, but they have succumbed to this. They are unable to control of presence of unscrupulous and corrupt people in the party. Some opportunities are there in different ranks.

SHRI PAWAN KUMAR BANSAL: I would like to set the record straight. We are not the victim of this so far. We have only noticed something in the system.

SHRI SOMNATH CHATTERJEE: You are the beneficiaries so far as this is concerned.

SHRI PAWAN KUMAR BANSAL: No, Sir. Neither way, it has not affected the Congress, but we observed something in the system. We are not the beneficiaries.

MR. DEPUTY SPEAKER: May I request Shri Somnath Chatterjee to kindly come back to the subject being discussed.

SHRI SOMNATH CHATTERJEE: He is a very articulate and a very responsible Member, but he also has a party whip. Only thing is that he cannot whip his MLAs.

Sir, there are some opportunists and some corrupt elements in their ranks—in the ranks of the ruling party; and also some of the parties supporting this Bill—and

they have no faith in their party policies and programmes, if any. They have treated themselves; and allowed themselves to be treated as purchasable commodities. Now, these few corrupt people in some of the Assemblies are going to decide the fate of this country's future.

Sir, the object is very clear. It is to enable some politicians to enter the Council of States from States to which they do not belong; with which they have no affinity and that money may not be collected by some corrupt MLAs. It will be an open book, and, therefore, secrecy of the voting must be done away with because some corrupt MLAs here and there may fall prey to the lures of cash payment or whatever it is. I do not know.

Sir, in this country, Mahatma Gandhi had led the struggle for Independence, and people had made tremendous sacrifices without hankering for any post or position of power. Now, some people in these parties feel themselves so indispensable that when they are rejected or cannot be elected by their own people, they see to it that they come back to Parliament by hook or crook. There are also politicians who have no support in their own State and must come to Parliament. For that purpose, they have some cases—fortunately, not too many—and they have polluted the system. It is a matter of concern, and there is no doubt about it.

What is the remedy? Please look at the Statement of Objects and Reasons. Have you got a copy, Mr. Deputy-Speaker, Sir,? Section 3 of the Representation of the People Act prescribes residential qualification for contesting elections to the Council of States. There have been numerous instances "where the persons, who are normally not residing in a particular State, have got themselves registered as voters in that State simply to contest an election to the Council of States." Of course, Sir, my friend, whose name is on the list as the mover of the Bill answer that description, that is, to get himself elected to Rajya Sabha, he made a foray to Gujarat and got himself registered as an ordinary resident. Just for this purpose, that is, to enable these people to get elected, should we approve of this system or the proposal that is being brought?

One of the Members of this House, we have all respect to him, Shri Bansal says that this Party is not a beneficiary. I am very sorry to say, without meaning and disrespect because people know the respect in which we hold the Leader of Opposition in Rajya Sabha, could he not have served this country by remaining outside the House? He is a man of tremendous ability, great

knowledge and expertise. He has held extremely important positions. This is not a reflection on him.

SHRI P.C. THOMAS: You are commenting on a person who is not here.

SHRI SOMNATH CHATTERJEE: Well, I will say 'somebody'. Your leader was here, but he has fled. You can delete that.

Sir, is parliamentary democracy being strengthened? We know of a person who has given in a State his address, which is nothing but a godown. There are Members of Rajya Sabha who have nothing to do with the States from which they have been elected. My simple query is, is anybody so indispensable in this country that politics of this country cannot survive or the Parliament cannot survive? As I said, our freedom fighters, like Mahatma Gandhi and Jayaprakash Narayan, never hankered for any position. Have they not served the country? The tallest leaders of our country have remained outside the elected office. Unfortunately, some very good candidates may lose an election, but that is not the end of the day, end of everything or end of the road. Very good persons should come to this Parliament. There is a provision for nomination also representing different facets of life in this country. But for whom are we changing this law? Are you changing for these persons? What will remain of the identity of the States? I will come to it.

The whole objective is, according to this Statement of Objects and Reasons, to do away with money power. Money power is being indulged in by whom—the Members of the Legislative Assembly. They say, well, there are big money-bags, who get themselves elected. They cannot bribe anybody and everybody, and they have to bribe some MLAs. How many such instances are there? Shri Kuldip Nayyar has made some study. Earlier, it was three per cent from other States, and it has now come up to ten per cent. For ten per cent, that is, 25 people in Rajya Sabha, today, you are mutilating the Constitution of India.

I will ask a simple question. Why do you allow such persons about whose honesty you are not convinced, to remain in your party? What action is taken against them? You indulge in having opportunists as your members, corrupt people as your members, you give them tickets, they become Members of Legislative Assembly, and then take bribe and elect somebody else for the sake of money. That may happen without changing the residence also. It can happen in the same State.

We are unable to understand how this can be the whole consideration. Very well, what will happen now? An MLA cannot take bribe. Who will get the money now? The party is astute enough. The party will collect money and give nomination. Now, those crooks with moneybags will purchase nominations from the party. Once they get the nominations, everything will be open. They will get themselves elected. Money will change hands. Instead of unscrupulous MLAs, it will be unscrupulous parties now. Instead of some individual corrupt MLAs selling themselves, the parties will sell themselves. This is going to happen.

By these proposed changes, are we not insulting all the Members of Legislative Assemblies?

SHRI S. BANGARAPPA (Shimoga): Are we not giving an impression that all the party leaders will indulge in this?

SHRI SOMNATH CHATTERJEE: That should not be the case. But then, why are you supporting this Bill? I am not saying that your party is corrupt or your leadership is corrupt, but you will be in the shadow.

Are you not insulting all Members of Legislative Assemblies in all the States? This is a direct insult to them. There are many people in politics, hopefully, who believe in some principles, some policies, some objectives; who have some party loyalty; who work for the common people and not for themselves. Are you not insulting them?

People are all not purchasable commodities. All the MLAs are not purchasable commodities. Just for some crooks, I would not like my MLAs in my State to be treated as purchasable commodities belonging to a party. They are not. We the Left parties stand today amongst all my friends here, we know that on this issue we are isolated. Even then, we shall go on objecting to this. We shall never accept the deliberate decimation of Constitution provisions in this country just for the sake of a handful of criminals who may have sneaked into some Legislative Assemblies.

SARDAR SIMRANJIT SINGH MANN (Sangrur): Mr. Deputy Speaker, Sir, he is not isolated. We are also with them.

SHRI SOMNATH CHATTERJEE: I am deeply obliged to him, Sir.

MR. DEPUTY SPEAKER: You have changed your place and perhaps that is the reason why he could not take note of you.

SHRI SOMNATH CHATTERJEE: So far as the residential status is concerned, what is the plea given here? The Election Commission, while discussing this aspect at an all-party meeting in April, 2000, was of the view that a precise definition of 'ordinarily resident' was very difficult and emphasised that it was for the political parties acting through Parliament to carry out what in their judgement might be the best possible solution in the light of experience in the past 50 years. It was because of the misuse that was being made, probably, the Election Commission thought three years back that the Parliament might consider it.

But as I said, there was no discussion with the parties.

Now, there is a reference to the Ethics Committee. The hon. Minister also referred to the Ethics Committee of Parliament. I am reading from the Statement of Objects and Reasons. This is the most atrocious statement. I have ever seen in my humble career of 32 years.

The Ethics Committee of Parliament, in para 9, of its first Report presented to Parliament on 8th December, 1998 recommended that the issue relating to open ballot—system for election—be examined. This is different. But the issue has given rise to concern in the wake of allegations of money power.

Therefore, only one observation was made by the Election Commission that the 'Parliament may consider it.' Where has the Election Commission recommended that? Anybody and everybody can be sent from anywhere in this country. What is meant by the federal structure of this country? Our Constitution has made it very clear. Kindly see article 1. You know, Sir, very well. I am sure, Shri Bansal knows it by heart. 'India, that is, Bharat shall be the union of States'. States' boundaries have been laid down by the Constitution of India, and the Upper House is called the Council of States and not the House of People. The difference is so obvious. That is the whole basis of our Constitution. That is why Seventh Schedule has been provided here about the separation of powers between the Centre and the States.

Every States has been given its own identity. That is why we are also so keen to preserve the rights, powers and identify of the States. We always object to encroachment by the Centre on the States' territory. Why? ;

It is because that is the basic feature of our Constitution. Every State has its own ethos, its own culture, its own problems and its own issues which are shared by the citizens of that State. They may speak different languages, they may belong to different religions, they may belong to different castes and creeds, but they have one unity, *i.e.*, they are residents of a particular States.

Sir, we feel proud to say that not only hundreds, not only thousands but lakhs and lakhs of people from all over the country are staying in our State, West Bengal. They are staying with dignity and honour. They consider themselves to be essential part and parcel of the State. They are contributing towards its development. I must admit with great happiness and pleasure that the people from outside who have made West Bengal as their State, have contributed substantially and are still contributing to the development of our State. We have no grievance or quarrel with them. They are residing there. They proudly call themselves that they belong to West Bengal. Similarly, those who belong to Karnataka also proudly say that they belong to Kerala. Everybody belonging to a particular State will say so about his State. .

Sir, the other day—although it was unseemly and I was very unhappy to observe—some of our hon. friends from Karnataka and Andhra Pradesh were, a sort of, criticising each other over discussion on water. They were trying to find fault with each other. Why? It was because each one of them felt that his State's interest was getting affected. We must concede full *bona fides* to them. Shri K. Yerrannaidu fought for about 50 minutes trying to make out a case for Andhra Pradesh. Similarly, friends from Karnataka also spoke trying to put forward their case. This is not chauvinism as such, because the Constitution of India postulates this. States have their own rights. States have their own problems. State have their own issues. Then, who will respond to them?

I do not want it. But if Shri P.C. Thomas has to be elected from Himachal Pradesh, where will his commitments be? This is not dividing the country, please. This is our unity in diversity. Therefore, if there is a dispute between Kerala and Himachal Pradesh, for whom he will respond? Whose cause will he uphold? This is the basis of it. That is why our Constitution' is there.

Kindly see, Sir the importance which has been given to the States.

Article 80, as you know, Sir, is about the composition of the Council of States. Article 80 says:

"The Council of States shall consist of twelve members to be nominated by the President..., and not more than two hundred and thirty-eight representatives of the States and of the Union Territories."

Now, comes to Article 249. Article 249 is a very important article. It deals with the powers of Parliament. It says:

"Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds members present and voting that it is necessary or expedient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List....."

It is stated to because it will be the view of the people of the State. Similar is article 312 that speaks of formation of all-India Service. It says:

"Notwithstanding anything in (Chapter VI of Part VI or Part XI), if the Council of States has declared by resolution, supported by not less than two-thirds of the members present and voting....., they can constitute an all-India service."

Sir, nowadays we do not hear the name of Dr. B.R. Ambedkar. What did he say? In the Constituent Assembly, this is what he said with regard to this.

"Ex hypothesize the Upper Chamber represents the States, and, therefore, their resolution would be tantamount to an authority given by the States."

What are the considerations of the Members of Rajya Sabha, representing a particular State, if they do not belong to their States? Now, even pretence of being ordinarily resident will go. In future, there will not ever be a pretence of being an ordinarily resident. No false declaration would be necessary. Very well, if you can get a nomination from your party, which has got a majority in Assembly, in a particular State, he will send you there. There are some indispensable people in this country. He becomes indispensable by his service, or indispensable because of the monetary contribution, he makes.

Sir, what does Sarkaria Commission say? It says that the Rajya Sabha has been constituted to enable the States to give effective expression of their viewpoints at the parliamentary level so that the States can give

effective expression of their viewpoints. Take the composition of Members of Rajya Sabha, who belong to different States. If there are 15 Members, two belong to Bihar, two belong Kerala, two belong to Gujarat, two belong to Pondicherry, who will speak and for whom? How will the State give effective expression to their view points at the parliamentary level? What are you doing? You are striking at the very basis of our parliamentary functioning and the basic character of our Constitution.

Sir, in Bommai case, what was done? What was said by the Supreme Court? It said:

"The States are sovereign in the field which is left to them. The States have an independent Constitutional existence, and they have an important role to play in the political, social, educational and cultural life of the people as the Union. They are neither satellites nor agents of the Centre."

"Federalism envisaged in the Constitution, is a basic feature in which the Union of India is permanent within its territorial limits, and the State is a permanent entity." Now we will have agents of political parties inside, not the representatives of the States. You would not have the representatives of the States any longer in the Council of States.

Sir, we have a federal structure of Government—some call it quasi-federal, some call it federal. Its very basis is the existence of Centre and the States with distribution of powers, but it is ultimately for the benefits of the country as a whole. The Supreme Court has repeatedly held that federalism is a basic feature of our constitution.

Therefore either from the point of view of the federal character or from the point of view of dealing with corruption of some MLAs, should you change the basic structure of the Constitution? I appeal to my friends not to do permanent damage to us. They are institutional corruption. They are to dealing with money power. They are giving primacy to money power today.

Is there any provision, Mr. Minister, in this Bill, to control persons taking money for giving nomination, so far as political parties are concerned? Can he control if political parties take money for giving nomination? I would like to know this. So, they are saying that individual MLAs should not take bribes, but the top people can take! That is the ridiculous situation that they have evolved.

[Shri Somnath Chatterjee]

Although the Election Commission said that they should be some discussion to find out the procedure, nothing was done; no meeting was held. The Government did not try to find out a solution in discussion with parties. I do not know whether the Congress Party was called for a separate discussion on this. Probably anticipating the support from Congress, they may not have called them or they may have called them separately.

MR. DEPUTY SPEAKER: Kindly conclude.

SHRI SOMNATH CHATTERJEE: The Constitution is being finished! Let me take a little more time, but not longer; maybe 5-10 minutes more.

As I said, Shri Kuldip Nayyar has made some exercise; he has taken the trouble; we respect him; he believes in certain basic norms.

Another situation has been commented upon—that those Members who get elected from other States do not take any interest in the affairs of the States. This is the situation, except perhaps our distinguished Minister of Law and Justice—I wanted him to be here—who is often found in Gujarat in the company of the discredited Chief Minister. Probably he is trying to create more trouble for the minorities there! I do not know what is his role in the trial in the Best Bakery case.

SHRI KHARABELA SWAIN (Balasore): What is your idea about the word 'discredited?'

MR. DEPUTY SPEAKER: Please be patient for a few more minutes. Kindly do not disturb him.

SHRI KHARABELA SWAIN: Sir, I hope at least some time will be left for us also!

MR. DEPUTY SPEAKER: Give him a few more minutes. Please do not disturb.

SHRI SOMNATH CHATTERJEE: I do not call him a discredited person. He is a very eminent person; he is a very eminent parliamentarian; he is a very eminent lawyer and an eminent Minister, but maybe in a very bad company!

This Bill strikes at the very root of the federal set up of our Constitution. So, I strongly object to it and I protest against this attempted pollution of our Constitution, which is because of some personal greed, having been responsible for election of some Members.

The other point is very important, which is the question of voting. The Supreme Court has expressed its agony in the case read by Mr. Bansal. It has said that the very basis of the parliamentary democracy is secrecy of votes. This is not the first time this has happened.

I forgot to mention one very important thing here. There is a document called the US Constitution. Mr. Minister, the party under which you are working today, gets its inspiration, if not sustenance, from U.S.A. In their case a Senator has to be the inhabitant of the State from which he is elected. This is in case of the Upper House. Even for the Lower House, a representative needs to be only 25 years old and a citizen of seven years but the residence requirement is the same namely, he must belong to that State. This is true even for the House of Representatives. By custom, a representative must reside not only in the State but also in the district from where he is elected...*(Interruptions)* That is for Senate, that is a different thing. President Bush will get annoyed. You do not know. He will be very upset since you are not following that. You are following the World Bank, IMF or even others. Also, if President Bush wishes to send troops to Iraq, you are conceding to that. But here is something against that.

There are other two very important international documents; Article 21 of the Universal Declaration on Human Rights to which India is a party and Article 25 of the International Covenant on Civil and Political Rights, 1996, to which also we are a party and we are bound by them. There is a mandatory provision that the will of the people shall be expressed in periodic and genuine elections which shall be held by secret vote. The Supreme Court says that it is the very essence of our parliamentary democracy.

Another inspirer of yours is the American Supreme Court. Of Course, any constitutional lawyer does refer to the American Supreme Court because it has pronounced outstanding decisions. The American Supreme Court has pointed out the danger of open voting in the following words:

"Absolute secrecy in voting reaches effectively a great number of evils including violence, intimidation bribery and corrupt practices, dictation by employers or organisations, the fear of ridicule and dislike or of social and commercial injury. In fact, all coercive and improper influence of every sort, depending on a knowledge of the voters' political action. Secrecy of

ballot has been considered and described as a postulate of constitutional democracy as it serves a vital public interest that an elector or a voter should be absolutely free in exercise of his franchise."

This is the basis. That principle is being given a go by in this country for a handful of corrupt and crooks, in some legislative assemblies and for some handful of power-hungry politicians who consider themselves indispensable, that they must enter Parliament by any method that may be available to them, even to the extent of filing false applications. Today, for them we are not only tinker with the Constitution, we are injuring the very heart and soul of the Constitution.

This is nothing but an outrage, a sacrilege committed so far as Constitution is concerned. Although we may be alone here, but Sir, I have got the great happiness, privilege and great satisfaction of opposition it today even if we are isolated, this lawless law, this attack on the Constitution of India which is nothing but according to me an outrage which is being committed. I oppose every sentence, every word of this Bill. I hope even now some of the hon. Members will reconsider their position and will see that this great Constitution of India which was framed in the next Hall, of which we all are proud is not diluted, polluted in this manner because of some handful of crooks in this country.

DR. B.B. RAMAIAH (Eluru): Sir, the Representation of the People (Amendment) Bill contains only two Sections. One is for the Rajya Sabha where the members have to identify their residences and the second Section is regarding the type of voting. As the hon. Members have mentioned, he can be a resident of that State or he can be an ordinary resident of that State as is going on for the last so many years. But what this Bill says is that instead of ordinary resident, let us take a policy decision so that it can be done without creating any problems. That is the basic thing.

Another thing is that there are some important intellectuals who are required to be taken into the Rajya Sabha. Sometimes we have to consider the place from where they can be brought to the Rajya Sabha. It has to be done to bring their talent into the Rajya Sabha, the Council of States so that we could get their valuable suggestions and advice. That is the main object on which I hope this Bill has been taken up for consideration.

This Bill has also been examined by the Standing Committee under the Chairmanship of Shri Pranab

Mukherjee. But the Standing Committee could not give any firm recommendation on the concerned Bill. Then, the Government has taken a decision. In view of the present circumstances, they want to legalise the system which is being followed for the last so many years.

There is one more important point which Shri Somnath Chatterjee has also the interest of the State to which he is representing in the Rajya Sabha or the interest of that State which he originally belongs to. This will also create some problems. But in spite of that, if we want to have the benefit of the advice and valuable suggestions of the intellectuals, we have to bring them to the Rajya Sabha. That is why, probably, they thought that it is better if we make it a more legalise affair. It is going on for the last 50 years. Shri Kuldip Nayyar has said that almost ten per cent people represent the States in the Rajya Sabha which are other than their own States. That is why, they want to legalise this temporary system so that there is no problem.

Therefore, this matter was discussed with the Election Commission also. Whatever is being put up today is not the final word. It can be amended any number of times as per the opinion and valuable guidance of the people.

The second question is of voting as to whether it should be by secret ballot or open ballot. This also represents two factors, viz., the party on which the mandate is given or the whip is served. Quite often there are violations. In order to make sure that there is discipline in the party, all have preferred that there should be open voting so that they can verify whether it is a right thing or not. If they do not follow the whip, some action can be taken against them. They have also tried to see the methodology of the voting which is being followed today and how best it can be improved.

In spite of all these things, there is possibility of using money power. We could see what happens in some parts of the country. It had happened recently also. We have to see how to control and how to prevent it. We require the valuable suggestions from different sectors. The Government would try to take them into consideration to see what amendments are required.

But in spite of this, we have to see what method we can adopt for the present. If necessary, we can, later on, take the views of different States and different Parties on this subject and also look into the recommendations of the Election Commission on this issue. In any case, a number of States have benefited out of this open voting

[Dr. B.B. Ramaiah]

system. Maybe, in certain States this did not work well. But a number of States feel that open voting system has offered an easy way to enforce Party discipline and so they prefer this system of voting.

Sir, in the circumstances in which the hon. Minister has brought this Bill, I think, it is necessary for us to accept it at present and then, in future, if there are any suggestions, those can be incorporated in it later on.

Thank you very much for giving me this opportunity.

[*Translation*]

SHRI MULAYAM SINGH YADAV (Sambhal): Mr. Deputy Speaker Sir, I am sorry that I am not convinced with the views of hon'ble Somnath Chatterjee...(*Interruptions*)

THE MINISTER OF LAW AND JUSTICE AND MINISTER OF COMMERCE AND INDUSTRY (SHRI ARUN JAITLEY): He knows that owing to secret voting how a problem is being faced by a state. You do not have such type of problem...(*Interruptions*)

SHRI MULAYAM SINGH YADAV: Mr. Deputy Speaker, Sir, this is the first time when I am unable to agree with the views of hon'ble Somnath Chatterjee. I appreciate and congratulate Somnath Ji that he has tried to prove his stand as correct by showing his intelligence and giving logical examples...(*Interruptions*) but I would definitely like to say that whatever has been done in the past is not good at all. I can say that much only. I do not want to say anything beyond this.

Mr. Deputy Speaker Sir, I have also written a letter for making amendment in this regard. Therefore, we support it...(*Interruptions*) If we do anything, we do it wholeheartedly and complete it. We do not do anything half-heartedly. We support the two amendments brought by you. We support it also because this disease will spread not only in Uttar Pradesh but everywhere. At present, you are deprived, Bengal is deprived. We agree that Bengal is deprived. But you will be surprised that simultaneously 420 such people have got elected who did not have a single member as an MLA. For example, even some industrialist who is elected on the basis of money power or by giving donation to the party, he also serves the country. Any industrialists can come in Rajya Sabha. Rajya Sabha is meant for such persons. Intellectuals, learned people, industrialists, educationists, jurists can contest for Rajya Sabha. This only was the intention behind it in the Constitution. Rajya Sabha was

constituted with the intention that if some mistake is committed in Lok Sabha then it may be brought before the learned members of Rajya Sabha and they make amendments in it. It is for the Rajya Sabha to see whether things are going on rightly in accordance with the law or the Constitution or not. There are many such members elected in Rajya Sabha who do not have even a single vote but they got the maximum number of votes. They got elected by the highest margin. Hon'ble Somnath Chatterjee ji I am proud that there is not a single MLA of Samajwadi party who has cast vote against the party line.

17.00 hrs.

There were 28 members of BJP in U.P. but the BJP candidate was defeated. Had their candidate not been defeated, they would not have brought this legislation....(*Interruptions*)

I will not quote his name but he was a good person. If his intention was good then why did he leave the legislative council aside? There should have been open voting for legislative council also otherwise mafia, businessmen, contractors, all of them will have an easy access in the legislative council. Hon'ble Law Minister ji, if the intention of the Government is good and you agree to it and give in writing and Mr. Deputy Speaker Sir, if you also grant permission then there could be open voting in Legislative Council. It makes no difference to them. It is also a big Panchayat of the State. So far as relaxation is concerned it is correct that a person residing anywhere in India can become a member of Rajya Sabha. Earlier people used to give false information and file false affidavits. But all of them do reach there. If a person from Maharashtra wants to go to Uttar Pradesh, he can do so because in the Constitution it is provided that his name should be included in the electoral list 6 months before...(*Interruptions*) If the name is included 15 days before and is traced out, then this nomination is cancelled as has happened in Ghaziabad recently where the nomination was got cancelled. People should be honest in filing their nomination. Why people are forced to file false affidavits. If there is a big leader of the party then we have to bring such person in the party. It is not that only wrong persons are included in the party. We too bring such people in the party whom we consider necessary. But so far we have not made any member. There is an industrialist, Sanjay Dalmia. He has his business in Noida. We had brought him...(*Interruptions*) Otherwise who will give money? If we bring some big person the party will get donation...(*Interruptions*) Mafia

do not give money to the party, they buy the MLA's. Today, the whole democratic system is under attack. MLA's are selling themselves. The ill effect of the system is that Pradhans and Zila Panchayat and Zila Panchayat members are selling themselves. It has such a effect that everybody is involved in this activity. I have said this because past is not always good, one can learn from the past and we can make future better by adopting ourselves to the present conditions. That is why I am unable to agree to it. We are supporting it. Earlier also we had written a letter. We had said that there should be a direct election for Zila Panchayats also. A serious situation has emerged there. Mafia and Goonda people are not allowing the genuine persons to file their papers. So the elections of both Zila Panchayat and Block Pramukh should be held by people. When that amendment will be brought we will congratulate for that. This amendment has been brought and we support it strongly.

I have to make one suggestion. I support it but bring forward a proposal regarding inclusion of Vidhan Parishad. You can bring it tomorrow or even today and get it passed. Otherwise all of them will contest for Vidhan Parishad election and there they will win easily. Till now we are saved and we have not confined our M.L.A at one place so far. Our M.L.As move freely and they always vote to the candidate of their party. But your M.L.As are required to be confined at one place. If there would have been any government, they might have confined them. They provide them food and likewise other thing. But our M.L.As. move freely without fear and any expectations. It is true that you also don't support it, you are right...(*Interruptions*)

SHRI SOMNATH CHATTERJEE: You commit mistakes and they also commit mistakes...(*Interruptions*)

SHRI MULAYAM SINGH YADAV: We never did so. We never formed government by defecting members. Had we done so we would have been in the government. Had we deviated from our principle, we would have been considered good. It is not so. Samajwadi party have made sacrifice. We could have formed government despite opposition from all the parties but we cannot compromise with our principles and I have said that if the BJP give up its four issues, then the distance between BJP and Samajwadi Party can be reduced. If you change your stand over Article 370, uniform code of conduct, Muslims and the issue 'Mandir-Masjid' in Ayodhya then the distance between us will be reduced and you may continue to be in power, we would not have any objection...(*Interruptions*)

SHRI SOMNATH CHATTERJEE: Then there will be no need of Mayawati...(*Interruptions*)

SHRI MULAYAM SINGH YADAV: Please don't compel me to say something on this issue. This government is patronising corruption. There is corruption every where in Uttar Pradesh. Members of Lok Sabha may confirm from their voters and party workers that such type of loot had never taken place earlier in India where security personnels had carried money in government aeroplanes. Nobody knows where the IB, RAW, CBI and Income Tax officials have gone. Everybody knows about it but I do not want to go into details. You are a cabinet minister. There is a collective responsibility. So I suggest, Minister Shri Kanshi Ram Rana, is also sitting here, that the election of blocks and Zila Panchayats be conducted through public directly in this session and make provision for open voting system in Vidhan Parishad. Then we will support this Bill.

[*English*]

SHRI KHARABELA SWAIN (Balasore): Sir, I rise to support the Representation of the People (Amendment) Bill, 2003. But I do admit that I support this Bill *albeit* grudgingly.

There are basically two questions with regard to this Bill. There is a provision in this Bill for open voting by the MLAs. The second point is that there is a provision to remove the residency requirement of the candidate who is to contest for the Rajya Sabha. A question is being raised with regard to open voting. Generally, in a democratic country like India, anybody can say that the secret voting provision is one of the most important features of democracy. I agree to that view. But while a Member of a Legislative Assembly votes, does he vote as an ordinary citizen only? An MLA is not only an ordinary citizen but he is also a representative of a political party.

The hon. Member Shri Somnath Chatterjee was talking about the secrecy aspect. He has left the House. I wish he would have been here. You take the example of the Leftists. When they get the salary, they contribute almost everything to the party. They take home only Rs. 1000. You can ask them. They will tell you why it is done like that...(*Interruptions*)

PROF. A.K. PREMAJAM (Badagara): Is it wrong?



SHRI KHARABELA SWAIN: I do not say that there is anything wrong in it. It is right from their point of view. But why do they take only a small portion of it? It is because they think that an MLA or an MP is a representative of the party and that is why they take it so. I am not objecting to that. But he is not an ordinary citizen. When he has become an MLA or an MP, he represents his party.

He represents his party. So, he must vote according to the wishes and dictates of his party. That is all. For that reason, to say that there should be a secrecy Clause, he is just like an ordinary citizen, he can vote for anybody, he can take money from anybody, I do not agree with that contention. I fully agree with the provisions of the Bill brought by the Government and I also agree with the point that is expressed by the Standing Committee and expressed by all the political leaders. I agree with them.

Sir, the second point is with regard to the removal of residency requirement of a candidate. My moot question: 'What is Rajya Sabha?' Is it a Chamber for the elders only? Is it a Chamber for the elite? Is it a Chamber for the celebrities or, is it a Chamber for the States? What was the intention of the Constitution makers? What did they intend to do? I am asking whether it is a Chamber to bring in unelectable persons to the Parliament. I do not think so.

Sir, the founding fathers of the Constitution wanted that the Council of States should serve the interests of the State and should safeguard the interests of the State at the Centre. The Rajya Sabha is to provide an opportunity to a resident Member of the State to concentrate on special needs peculiar to his State which require urgent attention. This is why there is Rajya Sabha and also a Member of Rajya Sabha must be able to understand his State's language and he should be familiar with its culture. That is what the founding fathers of the Constitution thought of. So, my point is, why should we remove the limitation of residency? Why should we do that? I am giving you a probable situation. Take this example. The other day, we had a debate under Rule 193 on the Krishna Water Dispute between Karnataka and Andhra Pradesh. Now, suppose a Kannadiga is elected to Rajya Sabha from Andhra Pradesh and there is a debate on the Krishna Water Dispute, what will happen to his role? On whose side will he make his presentation? Naturally, this will create a lot of problem. It will happen. You take the example of the great matinee idol, Rajnikant, a great Tamil film star but basically he is a Kannadiga. So, what difficulty was he put to when there was a dispute on Cauvery between Karnataka and Tamil Nadu? He was put a lot of difficulties.

SHRI VINAY KUMAR SORAKE (Udupi): Ms. Jayalalitha also belongs to Karnataka. Ms. Jayalalitha, the Chief Minister of Tamil Nadu was also born at mayday in Karnataka.

MR. DEPUTY SPEAKER: Please avoid all these names.

SHRI KHARABELA SWAIN: I am not accusing. I am just saying that he was put to a lot of difficulties.

MR. DEPUTY SPEAKER: You may not be accusing but it is better not to mention the names.

SHRI S. BANGARAPPA: Mr. Deputy Speaker, Sir, I do not want to name anybody here. There is an hon. Member of the Upper House who is elected from Karnataka but he comes from Andhra Pradesh. As rightly said by Shri Kharabela Swain, there is the dispute in sharing of Krishna water between Andhra Pradesh and Karnataka. So, what the gentleman should do? I have great respect for him. That is a different matter. But still we have to think over this aspect.

SHRI KHARABELA SWAIN: Sir, when we remove the limitation of residency, I think, it is an insult to a large number of capable people of a particular State. So, when we want to remove this clause, we should give a second thought to this aspect.

Sir, many times, the Government in power tries to bring in a very capable person through the Rajya Sabha route as to make him a Minister. Every Government wants to do that every Government has done that. I have got a very small suggestion here. This problem can be sorted out if we bring a small amendment to the Constitution. Why can we not provide 10 per cent reservation for outsiders in the Council of Ministers? In countries like the United States of America, all the Ministers are from outside. They are not from the House of Representatives or from the Senate. Somebody can say that there is a provision for outsiders to become Ministers with a stipulation that within six months from the date of becoming Ministers they have to get elected either to the Lok Sabha or to the Rajya Sabha. I am not talking about the stipulation. But if we provide for 10 per cent reservation in the Council of Ministers for outsiders by bringing an amendment to the Constitution, this problem can be sorted out and we need not bring in people from outside parliament through the Rajya Sabha route. It will not be required.

My next point is regarding the second Chamber. In some States we have the second Chamber. I think it is totally unnecessary. When we do not have the second Chamber in most of the States of our country, why should we have the second Chamber only in two or three States? It is not necessary. It is only an appendage and it leads to unnecessary spending of public money in those States. It also becomes an accommodation for disgruntled politicians. So, can we do away with the second Chamber system in those States?

Then, when the Rajya Sabha is not having any financial power, can the Prime Minister of this country be from the Rajya Sabha? The Members of Lok Sabha are being elected directly by the people. So, can we not make a provision that the Prime Minister of this country, who should represent the people of this country directly, should only be from the Lok Sabha and not from the Rajya Sabha? Why should anybody who cannot win an election from a Lok Sabha constituency, become the Prime Minister of the country? Why should he come through the back door? I am appealing to the hon. Minister to consider whether we can bring some amendment to the Constitution to this effect.

Finally, with regard to holding of simultaneous elections to the Lok Sabha and State Assemblies, as has been mentioned by Shri Pawan Kumar Bansal, personally I do not agree with that suggestion. My point is, when there is a simultaneous election to the Lok Sabha and State Assemblies, one issue will cloud over the other.

The State issues will specifically cover the national issues. For the fault of a MLA, an MP will get defeated. In the same election, if somebody is disgruntled with the MLA because he could not provide water, road or something else, then that person will also not vote for the MP candidate of the same party. He may vote if there is a separate election. So, I do not agree with that contention.

We are talking about expenditure. In a democracy, no amount of money is more valuable or indispensable than the directed election by the people.

Last but not least, with regard to the proxy voting, hon. Member, Shri Pawan Kumar Bansal, said: "Do not do it. Find out some other way so that the people in the Defence Forces can vote in their villages." How can they do it unless we have a system of proxy voting? We are having the postal voting system. You send the postal ballots to them. They send these back by post. Do these votes reach by the time when your elections are being

held? We have been trying for the last 56 years. Is it possible? This is basically denying the right of voting to a very large percentage of people of our country. So, I suggest that proxy voting should be allowed. It is being allowed in many other countries of the world. Let us not deny the opportunity to the people who are sacrificing their lives for saving us—the Indians.

*[Translation]*

DR. MAHENDRA SINGH PAL (Nainital): Sir, first of all I would like to thank both the Law Ministers, Shri Arun Jaitley and Shri P.C. Thomas for bringing this Bill. Both the Ministers are young and we can expect from them that they will bring the Bill keeping in view the present scenario. This Bill is in the interest of democracy as well as our society and also in the interest of the present political circumstances. This Bill would definitely create a conducive atmosphere in the country. With this hope I support and welcome this Bill.

Sir, this Bill would remove the difficulties being faced earlier. Ex-Prime Minister hon'ble Shri Gujral had to live in a rented house in Bihar to become a member of Rajya Sabha. And to legalise it and for entering into Rajya Sabha he had to give an affidavit. Shri Mulayam Singh also said that for producing an affidavit he had to live there for six months. Now this legal procedure is being carried out and it will definitely help to sort out this problem. Besides the open voting system will also definitely enhance the dignity of our upper House. In England this House is known as House-of-Lords and in America as Senate and in our country open voting system is being introduced for upper House. If this system is implemented it would definitely enhance the dignity of the upper House, this not only in our country but in foreign countries also it would enhance our dignity. It is a welcome step. There should be an open voting system in Vidhan Sabha also because upper House is a place of dignity and it must be given respect. This Bill if passed would provide this respect. So I support this Bill. Member of Rajya Sabha will become eligible to contest the election from any part of the country and there will be no problem for it, it is a very good thing. It will prove a mile stone for the unity and integrity of the country. While welcoming and supporting this Bill I would like to say that after passing this Bill the dignity of Rajya Sabha will enhance not only in our country but in foreign countries also. Through this Bill we will be able to check the use of money power during elections. With these words, I support this Bill.

[English]

SHRI K. MALAISAMY (Ramanathapuram): Thanks a lot, Mr. Deputy-Speaker Sir, for giving me an opportunity to speak.

Sir, on the other day when the hon. Minister moved the Election related laws amendment Bill, we wholeheartedly supported and move our pat and praise for bringing such an amendment and suggested that the must come with more and more electoral reform amendments. But today, we take a different stand.

As far as, we, the Tamilians, are concerned, we are known for our broad outlook and tolerance. To illustrate, I can cite a famous couplet:

*"Yadum Oorey Yavarum Kelir."*

It means, every place is ours and every one is our own kith and kin. But our broad outlook could not agree with the issue of broadening the residential qualification in question.

On the other day, the hon. Law Minister, in his introductory speech, wanted to legalise and legitimise the practice in vogue; and brought the Bill it. It was all right. There we agreed. Today he wants to do away with the practice, which has been in existence for years and years. We the AIADMK, oppose this amendment in unequivocal terms, with tooth and nail. Our reasons are manifold.

Many of our friends, who spoke here have either supported it or opposed it and while opposing, they said that it has got radical changes, lot of ramifications and implications.

It is said that the object of bringing this Bill is to curtail money power and to prevent cross voting. It is all right to curtail the money power. I used to say that there are five powers in existence in this country. They are, money power, muscle power, mafia power, media power and ministerial power. The Minister proposes to control only the money power. What about other four Ms? Will he be able to control the other four powers? Is he not interested in curtailing or controlling such powers? This is my point.

Today, he has suggested a remedy to this. The remedy should not be dangerous than the disease. What

he has suggested is not a remedy, but it is more dangerous than the disease.

Sir, according to me, and others also, the Upper House has got its own character, and feature. The fundamental character of the Upper House is lost by bringing this legalisation.

There are States and regions. As the Chair and others know, we are federal in character. Federal structure is going to be lost.

The imbalance among the States and the regions occur. In due course, regional imbalance will be there to a great extent. For example, a Rajya Sabha MP from Tamil Nadu is to be elected from somewhere else, from North-Eastern region—I am assuming it for the sake of argument—and he does not know anything about the language, culture, habit tradition etc. of North-Eastern region and he does not know about the problems of North-Eastern region, how can he represent North-Eastern region in the Rajya Sabha but hailing from different states. No purpose will be served by him.

There will be a conflict of interest between the state he belongs and the state from which elected. These are the days where the conflicts are too many. In such a situation, whether he will play here or play there. He will be nowhere. He will be a non-player.

Sir, this Bill will help in a way i.e. it will be a tool for patronizing somebody in the country, that too by the Party President who will be at Delhi. They can name somebody from one state to be elected from totally a different states, thus and they can patronize. To that extent the Bill will be useful but it will not serve the purpose. The National Commission to review the Constitution has said to many things about the amendment of the Constitution but they have never spoken about any of the aspects of the amendments now in question.

One more anomaly may happen. As per this amendment, the whole Rajya Sabha can be elected from the one State itself, for example, from Tamil Nadu or Andhra Pradesh or from any other State. Members for 250 seats of the Rajya Sabha can be elected from one State, if one wants. Whether it happens or not but the law permits it. What will happen?

Finally, Sir, in Schedule IV of the Constitution they have given the list of Rajya Sabha Members for each state. By adopting this Bill that structure is going to be lost. Whatever the seats allotted for a particular State and the seats mentioned in Schedule IV will not occur there. It will have no relevance at all. What is the purpose of Schedule IV? The framers of our Constitution should have done it with due purpose and fore sight. These are my points to the issue of residential qualifications proposed here.

Now, I come to open ballot. As rightly said by some of our colleagues, this has betrayed the basis of democracy and the heart of democratic functioning. The voter should have a free choice. He should have secrecy. How can he afford to vote openly? The Election Commission is supposed to have a free and fair election. Can the Election Commission adopt one yardstick as far as the Lok Sabha and other elections are concerned and another for Rajya Sabha is concerned? Can it close its eyes, and asks them to vote in open, what will happen? How can they do so? The image of the Election Commission will be lost and its prestige will be undermined. Should we not think from a constitutional authority's viewpoint?

Then, as per the Bill, the election results are predictable. Who is to vote and whom etc. is already known. There is open voting. The elections are well set already and the results are already known. Where is the need for an election then.

MR. DEPUTY SPEAKER: Next speaker.

SHRI K. MALAISAMY: Since you are looking at me several times, I will conclude now.

MR. DEPUTY SPEAKER: Yes, you have taken more time than that was allotted to you. You conclude now.

SHRI K. MALAISAMY: In fact I wanted to suggest a number of electoral reforms. While participating in the earlier Bill, I suggested that a comprehensive legislation, as far as the electoral reforms are concerned, is required. I have got a number of points on it.

Sir, if you permit, I will list them out, quickly.

MR. DEPUTY SPEAKER: I think, you can speak about them when the next Bill comes.

SHRI K. MALAISAMY: Thank you, Sir.

Instead of concentrating on relevant and substantial electoral reforms, an objectionable, inadequate Bill has been brought. Hence we totally oppose this Bill.

SHRI BHARTRUHARI MAHTAB (*Cuttack*): Sir, I start from where my friend, Shri Malaisamy has ended. I will come to the relevance of the Bill and the manner in which this is being discussed in Parliament.

Firstly I come to the open ballot which Shri Malaisamy has mentioned. Let us conceive a situation where we have an open ballot. Very recently, I think, two, three or four months back, an idea has also been floated to do away with any split. Now, one-third of a Party can split and maintain their group, maintain their membership. Just conceive that idea is accepted, the Constitution amendment is done and it becomes a law, then is there a necessity to have voting from Rajya Sabha? According to the position of respective political parties in different Legislative Assemblies when the leader of the political party determines these are my candidates according to the strength of that particular party they get elected. Where is the case for voting? What to speak to openness, there is no need for that. This occurs to my mind when I hear Shri Malaisamy saying that. Once that occurs, there is no need for voting at all...(*Interruptions*)

SHRI PAWAN KUMAR BANSAL: If you permit me, I will mention it. I do not wish to interrupt you all. This voting would be required where the result would depend upon the second preference, etc....(*Interruptions*)

SHRI BHARTRUHARI MAHTAB: I will come to the preferential vote because preferential vote goes along with your secret voting. Preference vote goes along with how you eliminate other Members by certain percentage of voting. I will come to that aspect. I do not know how much time I have but this is an important...(*Interruptions*)

MR. DEPUTY SPEAKER: You have five minutes.

SHRI BHARTRUHARI MAHTAB: I do not know how time is being divided. Sir, with your wisdom, you can also gauge the mood of the House...(*Interruptions*)

MR. DEPUTY SPEAKER: We can accommodate one or two minutes here and there.

SHRI BHARTRUHARI MAHTAB: I will just give certain dates. The Election Commission convened an All-Party meeting in April, 2000. The Bill was introduced in Rajya Sabha on 5th December, 2001; referred to the Standing Committee on Home Affairs on 10th December, 2001; the Standing Committee on Home Affairs submitted its Report on 23rd July, 2002; Rajya Sabha passed the Bill on 8th April, 2003; and today, the 6th August, a famous day for the human race, we are discussing about the existence of bicameral system of Indian Parliamentary democracy. Why I say this is because after this amendment is effected, becomes a law, a question will arise, it has been arisen through different Members who have spoken today, is there a necessity to have a duplication of this House in this edifice? Is there a necessity to have another House just to supplement, just to accommodate, as has been mentioned here? I do not see there is any reason.

It has also been mentioned that when you are considering changes in the statue, it is true that changes must be dictated by considerations of public good. What is the public good here? It has been mentioned, 'to drive out money power'. I accept that. That is one of the valid reasons for public good but is this amendment actually driving out money power? Is it actually dissuading those forces which want to enter the Rajya Sabha by the back door? The change must be on the assumption that some evil which was not present in the minds of those who made the law in the first instance has manifested.

As I was going through different reports, I found that since 1952, around 2,000 people had got elected to the Rajya Sabha and out of them 45 to 50 persons had got elected from States other than those to which they belong. This give rise to another question to which I would come later but what is the lesson in it? What is the percentage of those persons who have gone to other States and got elected to the Upper House? This reminds me of two or three elections in our State.

In the 1950, we do not have an Upper Chamber in our Assembly. We did not have a Vidhan Parishad. We have only the Assembly. When the then leaders of Orissa thought that we should send someone who could speak for us in Delhi, the leadership of the State of Orissa during that time, in the 1950s, saw to it that he got elected to the Lok Sabha. If we want someone to get elected and to put forth our viewpoint in Delhi, the leaders should also have that much of confidence in them that

they could get somebody elected to the Lok Sabha. Is it necessary to bring him from some other place as it was done in the 1980s when people from Kerala got elected from Orissa and come to Delhi, people from Delhi got elected from Orissa and people from Karnataka got elected from Orissa to Rajya Sabha?

There was a time when a party or a leader wanted somebody to be sent here to represent the State, he would get him elected by the people to the House of the People. It was not at all necessary to send him to the Rajya Sabha. Get the mandate from the people and show your capacity or capability; get him elected to the Lok Sabha. This was done in Orissa in the 1950s, in the first and the second general elections. It is still happening in many other States.

Coming to another aspect, a question occurs to me. As against the wisdom of Parliament in passing this law, we must put on the other side of the scale the wisdom of the entire Constituent assembly. I am requesting all hon. Members to do this. Of course, today the main Ruling party and the main Opposition party, and another vociferous Opposition party, have accepted this. As was mentioned letters were written and all party meetings were held. But as I represent a regional party, I have a different view. Many hon. Members of this House have reservations regarding this Bill. That is why I request you to be patient. I also request the hon. Deputy-Speaker to give some more time.

MR. DEPUTY SPEAKER: My difficulty is that you decide the time in the Business Advisory Committee.

SHRI BHARTRUHARI MAHTAB: I do not sit in the Business Advisory Committee.

MR. DEPUTY SPEAKER: Now, every party wants more time it is an unpleasant duty which I have to perform.

SHRI BHARTRUHARI MAHTAB: This is an important (Amendment) Bill. It deals with the basic fabric of the Constitution, the basic of the Indian parliamentary democracy. I say this Bill is wrong as it affects the smaller States and it affects the regional parties' political endeavour.

The body politic of the Indian politics is changing very rapidly. This was not a case till 1980. It happened

after 1989. A little bit of history is also required when we deliberate on this Bill. How many Members flew to other States and got themselves elected till 1989? It was not much. It was only after 1989 when the total political fabric changed. The percentage of these types of Members getting elected to Rajya Sabha rose to ten per cent. This was not the case before that. It was hardly three per cent, as Shri Kuldip Nayyar wrote it in one of his columns. The Standing Committee on Home Affairs has also deliberated on this Bill. I went through that report, but I do not want to mention it here. They have gone through in detail. What is the amendment that is being effected? It is very simply stated.

The first is, in the Representation of the People Act, 1951, for the words "in that State or territory" the words "in India" shall be substituted. By doing this, we are referring to the domicile status of a person. The domicile status of a person or the residential status of a person is essential for us, who get elected to Lok Sabha also. We have to mention it in the nomination form that this is our place of residence, this is our holding number.

Similarly, for Rajya Sabha, the only restriction is the territory, the State. Of course, the names of different countries have also been mentioned. Perhaps, we are getting too much influenced by the Constitution of the United States. Of course, of founding fathers of our Constitution also referred to the American Constitution, but they have deliberately mentioned that Rajya Sabha represents the 'Council of States'. So, by doing away with the territorial status, the residential status of that territory, are we not doing away with the basic structure of Rajya Sabha? 'Rajya' means 'State'. That basic structure is getting demolished. My request is that this should not be done.

I would now mention that a candidate who has filed a nomination and truthfully mentions his residential requirement of being domiciled in the State who can deny him? This gives rise to another question. In this country, if I belong to Cuttack and I want to go and stay in Ahmedabad. I have every right to do so. No law can restrict me saying, 'No, you were born in that place; you have to say there and you have to be confined to that State and you can only get elected from the State'. I can very well go and stay in Ernakulam. I can very well go and stay in Chennai. If the political party of that State thinks it fit to say 'Yes, you are the best person to get elected from Tamil Nadu', I will get their support and I

will get myself elected to Rajya Sabha. But why all these things have come up?

I may be excused, as I did not hear what Shri Pawan Kumar, the first speaker mentioned. A number of other Members have also spoken before me. I just want to remind this House that I mentioned about 2000, 2001, 2002 and 2003 deliberately.

I do not know whether other hon. Members have spoken about Shri T.N. Seshan or not. It was he who interpreted the law according to his own dictionary. His interpretation was: "No, you cannot go there; you belong to this State". My humble question to the Government is—should we be guided by that interpretation and make a law? Is it becoming on our part that we should be guided by that wrong interpretation? Of course, a lot of litigation was there. But how many of them saw the light of the Day? If the onus lies with the leaders of the Party, if they can select a person from that State, why bring this legislation? This is my basic question relating to the territory or area. The second part is the influence of money. Of course, many things have been told about it. My humble suggestion would be that by legalising the residential status, you are legalising an illegal act and that should not be done. I may be excused; but this is mutilation of the Constitution, both in letter and in spirit.

The National Commission for Reviewing the Working of the Constitution have categorically stated—rather recommended I would say—that 'make a person eligible to contest the Rajya Sabha election from a State'. It should not be done away with. That is the recommendation. But we are not adhering to that recommendation. The Bill violates the basic structure of the Constitution.

I now come to the second aspect.

MR. DEPUTY SPEAKER: Shri Mahtab, you may kindly conclude now.

SHRI BHARTRUHARI MAHTAB: Sir, please give two minutes.

Another violation of the basic structure of the Constitution is the change in the spirit of the Fourth Schedule which lists the number of seats for each State in the Rajya Sabha. People from outside the State will also now fill these seats. An outsider can never be a true representative of the State.

[Shri Bhartruhari Mahtab]

I was mentioning about Shri Seshan who looked beyond law and beyond the Constitution and proceeded on the basis of an assumption that he made that a person could not so change his residence as to become qualified to be elected from another State. The issue is—can we legitimise clearly that a person has the right of residence, right to establish residence for purpose of his occupation as well as for electoral purposes. That ought to be made very clear. The difficulties which were created by Shri Seshan should not be the only guiding factor or guiding consideration for us.

When we speak of open votes, the preferential votes get diluted. The preferential vote is a complex one. It respects the minority vote and if you have an open vote, does it respect the minority vote? The concept of preference vote is to see that a Member is elected by process of elimination.

Therefore, though I fully agree that purity in electoral system should be maintained, but who is going to enforce it? It shows the incapacity of the leaders who do not have control over the MLAs. This Bill, practically, speaks about our leaders. They do not have faith in their elected Members. This shows to what depth we have fallen. That is why, I oppose this Bill.

[Translation]

DR. RAGHUVANSH PRASAD SINGH (Vaishali): Mr. Deputy-Speaker, Sir, this Bill has been brought with a motive to facilitate big people only and is very much against the spirit of the constitution. In the study of law, there is a sum for exercise. Since the hon. Minister is a jurist himself. I am putting this question to him. It's a one line amendment— "to substitute India by that state or state area". It is a Bill to substitute India by state and Union territories. Sir, a jurist will give a constitutional reply only but you are the Judge. You have to give your own ruling. The name of Rajya Sabha is as it was before— 'Council of States. They have not changed its name in the Constitution as 'Desh Sabha' and 'Bharat Sabha. It is the same Council of State only. I would like to read out the three lines as mentioned in article 80 of the constitution about the constitution of Council of States:—

[English]

Clause (1) of Article 80 of the Constitution says:

"The Council of States shall consist of—

(b) not more than two hundred and thirty-eight representatives of the states and of the Union Territories."

Clause 2 says:

"The allocation of seats in the Council of States to be filled by representatives of the States..."

Clause 4 says:

"The representatives of each State in the Council of States..."

[Translation]

The word 'Composition of Council of States' is intact in the Constitution. According to Constitution, the Council of States shall consist of representatives of the states and of the Union Territories and will have a say in passing a Bill to make it a law. Now they are substituting it by Bharat. Till date Council of States is composed of both Council of States and Union Territories in the Constitution. But they are resorting to short-cut method. It means that they have not bothered to study Constitution at all. Rather they have presumed that their work would be over if they substitute 'State and Union Territory' by 'Bharat' in the Peoples Representation Act. Now it has to be seen whether this is in accordance with the Constitution. The Constitution is very clear about the Composition of Rajya Sabha.

I would like to cite an example. How would it sound if we call a Tamra Kalash made up of brass swarn kalash. The thing made up of brass would always be a tamra kalash not Swarn Kalash and a thing made up of gold would always be swarn kalash. In the same way the council of States is constituted by the representatives of both States and Union Territories. Article 80 states this in all its clauses. All these are there as they were before. Setting aside what has been provided, the hon. Minister has resorted to a short-cut method.

18.00 hrs.

An amendment has been brought to substitute 'in that State or State area' by 'in India'. If this was his intention he should have brought amendment first in article 80. It would have been an another constitutional amendment. But this Bill has been brought as a short-cut in the influence of big persons to make them happy and facilitate them. Hence it is against the spirit of the

constitution. Sir, earlier also these big persons used to impost as citizens and during the tenure of T.N. Seshan this section was complied with. T.N. Seshan had discovered some names but does a big person require to get his name registered? Let them be free from all formalities. Such a great disorder...(*Interruptions*)

MR. DEPUTY SPEAKER: Only two speakers are left.

[*English*]

MR. DEPUTY SPEAKER: Now, only two speakers are left to speak on this subject. It will take another 10-15 minutes.

[*Translation*]

SHRI KHARABELA SWAIN: Sir, please conclude this discussion today itself...(*Interruptions*)

[*English*]

SHRI RAMDAS ATHAWALE (Pandharpur): Let it be for tomorrow.

[*Translation*]

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF TOURISM AND CULTURE (SHRIMATI BHAVNABEN DEVRAJBHAI CHIKHALIA): Now, only two speakers are left i.e. only a little is left. We would like it to be passed today itself...(*Interruptions*)

[*English*]

MR. DEPUTY SPEAKER: You know, tomorrow we have two constitution Amendments listed in the Business for the day.

[*Translation*]

SHRI SOMNATH CHATTERJEE: Now, voting will be conducted in it...(*Interruptions*)

SHRI RAMDAS ATHAWALE: This Bill is very important. Let it be passed tomorrow...(*Interruptions*)

[*English*]

MR. DEPUTY SPEAKER: Is it the pleasure of the House to extend the time for further half an hour?

SEVERAL HON. MEMBERS: No, Sir.

SHRI A.C. JOS (Trichur): We are tired. Everyday it is like that.

THE MINISTER OF LAW AND JUSTICE AND MINISTER OF COMMERCE AND INDUSTRY (SHRI ARUN JAITLEY): It can be passed today if we sit for some more time. It is not going to take much time now.

MR. DEPUTY SPEAKER: I think only two Members are there, and the hon. Minister will take another 20 minutes or so.

SHRI A.C. JOS: Sir, tomorrow we will meet exactly at 11 o'clock.

MR. DEPUTY SPEAKER: It will take just 20-25 minutes more.

SHRI RAMDAS ATHAWALE: I will take half an hour. You kindly take it up tomorrow. This is an important Bill. So, you kindly take it up tomorrow...(*Interruptions*)

MR. DEPUTY SPEAKER: So, you are going to support this tomorrow. O.K. tomorrow. Now the House adjourned to meet again at 11.00 a.m. tomorrow.

**18.03 hrs.**

*The Lok Sabha then adjourned till Eleven of the Clock on Thursday, August 7 2003/Sravana 16, 1925 (Saka)*

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