

15.17 hrs.

**STATUTORY RESOLUTION RE: DISAPPROVAL OF REPRESENTATION OF PEOPLE (AMENDMENT) ORDINANCE**

**AND**

**REPRESENTATION OF THE PEOPLE (SECOND AMENDMENT) BILL**

Title: Combined discussion on the statutory resolution regarding disapproval of Representation of People (Amendment) Ordinance, 2003, moved by Shri Priya Ranjan Dasmunsi (Resolution negatived) and consideration of the Representation of the people (Second Amendment) (Bill), 2003 moved by Shri Arun Jaitley. (Bill passed).

MR. DEPUTY-SPEAKER: The House would now take up item nos. 18 and 19 together.

Shri Basudeb Acharia Not present

Shri Iqbal Ahmed Saradgi Not present

SHRI PRIYA RANJAN DASMUNSI (RAIGANJ): Sir, I beg to move:

"That this House disapproves of the Representation of the People (Amendment) Ordinance, 2003 (No. 5 of 2003) promulgated by the President on 29 October, 2003."

Sir, I gave this notice of disapproval not because this Bill is not required. But issuing ordinances have become a practice of the Government and the Government always tends to think a little later than before. The Government was aware of the fact that Delhi elections will be held at such and such time and the Government did not think it proper during the last days of the last Session to bring this legislation in that House and get it passed. The Government knew about it. The Government has now given an explanation in the note that since there was Delhi elections they had no other option but to bring this ordinance. As if the Government was not aware that there will be elections held in Delhi and that this was a requirement that was needed to be fulfilled insofar as the District Election Officers were concerned. I want to strongly object to this casual way of functioning of the Government and to their not wanting to understand the implications of this and forcing the hon. President to sign the ordinances. This is most unfortunate.

MR. DEPUTY-SPEAKER: The hon. Minister may now move his motion.

SHRI A.C. JOS (TRICHUR): Sir, we also have given notice on this Resolution...(*Interruptions*)

MR. DEPUTY-SPEAKER: We are taking up both the items together. The hon. Minister has to move the Bill. Then Shri Dasmunsi will speak and then again the hon. Minister will reply.

SHRI A.C. JOS : Sir, I am not talking about the Bill. I am talking about the ordinance. Six of us have given notices for speaking on this disapproval motion.

MR. DEPUTY-SPEAKER: The usual practice is that the mover of the Resolution first moves the Resolution. Shri Basudeb Acharia was the first person. He was absent. Then the next Member was also absent and then the third Member in the list, Shri Dasmunsi has moved the Resolution. Now, the Bill has to be moved. There is a procedure to be followed.

The hon. Minister may now move the motion.

THE MINISTER OF LAW AND JUSTICE AND MINISTER OF COMMERCE AND INDUSTRY (SHRI ARUN JAITLEY): Sir, I beg to move:

"That the Bill further to amend the Representation of the People Act, 1950, and the Representation of the People Act, 1951, be taken into consideration."

SHRI PRIYA RANJAN DASMUNSI : I would repeat the reason as to why I gave the notice. The Government's explanation today is really amusing to the entire House. The Government has given this explanation:

"The Commission has recommended amendment of section 13AA to provide for designation or nomination of district election officers in the Union Territories including the National Capital territory of Delhi, which will facilitate better management of elections in the Union Territories. The Election Commission has also requested that in view of the ensuing general election of the Legislative Assembly

of the National Capital Territory of Delhi, urgent action may be taken to carry out the proposed amendments."

My question to the hon. Law Minister is this. Please tell us the date when actually the Election Commission advised the Government of India and its appropriate Ministry, that is, the Law Ministry that these amendments are required on the eve of the elections. Was it during the course of the last Session or was it given later on? If it was given after the Session was over, I could understand the urgency. If it was not so, then the Government had deliberately kept avoiding the Parliament to bring the amendment in time and used the course of Ordinance. This is my first point.

Secondly, was not the Law Ministry aware of the fact as to when the Delhi elections were coming and the time of expiry of the life of the Delhi Assembly? There was a tall claim of the Union Government that they will provide statehood to Delhi. I was expecting an Ordinance for statehood for Delhi. The Government deliberately chose the route of ordinance because they thought that they can use this course and there is no point of bringing it to the House in advance. Therefore, I feel that the Law Ministry and the Government as a whole did not study the implications carefully during the course of the Session which may be applicable to the district election officers enactment on this provision and advised the Election Commission as far as Delhi is concerned. Therefore, we think that this is not the way to function and the Government lacks competence in judging the issue. That is why the Ordinance was brought and hence, I moved the motion for disapproval of this Ordinance.

MR. DEPUTY-SPEAKER: Mr. Minister, you may speak on the Bill now.

SHRI ARUN JAITLEY: Sir, the limited scope of this Bill is that, in the year 1966, Section 13AA was introduced in the Representation of the Peoples Act, 1950. The language of Section 13AA as it was then introduced is like this. I would like to read the sub-Section.

"For each district in a State other than a UT, the Election Commission shall, in consultation with the Government of the State, designate or nominate a district election officer who shall be an officer of the Government."

Therefore, in 1966, when this Bill was introduced and this Act was passed, there was only a provision for a district election officer in a district of a State but not a Union Territory because the Union Territory was deemed to be one district itself and there was only one district election officer for the entire Union Territory. Subsequently and recently, the Union Territories themselves have been split up into various districts. And on account of this contingency which has arisen, you require to have district election officers for each of the districts within the Union Territories.

Now, the Election Commission, when it must have been preparing for the elections in the Union Territory of Delhi, on the 9<sup>th</sup> June, must have realised that there was a legal embargo and that this could not be done for each district in the case of Delhi. So, as Mr. Dasmunsi asked as to when it was brought to notice, they said that it may not be addressed to the Government, that it may not be possible for us to have in every district because of the work load on the main election officer and otherwise. At this stage, the Department of Legislation which administratively deals with the Election Commission held consultations with the various Departments of the Government, particularly the Home Ministry whose views were very important because the Home Ministry deals with the Union Territory itself. The response from the Home Ministry was received by us towards the end of 21<sup>st</sup> August, 2003. Therefore, on account of this exigency, since elections were to be held on the 1<sup>st</sup> December in Delhi, it became extremely important during September-October, when the election work was being done, to bring this change by virtue of an Ordinance and that is why, it was brought by virtue of an Ordinance. And today, this is a constitutional and legal requirement. It is for this reason that this Ordinance was brought about.

Let me also remind my good friend, Shri Dasmunsi, that while he is rightly concerned about the statehood of Delhi, statehood of Delhi requires a Constitutional Amendment. And Constitutional Amendment is not possible through an ordinance. Ordinary legislation can be brought in through an ordinance but not the Constitutional Amendment. Therefore, for that purpose itself the Government has already announced its decision and taken adequate steps in that direction.

SHRI PRIYA RANJAN DASMUNSI : The hon. Minister himself has admitted that the Election Commission had brought this to the notice of the Government on 9<sup>th</sup> June. The hon. Law Minister stated that from 9<sup>th</sup> June to 21<sup>st</sup> August various Departments spent time as to whether this Act could be amended. Then only it was brought before the House. The Election Commission explained the urgency, I use the word 'urgency', and the Government sat over it till 21<sup>st</sup> August. It deliberately ignored the Parliament and brought an Ordinance to suit its purpose. This is unpardonable. I think the Government should not function in this manner. This is absolutely wrong.

MR. DEPUTY-SPEAKER: Motions moved:

"That this House disapproves of the Representation of the People (Amendment) Ordinance, 2003 (No. 5 of 2003) promulgated by the President on 29 October, 2003."

"That the Bill further to amend the Representation of the People Act, 1950, and the Representation of the People Act, 1951, be taken into consideration. "

SHRI PAWAN KUMAR BANSAL (CHANDIGARH): Mr. Deputy-Speaker, Sir, as our hon. colleague, Shri Priyaranjan Dasmunsi explained that this Government perhaps works only through ordinances, I would also like to repeat this point more for the sake of adding emphasis to it. It is because of the route of ordinance adopted by this Government, a good bit of time of the Parliament is wasted on matters which could have been utilised for other purposes. It is only a sort of repetition again that I refer to the dates mentioned by the hon. Minister. He says that it was on 9<sup>th</sup> June, 2003 that the Election Commission had recommended to the Government this Amendment. It was on 21<sup>st</sup> August 2003 that they had got the approval of the Ministry of Home Affairs. I do not really know and I just wonder as to why that much time was taken for this small Amendment by the Home Ministry to clear. There are many matters in which we want the Home Ministry to rather act but the matters are not referred to the Home Ministry for very long and there is some sort of shuttling of files from one Department to another.

As the hon. Minister says, it was to expedite the work of the Election Commission that they had thought of including the Union Territories in the scope of Section 13 AA of the Act to provide for the appointment of district election officers. That is a step which I would welcome because I have myself seen the enormous amount of work which the persons charged with the responsibility of carrying out the election work in the Union Territories have to handle.

Our precise objection was that, as it has been said out earlier also, in the last Session, which was the Monsoon Session, once the recommendation had come from the Election Commission, immediately thereafter a Bill could have been introduced in the Parliament and it could have been passed. There were as many as nine Ordinances that were issued this time. The summons for the present Session were delayed. During that period different reasons have been offered for giving justification for the Ordinances and this is one of them.

I would only wish that in future, whatever little time this Government has with it, it does not resort to promulgating ordinances. I would like to make a pertinent point, though it is out of context. One of the Ordinances that we have before us relates to a matter which in the form of the Bill had been referred to the Standing Committee. The matter was with the Standing Committee, but the Ordinance was issued. Now, we will be told that there is a Constitutional requirement, please pass the Ordinance or clear the Ordinance. Is this the way the Parliament should work? Is this the way the Government should deal with the Parliament?

Having said that, I come to the scope of the Bill. The hon. Minister says that it has a limited scope. The Government itself has a limited scope.

The Government of the day is functioning with a limited scope. Nevertheless, be that as it may, we would support this particular aspect of the Bill as such.

There was a requirement of appointing more election officers dealing with elections in the Union Territories, as you would also have seen yourself. But I would not like to expand the scope of the debate on this Bill. I would like to limit myself only to the conduct of elections and the preparation for the elections by the Election Department.

One very important function which is the primary responsibility of the Election Department is the preparation of electoral rolls. I am not saying about the Election Commission now because that function is delegated by the Election Commission of India to the various offices in the State Government. That function is the preparation of electoral rolls. There is a cause of concern for any person who wants democracy to thrive in a democratic society. What is happening now? We have intensive revision of electoral rolls once in a while. People go from house to house for door to door survey to include or exclude the names of people from the electoral rolls which is considered to be a very important constitutional right. But people are disenfranchised. Without their knowing, their names are deleted and knocked out from the list. There are cases where people have the electors photo-identity card issued to them on the basis of their earlier enrolment as voters. But suddenly they find that their names are not there. This is a matter of very serious concern. The Government just does not seem to be worried about it.

I have seen that in a large number of cases in Delhi itself rows and rows of houses were deleted from the electoral list. ...*(Interruptions)* If this concerns the hon. Minister, if he could really exercise his authority also in seeing to that or at least prevailing upon the officers all over the country- I would seek his indulgence to kindly listen to me on this point- I was saying that in a large number of cases, rows and rows of houses were deleted. I am sure, he must have

heard about it otherwise also.

There are a large number of cases where names of the voters were deleted from the list despite the fact that they have their electors photo-identity card with them. What are our officers doing? I have a valid reason even to allege that in Delhi and in my own place - these were the two places which fell victim to the machinations of this Government - they decided that colonies should be bulldozed and razed to the ground. Under a different policy, they have done it. We are taking up that matter differently. But this is what is happening consequently. The basic intention has been to disenfranchise the residents of those areas. There is no requirement in law whatever except the requirement of an "ordinarily resident" clause. A person who is ordinarily resident of a place is entitled himself as a voter therein. There is no provision in law besides that. There is nothing in the election Form-6 prescribed by the Election Commission for the purpose. But, Mr. Minister, what are your people down stairs insisting upon? They are insisting upon the birth certificate. What are they further insisting upon? They are insisting upon the residence certificate. In a large number of cases, I have come across this. If I am a residence or tenant of somebody's house, the landlord would not even issue me a resident certificate because of various implications it could lead to. I am thereby deprived of the right of getting myself enrolled because I do not attach the residence certificate therein.

Then, they insist upon the employment certificate. Has the Government assured employment to everybody in the country though the hon. Prime Minister says that one crore jobs are being provided every year? The field staff insist on the employment certificate irrespective of the fact whether a person is employed somewhere or not. I would like to know from the hon. Minister whether these are the grounds for denying somebody the right to get himself enrolled as a voter. I have seen this these days. The date came to an end only yesterday. It is special process.

SHRI A.C. JOS : That has been extended.

SHRI PAWAN KUMAR BANSAL : I wish it were extended. I am happy to know that it has been extended. What is happening is that the staff deployed for the purpose insist on these things with the result that a person who is unable to give the proof, is deprived of his vote. His name is not included in the list.

What for do we have more officers? It is for the purpose of bringing about efficiency in the working of the department as the hon. Minister has said in his Statement of Objects and Reasons, but then we must see that, after 55 years of Independence, not a single citizen of the country is deprived of his right to be enrolled as a voter.

Sir, there is a move afoot to start issuing a Citizenship Card, a common card for the entire populace of the country. Here, if somebody's name is missed out, the consequence is, he is deprived of his right to vote. While preparing the National Identity Card for the citizens of India, if somebody's name is deleted in the same way as the names are deleted from the Voters' List, what would happen to those people? They would not even be treated as citizens of the country. Is this the way the Government should function? This is the cause of concern which I would like to express.

Sir, there are many other functions which the staff deployed for the purpose is supposed to be performing. I would not refer to them. But I would now refer to one point on behalf of those people who are deployed for election duty in different parts, sometimes in their own States and sometimes in other States. The Government was very eager to provide proxy voting to the people in the Armed Forces. But they have not taken care of those people who are posted on election duties. This happens all the time. I am not accusing just this Government only. This is the practice which has been there all through. The lower level staff deployed for election duty always ask for their right to vote where they are put on duty. That right is not granted to them. The response given to them is that they must submit their requisition well in advance so that they would get a postal ballot and like others they would only exercise their voting right through postal ballot. I am not advocating proxy voting for them, but I certainly say that if a person is deployed in a city other than his own or at a polling station other than his own, which, invariably, is the case, he should have the right to vote from that very place.

With these few observations, I hope that the hon. Minister would take note of the points raised by me so that the entire conduct of elections, beginning with the preparation of electoral rolls and ending with the declaration of results, is conducted properly and I would also request the hon. Minister that it must be ensured that the election staff carry out their duties and functions with full sense of responsibility to see that the process of election is clean.

श्री थावरचन्द गेहलोत (शाजापुर) : अध्यक्ष महोदय, मैं लोक प्रतिनिधित्व (दूसरा संशोधन) विधेयक, 2003 जिसके संबंध में लोक प्रतिनिधित्व अधिनियम, 1950 तथा लोक प्रतिनिधित्व अधिनियम 1951 में और संशोधन करने का प्रावधान है, उसका समर्थन करता हूँ। अभी विरोधी पक्ष के माननीय वासुदेव आचार्य जी, बंसल जी और प्रिय रंजन दासमुंशी ने जो सांविधिक संकल्प के माध्यम से निरनुमोदन की बात कही है, उससे मैं असहमति व्यक्त करता हूँ और उनसे निवेदन करना चाहता हूँ कि ऐसे महत्वपूर्ण मामले में कम से कम निरनुमोदन सांविधिक संकल्प न दें तो ज्यादा अच्छा है। आप और हम सब अनेक वॉ से यह देख रहे हैं और मांग भी करते आ रहे हैं, सरकार से अपेक्षा भी करते आ रहे हैं कि चुनाव निपक्ष और अच्छी तरह से सम्पन्न हो, शांतिपूर्ण सम्पन्न हो। लड़ाई-झगड़े आदि की गड़बड़ी की शंका नहीं हो इसलिए जो जिला निर्वाचन अधिकारी होते हैं, उनका नियंत्रण उस क्षेत्र पर ठीक से रहे और चुनाव कार्यवाही ठीक से सम्पन्न हो जाये, ऐसी व्यवस्था होनी चाहिए। वैसे राज्यों में इस प्रकार की व्यवस्था है परन्तु संघ शासित क्षेत्र अर्थात् केन्द्र शासित क्षेत्र में विशेषकर जैसे अभी दिल्ली के चुनाव होने थे, यहां अगर यह अध्यादेश जारी करके कानूनी प्रावधान नहीं किया होता तो चुनाव प्रक्रिया में उसका ठीक से पालन करवाने में खर्ब वगैरह जो उम्मीदवार की ओर से प्रदर्शित किये जाते हैं, उसे देखने

में कठिनाई होती।

### 15.39 hrs. (Shri P.H. Pandian in the Chair)

और चुनावी कार्यवाही पर नियंत्रण करने में भी कठिनाई होती क्योंकि जो पुराना कानून था, उसमें यह प्रावधान है कि संघ राज्य शासित क्षेत्र पूरे में एक ही निर्वाचन अधिकारी होता और उसी निर्वाचन अधिकारी को उस क्षेत्र में अर्थात् पूरी दिल्ली में चुनावी कार्यवाही सम्पन्न करनी होती थी। अगर उसी के पास प्रावधान सीमित होता, केन्द्रित होता और सारे 70 उम्मीदवारों अपने हिसाब का पर्चा दूसरे या तीसरे दिन लेकर उसके पास जाते या निर्वाचक नियमावली में चुनाव के पहले संशोधन हुआ था, उस प्रक्रिया में उसके पास जाते रहते तो उसके ऊपर काम का बहुत बर्धन होता।

शायद सुव्यवस्थित चुनाव प्रक्रिया सम्पन्न कराने में कठिनाई होती। इसलिए यह आवश्यक महसूस किया गया कि इसमें संशोधन करके राज्यों की भांति हर जिले में निर्वाचन अधिकारी ऐप्वाइंट कर दिए जाएं। वे फिर अपने-अपने क्षेत्र का निर्वाचन कार्यक्रम बनाकर, जो बना है, उसपर अमल करने के लिए कार्यवाही करें। जो संशोधन लाया जा रहा है, यह उसी की पूर्ति करने के लिए है। मैं यह मानता हूँ कि यह संशोधन हो गया और दिल्ली जैसे राज्य क्षेत्र में 1966 के बाद इसका बहुत विस्तार हुआ और उसके साथ-साथ क्षेत्रफल भी बढ़ा। अगर निर्वाचन अधिकारियों की संख्या नहीं बढ़ती और एक ही होता तो वह सब कार्यवाही सम्पन्न कराने में कठिनाई महसूस करता। वह कठिनाई न हो, इसलिए इसका विकेंद्रीकरण हुआ और निर्वाचन अधिकारी भिन्न-भिन्न जिलों में नियुक्त किए गए जिसके कारण निर्वाचन कार्यवाही सम्पन्न होने में काफी मदद मिली और शांतिपूर्वक निर्वाचन सम्पन्न हुए। निपक्षता से निर्वाचन कार्यवाही सम्पन्न हुई। चुनाव आयोग ने समय-समय पर अनेक निर्देश दिए हैं और उनका पालन करने में एक से अधिक निर्वाचन अधिकारी होने के कारण काफी सफलता मिली है और चुनाव सम्पन्न कराने में उनको कम कठिनाई महसूस हुई है। मैं मंत्री जी से निवेदन करना चाहूंगा कि चुनाव में जो छोटी-मोटी और खामियां दिखाई देती हैं, गड़बड़ी करने वालों, धनबल, बाहू बल आदि भिन्न-भिन्न प्रकार से चुनाव जीतने के जो उपाय किए जाते हैं, इस दिशा में भी गंभीरता से विचार करके इस प्रकार के कानूनी प्रावधान कर दिए जाएं कि वास्तविक जनसेवा का लक्ष्य लेकर जो लोग राजनीति में काम करते हैं, उनको इस प्रकार के बाहूबल और धनबल से नुकसान नहीं हो और जो जनसेवा की भावना से राजनीतिक क्षेत्र में अच्छे लोग, निठावान लोग आए हैं, जनसेवा में विश्वास करके ईमानदारी और कर्तव्य निठा से काम करने की इच्छा रखते हैं, ऐसे लोगों को भी लाभ मिल सके। इस प्रकार के चुनाव प्रबंधन के लिए जो भी कानूनी प्रावधान करना आवश्यक हो, उस प्रकार के कानून बनाने में भी अग्रसर होना चाहिए। सरकार ने अध्यादेश जारी करके कानून में जो प्रावधान किया और निर्वाचन अधिकारियों की संख्या क्षेत्रवार की, इस बात का समर्थन करना हूँ और निरनुमोदन का विरोध करता हूँ।

**SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL):** Sir, I oppose the Representation of the People (Second Amendment) Bill, 2003. I am not opposed to the changes that are being made in the election process, but the thing is that laws originate in the House and ordinance is only an exception. The power of issuing an ordinance is provided in the Constitution to meet the contingent and exceptional situations. It should not be a casual matter and, it should not be a routine matter. It must be in the true sense of the word exceptional cases.

It is there in the Constitution under article 123 for the President of India and article 213 for the Governments of the State. Reading these two articles, it is crystal clear that there must be a contingent satisfying an emergent situation. Otherwise, making a law through ordinance is more or less making the legislature a rubber stamp of the Executive by using the majority.

Here is a case that the law was changed as early as 1966. The original statute was passed in 1950. The amendment was effected to in 1966. We all know that for administrative purposes, in Union Territories, one single district may be divided into two or three. As early as in 1966, there was a provision that for every district there should be an Election Officer. So, it is quite natural that for administrative purposes, the Union Territories are divided into more than one district. It was the duty of the Law Department to see that the election law is also amended in such a way so as to suit their administrative convenience. That was not done. What was the emergency? I have already referred about the two conditions. One condition is that there must be an emergent situation. Secondly, in the coming Session, it should be ratified by this House, otherwise it will lapse. So, for preventing the process of lapsing, they have come with the Ordinance. If that provision was not there, they would not have come with an ordinance. This is the position. It is an important cardinal principle of Parliamentary democracy that law should originate in the House, not in the Central Secretariat or elsewhere. But, there was an occasion and this Government had ample time to originate the law at the proper time. What was their urgency? You are quite aware that for each and every district, there should be an election officer. You were sleeping. Then, all of a sudden they thought that the Election Commission should advise these people. They have urged the Central Government to see that the separate officers were appointed for each and every administrative unit in the Union Territory. Were they not aware of it? Should the Election Commission advise you in this matter? You could have done it earlier. Do you contend that you will always accept the advice of the Election Commission? In those days, the Election Commission had given you an advice that each and every candidate should file his return at the time of nomination regarding his assets, his educational qualification. That was the suggestion from the Election Commission to the Central Government. The Central Government rejected it. But, they were forced to accept it because the Supreme Court gave a direction that the Election Commission's stand is correct. That is why we are now filing returns. In the past also the Central Government did not accept the advice of the Election Commission in those matters. So, the Election Commission's advice as the only criteria for issuing an Ordinance will not hold water.

Moreover, we all knew that there would be elections in Delhi. It is not a new thing. There is no urgent situation. The Central Government as well as the people of India, everybody knew that there will be elections in four States out of which one is the Union Territory and not only that it is, a Capital Union Territory. All of us know that there must be an election officer for each and every district. I can understand if it is in far off or remote Union Territory. It is their view that every Union Territory is divided into many administrative districts. Were you sleeping? What happened to you? It is because you have the audacity that we have got the majority and we will get a rubber stamp legislation. That is the purpose for which it was done. In the normal course, they ought to have preferred a Bill not an ordinance. This is very unfortunate. Not only this, I am coming to another one where also the same thing is being repeated. Everybody knew that there will be Winter Session of Parliament. The Central Cabinet decided long before that the session will begin on such and such date.

Even after writing a decision, they have issued this ordinance. I do not understand. If the Central Government had taken the decision to hold the winter session at second of this month, they would not have issued this Ordinance. Not only this ordinance but many other ordinances were also issued. Are you making a mockery of the rubber stamp?

Are we here to approve everything whatever you do and to put in our signature? Is it a rubberstamp? It is being usually done by the Central Government. I can understand it if there is an emergent situation. Unforeseen circumstances are coming. There were reasons for unforeseen circumstances. For unforeseen and unexpected circumstances, this provision is made in the Constitution. It is not for appointing an Election Officer, not for having a simple statute but it is for unforeseen and very emergent situation, which will affect the nation. In those circumstances, the power of Ordinances can be made use of.

In a very casual way, for each and every purpose, you are bringing in an Ordinance and making mockery of the Parliamentary democracy. The decision of the House is made more or less a rubberstamp.

We have a very great Prime Minister, who is well versed with these matters and he has the Parliamentary experience for nearly 50 years. It is very unfortunate that during the regime of Shri Atal Bihari Vajpayee, you are doing it. This is very unfortunate. I do not agree with you. I can understand if a new man, without much experience, doing it. During his period, something may have happened but it should not happen during the time of Shri Atal Bihari Vajpayee, who is in this House for a very long time and who knows the methods of issuing Ordinances. You are doing it and we will have to suffer and we will have to say goodbye to all these things. That is what you expect.

You were quite sure that the House would meet on such and such a date but on the presumption that we are the National Democratic Alliance and so we can do anything and everything. That is why, you issued the Ordinance and now you are coming with a Bill replacing the Ordinance and asking us to give our Assent.

Sir, I give my Assent because there is no other way and I cannot escape. But, even our learned Law Minister cannot answer my question. It is a fact. I am not expecting any reply from him but let it be on record that there was an old man who spoke all these things.

With these words, I strongly oppose this move of issuing the Ordinance.

**DR. MANDA JAGANNATH (NAGAR KURNOOL):** Sir, I rise to support the Ordinance and also support the Representation of the People (Second Amendment) Bill, 2003.

I agree with the hon. Minister that as there was urgency that the Union Territory and the Capital Delhi was going for polls and this Ordinance was necessitated.

I disagree with the hon. Member, Shri Pawan Kumar Bansal's contention that the Government of the day is running on the Ordinances. The entire country knows as to which was the party and which were the Governments that were running on the Ordinances. I do not want to go into the list. Sir, the country knows. That is why, I do not want to go into the details. ...*(Interruptions)* The country knows. We are also a part of the country. We, the Members of Parliament, are also a part of the country and citizens of the country.

Sir, this Bill seeks to appoint the District Election Officers in the districts of the Union Territories like any other district in the State by amending Section 13 AA of the election processes.

At that time, since Independence, we had one Chief Election Commissioner. As the time passed, we have appointed two more Election Commissioners to oversee the entire election work of the country. Likewise, though the provision was not there at that time, as the time passed, it was necessitated because the election process has changed a lot and it is getting metamorphosed. That is why, we had this necessity. In my opinion, the appointment of District Election Officers should not be just on the paper as a job to be done. Nowadays, the election is becoming very costly. It is because of non-supervision of the election process, as Shri Pawan Kumar Bansal said, in the voters' list, there are so many discrepancies in the work of addition and deletion. If this work is given to the District Election Officer or he takes it up, the mistake of deletion of people who have got the I-cards will not take place and all these things would be corrected.

As I said earlier, as the time passes, the election is becoming very costly. As we all know, the people are not adhering to the election guidelines. They are seeking so many ways of spending and making the election process costly. So this is causing a lot of inconvenience to the people who are from the weaker sections of the society. They cannot stand in the election. Suppose these officers are appointed, if they take care of these aspects, if they adhere to the rules of the Election Commission and if this chapter is taken care of, then the expenditure will come down drastically. It will give an opportunity for the people from the weaker sections of the society to contest.

This also reduces the burden on the Election Commission. Before this Ordinance was brought in, it seemed there was only one Chief Election Commissioner in the Union Territories and it put a lot of burden on him to oversee the election process. This will give an opportunity to share the burden and see that the election process is carried on very well.

**DR. K. MALAISAMY (RAMANATHAPURAM):** At the outset, I do not like to go into the merits or the demerits of the case in promulgating the Ordinance. I am neither there nor here. I am in between the two.

Coming to the scope of the Bill, as rightly said, it has got a limited scope. The very purpose of Ordinance, which is being replaced now by a Bill, is to empower by designating or nominating a particular officer to be a District Election Officer. Till now, every State is having this designation of District Election Officer. The District Head, namely, the District Collector or the District Magistrate used to be appointed as the District Election Officer in every State, whereas in the Union Territories, since the Union Territories did not have the terms of districts, they did not have this designated officer. Hence, now the Union Territories have been divided into districts. As such, they want to go along with the other States. It has rightly come up first with an Ordinance and then to replace it; now it has come as a Bill.

Coming to the merits of the Bill, our Indian democracy stands on three pillars of Executive, Legislature and Judiciary operating through bureaucracy and assisted by the Fourth Estate. So these are the limbs of our Indian democracy. As we know, the political executives enjoy the power in parliamentary democracy and the bureaucrats are working under them. What to do is the function of the political executive and how to do is the function of the bureaucracy. Now, as we know, as the Chairman very well know, the entire district administration is in the hands of the District Head, namely the District Collector or the District Magistrate.

16.00 hrs.

Under him the revenue division is there and under him the *Tehsildars* are there. So, the hierarchical discipline is already there. It starts with the Collector and ends with the *Tehsildar*. It is a well-knitted link and the hierarchical layer and discipline is well-established from the days of the colonial rule and we have been strictly following it.

Now, as far as the district election officer is concerned, he must be not only the district head but he must be a coordinating agency. Rightly the District Magistrate or the District Commissioner or the District Collector will have a coordinating function with all the other Departments and he has got a super say in all these matters. That is why he has been rightly appointed as the district election officer. After having done it in the States and in the Union Territories now, what is going to be the effect? Many of our friends have said that a number of reforms are to be done. I am one who always wish for a comprehensive electoral reform to have a free and fair poll and a peaceful poll and to have an excellent election process. Unfortunately, many complaints are forthcoming despite the fact that several reform measures are done.

In this connection, if I am not mistaken, can I suggest or make certain observations? The district election officer who has been appointed is none other than a part of the State machinery. As you know, the Election Commission of India is an independent and a constitutional authority. But he cannot operate directly. On the other hand, he has to operate through the State machinery only. In the State machinery, the District Collector or the Commissioner is a Government servant of that particular State. Though they are working for that particular period directly under the Election Commission and though the law says so, but still their transfers and postings and the disciplinary proceedings are with the concerned State Government or with the Union Territory. In that case, I want to know whether the district election officer who has been designated or nominated now can afford to be independent as the Election Commission can afford to be independent. This is my first point.

In this connection, can your law or your process afford to appoint a district election officer from outside the State. In other words, all the district election officers or District Collectors are officers belonging to the Indian Administrative Service. Can you bring them from one State to another? In a sensitive area whether a particular officer from the other State can be posted as district election officer? Assuming that this is not possible, even from within the State can you select your district election officer or can you think of a right person for a right job? I want to know whether this could be possible. This is my second observation. Thirdly, I want to know whether your procedure and other things can be simplified and rationalised in such a way that it will not give room for any misuse or malpractice.

Further, I want to know whether you can enhance the powers of the Election Commission in such a way that they can monitor and supervise electoral process directly because they are entitled to have the superintendence, direction and control. This is the basic function of the Election Commission. I want to know whether they can afford to have superintendence or control or direction directly and if it is not possible, how their direct monitoring and supervision could be improved.

Finally, the observers who have been appointed do not have the legal sanction of powers. On the other hand, they come and observe and report. They do not really exercise the powers. Of course, they come from far away States and they are totally independent. In such a situation, it is up to you to think of whether you can afford to give more powers to the observers during the time of election so that more fair and free elections can be ensured.

To conclude, I would like to appeal to the hon. Minister of Law and Justice not to have this kind of piecemeal reform or piecemeal amendment. On the other hand, can he think of a comprehensive electoral reform so that our elections will be total and free and fair.

डॉ. रघुवंश प्रसाद सिंह (वैशाली) : सभापति महोदय, लोक प्रतिनिधित्व अधिनियम, 1950 तथा लोक प्रतिनिधित्व अधिनियम, 1951 में एक छोटा सा और संशोधन करने वाले विधेयक को सदन में लाने का काम मंत्री महोदय ने किया है और उन्होंने दावा किया है कि इसमें ज्यादा संशोधन नहीं है बल्कि वॉ 1996 में जो संशोधन हुआ था, उसमें 'other than a Union territory' यानी यूनियन टैरीटरीज में जिला नहीं था, तो हरेक जिले में पहले जिला निर्वाचन पदाधिकारी की बहाली होती थी, इसका प्रावधान था और उस समय जिले नहीं थे। इसलिए इसमें जो "other than a Union territory" लगा हुआ था, अब इन्होंने कहा है कि चूंकि अब जिला हो गया है इसलिए इस "other than a Union territory" को इसमें से हटाया जाए और यह भी कि दिल्ली में चुनाव होने जा रहा था इसलिए इन्होंने क्लेम किया है कि आर्डीनेंस चुनाव आयोग के निर्देश पर लागू किया गया।

महोदय, जिला निर्वाचन पदाधिकारी का प्रावधान है, चूंकि अब हर जगह जिला हो गया है, इसलिए जिला निर्वाचन प्राधिकारी के जो कार्य परिभाषित हैं उनमें कहा गया है कि वे मतदाता सूची तैयार करेंगे, नामावली तैयार कराएंगे, बूथ बनाएंगे। उसके बाद बूथ पर रिटर्निंग अफसर की बहाली होगी, निर्वाचित पदाधिकारी बहाली होगी, रिटर्निंग अफसर की बहाली होगी, आइडेंटिटी कार्ड तैयार होंगे। ये सारे कार्य, कहा गया है कि जिला निर्वाचन पदाधिकारी कराएंगे।

महोदय, यह जो अभी संशोधन आया है कि "other than a Union territory" को हटाकर सभी राज्यों में, चाहे यूनियन टैरीटरी हो, सभी में यह प्रावधान किया गया है, तो जब जिला नहीं था, जिला निर्वाचन पदाधिकारी का काम कौन करता था ? आप जो संशोधन इसमें लाए हैं, इसमें यदि देखा जाए, तो इन्होंने कहा है। Sir, section 26 of the Representation of the People Act, 1951 deals with appointment of Presiding Officers for polling stations. Section 26(5) reads :

"Any reference to a district election officer in section 25 and in this section shall, in relation to a constituency in a Union Territory, be construed as a reference to the returning officer for that constituency."

अब इन्होंने कहा है कि हमने उसका लोप कर दिया है। यदि ऐसा है, तो इसमें रिटर्निंग अफसर भी दिया गया है, तो क्या रिटर्निंग अफसर के बिना काम हो जाएगा, यदि ऐसा है, तो कैसे निर्वाचन होगा, इसको लोप करने से कैसे काम चलेगा क्योंकि इन्होंने रिटर्निंग अफसर का कहीं कोई प्रावधान नहीं किया है। ऐसे कैसे काम चलेगा। रिटर्निंग अफसर कैसे चुनाव कराएगा ? एक जिला निर्वाचन अधिकारी कलैक्टर को बहाल करता है, इसको इन्होंने खाली छोड़ दिया है और केवल "other than a Union territory" रखा है, जिले के बन जाने से जिला निर्वाचन पदाधिकारी की बहाली हुई है, लेकिन अभी हाल में जो चुनाव हुए हैं उनमें हमें देखने को मिला कि कई बूथों पर आइडेंटिटी कार्ड नहीं बने। वहां से गरीबों को लौटा दिया गया। उन्हें वोट नहीं डालने दिया गया। किसी से कहा कि राशन कार्ड लाओ, किसी से कहा कि चुनाव पहचान पत्र लाओ। लोगों का नाम नहीं आया है, यह बहुत असंतुलित स्थिति है, बहुत अव्यवस्थित स्थिति हो गई है। कुछ लोगों का कुछ राज्यों में आइडेंटिटी कार्ड नहीं बना, पहचानपत्र नहीं बना, कुछ का नाम नहीं है, कहीं कहा गया कि नाम है, लेकिन पहचान के लिए राशन कार्ड लाओ। इसलिए मेरा कहना है कि कोई एक नियम तो होना चाहिए। लोक तंत्र में वोट का अधिकार है। इसलिए मेरा कहना है कि एक कॉम्प्रीहेंसिव इलैक्टोरल रिफॉर्मर्स बिल आना चाहिए। ये बहुत होशियार मंत्री हैं।

ये सब कुछ लेते हैं लेकिन इन्होंने कभी वोट लड़ा होता तो इन्हें पता लगता कि कैसे वोट होता है और क्या-क्या कठिनाइयां होती हैं। इसलिए इलेक्टोरल रिफॉर्मर्स का कॉम्प्रीहेंसिव बिल आना चाहिए। वहां अभी जो मतदाता सूची तैयार हो रही है, बूथ पर काफी कशमकश चल रही है। चुनाव आयोग रंग-बिरंगा निर्देश दे रहा है। अभी चुनाव आयोग ने निर्देश दिया कि जो कम्युनिटी हॉल बन रहा है, सरकारी बिल्डिंग है, पहले यह था कि गवर्नमेंट बिल्डिंग में बूथ रहेगा, लेकिन आयोग ने निर्देश दे दिया कि अब उसमें नहीं रहेगा, इसलिए सभी राजनैतिक दलों में मारा-मारी हो रही है। आपने सभी राजनैतिक दलों से क्यों नहीं परामर्श किया और उस संबंध में विचार-विमर्श किया। जिन बूथों पर वोट होता है, जो मतदाता सूची तैयार हो रही है उसमें गरीब व्यक्ति का नाम छूट रहा है। सेशन के समय में उन्होंने कहा था कि हम आइडेंटिटी कार्ड अनिवार्य रूप से लागू कराएंगे और जिनका नहीं होगा, उन्हें हम वोट नहीं डालने देंगे। फिर कोर्ट में चलेज हुआ, अब उन्होंने निर्णय दिया कि जिनका आइडेंटिटी कार्ड नहीं है और वोटर लिस्ट में नाम है, वे वोट डालने के हकदार होंगे। उसके बाद कुछ लोगों का वोट बना और कुछ का नहीं बना, कुछ राज्यों और जिलों में बना और कुछ में नहीं बना तथा अगर बना तो गलत बन गया। फोटो खिंचाने और आइडेंटिटी कार्ड बनाने का वे 18-20 रुपए मांग रहे हैं। मंत्री जी, यह आम जनता की कठिनाई है, इसलिए आप कृपा करके इसकी छानबीन कीजिए। जिसका आइडेंटिटी कार्ड नहीं बना, उसका बनाने के लिए 18-20 रुपए का उसे दंड लगा। उसमें कुछ का नाम गलत लिख दिया, इसलिए उसे बूथ से वापस भेज दिया। ये सारी गड़बड़ियां हो रही हैं, बूथ का कैसे मैनेजमेंट होगा। इसमें ये सब संशोधन किया जाए तब इसे पास किया जाए। जिला रिटर्निंग आफिसर का जो कर्तव्य है, उसमें जो कठिनाइयां हैं, चुनाव आयोग का जो निर्देश होता है, उसमें आपसे परामर्श होता है या नहीं होता, हम नहीं जानते। जो गरीब व्यक्ति है उसका नाम मतदाता सूची में डालना चाहिए। आइडेंटिटी कार्ड निश्चित रूप से सब का बने और अगर नहीं बने तो यह प्रावधान हो कि पहले की तरह जिनका वोटर लिस्ट में नाम है, वे वोट डालेंगे। गरीब आदमी का चुनाव के दिन कोई सुनने वाला नहीं होता है।

महोदय, अभी फतुहा में उप-चुनाव हुए, वहां गरीब आदमी को लौटा दिया। अखबारों में खबर छपी कि उसका आइडेंटिटी कार्ड नहीं था, इसलिए उसे लौटा दिया। उसमें स्पेलिंग मिस्टेक होती है, तालमेल नहीं बैठता है इस कारण से उसे लौटा दिया जाता है। इसलिए जो चुनाव की प्रक्रिया है उसमें सुधार के लिए,

**Representation of the People Act, 1950 and the Representation of the People Act, 1951**, चुनाव संबंधी जो नियम बने हुए हैं, उसका भी अध्ययन किया जाए और किस हिसाब से लोगों को वोट डालने में सहूलियत हो, इस बात का भी ध्यान रखा जाए। लोकतंत्र का मतलब है, वोट का राज और जब तक वोट प्रणाली दुरुस्त नहीं होगी तब तक उसके आगे की प्रणाली भी दुरुस्त नहीं होगी, यह हम लोगों का मत है। इसलिए वोट का राज और लोकतंत्र की मजबूती के लिए चुनाव साफ-सुथरा और शांति वाला होना चाहिए, जिससे हर मतदाता मतदान कर सके और किसी को कठिनाई न हो। अब उसमें कहा कि पहले 500-700 मतदाता एक बूथ पर होते थे लेकिन इस बार कह दिया कि 1500 मतदाता एक बूथ में रहेंगे, क्योंकि अब इलैक्ट्रॉनिक मशीन होगी और उसकी क्षमता है कि 1500 मतदाता एक दिन में सुबह से शाम तक वहां वोट डाल सकते हैं। अब तीन टोलों के मतदाता एक बूथ पर होंगे, इसलिए उन्हें आने-जाने में असुविधा होगी, उनके लिए दूरी बढ़ जाएगी। कमजोर वर्ग के मतदाताओं को वोट डालने में कठिनाई उत्पन्न होगी। ये किस तरह के निर्देश चलते हैं, इसकी जानकारी विभाग को कोई देता है या नहीं या चुनाव आयोग अपने मन से कुछ न कुछ निर्देश जारी करता रहता है।

चुनाव आयोग के अधिकारी लोग स्थानीय स्तर पर भयभीत होते हैं, इसलिए इन सभी बातों पर क्यों नहीं परामर्श किया गया कि 1500 मतदाताओं पर एक बूथ होगा तो तीन टोलों में जो चार किलोमीटर में फैले हुए हैं, जिनमें कहीं 200, कहीं 400 और कहीं 500 मतदाता हैं, सभी को एक जगह करने में दो किलोमीटर से अधिक दूरी हो जायेगी, जिससे मतदाताओं को कठिनाई होगी।

बूथ के सम्बन्ध में जो निदेश जारी हुए हैं, उनको देखा जाना चाहिए और इस तरह के निदेशों को वापस लिया जाना चाहिए, जिससे गरीब, कमजोर वर्ग और गांव के रहने वाले मतदाताओं को वोट डालने में कठिनाइयां हों और उनको वोट डालने से वंचित किया जाये। उनकी सुरक्षा का प्रावधान किया जाये। हमने संशोधन दिया था कि सब जगह फोर्स का प्रावधान होना चाहिए। अगर पैरा मिलिट्री फोर्स वहां रहेगी तो वहां जोर-जबरदस्ती नहीं चलेगी। इस हिसाब से तीन राज्यों में चुनाव हुआ है, हमारे यहां भी तीन विधान सभा क्षेत्रों में उपचुनाव हुआ है। प्रथम बार चंडी में हुआ था, जिसमें इलैक्ट्रॉनिक प्रणाली से मतदान हुआ था, इसमें समय कम लगता है, लेकिन उसमें भी कई बूथों पर इलैक्ट्रॉनिक मशीन लगी हुई थी। लोगों ने वोट डाला तो मशीन बोली ही नहीं। दिल्ली में अभी मतदान हुआ है, मल्होत्रा जी को सब अनुभव हुआ होगा। ये सारी कठिनाइयां हैं, इन सब पर विचार-विमर्श करके ठीक ढंग से कानून बनना चाहिए और चुनाव आयोग को निदेश जाना चाहिए और वह प्रणाली लागू होनी चाहिए। केवल अदर दैन यूनियन टैरीटरी को हटा देने से काम नहीं चलेगा, ऐसा विधेयक आने से चुनाव प्रणाली में सुधार की सम्भावना है। हमें लगता है कि सरकार इस माने में बहुत गम्भीर नहीं है। जैसे-तैसे चुनाव हो जाये, वह समय अब नहीं है। वोट साफ-सुथरा होना चाहिए। जब तक वोट साफ-सुथरा और चुनाव दुरुस्त नहीं होगा, तब तक आगे का भी काम ठीक नहीं होगा।

इन्हीं शब्दों के साथ इस बिल को तो पास कर दिया जाये, किन्तु जो सब बिन्दु बहस के दौरान उठाये गये हैं, उन पर गम्भीरता से विचार करने की जरूरत है और चुनाव आयोग से परामर्श करके उन पर आगे कार्यवाई करने की जरूरत है, जिससे आम मतदाता का नाम न छूटे, आम मतदाता को आइडेंटिटी कार्ड मिले और नहीं



भी मिले तो भी उसे वोट डालने से वंचित नहीं किया जाये। उनको बूथों पर सुरक्षा मिले और उनके टोले से कम दूरी पर बूथ होना चाहिए ताकि वे वोट डाल सकें। इन सभी बिन्दुओं पर ध्यान देने की जरूरत है, तब इस विधेयक को पास करने की जरूरत है।

**SHRI ADHI SANKAR (CUDDALORE):** Sir, I rise to support the Representation of the People (Amendment) Bill, 2003.

The District Electoral Officers coordinate and supervise the work relating to the preparation and revision of electoral rolls and conduct elections to all Parliamentary, Assembly and Council constituencies within the Districts concerned. It is a welcome measure.

The work of revision of electoral rolls is now going on. The Chief Election Commission's instructions are very clear and helpful to the citizen. But the State Electoral Officers are acting according to the instructions given by the ruling parties in the States. For example, in Tamil Nadu, they displayed the voters' lists one week after the scheduled date.

...(Interruptions) They distributed the voters' lists to the recognised political parties after ten days. In the normal course, all political parties are allowed to print Forms 6, 7 and 8. Now, the State Electoral Officer strictly warned the political parties not to use printed forms.

After the DMK party office bearers met the Chief Election Commissioner in Delhi and convinced him, instructions were issued to the State Electoral Officers to allow printing of Forms 6,7, and 8. This is a welcome measure taken by the Chief Election Commission.

In Tamil Nadu, they have reduced the number of polling booths by thousands. Nearly five thousand to six thousand polling booths are removed now. Without consulting the recognised political parties, this was done by the Tamil Nadu State Electoral Officer.

**SHRI K. MALAISAMY (RAMANATHAPURAM):** That was not done by the Government; that was done by the Election Commission.

**MR. CHAIRMAN :** Election Commission is an independent body.

**SHRI S.S. PALANIMANICKAM (THANJAVUR):** It will help the DMK party also.

Sir, in my State, most of the voters' lists are not clear. Thousands of voters' name have been deleted from the voters' lists with the intention of the ruling political parties ....(Interruptions)

**DR. V. SAROJA (RASIPURAM):** Sir, we have a strong objection to it....(Interruptions) Anything he speaks cannot go on record. (Interruptions) My State is strongly objecting to it....(Interruptions) It should be deleted.

**SHRI K. MALAISAMY :** Sir, we were told that thousands and thousands of applications have gone from the party functionaries of the DMK. They are pressurising the officers and they are getting the things done also...(Interruptions)

**MR. CHAIRMAN :** Both these things should be on record.

**SHRI ADHI SANKAR :** Sir, in most of the voters' lists, the serial numbers and the door numbers are not clear. In most of the places, there is a double entry...(Interruptions) The entire process must be regularised....(Interruptions)

**MR. CHAIRMAN :** It is not concerning Tamil Nadu. It is concerning the Union Territory.

...(Interruptions)

**SHRI ADHI SANKAR :** In Tamil Nadu, the voters' lists are in confusing manners....(Interruptions) About 60 per cent of the voters' lists are not clear. It must be rectified....(Interruptions) All steps should be taken to improve the system.

With these words, I conclude.

SHRI K. MALAISAMY : Sir, the electoral rolls were got prepared by them. Now, we are trying to improve upon that....(Interruptions)

SHRI ADHI SANKAR : Sir, at that time, he was the Election Officer.

SHRI K. MALAISAMY : No, I was not the Election Officer (Interruptions) I was only a State Election Commissioner.

श्री सुरेश रामराव जाधव (परभनी) : सभापति महोदय, लोक प्रतिनिधित्व (दूसरा संशोधन) विधेयक, 2003 का, मैं अपनी ओर से और अपनी पार्टी की ओर से समर्थन करने के लिए खड़ा हुआ हूँ। इस संशोधन विधेयक के उम्र बहुत कुछ डिसकशन हुआ है। लोक प्रतिनिधित्व अधिनियम 1950 और 1951 का संशोधन इस बिल में हो रहा है।

सभापति महोदय, मैं इस बिल पर ज्यादा कुछ नहीं कहूंगा। मैं केवल दो-तीन बिन्दुओं पर प्रकाश डालूंगा। हमारी डेमोक्रेसी में जो चुनाव होते हैं, वे निर्भय और निपक्ष होने चाहिए। इसके बारे में कोई दो राय नहीं हो सकती। इस डेमोक्रेसी में सबसे ज्यादा महत्वपूर्ण चीज डेमोक्रेसी की आत्मा, मतदान और मतदान की प्रक्रिया है और वोटर्स लिस्ट है। अगर निर्भयता और निपक्षता से चुनाव होंगे तो हमारी 55 साल की डेमोक्रेसी आगे भी सशक्त होगी।

सभापति महोदय, मेरी नजर में सबसे ज्यादा अहम चीज वोटर्स लिस्ट है। इस देश का जो नागरिक है, उसको वोट देने का अधिकार होना चाहिए। उसका मतदान मत पेटी में जाना चाहिए।

लेकिन अगर गलती से वोटर्स लिस्ट में किसी सिटिजन का नाम नहीं आता तो वह मतदान करने से वंचित हो जाता है। वह अपने मूल अधिकार से भी वंचित हो जाता है। जब मतदान सूची बनती है, मतदान सूची बनने का जो पीरियड होता है, उसमें सब सिटिजन्स की सूची बननी चाहिए। लेकिन असल में ऐसा नहीं होता। किसी के लिए डोमीसाइल सर्टिफिकेट की डिमांड की जाती है, किसी के लिए दूसरे सर्टिफिकेट की मांग की जाती है। अगर किसी कारणवश गरीब तबके के लोग जिलाधिकारी कार्यालय या जिला निर्वाचन अधिकारी के पास कागज जमा नहीं करवा पाते तो उनका नाम मतदान लिस्ट में शामिल नहीं किया जाता। मैं आपके माध्यम से कहना चाहता हूँ कि 21 नवम्बर को मेरे 31 लोक सभा क्षेत्रों में हिन्दू और मुस्लिमों का बहुत बड़ा रॉयट हुआ था। 21 तारीख से लगातार 8-10 दिन तक कर्फ्यू जारी था। उस समय कोई भी व्यक्ति बाहर नहीं जा सकता था, कोई मतदाता जिलाधिकारी के कार्यालय या निर्वाचन अधिकारी से नहीं मिल सकता था। मैं एमपी की हैसियत से भी जिलाधिकारी से नहीं मिल सका। उस समय बड़ी विचित्र स्थिति थी। हिन्दू-मुस्लिमों में अविश्वास का वातावरण था। सब लोग अच्छा माहौल क्रिएट करने के कार्य में लगे हुए थे। इस वजह से वोटर्स लिस्ट बनने का समय निकल गया। जब हम एप्रोच नहीं कर सके, विधायक एप्रोच नहीं कर सके तो जनता कैसे एप्रोच करती। जब पीरियड खत्म हो गया तो हम जिलाधिकारी से मिले। वे कहने लगे कि अब हम कुछ नहीं कर सकते, आपका पीरियड खत्म हो गया है, अब आप इलैक्शन आयोग के पास जाएं। ऐसी स्थिति में मेरे 31 लोक सभा क्षेत्रों के 70,000 से 80,000 वोटर्स का नाम शामिल नहीं किया गया। अभी इलैक्शन होने वाले हैं। सिर्फ मेरे क्षेत्र में 6 विधान सभा क्षेत्र हैं जिनमें एक विधान सभा क्षेत्र में 15,000 वोटर्स का नाम शामिल नहीं किया गया। वे कहते हैं कि इलैक्शन आयोग के पास जाएं। मैं आपके माध्यम से विनती करता हूँ कि ऐसे स्पेशल केसेज़ में, जब मतदाता डेमोक्रेसी के अधिकार से वंचित रह जाते हैं, आपको कुछ मदद करनी चाहिए।

हिन्दू-मुस्लिम का बहुत बड़ा कम्युनल राइट्स हुआ था। मस्जिद में बम-ब्लास्ट हुआ था। उसके कारण हिन्दू और मुस्लिम की दोनों तरफ की दुकानें जलाई गईं। बहुत लोगों की दुकानें जली थीं। इसी में हमारा वोटर्स लिस्ट का पीरियड चला गया। ऐसी स्थिति में हम डोमीसाइल सर्टिफिकेट नहीं दे सके, एम्प्लायमेंट सर्टिफिकेट नहीं दे सके। वैसे तो बहुत सारे लोगों के पास नौकरी नहीं है फिर भी एम्प्लॉयमेंट सर्टिफिकेट मांग रहे हैं। लेकिन हम कुछ भी नहीं दे सके। हम जिलाधिकारी कार्यालय या निर्वाचन अधिकारी को भी एप्रोच नहीं कर सके। ऐसी विशेष परिस्थिति में हमें मदद मिलनी चाहिए और हमारी वोटर्स लिस्ट का जो पीरियड खत्म हुआ था, इलेक्शन कमीशन या सरकार द्वारा इसे बढ़ाने के लिए मंत्री महोदय हमारी मदद करेंगे, ऐसी मैं उम्मीद करता हूँ।

बेसिक जो हमारी वोटर्स लिस्ट है, अगर वोटर्स लिस्ट में ही मतदाताओं का नाम नहीं होगा तो वोट कहां से करेंगे? मैं आपको मेरे क्षेत्र का उदाहरण देता हूँ। 70 से 80 हजार लोगों का नाम वोटर्स लिस्ट में नहीं है तो हम वोट कैसे करवाएंगे? अच्छे और निर्भय मतदान के लिए मतदान सूची बननी चाहिए और इसके लिए खास तौर से मतदान सूची बनाने के लिए संबंधित अधिकारी के लिए हमारे मंत्री महोदय जरूर कुछ सूचना देंगे। इतना कहकर मैं अपनी बात समाप्त करता हूँ।

**SHRI PRAKASH YASHWANT AMBEDKAR (AKOLA):** Sir, I am here to make certain suggestions. I am not going to give a speech. It is an innocuous amendment brought about due to changing circumstances of the Union Territories. One of the suggestions – many persons have spoken about it – is that in many of the States the voter identity cards have been issued. Once the card is issued, it is expected that he is on the voters' list. I would like the Minister to take up this matter with the Election Commission. In the revision, many names are omitted. Once a name is omitted, he does not have a right to vote despite having the card. I would like the Minister to take up this matter with the Election Committee that if he has a card, which is a valid card and which has been issued by the Election Commission, he should be allowed to vote. Only because in the revision one name is missing, he is deprived of the right to vote. He is having a photo identity card. It is a visible photo which is there. If that is there, he should be allowed to vote. This is one of my suggestions.

The other suggestion is – Dr. Raghuvansh Prasad Singh has also spoken about it – that where the constituency is rural, the major problem is that Election Commission has fixed the minimum number as 1000 voters for a polling centre. With the electronic system coming up, they have fixed the minimum number at 1500 votes for each centre. Most of the villages in the rural areas have only 1000 voters. Sometimes the total population is around 600 to 700 persons. The distance between each village is around six to seven kilometres. If I have to speak of my constituency, it has nearly about 1200 villages. Out of 1200 villages, 900 villages are such that the population itself is not more 750 and the distance between one village and the other is not less than six to seven kilometres. If this is the situation and if they are going to fix the minimum number at 1500 voters per Centre, the voting percentage is going to go down. Otherwise, you will have to raise

the expenditure limit for the Lok Sabha elections as you will have to transport people from one village to the polling centre. My suggestion in this case would be that every village should have a polling centre. I do not think that there is a shortage of staff for implementing it. There is enough staff. The only thing is that a conscience decision has to be taken saying that to increase the voting percentage, every village should have a polling centre.

The third suggestion is that with the 74<sup>th</sup> Constitution amendment, normally the Electorate Officer was himself the Chief Officer looking after the local body elections. We have intervened into the State Election Commission. The question is that there is no governance of the State Election Commission. He has no powers to govern the officers who are employed there. This is a very grey area.

Sir, I would like the Government to amend the People Representation Act so as to include the Zila Parishads and the local bodies so that they become functional. Or, to bring about a legislation at the national level by which the State Election Commissions could be strengthened so that there could be free and fair elections.

Sir, lastly, there is one more area where there are conflicting opinions and I thought, I should bring up this issue while participating in the discussion on this Bill. What are basically the powers of the Election Commission? Is it superintendence? If so, does that superintendence include deciding as to when to conduct elections? During the Gujarat elections, this matter was referred to the Supreme Court. But the Supreme Court refrained from giving a judgement for its own reasons. I would like to tell the hon. Minister that everything cannot be decided in a court of law. In some cases, one has to go by conventions as well. I would like to suggest to the hon. Minister that he should convene a meeting of all the recognised and registered political parties and decide about it. For example, if an Assembly is dissolved, or say, if the Parliament is dissolved and if the Election Commission says that they would not hold elections to these bodies for six months, then are we going to have a situation in this country where the elections would be held according to the whims and fancies of the Election Commission? This needs to be decided.

My suggestion to the hon. Minister is that the Government should convene a meeting of all the recognised and registered political parties to decide – if an Assembly or the Lok Sabha is dissolved – within how many days elections to those bodies should be conducted. The Election Commission might say that they would take up revision of electoral rolls and all that. Revision of electoral rolls is a routine matter and I do not think that this should come in the way of holding of elections to various constitutional bodies. These are my suggestions and I think, the hon. Minister would take note of my suggestions.

**SHRI ARUN JAITLEY:** Sir, I am extremely grateful to the hon. Members who have expressed their views in detail on various facets of the conduct of free and fair elections in India.

Sir, first, a word about the objection that was raised by some hon. Members with regard to issuance of ordinances when the Parliament was not in Session. Let me assure Shri Dasmunsi that at times, when he said that the Government is not working, even the power of ordinance is resorted to during the inter-Session period when you realise that some contingencies have occurred that necessitates a legislation. We would like to uphold the supremacy of this Parliament. Hon. Members are right that the normal rule is to come through the route of an ordinary legislation by introducing it in the House. It is only when there is some grave emergency that the legislation on account of that urgency cannot await the next Session of the House that you resort to the route of ordinance.

Sir, in this case, for instance, the Election Commission wrote to the Government in the month of June that this amendment would be necessary for the conduct of elections, particularly in the context of the Union Territory of Delhi. Thereafter, a discussion took place between the various departments of the Government and the view of one of the departments of the Government was that this would arise only in such Union Territories which have State Assemblies. Those Union Territories which do not have a State Assembly, why should this amendment apply to them? Shri Pawan Bansal was in the forefront of raising this objection. Delhi is divided into various districts and each district of Delhi would require a District Election Officer. But what would happen in case of Chandigarh where there is no State Assembly. Therefore, this was not such a casual matter that the Election Commission has requested and this should immediately have been legislated. It was to be done only after a detailed discussion. This counter view was conveyed to the Election Commission. They analysed the view and said that even electoral rolls are, at times, even required for municipal elections. But finally a view was reached after consultation in the Government that we would require a District Election Officer in each district even in a Union Territory, a provision which had been excluded in the 1966 Amendment in section 13A of the 1950 Act.

Because of that, two consequential amendments are required in the 1951 Act which are being mentioned in this. There were several important questions which have been raised with regard to individual constituencies. I request Shri Jhadav that with regard to those issues, he would easily request the Election Commission, and I am sure the Election Commission would take a reasonable view if there has been some kind of a social tension in that constituency and voters could not register in that period and what system they would devise there.

The power of the Election Commission is very wide. Shri Ambedkar wanted to know as to what would really be the width of the power under article 324. The power under article 324, in our reading, is very clear. It is the power of superintendence which is to be exercised in aid of conduct of free and fair elections. This power is so wide, Mr. Jos, as it has been called the reservoir of residuary power. Reservoir of residuary power means that wherever space is occupied by a primary legislation or a subordinate legislation, that space cannot be eroded by a power under article 324. And curiously enough, a case where the Supreme Court has decided this, is also titled Jos's case which is in relation to the

machines, the EVMs. Therefore, wherever there is a specific space which is occupied by primary legislation or subordinate legislation, the Election Commission, under article 324, cannot go against that. But where there is a vacuum and the Election Commission feels that orders are required to be passed for the purpose of conduct of free and fair elections, the Election Commission can always use that power under article 324 and that is why, it is called a reservoir of residuary powers of the Election Commission.

Questions were raised by my hon. friends from the AIADMK. It was a very important question. When you appoint district election officers, who are otherwise officers of the State Government, how would it ensure that there is free conduct of elections because these Government officers would be accountable to the State Government, their ACRs would be written by the State Government, their promotion would depend on what the State Government have to really say. The disciplinary power would be that of the State Government. Therefore, if that situation remains, this would somewhere indirectly affect the conduct of fair and free elections even though, for the purpose of elections, they are under the supervisory jurisdiction of the Election Commission. This problem had continued to remain for a very long period.

About three years ago, I remember that when Shri Gill was the Chief Election Commissioner, there was also a case in the Supreme Court to that effect. Members from all the political parties may know this that Shri Gill and myself arrived at a particular formulation. The formulation was finally put across to the Supreme Court, it received the judicial approval of the Supreme Court and the legal provision now is that all officers who are involved in electoral duty, for the limited purpose of that electoral duty, would be accountable to the Election Commission. Orders in relation to election with regard to even transfers and postings can be passed by the Election Commission. The Election Commission may have the power to remove them but it can only recommend disciplinary power to the State Government or the appropriate disciplinary authority. That residuary power would remain only with the State Government. There is a detailed order passed by the court in terms of how disciplinary matters of these officers would be dealt with. Now this is the law of the land and the Election Commission continues to function on those lines.

I hope that with the experience in the conduct of elections that our Election Commission has gained, these problems would be solved. For instance, in Jammu

and Kashmir, it was a multi-party democracy which would remain like ours. But the system would also cure itself that it would eventually have the capacity to resolve those problems in terms of constitutional framework which we have created.

With these words, I commend to this House to accept this Bill.

**SHRI PRIYA RANJAN DASMUNSI :** Sir, in response to what the Law Minister just now has stated, the argument that he provided to us is that the 9<sup>th</sup> June communication of Election Commission took a long time and till August, by inter-Ministerial dialogue, they could not find a solution, and that is why, there has been a delay. This explanation is not convincing enough. I think he himself understands that the recommendation of the Election Commission was very specific.

It was just to separate the whole issue whether electoral officers of the Union Territories should be treated equally or National Capital Territory of Delhi should be treated as a special case.

I do not like to argue any more now because the whole argument is not convincing even to his own constituents as to why this Ordinance route was chosen instead of bringing in a Bill in the last Session itself. Taking this opportunity, I would only humbly submit to the hon. Law Minister to consider the following four points. I understand the importance of this legislation. Only day before yesterday, I came back from my constituency. I found how important is the role of the district election officers during enrolment time. I would appeal to the Law Minister that if necessary to consult the Election Commission and to give a direction through the Election Commission to the respective States on these points. There is a big confusion going on. The confusion is that; (1) the recent circular we got in that meeting of State electoral officers recognises that political parties can submit the enrolment form in a bunch with an affidavit to the BDOs or the local authorities. They will fix a date for hearing and then they will decide the electoral rolls. As the Law Minister has rightly pointed out, the fear is that district electoral officers under whom the BDOs are working – they are junior officers – are the masters to decide the final role. If I give a bunch of 5,000 electoral forms, BJP gives a bunch of 4,000 forms, and the Left parties give a bunch of 5,000 forms – I am not mentioning the name of the State – if the pressure comes from the party in power that you include this bulk, depriving the other parties of any fair trial, where the grievance should be addressed thereafter? This is a big question.

Second question is determination of age proof for determining that a particular person is of the age of 18. In large number of villages in India, children are born not in municipal hospital or in the district hospital. So, they cannot give the exact date of birth. Children in the villages are born in their own homes, in *daima's* lap. Some of them have gone to school, up to fifth or sixth. It is impossible for the hospital authorities to give them the birth certificate. There are only three institutions which can do that. One is the local *panchayat*, the second is the *Tehsildar*, and the third is the parents themselves whose name figure in the voters list. The parent certify that my son was born on so and so date. How will they prove that they are 18 or 19 years of age? I am faced with this problem in my constituency and in the constituency of Shri Shah Nawaz Hussain, Cabinet Minister in this Government. These type of problems are being faced by the villagers.

Another complication is that Voters Identity Card has been issued and the person went to vote, but his name is not in the list. The name is in the list, but Voters Identity Card is not there. They are being harassed by the presiding officers there and they come back to home. These kind of difficulties are being faced by the voters.

On the following point, I would request the Law Minister to kindly enlighten us. It is said that informally, not formally, the electoral officers have got direction not to increase the inclusion rate more than two per cent. If genuinely the number of youngsters who have reached the age of 18 or 19 have increased by more than two per cent, and if this informal direction of not to increase the inclusion rate more than two per cent, how can they really exercise their right to franchise? How can our country ensure that right in the existing system? These things are very much there.

I fully share with the point raised by Shri Ambedkar that the voting machines used recently and the re-organisation of booths have created new problems. You are combining two booths into one. When you are combining them into one, when it comes to voting, you are not choosing the central point. They are choosing a purposeful point, again inspired by the party in power in the local area. This deprives the voters of the other part to go to the booths on that day. Therefore, I feel that the voting rate would be going down in the remote areas, of course not in the urban areas, because they cannot go to the polling booths. I know at least a few booths in my constituency and for example, Shri Shah Nawaz Hussain's constituency one has to cross the river. It is impossible. The booth is on the other side of the river. How can they go? I feel that the Election Commission can give a new direction in this regard. If necessary, the number of booths can be increased.

But let the booth be in the *gram panchayats*. Let the *gram panchayat* members, who are in the villages, choose to vote. But this is creating another problem where the mechanism itself will deprive the electorate of exercising their franchise. I think a comprehensive review right from the inclusion of the electoral roll programme up to 31<sup>st</sup> December down to the direction on the issue of the age, bunch collection of forms and giving a decision *suo motu* one day, should be reviewed. Suppose people do not come on a particular date, what does the officer do? The BDO fixes a date of hearing. Thousands of people enrol their names. Let them belong to any party. I am not questioning about any particular party. Half of them are engaged in the field with harvesting work. If the parties have to collect those people, go to the places and justify with the affidavit, it would become difficult. So, the political parties' submitting a bunch of forms might create another disorder. Therefore, the direct submission to the lower level authorities would be much more acceptable. It is my understanding of the situation. I hope the Law Minister shall very quickly come with a comprehensive electoral reforms Bill consulting all the political parties. I further hope that he will provide at least another stage of improving the electoral process.

I appreciate the Election Commission. I have no personal grievance against it. Under what difficulties do they work? They have no independent machinery. We do not question their *bona fide*. They are improving the teeth provided to them. They are doing well. I must say that right from Shri Seshan to Shri Lyngdoh, the Election Commission itself has become an acceptable and credible institution. People feel that at least there is an Election Commission which will ensure justice. What can be done to give them more strength? I am glad to hear from the Law Minister about the arrangement they made about the accountability part of it. My suggestion would be that accountability should start right from the District Electoral Officer. When election is announced, the officer in charge of the police stations, the Superintendent of Police and the District Magistrate are involved in the process. If you make another mechanism saying that the person who is a Returning Officer is the Collector, the person, who will be the Additional Returning Officer, is the Additional District Magistrate, the person in charge of law and order, the Superintendent of Police, the persons who will be in charge of the law and order of the local police stations - all of them should be answerable and the ACR should be verified for that period by the Election Commission's representatives, that would go a long way. Then, the teeth will be much more stronger. Otherwise what happens is that the Superintendent of Police cannot tour the entire district on the day of election. Therefore, he depends upon his subordinates. The subordinates claim that they are not exactly under the Election Commission and the Superintendent of Police would answer. The real mischief is taking place there. Therefore, these things should be thought of in-depth. If possible, the Law Minister can have another meeting with the political parties and help the Election Commission with our suggestions and recommendations to strengthen the democratic system in a much more superior way.

With these words, I would like to say that the reply given by the hon. Minister was not very convincing. However, in future, if the Law Minister comes forward with many more amendments based on any recommendation that comes from the Election Commission in regard to improving the situation, they should be expeditiously disposed of in a proper forum and not like in a Round Table Conference or an Inter-Ministerial Conference. I do not understand the logic in discussing it in the Inter-Ministerial Meeting. This logic does not hold good.

The hon. Minister said that the advisory instruction of 9<sup>th</sup> June took time; it went event after 21<sup>st</sup> of August; there was not enough time and hence the Government have brought forward the Ordinance. I have responded to the hon. Minister's reply. I still insist that the statutory Resolution that disapproves of the Ordinance should be accepted by the House. Let the Law Minister bring forward the legislation again. That is what I wanted to say.

MR. CHAIRMAN : The question is:

"That this House disapproves of the Representation of the People (Amendment) Ordinance, 2003 (No.5 of 2003) promulgated by the President on 29 October, 2003."

*The motion was negatived.*

MR. CHAIRMAN: The question is:

"That the Bill further to amend the Representation of the People Act, 1950, and the Representation of the

**People Act, 1951, be taken into consideration. "**

*The motion was adopted.*

*MR. CHAIRMAN: The House will now take up clause by clause consideration of the Bill.*

*The question is:*

*"That clauses 2 to 4 stand part of the Bill."*

*The motion was adopted.*

*Clauses 2 to 4 were added to the Bill*

*Clause 1, the Enacting formula and long Title were added to the Bill.*

*SHRI ARUN JAITLEY: Sir, I beg to move:*

*"That the Bill be passed."*

*MR. CHAIRMAN : The question is:*

*"That the Bill be passed."*

*The motion was adopted.*

---