

31st day of March, 1964 in excess of the amounts granted for those services and for that year.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill to provide for the authorisation of appropriation of moneys out of the Consolidated Fund of India to meet the amounts spent on certain services during the financial year ended on the 31st day of March, 1964 in excess of the amounts granted for those services and for that year."

The motion was adopted.

Shri L. N. Mishra: Sir, I introduce the Bill.

13.09 hrs.

REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL—contd.

Clause 20—contd.

Mr. Speaker: We were considering clause 20 of the Representation of the People (Amendment) Bill. The hon. Law Minister may continue his reply.

The Minister of Law (Shri G. S. Pathak): Mr. Speaker, Sir, I shall take up the various amendments not in the order in which they were moved but in the order of their importance, if I may be permitted to do so. I shall first take up Mr. Kamath's amendment No. 72.

13.09½ hrs.

[MR. DEPUTY-SPEAKER in the Chair]

Views have been expressed in this House disapproving of hoarding, disapproving of black marketing and such anti social acts.

I share that view and I want that the House should express its disapproval, its detestation against such acts and for that reason, I am prepared to accept Shri Kamath's amendment

subject to a condition. The condition is this. Shri Kamath's amendment does not mention any sentence. (Interruption). It is not a zero hour now! Now, for technical offences, very light punishment might be given. and in that case, it may be that the House should not disqualify a person who might have committed a technical breach of the law. Therefore, it is essential that we must prescribe a minimum sentence, may be lower than two years of imprisonment, but a sentence must be prescribed. Therefore, I suggest to Shri Kamath to adopt a substitute amendment which I shall read, and which also fills up the lacuna in his amendment.

Shri Hari Vishnu Kamath (Hoshangabad): I have no draftsman as you have.

Shri G. S. Pathak: Hoarding, black-marketing, etc. have not been defined in this Bill. These are expressions which are mentioned in the headings, titles, etc. But they have got to be defined in this Act if you want to introduce that idea in the clause with which we are concerned. I will read, therefore, the substitute amendment which, if Shri Kamath accepts, I am going to accept and support. We are adding a proviso to sub-section (2).

Mr. Deputy-Speaker: Why not we hold this over and take up other clauses in the meanwhile?

Shri G. S. Pathak: It is ready. I have only to read it. It is this:

Page 12, after line 14, insert:

"Provided that a person convicted by a court in India for the contravention of any law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs and sentenced to imprisonment for not less than six months shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of five years since his release."

†Introduced with the recommendation of the President.

Shri Hari Vishnu Kamath: Pardon my interruption. Very often, after conviction, they are let off with just a fine. After they have been convicted for anti-social, criminal offences, they are let off with a fine or imprisonment for one month, two months or three months, because the Government's policy is to be lenient towards these anti-social elements, and the judiciary takes a cue from the Government's policy and treats them leniently. I therefore suggest that instead of six months, it should be one month.

Shri Sonavane (Pandharpur): The judiciary does not act under the instructions of the executive.

Shri Hari Vishnu Kamath: They sometimes take a cue from the executive's policy. Therefore, six months is too much.

Shri G. S. Pathak: I request hon. Members not to cast any aspersion on the judiciary. Where the sentence awarded is less than appropriate to the offence, they can always resort to a higher court for enhancement of the sentence. Let us not impute motives to the judiciary.

Shri S. M. Banerjee (Kanpur): On a clarification.

Shri G. S. Pathak: I have not yet finished the point. Then there is an explanation which we would like to add, because these words have not been defined. The explanation reads thus:

"In this section, 'law providing for the prevention of hoarding or profiteering' means any law, or any order, rule or notification having the force of law, providing for the regulation of production or manufacture of any essential commodity, the control of price at which any essential commodity may be brought or sold, the regulation of acquisition, possession, storage, transport, distribution, disposal, use or consumption of any essential commodity, the pro-

hibition of the withholding from sale of any essential commodity ordinarily kept for sale. 'Drug' has the meaning assigned to it in the Drugs and Cosmetics Act; 'essential commodity' has the meaning assigned to it in the Essential Commodities Act; 'food' has the meaning assigned to it in the Prevention of Food Adulteration Act."

Shrimati Renu Chakravartty (Barrackpore): What is the first word which you explained? Is it hoarding? Does it include production? Unless it is circulated, we cannot follow. I could not follow the first explanation.

Shri G. S. Pathak: It is hoarding

Shrimati Renu Chakravartty: In that, production and everything also will come?

Shri G. S. Pathak: Everything will come. (Interruption) I may assure the House that I have taken every care to.....

Mr. Deputy-Speaker: Why not he distribute this amendment first? Have you got copies ready?

Shri G. S. Pathak: I have not got copies ready. I have examined all the speeches made in the House and I have very carefully considered them. I think I have incorporated everything that was essential.

Mr. Deputy-Speaker: Supply copies in an hour's time; we can take it up later in the evening.

Shri S. M. Banerjee: Now that the Constitution (Amendment) Bill has been passed with respect to this, we can take this up even tomorrow.

Mr. Deputy-Speaker: Can you give copies in about an hour's time? We can take up the other clauses in the meanwhile.

Shri N. C. Chatterjee (Burdwan): I would like to make one suggestion. I am very happy that the spirit of Shri

Kamath's amendment has been accepted by the hon. Minister. I want to suggest that instead of "six months" it may be "three months."

Shrimati Renu Chakravartty: I suggest that before one commits oneself to this particular amendment, let us all look into the text of it. As far as I could follow, the definition of hoarding has been extended; they are including production in its definition.

Mr. Deputy-Speaker: We will take up other clauses.

Shri N. C Chatterjee: I take it that that is not the intention.

Shri Sonavane: May I suggest to the hon. Minister of Law that unless the whole Opposition agrees to this proposal, there is no use. Otherwise, it is not useful to go in for any such amendment and waste the time of the House.

Shrimati Renu Chakravartty: It is for us to see what it is. (*Interruption*).

Shri Ranga (Chittor): It is a very serious matter. Just because some Members have found it possible and necessary and advisable to speak, my hon. friend says he has taken their views into consideration and therefore formulated this very technical amendment. We have not had any opportunity of studying it. I want to consult my advisers and make sure that kisans are not covered; whether they are likely to be brought within the mischief of this provision; whether the workers who have a right to strike are likely to be brought within the mischief of this provision. We have seen the way in which this Government acts whenever it wants to get rid of anybody. It did not give much attention when it came to arresting Members of Parliament themselves. Therefore, where is the guarantee that it is not likely to use this very same power in order to disqualify its own political enemies. Therefore, it is a very dangerous thing and I would

like careful consideration to be given to this. I would also like to be advised properly as to what the real implications of this are, and what classes of people are to be covered and are likely to be brought within the mischief of this provision, and I am here to protest against any such possibility.

Mr. Deputy-Speaker: We will take up the other clauses now and hold over clause 20.

Shri S. M. Banerjee: What about his reply to Mr. Madhu Limaye's amendment seeking to add the words "moral turpitude"?

Mr. Deputy-Speaker: The whole clause will be taken up later and he will reply.

I will now put clause 21 to the House.

The question is:

"That clause 21 stand part of the Bill."

The motion was adopted.

Clause 21 was added to the Bill.

Clause 22 was added to the Bill.

Mr. Deputy-Speaker: Clause 23. Any amendment being moved? None.

The question is:

"That clause 23 stand part of the Bill."

The motion was adopted.

Clause 23 was added to the Bill.

Mr. Deputy-Speaker: Clause 24. Any amendment being moved? None.

The question is:

"That clause 24 stand part of the Bill."

The motion was adopted.

Clause 24 was added to the Bill.

Clause 25.—(Substitution of new section for section 25)

Mr. Deputy-Speaker: Any amendment being moved? No.

Shri Hari Vishnu Kamath: I would like to speak on this clause. This clause seeks to make a change in the scheme of things. Some of the duties that were assigned to the Returning Officer under the 1951 Act are apparently being assigned to the District Election Officer. I am sure, Sir, you have had some acquaintance with the election officers during the elections that you have fought.

Shri Sham Lal Saraf (Jammu and Kashmir): He was elected unopposed.

Mr. Deputy-Speaker: I was not unopposed; I was opposed.

Shri Sham Lal Saraf: I wanted to short-cut his speech.

Shri Hari Vishnu Kamath: You have fought the election and won, which is more creditable than going to the Rajya Sabha or coming unopposed.

Shri G. S. Pathak: Thank you for the advice.

Shri Hari Vishnu Kamath: Under the new dispensation of things that will come into effect if this Bill is passed,—I know it will be passed because they will bulldoze most of the amendments and have their own way—what will be the duties of the district election officer? Clause 22 reads thus:

"Subject to the superintendence, direction and control of the chief electoral officer, the district election officer shall coordinate and supervise all work in the district or in the area within his jurisdiction in connection with the conduct of all election...."

What will be the position of the returning Officer. Will he become *functus officio* and reduce to anullity if the district election officer is empowered in this omnibus fashion? Under article 324 the Election Commission is vested with the power. It says:

"The superintendence, direction and control of the preparation of the electoral rolls for and the conduct of all elections...."

The same words are used in the Constitution as are used in this clause except that instead of "superintend", here in the clause it is said "supervise". I do not know what the distinction is. My knowledge of English is very meagre.

Shri Sonavane: The Law Minister will enlighten you.

Shri Hari Vishnu Kamath: I am glad Mr. Sonavane has come to his rescue. He is on the panel of Chairmen and he has done his duty well. Sir, English is such a tricky language and I do not know the nuances of it.

Shri J. S. Pathak: Better speak in Hindi then.

Shri Hari Vishnu Kamath: You have brought the Bill in English. If you had brought it in Hindi, I would have spoken in Hindi. The fault is yours, not mine.

श्री मधु सिमये (मुंगेर) : ठीक है ।

श्री हरि विष्णु कामत : प्राय भी सहमत है मैं प्रायका शुक्राजार हूँ ।

The word used here is 'supervise' and the word used in the Constitution is 'superintend'. What exactly is the difference? I do not think we should decide this by referring to the dictionary. I do not know what the Law Minister will say...

Shri S. N. Chaturvedi (Firozabad): Supervision is more immediate.

Shri Hari Vishnu Kamath: You know English much better. I want light from the Law Minister. If everyone fails, we will go to the dictionary. I know, the meaning of the word "vermins"—plural of vermin!—which occurred in a Bill here was decided by the vote of the House. I requested that the dictionary should be called for. That is by the way. I want to know what is meant in clause 22 by the word "supervise", because clause 22 links itself with clause 25. Secondly I want to know the powers of the Returning Officer who ultimately declares the result. I suppose he is charged with the duty of counting votes and declaring the result. At what stage does he come in? What powers will he enjoy and what powers of the Returning Officer are being usurped by or vested in the district election officer? There should not be a conflict between the jurisdiction and duties and functions of the two. Otherwise, elections will be vitiated by their non-coordination. I would request the Minister to tell the House not in an airy, ambiguous manner, but precisely and accurately what the district election officer will do what the Returning Officer will do under the new scheme of things.

Shri Sham Lal Saraf rose—

Mr. Deputy-Speaker: We have already spent 10 hours on this.

Shri Hari Vishnu Kamath: Government is going to spend Rs. 10 crores on the elections, why then talk of 10 hours?

श्री मधु लिमये : घग्ने पांच माल का नाक मभा का घग्नेतर डम पर निर्भर करना है ।

Shri Sham Lal Saraf: This is a very important matter. He is bringing in the appointment of district election officers. In a way it will be very much helpful and will facili-

tate the election, but I want to impress two or three things on him. Sir, we had been pressing that the same district magistrates or deputy commissioners who are at present in charge of the territorial districts for more than 6 months should not be entrusted with this work. Either they should be transferred and fresh men brought or others equal in status to them should be brought in. In fact, I had suggested that Sessions Judges may be entrusted with this work. Then we will have no difficulty. With your permission I would like to bring it to the notice of the Law Minister here and request him to pass it on to the Election Commission. I have come from my State only three or four days back. Polling officers, election officers and returning officers have been appointed and in selecting them mass transfers have taken place. The entire group, the entire type of people come with one particular purpose. If such things happen I am sure the elections will not be fair. Therefore, I would request the Law Minister to give his immediate attention to this important point. I can only speak of my State. I can name them, I can give a list of them, and I can say for what purpose these election officers, polling officers and returning officers have been brought and why promotions have been given to some of them. It is simply for the purpose of helping the concerned people, it is only with nefarious motives. It concerns all. It can affect anybody. Even among the Congress there may be many whom they do not want to be returned because many things have been coming up on to the surface. Therefore, these returning officers and election officers should not be the very same people who are at present there in those districts.

Shri Kamath has raised many points. I only want to stress if you entrust this work to district officers who are at present district magistrates or deputy commissioners it will create difficulties in a number of ways. I would request the Minister to pass

[Shri Sham Lal Saraf]

this on the Election Commission and give us some assurance that as far as the district officers are concerned they will not be the very same persons who have been in the same districts for more than six months as district magistrates or deputy commissioners.

Shri Dinen Bhattacharya (Serampore): So far as I know, Sir, from my personal experience, the District Election Officer has nothing to do with the finalisation of the polling stations. The people in charge of every constituency are asked by the State Election Officers to get the lists of the polling stations finalised. The District Election Officer has nothing to do with it. Therefore, I do not know how this has been brought here. This point may be clarified.

Mr. Deputy-Speaker: The hon. Minister—

Shri Sham Lal Saraf: Sir, there is one other point...

Mr. Deputy-Speaker: No, Sir. He cannot speak for a second time on this.

Shri Sham Lal Saraf: Sir, this is a very important point. We are making a law here.

Mr. Deputy-Speaker: He cannot speak a second time.

Shri Sham Lal Saraf: The Election Officers are inviting the political parties for fixing up polling booths, but in some cases all the political parties are not being invited to these meetings.

Shri G. S. Pathak: Sir, it is known to the hon. Members of this House that the Chief Electoral Officer is one officer who functions for the entire State and the Election Commission suggested that there must be an officer intermediate between him and the returning officers etc.

Shri Tyagi (Dehra Dun): Who appoints him? Is it the Government of

a State which appoints that officer or is it done by the Election Commission?

Shri Ranga: It is only the Government subject to the final approval of the Election Commission.

Shri G. S. Pathak: I must have some amendment on which I should be required to speak. If I am to explain every little part of the election machinery...

Shri Ranga: You are supposed to master it.

Shri G. S. Pathak: I have mastered it. That does not mean I should be required to air my knowledge.

Shri Hari Vishnu Kamath: You take time and reply tomorrow, but you have to reply to the points raised.

Shri Tyagi: To ensure absolute fair-play and fair elections, could it be possible for him to manage that in each State the Central Chief Officer comes from outside the State (Interruptions)?

Shri G. S. Pathak: May I answer first my hon. friend, Shri Tyagi's question. Section 13AA as reported by the Committee says:

"For each district in a State, other than a Union territory, 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 Government."

Therefore, the authority which appoints is the Election Commission and not the Government. The Government has to be consulted because he is going to be an officer of the Government.

Shri Ranga: It is not merely consultation. It is the Government that provides the man and it provides that man who will do its bidding.

Shri G. S. Pathak: Then you should have asked for amendment of 13AA.

There must be somebody who has got to do it. How can anybody without consulting him take away his servant. He is a public servant.

Shri Ranga: That is why we suggested that he should be taken from another State. Our suggestions are not considered by you at all.

Shri G. S. Pathak: Officers of one state are familiar with the conditions....

Shri Ranga: They are familiar with the mischief.

Shri G. S. Pathak: All right. I have no amendment on which I am to address you, you are only discussing it with me.

So far as the returning officers are concerned, their duties are laid down by the Representation of the People Act. They have got to scrutinise the nomination and they have got to perform many other functions. There is no overlapping between the duties of the returning officer and the duties of this new officer (*Interruptions*).

Shri C. K. Bhattacharyya (Rai-ganj): But for these officers, Shri Ranga would not have been here.

Shri Ranga: I want them to be judicial officers.

Shri G. S. Pathak: You cannot have so many judicial officers available. There is lack of judicial officers in the judiciary itself, and you take away judicial officers from the judiciary because you are going to have the elections?

Shri Ranag: You can appoint lawyers of ten years' standing as election officers if you want to do it, but you do not want to do it (*Interruptions*.)

Shri G. S. Pathak: I am required to explain the English language (*Interruption*). There are so many things which form part of the election machinery and which have got to be performed. Polling stations of the entire machinery have got to be set up. This District Election Officer shall co-

ordinate and supervise. He cannot co-ordinate unless he supervises. It means he sees what other people are doing and he has got to co-ordinate so that the efforts may not be duplicated and time and energy may not be wasted. These words: superintendence, direction and control, have been borrowed from the Constitution. Kindly see article 324. "Superintend" may have a much wider meaning. They can give you orders, asking you to do this or do that. If something has been done, if some order has been passed, just like the High Court can superintend the working of the subordinate judiciary, he may interfere in those orders. "Supervising" has got a sense of seeing everywhere what is going on and then co-ordinating them.

Shri Hari Vishnu Kamath: Seeing and not acting.

Shri G. S. Pathak: If I have explained one thing successfully, let me go to the next point (*Interruption*).

Therefore, the Chief Election Officers' functions are also laid down in the two Acts. I need not read those functions. I submit that the Election Commission, quite properly and in order to relieve the burden under which one officer throughout the State was working, recommended the interposition of another officer and that has been done. Therefore, there is no valid objection to what has been done and that will facilitate....

Shri Ranga: What power would he have over the returning officer?

Shri G. S. Pathak: His powers are mentioned in section 22. One power of the District Election Officer will be co-ordination and supervision of all work. Then, the Election Commission and the Chief Election Officer may also entrust other functions to him. The Election Commission is at the apex and it should be entrusted with what other powers these officers

[Shri G. S. Pathak]

should have. Therefore, there is a provision that is made here. I hope, I have satisfied Professor Ranga.

Shri Ranga: We hope, another Ram Gupta's declaration will not take place.

Shri G. S. Pathak: No.

Mr. Deputy-Speaker: The question is:

"That clause 25 stand part of the Bill."

The motion was adopted.

Clause 25 was added to the Bill.

Clauses 26 to 28 were added to the Bill.

Shri Madhu Limaye: Sir, I beg to move:

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after line 5, insert—

'(c) for sub-section (5), the following sub-section shall be substituted, namely:—

"(5) Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy in the prescribed form of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny." (30)

मेरा क्याल है कि जिस तरह नाम दर्ज करने के बारे में कानून मंत्री ने मेरा मुझसे स्वीकारा उसी तरह वह जो मेरी छोटी सी तरफ़ीम है मुझे उम्मीद है कि कानून मंत्री सि को भी स्वीकारेंगे। क्योंकि इसमें जो दखलत है खुद अनुभव कर चका है, वह रखना

चाहता हूँ। हिन्दुस्तान के हर एक हिस्से में नाम लिखने के तरीके अलग अलग हैं जैसे मेरे मिला यहाँ पर हरिविष्णु कामत बैठे हैं। बहुत सारे लोग समझते हैं कि इन का नाम हरिभाऊ है। लेकिन हरि तो शायद इनके गांव का नाम है (व्यवधान) भगवान का तो है ही।

श्री हरि विष्णु कामत : हरि विष्णु एक नाम है। (व्यवधान)

श्री मधु लिमये : तो अध्यक्ष महोदय, नाम लिखने का दक्षिण में एक तरीका है। पहले गांव का नाम आता है। पश्चिमों हिस्से में पता नहीं कैसे, किस का अमर है (व्यवधान) हमारे यहाँ पहले हमारा अपना नाम रहता है, बाद में पिता जी का रहता है और फिर अपने कुटुम्ब या परिवार का नाम रहता है। अब उत्तरी हिन्दुस्तान में या पूर्वी इलाके में दूसरी प्रणाली प्रचलित है। तो नतीजा यह हुआ कि मेरा नाम, वैसे मधु लिमये के नाम से लोग मुझे पहचानते हैं लेकिन पश्चिमों हिस्से के तरीके से मेरा नाम आयेगा मतदान सूचा में मधु रामचन्द्र लिमये। तो बिहार के लोग समझे कि मेरा असली नाम रामचन्द्र है और मधु मेरा खिताब है, तो इस तरह की भी गलतफहमी हो जाती है। असल में मेरा नाम है मधु। तो बात यह हुई कि जब मैंने अपनी अर्जी

श्री साइलकर (खेट) : जब मधु नाम है तो आप इतने बिटर क्यों हैं ?

श्री मधु लिमये : वह आप लोगों के लिए है, अन्दर से देख लीजिए क्या है ?

तो अध्यक्ष महोदय, मैं यह निवेदन कर रहा था कि जब मैंने अपनी अर्जी पेश की तो मेरे खिलाफ जो उम्मीदवार था उसने इस के ऊपर आपत्ति की और कहा कि इन का नाम तो मधु लिमये है और मतदाता सूची में इनका

नाम मधु रामचन्द्र लिमये है। तो इसकी क्यागारन्टी है कि यही भ्रादमी है वह। तो फिर हम को हवाई जहाज में एक भ्रादमी को बम्बई भेजना पड़ा और यहसूची मंगवाना पड़ा। बम्बई से मुझको यह सिफारिस पत्र प्राप्त हुआ था। लेकिन इसको स्वीकारने पर उन्होंने आपत्ति की कि इस को नहीं स्वीकारा जायगा। इसलिए मैं यह जानना चाहता हूँ और इस बात पर जोर दे रहा हूँ—ए सर्टिफाइड कॉपी इन दो प्रेक्वाइज्ड फॉर्म। अगर आप्रेंटिस किम्म का नियम बनाने के लिए नयार हैं और सभी नुबों के लिए बना देंगे कि इस फॉर्म में ही नाम पंज किए जायें तो मैं आपके आश्वसन पर अपनी तरमीम को वापस लेने का तैयार हूँ। आप को याद होगा, सेलेक्ट कमिटी की बातें तो मैं नहीं कहना चाहता लेकिन मेरे दूसरे मित्र हैं नारायण दांडेकर साहब, उन्होंने भी इस बात की तारीफ की थी। इसलिए अध्यक्ष महोदय, आप के माफत मैं विनम्र निवेदन कानून मंत्रों से कृपया कि वह बहुत ही छोटी सी बात है। या तो इस को वह स्वीकारे या किसी नियम में इसके लिए इन्तजाम कि "रेलवेट एंटीड" का कोई निश्चित फॉर्म हो। यह करने से मेरा संतोष हो जायगा।

Shri G. S. Pathak: Sir, I cannot accept this amendment for the obvious reason that only.....

Shri Dinen Bhattacharyya: Then, you incorporate it in the rules.

Shri G. S. Pathak: But first let me be satisfied if there is any justification for it. I say that there is no justification. Sub-section (5) of section 33 reads:—

"Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper,

be produced before the returning officer at the time of scrutiny."

The only words sought to be introduced by Shri Madhu Limaye are "in the prescribed form", that is to say, the certified copy shall be in the prescribed form. The certified copy will be a copy. How can you prescribe a form for a copy? A copy has got to be a copy of the original.

श्री मधु लिमये : एक सेकेंड में निवेदन कर दू (व्यवधान), उनको दिक्कत बता रहा हूँ।

उपस्थित महोदय : बैठ जायें आप।

श्री मधु लिमये : बैठ तो जाऊंगा ही।

Shri G. S. Pathak: You cannot prescribe a form for a copy. If it is a copy, it has got to be in accord with the original. You may prescribe a form for the original but you cannot prescribe a form for a copy. Therefore, this amendment is obviously untenable and it cannot be accepted. Any objection which Shri Madhu Limaye may have can be achieved by different methods. He may apply for correction of his name or he may satisfy the authorities concerned that his name has been wrongly mentioned and he may tell them, "I am the person whose name is this". There is no doubt that any error of this kind will be ignored. There are sufficient provisions.

Shri Hari Vishnu Kamath: On a point of clarification. The Minister, if I heard him aright, uttered a profound maxim that a copy is a copy, if it is a copy.

Mr. Deputy Speaker: A copy of the original.

Shri Hari Vishnu Kamath: Then, what does the phrase "commonly understood" mean? Does it mean understood by a common man or what?

Shri G. S. Pathak: I was reading amendment No. 30.

Shri Hari Vishnu Kamath: I am reading the clause itself. It is an important matter. Mr. Madhu Limaye has raised a good point. What is the meaning of 'commonly understood', understood by a common man or what? Clause 29 is under discussion. I am reading from there. It is stated:

"...the name of the person or place is such as to be commonly understood;"

I would like him to throw some light on this.

Shri G. S. Pathak: That has nothing to do with the amendment.

Mr. Deputy-Speaker: He wants to know the meaning of the expression 'commonly understood'.

Shri Hari Vishnu Kamath: Let me just illustrate it. In Maharashtra, for instance, to which he has referred, the person has got a name but he is referred to as 'Baba Sahib' or 'Anna Sahib' or 'Kaka Sahib' and so on. That is the common name. What does 'commonly understood' mean?

Shri G. S. Pathak: This expression has been taken from the English law and it means 'generally understood'. There may be some secret part of the name.

Shri Hari Vishnu Kamath: The Minister's name, would the name of Shri Gopal Swarup Pathak be commonly understood is Gopalbhai Sahib Pathak?

Mr. Deputy-Speaker: Now I am putting amendment No. 30 to the vote of the House.

श्री मधु लिमये मैं एक बात कहना चाहता हूँ। वह रेजिस्ट्रार की कार्रवाई नहीं है, एन्ट्री की कार्रवाई है।

Mr. Deputy-Speaker: That is all. I am putting amendment No. 30 to the vote of the House.

Amendment No. 30 was put and negatived.

Mr. Deputy-Speaker: The question is:

"That clause 29 stand part of the Bill."

The motion was adopted.

Clause 29 was added to the Bill.

Clauses 30, 31, 32 and 33 were added to the Bill.

Mr. Deputy-Speaker: Amendments Nos. 18, 31 and 96 (Clause 33A New) are ruled out because Section 61 is not touched at all by this Bill.

Clause 34—(Insertion of new section 64A).

Mr. Deputy-Speaker: There are two amendments Nos. 19 and 97. Are they being moved? No.

Shri Hari Vishnu Kamath: I want to speak on clause 34.

New section 64A reads:

"If at any time before the counting of votes is completed any ballot papers used at a polling station or at a place fixed for the poll are unlawfully taken out of the custody of the returning officer or are accidentally or intentionally destroyed or lost or are damaged or tampered with, to such an extent that the result of the poll at that polling station or place cannot be ascertained, the returning officer shall forthwith report the matter to the Election Commission."

I want certain information or facts with regard to this. What has obliged the Government to bring forward this proposal? There must be something behind this. Otherwise, there is more than what meets the eye. I would like to know whether in the course of the last three General Elections, these things had taken place.

I want to know whether there were many cases reported to the Election Commission from various constituencies where either ballot boxes were tampered with, ballot papers destroyed or were intentionally replaced or substituted by fake ballot papers with marks made by the officers on duty or what sort of mal-practices were committed at the various polling stations in the last three General Elections and that safeguards, apart from reporting the matter to the Election Commission, are being devised to prevent such mal-practices. I do not know whether you have been a victim of this. In my constituency, the ballot boxes were tampered with. Mr. N. C. Chatterjee who argued my case in the Supreme Court knows it very well. The ballot boxes were tampered with in my constituency in the First General Elections in 1952. I would like to know whether the ballot boxes are now definitely and completely non-tamperable and what measures will be taken to prevent intentional destruction of ballot papers. I cannot understand intentional destruction of the ballot boxes or the ballot papers. That means the officers on duty destroy them intentionally. If that is so, they must be prosecuted. Such persons must be prosecuted who destroy these papers intentionally. The facts are very revealing. I can understand 'accidentally destroyed' but not 'intentionally destroyed'. If they are intentionally destroyed, the persons responsible must be prosecuted. I think, some cases would have been reported to the Government. Otherwise, they will not bring forward this proposal at all. Then, it is stated 'unlawfully taken out' and that means perhaps the voter takes out the ballot papers outside the polling station. That is perhaps the voter. But about the destruction of the ballot papers, I do not know who is responsible for this. Nothing is prescribed.

I want to know whether the ballot boxes are now non-tamperable and they are sealed properly. In my constituency, there was an allegation which was substantiated later on that

some ballot boxes were tampered with in the First General Election in 1952. I suppose things are now better and not so easily tamperable as they were in 1952. I would like to have an assurance on this point. You are as much concerned as we are with this matter because you are also facing an election to the Lok Sabha as many of us are and you must be equally interested and concerned over the matter.

Shri Sham Lal Saraf: Sir, the apprehension expressed by my learned friend, Shri Kamath, is substantially met by the amendments that have been made in the Bill. As far as the present Bill is concerned, a number of lacunae have been removed. For instance, as far as the ballot boxes are concerned, they are definitely better and stronger. There is the least possibility of tampering as has been alleged in the past. Secondly, as far as the system of voting is concerned, it is very much improved. I need not go into that. Thirdly, as far as the issue of the ballot papers is concerned, necessary precautions have been taken. As far as the sealing of the boxes is concerned, by the candidates as well as by the presiding officers, that is also very much covered. One thing about which I would like to ask the hon. Minister is that after the ballot papers are issued and the votes are cast inside the ballot boxes, since this time there is an improvement that the symbols and the names of the candidates will be written on one paper, at the time of closing the voting at a particular polling booth, apart from sealing the ballot boxes, the number of votes issued by the presiding officer must also be recorded and signed by the officer. That is not covered.

Shri Tyagi: That is always done.

The Minister of State in the Departments of Parliamentary Affairs and Communications (Shri Jaganatha Rao): That is always done. What I say is this. At the time of closing elections, it must be noted that at that

[Shri Jaganatha Rao]

polling booth, 660 or whatever the number, voters had come, so many votes had been issued, to whom they were cast, etc.

14.00 hrs.

Shri Tyagi: That is always done.

Shri Sham Lal Saraf: That was not done in the past. It is not covered as far as the law today is concerned. Therefore, the hon. Minister will kindly look into this. If it is already there, I will be very happy.

Mr. Deputy-Speaker: It is already there

Shri S. M. Banerjee: As far as Clause 34 is concerned, much has been said about the ballot boxes and the ballot paper. Our experience in the past was this. The ballot paper has now been substituted by one sheet of paper, a small one. That is no doubt an improvement. Our experience in the last General Elections, in 1962, was this. There were ten candidates fighting against me and there was a long list; in fact, it was as good as a toy for a baby because there were various pictures in that; the Congress symbol was at the last, number 10. When the elections were fast approaching and only seven days were left, we found that the ballot paper which was shown to us by the election officer as the specimen, had suddenly changed and instead of a long ballot paper, it was small paper, five on this side and five on the other side. We had to go from place to place. You can imagine the case of a person fighting a Parliamentary seat. We had to go to 500 polling booths; we had to go and explain to the people that it had been suddenly changed by the election officer with no motive and that the ballot paper would now be like that. We had printed about 20,000 copies for distribution, for the education of our voters and we had to reprint the whole thing which entailed heavy expenses on a poor candidate like me.

About tampering of boxes, I know what happened in the last elections. When the counting was going on, I was in jail; I was elected from the jail. I was not allowed to go and it was with great difficulty, with police protection, etc.; that I visited those places. I have seen that box; one gentleman who was present there opened it and demonstrated that it could be broken like that and votes could be taken out; a demonstration was given. So I will request the hon. Minister, if the hon. Law Minister wishes to fight a Lok Sabha seat—if he is contented with a Rajya Sabha seat, then it is all right—

Shri Hari Vishnu Kamath: Leave it to him.

Shri G. S. Pathak: I will oppose this...

Shri S. M. Banerjee: Let him oppose. If he is interested in a Lok Sabha seat, let him make sure that the ballot boxes would not be tampered with. Everything can happen in this country; that is a different matter; there may be experts. But I would only request that the ballot paper, once a specimen is given, should not be changed and that ballot boxes should be demonstrated to all the candidates, so that ballot boxes could not be tampered with.

Something happened in U.P. in the case of Ram Rattan Gupta vs. Dandekar, which has created history.

Mr. Ram Rattan Gupta is neither dead nor is he removed from Congress he is still in Congress. I wish that Congress had expelled him. Because such men are there still, they can, with the help of Congress bosses, convert any constituency into a goonda constituency. I know the comments of Mr. K. V. K. Sudaram, the Chief Election Commissioner, in that case. He was helpless Anyway, thanks to the Law Ministry, with the courage and conviction of men like Mr. Sundaram, ultimately action was taken.

In such cases, how the election was held, how the Returning Officer was involved, and how counting was done could be seen. Let goondas be weeded out.

Shri C. K. Bhattacharyya: This is a good provision made in this Bill. Whatever might have been said about the officers, by and large they have acted well and fairly. The presence of our Opposition friends in the House itself proves that the officers have acted fairly and impartially. That cannot be denied. The shining lights that are present before me are themselves the proof that the officers have acted well and done their duty well and honestly. That should be accepted.

One thing that surprises me is this. I find that members of the Select Committee—Mr. Kamath was one and Mr. Sham Lal Saraf was another—are asking for information. (*Interruptions*). What were they doing in the Select Committee? Why did they go to the Select Committee? (*Interruptions*).

Shri Hari Vishnu Kamath: We have given a minute of dissent. Therefore, we are entitled to raise the question here. If he does not have a minute of dissent, that is a different matter.

Shri C. K. Bhattacharyya: Why did they go to the Select Committee? They could have raised the points there. They need not have taken the time of the House....

Shri Hari Vishnu Kamath: He is taking more time now.

Shri C. K. Bhattacharyya:...by asking as to why this provision has been made there, etc.

Shri N. C. Chatterjee: It is an unfair reflection on the members of the Select Committee. We have given our minutes of dissent. In some places where we agreed, I have strongly asked the House to accept the recommendations of the Select Committee. On some points we wanted clarification

or we wanted to put forward our comments.

I remember the Hoshangabad election case, that is Mr. Kamath's case—in which the hon. Law Minister appeared against me. So, he may also remember the facts of the case. It was an amazing thing that the Supreme Court set aside the election and accepted our contention on behalf of Mr. Kamath....

Shri G. S. Pathak: Mr. Kamath has already informed the House twelve times that ultimately the hon. Member won in the Supreme Court.

Shri N. C. Chatterjee: I am too old, and Mr. Pathak is also too old, to gloat over victories at this stage of our lives. That was not my intention. I am bringing into prominence the fact. These things do happen and that was done really by some officer who was mishandling ballot boxes. So far as my information goes, after the Supreme Court accepted our contention in favour of Mr. Kamath and set aside the election, the man was demoted. Therefore, such things are happening. All that I want is that condign punishment should be given; criminal action should be taken; condign punishment should be given to the delinquents. Even after 1957 I know that ballot boxes have been tampered with. Therefore, it is very very necessary, in the interest of fair elections, that these practices should be firmly dealt with and put down.

Shri Tyagi: We agree.

Shri G. S. Pathak: I cannot give any assurance because the Constitution has invested the Election Commission with powers in regard to election. The Constitution has not placed the responsibility on the Government in respect of this matter.

Shri Hari Vishnu Kamath: Law is passed here.

Shri G. S. Pathak: The hon. Member wants an assurance about this—how they will be conducted. All these

[Shri G. S. Pathak]

discussions and debates that are going on in Parliament will be communicated to the Election Commission and the Election Commission will certainly bear in mind the observations of the hon. members.

Shri Hari Vishnu Kamath: All right.

Shri G. S. Pathak: I cannot give an assurance, which Mr. Kamath wants from me because the Election Commission is an independent body and I cannot give an assurance on behalf of the Election Commission....

Shri Hari Vishnu Kamath: He answers questions on behalf of the Election Commission.

Shri G. S. Pathak: That is because I have to give information about facts; I have to take facts from the Election Commission. The reason why this section 64 A was introduced was this. All that I can say is that if Shri Kamath had read—I mean no disrespect to him.....

Shri Hari Vishnu Kamath: Not at all. We have respect for each other. We have mutual regard.

Shri G. S. Pathak: I have also great respect for him. If he had read the report of the Election Commission he would have found that the reason why the Election Commission suggested that this new section should be introduced was this....

Shri Hari Vishnu Kamath: It is too bulky a volume.

Shri G. S. Pathak: I would not read it. From page 80 onwards in that report he will find a discussion of this question. By reason of an allegation made, the Election Commission might have reached the conclusion that there should be something done about it because more allegation is enough for the Election Commission or for Government to make a law, for, if an allegation is made, it becomes the duty of the Election Commission to

see that such things might not happen. And even if the allegation may ultimately be proved to be false, it is open to Government to make provision against the happening of such things. Therefore, this is a matter which remains in the region of allegation; it was in the region of allegation when the Government acted upon it. I do not find that the Election Commission proceeded upon any definite finding which might have been arrived at by any tribunal.

So far as the ballot box question is concerned, I submit that the debate here will be read by the Election Commission and I am sure that the Election Commission will take, if it has not already taken, sufficient precautions to ensure the fairness of the elections. The Election Commission has got a reputation for conducting elections fairly.

Shri Sham Lal Saraf: A record of that has to be kept.

Shri Himatsingka (Godda): A record is kept.

Shri G. S. Pathak: I have myself attended at the elections and have worked for others. There is a list of ballot papers issued, then there is counting and then again a record is made and so on.

Mr. Deputy-Speaker: A record is kept.

The question is:

That clause 34 stand part of the Bill.

The motion was adopted.

Clause 34 was added to the Bill.

Clause 35 was added to the Bill.

Re. New Clause 35A

Mr. Deputy-Speaker: There are two amendments, namely amendments Nos. 20 and 32 which seek to insert a new clause 35. They are out of

order because the original section which they seek to amend is not touched by this Bill at all.

Shri Dinen Bhattacharya: I knew that. That was why I wanted to speak something about it.

Mr. Deputy-Speaker: He cannot mix it up. Those amendments are out of order and, therefore, they are ruled out.

Shri Dinen Bhattacharya: If you see the recommendation of the Election Commission....

Mr. Deputy-Speaker: The original section is not being amended. So, those amendments are out of order.

The question is:

"That clauses 36 and 37 stand part of the Bill".

The motion was adopted.

Clauses 36 and 37 were added to the Bill.

Clause 38—(Insertion of new section 80A)

Shri G. N. Dixit (Etawah): I beg to move:

Page 18, omit lines 39 to 41. (68).

Shri Dinen Bhattacharya: I beg to move:

Page 18, for lines 39 to 41, substitute:

"(3) The High Court shall, in the interests of justice or convenience, try the election petition, wholly, at the district headquarters of the constituency concerned." (99).

Mr. Deputy-Speaker: These two amendments and the clause are now before the House.

Shri Hari Vishnu Kamath: Before this clause is taken up, I wou'd like to raise a point of order on this clause.

You will be pleased to see that clause 38 reads as follows:

"The court having jurisdiction to try an election shall be the High Court."

This is in pursuance of the decision made by Government that the trial of election petitions shall be done hereafter not by election tribunals but by the High Court. I think about a fortnight ago, the House suspended the proviso to rule 66 which obliges Government to get the Bill on which this Bill is dependent assented to by the President before this Bill can be passed by the House. That is all right. The House has suspended that proviso in its wisdom and I do not question that decision. Now, what is the position? My fundamental question is this. Can the rules override the Constitution?

Shri K. C. Sharma (Sardhana): Rules are made under the Constitution.

Shri Hari Vishnu Kamath: I suppose rules are made under the Constitution.

Shri N. C. Chatterjee: It is delegated legislation.

Shri Hari Vishnu Kamath: Certainly; I hope the Minister will not contest this proposition that the Rules of Procedure cannot override the Constitution. Now, what does the Constitution say?

Article 368 reads thus:

"An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill."

Yesterday we had passed the Constitution (Twenty-first Amendment)

[Shri Hari Vishnu Kamath]

Bill, but that Bill does not become law, according to article 368 till the President has given his assent after it has been passed by the other House also. It has to be passed by the other House.....

Shri Sham Lal Saraf: Other place.

Shri Hari Vishnu Kamath: It has to be passed by the other place, and then it has to go the President for his assent and then only it becomes law. That means that as long as it is not assented to by the President, article 324 stands intact.

Shri N. C. Chatterjee: The Constitution has not yet been amended.

Shri Hari Vishnu Kamath: As long as that Bill has not been assented to by the President, the Constitution remains as it is, and the provision has not yet been amended. Article 324 which is sought to be amended by that Bill reads thus.

Shri Tyagi: Can we not meet this contention by saying that this Bill will come into effect after such and such a Bill has come into effect?

Shri Hari Vishnu Kamath: There is no such clause in the Bill.

Shri Tyagi: We can put in a clause to provide that this Bill will come into effect after such and such a Bill comes into effect.

Shri Himatsingka: That is not necessary.

Shri Hari Vishnu Kamath: Let me complete what I was going to say. The two articles concerned are articles 324 and 368. I am first on article 368. When does a Bill to amend the Constitution take effect? That is the first point. When it is passed by this House and by the other House with the requisite majority and then it goes to the President for assent and the President gives his assent it takes effect. And whatever rules we

may have framed, such as rule 66 or whatever it is, cannot override the Constitution.

Now, the Constitution (Twenty-first Amendment) Bill has been passed by this House but it has not yet gone to the other House; it is still in an intermediate stage; it is not even in the other House and it has not become law yet; so long as that has not become law, article 324 which is sought to be amended by that Bill stands intact.

Shri Tyagi: Yes, it stands intact.

Shri Hari Vishnu Kamath: I am glad that my hon. friend agrees. Article 324 reads as follows:

"The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Commission...."

This article stands intact today. That means that the power to try election petitions is still vested by this article in the election tribunals and not in the High Court. Therefore, as long as that Bill has not become law by the President's assent, we cannot consider this particular clause.

Shri Tyagi: We can consider; only it cannot be effective now.

Shri G. S. Pathak: Where is the bar?

Shri Hari Vishnu Kamath: We cannot pass it.

Shri G. S. Pathak: May I be permitted to intervene if Shri Kamath allows?

Shri Hari Vishnu Kamath: Therefore, I would seek light on this matter. When does the Bill become law?

Shri G. S. Pathak: The question was raised yesterday and it was disallowed by the Speaker.

Shri Hari Vishnu Kamath: I am sorry you do not allow me to proceed. That was the rule only. The rule was suspended. Can a rule override the provision in the Constitution? He may answer that later. Secondly, when does the Constitution (Amendment) Bill become law, after what stage; one this House, second the Rajya Sabha and the third, President's assent, then it becomes law? If so, as long as the last stage is reached, Art. 324 is intact. Article 324 envisages election tribunals as the other Bill has not become law. So now this clause, though it can be considered, cannot be passed by the House.

Shri G. S. Pathak: This point was raised in another form yesterday....

Shri Hari Vishnu Kamath: No, no. That was a different point.

Shri G. S. Pathak: He is ignoring that the proviso to rule 66 was suspended. Now he is raising the same point in another shape.

Shri Hari Vishnu Kamath: I am sorry to say he does not follow, does not understand.

Shri G. S. Pathak: He is raising the same point in another form. He concedes that the Bill cannot be deemed to have been passed unless there is assent given by the President. He says that you may consider this Bill but you cannot pass it because the Constitution (Amendment) Bill has not received assent. He is forgetting that the passing of a Bill will not make it an Act, unless assent is given to it. When I go to the President after the Constitution (Amendment) Bill has been passed by the Rajya Sabha and seek his assent and it is given,

then the Constitution has been amended, Art. 324 has been amended. Then I go to the President after this Bill has been passed by this House and the other House to give me assent. He gives it. Then it becomes law. Where is the defect in this? What Shri Kamath says is that although the Constitution (Amendment) Bill will become law when assent is given, this will become law when this House passes it....

Shri Hari Vishnu Kamath: Not become law.

Shri Sham Lal Saraf: How does it become law unless assent is given?

Shri G. S. Pathak: Yes. Do you find any provision in the Constitution saying that the Bill cannot be passed by the House until there is a constitutional amendment? There is no such provision. For one thing, he relies on the rules. Then he says that the rules cannot override the Constitution. He is not able to cite any constitutional provision which can be an impediment to the passing of this Bill by this House. All that he says is that this cannot become law until the other becomes law. Then if the President gives assent to the other one, the constitutional impediment is removed. Then he can give assent to this. Where is the impediment? I submit there is no objection.

Shri Hari Vishnu Kamath: Have it your own way.

Mr. Deputy-Speaker: I agree with the Law Minister (*Interruption*). This point was raised by Shri Kamath and the Speaker ruled that there was not point of order. Shri Kamath says that unless and until the Constitution (Amendment) Bill receives the assent of the President, this Bill cannot be considered. If the Rajya Sabha does not pass the Constitution (Amendment) Bill or if the President does not give assent to it, this Bill also will stand abrogated.

Shri Hari Vishnu Kamath: So much labour of Parliament rendered infructuous.

Mr. Deputy-Speaker: There is no impediment to passing the Bill. I see no point of order. We will continue.

Shri Hari Vishnu Kamath: The election schedule will be upset otherwise.

Shri G. N. Dixit: My amendment says that sub-clause (3) of the proposed section 80A may be deleted. This provision will create enormous difficulties and is also not necessary.

When I was speaking in the general consideration stage, I had said that this point whether the High Court should sit at the place of their own seat or should move from place to place as tribunals or circuit benches, had been discussed and decided in this country, and it was found that in the interest of administration of justice, it was necessary that the High Court should be located and should function at the place of its seat. For this reason, in spite of the great strike and agitation at Jaipur, Government did not agree to a circuit bench at Jaipur. There was one High Court at Jaipur. That was to function as such for the whole State. This is the principle, although in some exceptional cases, there has been another Bench functioning. For example, the Allahabad High Court has a Bench at Lucknow and this has been there for very long. There was the Avadh Chief Court before. There were two High Courts in that State. Therefore, the Lucknow Bench carries on. Otherwise, the principle is one High Court functioning from one place.

There are reasons behind this. The principal one, apart from many others, is that there is a good library necessary for our lawyers and the Judges to give proper judgment. At the seat of the High Court, the lawyers

have a very good library and the Judges also have very fine libraries. Access to these libraries will not be available if they move from the seat of the High Court.

Secondly, there is, after all, decorum of the court, which is also an important element in the administration of justice. Up till now, the High Courts have commanded great respect all over the State. The environment of the High Court is also a factor contributing to this. Although it may not be very fit to mention it, you might be knowing the story of Maharaja Vikramaditya who used to administer justice from his takht. It had a sanctity and dignity attaching to it.

Later on this was found to be at another place. At that place, some trees had grown and a few shephard boys used to sit on it.

Almost all the countries used to go there to get proper justice. Therefore, the Vikramaditya takht had a very great importance.

The atmosphere of dignity, decorum and reverence prevails in the seat of the court. Therefore, if the court moves from place to place, there will be less of that atmosphere.

Thirdly—this is of equal importance—once you agree that with regard to election matters, the High Court should move from place to place, the result would be that in other matters also it will not be possible to stop litigants from demanding that the High Court should move from place to place. You have accepted and acknowledged that it is not congenial to the administration of justice to move the High Court from place to place or to have too many circuit benches. Having accepted this, if only in election matters you make a difference, the impression will be that for the politicians only such special facilities are being accorded, facilities which are not available to the ordinary citizens in the country. The politicians should not be given any special facility.

There is only one difficulty and that is about the recording of evidence of the witnesses. Apart from that all the other matters, are to be dealt with by the lawyers, whether it is filing a written statement or framing of issues or arguments. If the place of hearing is at one place, it is not going to make much difference. There is going to be a little difficulty about the recording of evidence. We are aware that evidence can be recorded on commission even under the civil law. If there is difficulty, amendments are possible in the Civil Procedure Code itself. Wherever the High Court feels that it is just and convenient to record evidence outside the premises of the High Court by a Commission, it can be recorded. Being an eminent lawyer, Mr. Chatterjee will agree with me that the High Courts have power to frame rules. You have vested them with this power and every High Court will have to frame rules to perform the duties assigned to each of them. Therefore, there are going to be special rules as to know this power is to be exercised by them and they can amend them if necessary. They can record evidence on commission and no difficulty is going to be created on that account. Even if there is difficulty, the Law Minister can then consider a minor amendment in the Civil Code. If we deviate from this principle and make these High Courts roving travellers, there will be demand from the country in other matters such as agricultural and other civil matters—and that demand will be justified—that the High Court should move out. Therefore, I think that this sub-clause (3) is not necessary. Firstly, the High Courts have power. Secondly, it is going to create many complications. Therefore, the hon. Minister may think of accepting my amendment to delete sub-clause (3).

Mr. Deputy-Speaker: Does Mr. Bhattacharya want to say anything on this amendment?

Shri Dinan Bhattacharya: Only a few words. I think the provision in

sub-clause (3) will help in taking evidence. But evidence is not the only question in an election petition. It is not possible for ordinary men to conduct cases in the High Courts which are in far off places. So, it is better to take evidence in the constituency or in the near about places of the constituency so that the petitioner may have better facility of producing his evidence and he is not to spend much money to take his witnesses to the far off places. It is impossible for an ordinary man to conduct an election case in far off High Courts. So, the provision should be that the High Court should in the interest of justice and convenience try an election petition only at the place or in the constituency from which the petitioner comes. Provision should have been made in that way so that the ordinary man could get justice at less expenditure and justice could be had within his means and resources.

Shri Tyagi: Sir, I always value the opinion of Mr. Dixit and I am generally in agreement with him when he speaks about anything. But I hope he will appreciate that the Parliament represents the people and the consensus of opinion in Parliament has been in favour of this when it was introduced for the first time. The main objection to cases being tried by tribunals was that election petitions may be delayed too much; it will be costly and difficult also. Various difficulties were felt. All the persons who are elected to this House know best what fairplay and justice should be. I am afraid the wishes of the House are not met by this amendment. This provision here does not force the High Courts to go out to some place. The provision is only like this:

"The High Court may, in the interests of justice or convenience, try an election petition, wholly or partly, at a place other than the place of seat of the High Court."

He mentioned two or three instances where the High Court was not allowed to change its seat and there was

[Shri Tyagi]

some agitation and somebody wanted a High Court to be provided somewhere else and then it was not allowed. That was for a permanent change of High Court. Here this is not permanent change of location. The seat of the High Court shall remain where it is. If the Judges in their discretion think that it will serve the interest of justice if they follow this course, they may do so. It is not that the case will be transferred to some other station. It all depends upon the convenience; it is all in the interest of justice; and then it may be tried wholly or partly. Whatever he suggested is also included. Of course the lawyers in High Court stations will suffer a little because their income depends upon litigation and if cases go elsewhere litigants might choose to have a local lawyer. My friend practices in the High Court and I can well understand that, but I do not think that any injustice will be done and I think it will all be fair. I would request the hon. Law Minister to advise the High Courts to give as far as possible consideration to the convenience of the litigants in these cases.

Shri N. C. Chatterjee: Sir, it is not the intention of the Select Committee which recommended this clause that we should have itinerary High Courts, High Courts moving from district to district. Nothing of that kind.

Sir, the predominant interest is the interest of justice and fairplay. We all think that the high court judges would be better instruments for dispensing justice in the election cases. Another thing we shall avoid is in regard to appeal. You know that from the election tribunal, the case goes to the courts of appeal and in some cases, article 136 comes into play whereby the Supreme Court entertains appeals. You know that the Supreme Court has in half a dozen cases said, although one may declare that this law is final and there shall be no appeal, that does not take away the constitutional right of the Supreme Court to enter-

tain appeals under article 136, because Parliament does not have the right to abrogate that power. The power is there. Therefore, we are doing something in the interests of justice, in the interests of election petitioners and the respondent, the election of any unfortunate man who has been returned to Parliament after going through the grill of an election.

What is the position? I appeal to the hon. Minister and I appeal to you and to the House to remember this. Take for instance a batch of cases which are there in Darjeeling and Kalimpong in West Bengal. There are 10 to 12 cases which may be disposed of in one month. What are we saying? In these cases possibly 500 witnesses will have to be called. Are you going to order that all the 500 witnesses will have to travel down to Calcutta, stay there for months and then one after the other, these cases will be taken up and they have to dance attendance in that expensive place? We only say, let only one judge, who shall be the election judge, who may go down to Kalimpong or Darjeeling, stay there for a month and dispose of these cases. That will facilitate the interests of justice. The greatest tragedy is that big money is playing a conspicuous part in the election machinery. Do you want that big money will also play in the disposal of the election cases? It will be an engine of oppression, an engine of terror. Here is my hon. friend from Meerut. Supposing there is an election case, or, say there are five to six cases or say, 10 cases. Is it not better that a judge of the Allahabad High Court should be deputed to come to that area, finish the case in a fortnight or three weeks?

We are not making this provision mandatory. Kindly see what is the recommendation of the Joint Committee, over which you presided. You remember we have put it very mildly. We have said, "The Committee are of the opinion that a High Court may, in the interests of justice or convenience,

try an election petition, wholly or partly, at a place other than the seat of the High Court." This is at page (vii) of the Report of the Joint Committee. A man from Moradabad will have the benefit of a Bench at Lucknow. A man from Meerut or Ghaziabad or Muzzafarnagar will have to go a long way. This is a travesty of justice. What are we saying? We are leaving it to the high court judge. We are appealing to the high court. The high court judge has no power under the Constitution to try an election case. We are giving him the power, and we are also asking him modestly, respectfully to see that the high court may depute one judge to try these cases at another place to suit the convenience of the public. The Chief Justice shall nominate one or two judges; there are 36 judges in the Allahabad High Court. They have invited me to go to the Centenary celebrations of the Allahabad High Court. I know that there are 36 judges there. Out of the 36, two judges will be deputed or three will be deputed. One of them will be asked to exercise the power. "The High Court may, . . ." It is not mandatory. It is only an enabling provision. It is left to his discretion and to his judgment. The high court judge will find out how many cases are there. Supposing there are just one or two witnesses, that is a different thing. Supposing there are over 40 witnesses on the part of the petitioner and 50 on the part of the respondent. We know the election cases have gone on for months and months together. And there are a multiplicity of witnesses. You know how easy it is to trot out false charges of corruption against a man, an election agent; that man may say Rs. 500 have been paid. I remember, at the instance of some of the leaders of Punjab, I had a fight in Giani Kartar Singh case; it was a ridiculous charge of Rs. 200 having been paid, and the charge was negatived. You will read the judgment of Justice Falshaw and the other judge. They have said that it is a fantastic charge. There are professional witnesses. As Shri Trivedi pointed out,

there are professional election experts and professional witnesses in election cases. They trot out charges and manufacture everything; they may say a man has paid Rs. 100 and so on.

I am only saying this is a very modest, very reasonable, very practical piece of legislation. We are giving the power to the high courts. We are saying, "Do not monopolise power for the sake of boosting up the high court barristers or pleaders or advocates or in the interests of the dominant professional bar there. Look to the interests of justice; look to the convenience of the litigants and look to these things."

There are 52 districts in Uttar Pradesh, for example, under the Allahabad High Court. One has to go from one corner to the other. I do not know what is the distance from Ghaziabad to Allahabad; at any rate, the distance will be not less than that from Delhi to Allahabad. You have to take all your witnesses, a multiplicity of witnesses, there. A multiplicity of charges may be there; of corruption or bribery and other things. How many cases will there be? You have got some experience and I have got some experience. Shri G. S. Pathak has experience. For how many cases would you like to refer to Rogers? For how many cases do you want to refer to Halsbury's? For how many cases do you want to refer to the English Law? Not many. Only in very exceptional cases. For most cases, 20 to 25 volumes of Election Law cases are quite enough, to deal with these cases. And every court, every district court, apart from every High Court, and every eminent lawyer has got these books.

It is not a question of diminishing the high courts. The high court judges should the majesty of law and they should remember that they are now functioning in a Democratic Republic; the high court judges should shed their old attitude, the bureaucratic attitude of inspiring awe and commanding reverence to the majesty of law. They are citizens as much as

[Shri N. C. Chatterjee]

anybody else, and we are giving them this power on one condition and one condition along: that they must exercise their discretion, their equitable discretion, to dispense justice; to go to a place and hear the evidence in a particular case where you think fit, having regard to the circumstances; to go there, to stay there and expedite the disposal of the case and dispense justice quickly, expeditiously and fairly.

श्री सिंहासन सिंह (गोरखपुर)

उपाध्यक्ष जी, अभी जो हमारे बक्ता दीक्षित जी ने कहा है, वह सही बात है, हाई कोर्ट की जूरिसडिक्शन दी गई है, वह कमीशन की रिपोर्ट के आधार पर दी गई है। अगर आंकड़ों को देखा जाय, तो आपको मालम होगा कि जितने पेटिशन दायर हुए, उनमें से कितनों के फंसले हुए और कितनों के फंसले नहीं हुए। मैं ला मिनिस्टर का ध्यान इस तरफ दिलाना चाहता हूँ, अगर डिले कहीं पर हुई है, तो वह डिस्ट्रिक्ट कोर्ट्स में नहीं हुई है, अधिकतर डिले हाई कोर्ट्स में हुई है, सुप्रीम कोर्ट्स में पेटिशन हुई है, वहां पर हुई है। डिस्ट्रिक्ट कोर्ट्स अगर कहीं पर फंसला नहीं कर पाई हैं, तो इस बजह से कि इन केसेज की हाई कोर्ट्स में पेटिशन फाइल हो गई हैं। अभी उत्तर प्रदेश के ही बहुत से केसेज के फंसले हाई कोर्ट्स में नहीं हो सके हैं। इस लिए हाई कोर्ट्स जल्द से जल्द फंसला कर देंगी, हमारे अ्याल में यह एक सपने की बात है, क्योंकि जो केस हाई कोर्ट में आता है, वह फिर सुप्रीम कोर्ट में भी जाता है। हमें इसमें यह धन्येशा है कि अब जो धनी लोग हैं, वे मन-मानी तरीके से अधिक सं अधिक रुपया खर्च कर के कोर्ट्स को खरीद लेंगे और गरीब आदमी जो लड़ने वाला है, वह इलैक्शन पेटिशन नहीं कर पायेंगा। अगर इस कानून का यह मतलब है कि इलैक्शन पेटिशन दायर न होने पाये, तब तो ठीक है। इस तरह से तो धनी लोग ही आ पायेंगे।

हम से एक पंजीपति ने पूछा कि आप का इलैक्शन में कितना खर्च हुआ, मैंने कहा

कि मैं इलैक्शन में खर्च नहीं करता, जिसको गुप्त बांट देगा होगा, वह देना, जिसको नहीं देना होगा, वह नहीं देगा, मेरा तो कुल एक हजार रुपया खर्च हुआ था। उनको मेरी बात से आश्चर्य हुआ, एक हजार में पालियामेंट का इलैक्शन कैसे लड़ा जायगा। उनका इलैक्शन पर ढाई लाख रुपया खर्च हुआ था

श्री कु० चं० शर्मा : श्रीर वह यहां बैठे भी है।

श्री सिंहासन सिंह दो ढाई लाख रुपया इलैक्शन में खर्च होगा और 35 हजार का हिसाब देंगे, इस तरह से जो पंजीपति लोग हैं, वे रुपया खर्च कर के यहां प्रायेंगे, सिवाय करप्शन के और कुछ नहीं होगा। इसके खिलाफ पिटिशन दायर हो तो पहले पहले हाई कोर्ट जाने पर 1 हजार रु० लगता था अब वह 2 हजार रु० हो गया है। आप समझ सकते हैं कि मामूली आदमी को इस में कितनी दिक्कत होगी। अगर चूकि आप ने उचित समझा, इस लिए संविधान का अमेंड-मेंट कर दिया। आप समझ सकते हैं कि हम लोग संविधान का कितनी छोटी नजर से देख रहे हैं। जब चाहते हैं उस को बदल देते हैं। एक ट्राइब्यूनल के लिए, मुकदमेबाजी के लिए आपने संविधान को बदल दिया। हाई कोर्ट में जाने के बाद आज कितनी राहत लोगों को मिलेगी, इस पर विचार करना होगा। मैं कानून मंत्री से अमुरोध कसंगा कि उनका एक ध्यान है कि सब मुकदमे हाई कोर्ट में जायें। इस लिए हाई कोर्ट के वकीलों का फायदा होगा, यह तो हम समझ सकते हैं, लेकिन यह भी सोचना कि डिस्ट्रिक्ट कोर्ट में जो मुकदमा 200 रु० में हो सकता था हाई कोर्ट में उस पर 2,000 रु० लगेंगे। इस तरह से, मैं नाम नहीं लेना चाहता, लेकिन यदि हम केवल यह चाहते हैं कि केवल धनी वर्ग के लोग ही पालियामेंट के सदस्य हो जायें, तो ठीक है।

मैंने कल हाई कोर्ट के जज में बहुत ईमानदारी के साथ बात की। कांई भी हाई कोर्ट का जज अपने प्राराम का छांड कर डिस्ट्रिक्ट कोर्ट में नहीं जायेगा। एक पक्ष कहेगा कि हम डिस्ट्रिक्ट में पूरी गवाही दे सकेंगे दूसरा पक्ष कहेगा कि हाई कोर्ट में मुकदमा किया जाये। धनी वर्ग को हाई कोर्ट में ज्यादा कन्वीनिएन्स है। वहां ज्यादा अच्छे लाइफर्स मिल सकेंगे। इस लिए वह चाहेंगे कि डिस्ट्रिक्ट में मुकदमे न हो। इस तरह से मजबूर कर के आप गला काटते हैं उन आदमियों का जो गरीब हैं। वह पूरी तरह से करपशन के द्वारा हराये जायेंगे जब कि आप चाहते हैं कि वह जीत कर प्रायें। अगर कांई केस हो तो हाई कोर्ट वहां जाये जहां पर कि एलैक्शन पिटिशन होता है तब तो ठीक हो सकता है वना इस से गरीब लोगों का गला कटेगा। मैं मंत्री महोदय से फिर अनुरोध करूंगा कि अगर वह चाहते हैं कि देश में प्रजातन्त्र राज्य हो तो वह इस प्रमंडमेंट को मान लें कि वह डिस्ट्रिक्ट कोर्ट में जाया करें।

Dr. L. M. Singhvi (Jodhpur): Sir, one important policy consideration which prompted the change from election tribunal to High Courts was that the quality of election litigation would improve, that the quality of adjudication would improve, the appeals and interlocutory applications made from time to time in the course of election proceedings would come to an end and this dilatoriness which characterises election controversies would come to end. The other important consideration has been aptly voiced by my hon. friend, Mr. Chatterjee and others, namely, the interests of the litigants have to be kept in mind, particularly in a field where litigants happen to be engaged primarily in a task of public service. Those who contest elections are not there to fight for half of the tenure of their office, of election petitions here and there. The experience in this country shows that election petitions have

been prolonged for as much as 5 years or thereabout. My friend, Mr. Dwivedy, knows it to his cost how much harassment was caused to him by way of election proceedings.

Shri Surendranath Dwivedy (Kendrapara): It went on for 3½ years.

Dr. L. M. Singhvi: Those who are elected must not be faced with the continuing difficulty of facing election controversies, sometimes genuine, but quite often not genuine.

By vesting this jurisdiction on the High Court, while we might improve the quality of adjudication and bring to an end interlocutory applications, if we are not prepared to extend this jurisdiction to be exercised nearer the places where evidence is recorded, we might be taking away the prospects of doing proper justice in these controversies. I would not have been too convinced by the argument of distance if the High Courts were to adjudicate in the legal questions involved. But if the entire evidence has to be recorded by the High Court naturally it takes a different complexion. My friend, Mr. Chatterjee, who has had a long and distinguished experience of the Bar, has already recounted the many problems which characterise litigation in general and election litigation in particular in this country. There is perjury, made-up evidence, professional witnesses, etc. Are we trying to facilitate the way for those who are rich and can afford such controversies rather than to allow such adjudication to proceed on fair considerations of equality? In election controversies generally the evidence is quite massive. If that is to be recorded and witnesses have to be brought from far flung places to the seat of the High Court, it may create a lot of difficulty. Therefore, in the exercise of the original jurisdiction we are vesting in the High Court, it is incumbent upon us to consider the desirability and advisability of having the Election Judge of the High Court sit as near to the place of controversy as possible. I think election justice should particularly be made

[Dr. L. M. Singhvi]

cheap. Otherwise, we would be defeating the basic and primary consideration which must prevail in cases such as these.

श्री रघुनाथ सिंह (वाराणसी) :

उपाध्यक्ष महोदय, मैं श्री चटर्जी के विचारों का, जिसका समर्थन श्री मिहासन सिंह ने किया है, जोरदार समर्थन करता हूँ। इसके दो कारण हैं। श्री दीक्षित ने कहा है कि कमीशन से शहादत दी जा सकती है। मैं पूछना चाहता हूँ कि कमीशन जारी करने में खर्च कितना लगता है। अगर आप को एक एलेक्शन पिटिशन में 100 आदमियों की शहादत दिलानी है तो 100 आदमियों के वास्ते कमीशन जारी करने में कितना खर्च लगेगा।

दूसरी बात यह है कि विटनेस का जो आचरण है, जो डिमेनर है, उस को जब तक जज नहीं देखेगा तब तक वह समझ नहीं सकता है कि गवाह सच बोल रहा है या झूठ। इंग्लैंड में कमीशन की जो बात कही जा रही है वह व्यर्थ है। क्योंकि जज को मोका नहीं मिलता कि वह साक्षी की बात को समझ सके, उसका आचरण कैसा है देख सके। मैं आप को एक दूसरा उदाहरण भी देता हूँ। आज के हिन्दुस्तान टाइम्स में आप ने पढ़ा होगा कि राजस्थान में एक चुनाव पालिका का फैसला हुआ। अब केवल दो महीने बाकी रह गये हैं नामिनेशन दाखिल करने में राजस्थान असेम्बली के लिये। लेकिन एक मेम्बर की एलेक्शन पिटिशन का फैसला कल हुआ है। पांच वर्ष तक वह केस चलता रहा। आप के न्याय की यह अवस्था है। यदि कोई आदमी एलेक्शन पिटिशन में फंस जाये तो उसका घर टार, प्रापर्टी, सब बिक जायेगी। और वह रह नहीं सकेगा। इसलिये श्री मिहासन सिंह का कहना बिल्कुल ठीक है। आप जो कानून बनाने जा रहे हैं उससे गरीबों का फायदा नहीं होगा। अमीरों का ही

फायदा होगा। केवल पूँजीपति ही इस पार्लियामेंट में आ सकेंगे। मेरे जैसे या श्री मिहासन सिंह जैसे आदमी नहीं आ सकेंगे।

श्री त्यागी: जो श्री एन० सी० चटर्जी को एग्जेक कर सकेगा वह जीतेगा।

श्री रघुनाथ सिंह : दूसरी बात मैं यह कहूँगा कि श्री दीक्षित को और श्री पाठक को पता होगा। मैं यू० पी० की उदाहरण देना चाहता हूँ, बोर्ड आफ रेवेन्यू माल के मुकदमों को करता है। हमशा डिस्ट्रिक्ट डिस्ट्रिक्ट में घूम कर काम करता है। हर डिस्ट्रिक्ट में घूम कर वह फैसला देता है। वह रेवेन्यू बोर्ड का फैसला माना जाता था। जब से वह प्रथा बन्द हुई है। यू० पी० में लिटिगेशन की हालत बहुत खराब हो गई है। क्योंकि गरीब आदमी वह दूसरे सेंट्रों में नहीं पहुँच सकता है। हेडक्वार्टर में नहीं पहुँच सकता है। उसके पास इतना पैसा नहीं होता है। मैं आप को इलाहाबाद की मिसाल देना चाहता हूँ। यू० पी० में 52 जिले हैं। जिनमें से टेहरी गढ़वाल भी एक है। वह इलाहाबाद से साढ़े पांच सौ मील दूर है। क्या 100 आदमियों को शहादत में इलाहाबाद ले जाया जा सकता है। जब कि शहर में रहने का स्थान नहीं। शहर में खाने का स्थान नहीं है। 100 आदमियों को खिलाना पिलाना भी मुश्किल हो जायेगा। आखिर वह आदमी किस तरह से इलाहाबाद अपना मुकदमा ले जा सकेगा। इसलिये मैं नहीं समझता कि जो अमेंडमेंट लाया गया है उससे कोई लाभ हो सकता है। अगर अमेंडमेंट का यह मंशा है कि लोअर और हाई कोर्ट के बीच की जो एक कड़ी आज है वह कड़ी टूट जाये ताकि फैसला जल्दी से हो तो मैं कहूँगा कि प्रेक्टिकल दृष्टि से आप देखें कि जो कानून आप बना रहे हैं इससे क्या जल्दी फैसला होगा? नहीं होगा। हाई कोर्ट में सौ आदमियों की

अगर शहादत होनी है तो किसी भी बबत काई भी उनमें से पेटिशन कर सकता है कि वह बीमार हो गया है। टेहरी का रहने वाला है। एक मैडीकल सर्टिफिकेट वहां से आ जायगा वो आप क्या करेंगे ? सी वितनेसिस को लेकर आप इलाहाबाद में बैठे हैं। एक मैडीकल सर्टिफिकेट के ऊपर पोस्टपोन केस हो जायेगा। यह हुकम दे दिया जायेगा कि केस पोस्टपोन्ड। कितना ज्यादा खर्च लगेगा। मैं समझता हूँ इस तरह के कानून बनाने से लोगों का कोई उद्धार नहीं होगा बल्कि आप को कानून यह बनाना चाहिये। जिस तरह से चटर्जी साहब का कहना है। दूसरे माननीय सदस्यों का कहना है। हाई कोर्ट के जज को राइट होना चाहिये। वे डिस्ट्रिक्ट हेडक्वार्टर्स में जायें। वहां जा कर शहादतें लें। आप देखें कि इलाहाबाद हाई कोर्ट में शायद 37 जज हैं—

15.00 hrs.

श्री राम सहाय पाण्डेय (गुना) :
39 है।

श्री रघुनाथ सिंह : ये जो 39 जज हैं ये बैठ कर क्या वहां पिडा पारेंगे ? उनको कहिये कि दो-दो जज एक-एक जिले में जा कर बैठ कर काम करें। गवाही लें। गरीब आदिमियों का जो रूपया है उस रूपये का ठीक युटिलाइजेशन होना चाहिये। मैं कहना चाहता हूँ कि 39 जज हैं, उनमें से छः जजों को आप कहें कि वे जिलों में जा कर बैठें।

यह भी कहा गया है कि जिलों में लाइब्रेरी नहीं है। मैं कहता हूँ कि हर बार एनोमिएशन के पाम लाइब्रेरी है और इलैक्शन ला की किताबें भी बहुत ज्यादा नहीं हैं, बारह या तेरह किताबें होगी और ये हर जगह आप को मिल सकती है। आप ने जो दलील दी है कि लाइब्रेरी नहीं है यह ठीक नहीं है। लायर अपनी लाइब्रेरी खोज लेंगे, वहस कर

लेंगे। आप को अपनी तरफ से सहूलियत देनी है। हाई के जज को कोर्ट आप कहें कि वे जा कर हाई कोर्ट की जुरिसडिकशन की पूरी हैसियत से केसिस को देखें। यदि आप ने ऐसा किया तो न्याय होगा। नहीं तो जो कानून आप बना रहे हैं इससे कोई न्याय होने वाला नहीं है।

Shri D. S. Patil (Yeotmal): High Court should try election petitions at District Headquarters. That is the suggestion of hon. Members.

Shri G. S. Pathak: Sir, on this question there have been various views expressed. One view is that the clause should be retained. Another view is that the High Court Judges should go to every constituency if possible.

Shri Raghunath Singh: Not every constituency, every district headquarters.

Shri Priya Gupta (Katihar): Sir, when the hon. Law Minister is speaking there is no quorum in the House.

Mr. Deputy-Speaker: The hon. Minister may resume his seat. The Bell is being rung.

There is quorum now. The hon. Minister may continue.

Shri G. S. Pathak: Now, Sir, the House has heard these various views and I do not wish to show any rigidness about it. I leave it in the hands of the House to decide. The only question is whether this amendment should be accepted or this clause should remain as un-amended. That is the only question before the House. But I would suggest one thing to Shri Chatterjee in particular. The word is "may" and there is discretion given. That is why Shri Chatterjee and other friends have insisted on it. If we want to prevent any controversy about "may" and

[Shri G. S. Pathak]

"shall", let us add the words "in its discretion" and then there will be no controversy.

Several hon. Members: Agreed.

Shri G. N. Dixit: Sir, in view of the soft feelings and the appeal made by Shri Tyagi and also in view of the non-rigidity of the hon. Law Minister, I withdraw my amendment.

Mr. Deputy-Speaker: Has he the leave of the House to withdraw his amendment?

Amendment No. 68 was, by leave, withdrawn.

Mr. Deputy-Speaker: I shall now put Shri Dinen Bhattacharyya's amendment No. 99.

Amendment No. 99 was put and negatived.

Mr. Deputy-Speaker: What is the amendment that the Minister wanted to make?

Amendment made:

Page 18, line 39—

after "High Court" insert—

"in its discretion". (108).

(Shri G. S. Pathak)

Mr. Deputy-Speaker: The question is:

"That clause 38, as amended, stand part of the Bill."

The motion was adopted.

Clause 38, as amended, was added to the Bill.

Clauses 39 to 42 were added to the Bill.

Clause 43— (Substitution of new sections for section 193).

Mr. Deputy-Speaker: There is one

Government Amendment to clause 43.

Amendment made:

Page 21,—

omit lines 1 to 4 (64).

(Shri G. S. Pathak)

Mr. Deputy-Speaker: The question is:

"That clause 43, as amended, stand part of the Bill."

The motion was adopted.

Clause 43, as amended, was added to the Bill.

Clause 44— (Amendment of sections 106 and 107.)

Mr. Deputy-Speaker: There is an amendment to clause 44.

Amendment made:

Page 21,—

for clause 44, substitute—

'44. (a) in section 106 of the 1951—Act, for the words "the Tribunal", the words "the High Court" shall be substituted;

(b) in section 107 of the 1951—Act, for sub-section (1), the following sub-section shall be substitute, namely:—

"(1) Subject to the provisions contained in Chapter IVA relating to the stay of operation of an order of the High Court under section 98 or section 99, every such order shall take effect as soon as it is pronounced by the High Court." (65)

(Shri G. S. Pathak)

Mr. Deputy-Speaker: The question is:

"That clause 44, as amended, stand part of the Bill."

The motion was adopted.

Clause 44, as amended, was added to the Bill.

Clauses 45 to 49 were added to the Bill.

Clause 50—Omission of Chapter IV A of Part VI).

Mr. Deputy-Speaker: There is a Government amendment to clause 50.

Amendment made:

Page 22,—

for clause 50, substitute—

'Substitution of new sections for sections 116A and 116B. 50. For sections 116A and 116B, the following sections shall be substituted, namely:—

"Appeals to Supreme Court. 116A. (1) Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie to the Supreme Court on any question (Whether of law or fact) from every order made by a High Court under section 98 or section 99.

(2) Every appeal under this Chapter shall be preferred within a period of thirty days from the date of the order of the High Court under section 98 or section 99:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appelliant had sufficient cause for not preferring the appeal within such period,

Stay of operation of order of High Court.

116B. (1) An application may be made to the High Court for stay of operation of an order made by the High Court under section 98 or section 99 before the expiration of the time allowed for appealing therefrom and the High Court may, on sufficient cause being shown and on such terms and conditions as it may think fit, stay the operation of the order; but no application for stay shall be made to the High Court after an appeal has been preferred to the Supreme Court.

(2) Where an appeal has been preferred against an order made under section 98 or section 99, the Supreme Court may, on sufficient cause being shown and on such terms and conditions as it may think fit, stay the operation of the order appealed from.

(3) When the operation of an order is stayed by the High Court or, as the case may be, the Supreme Court, the order shall be deemed never to have taken effect under sub-section (1) of section 107; and a copy of the stay order shall immediately be sent by the High Court or, as the case may be, the Supreme Court, to the Election Commission and the Speaker or Chairman, as the case may be, of the House of Parliament or of the State Legislature concerned.

Procedure in appeal.

116C. (1) Subject to the provisions of this Act and of the rules, if any,

[Mr. Deputy-Speaker]

made thereunder, every appeal shall be heard and determined by the Supreme Court as nearly as may be in accordance with the procedure applicable to the hearing and determination of an appeal from any final order passed by a High Court in the exercise of its original civil jurisdiction; and all the provisions of the Code of Civil Procedure, 1908 and the Rules of the Court (including provisions as to the furnishing of security and the execution of any order of the court) shall so far as may be, apply in relation to such appeal.

(2) As soon as an appeal is decided, the Supreme Court shall intimate the substance of the decision to the Election Commission and the Speaker or Chairman, as the case may be, of the House of Parliament or of the State Legislature concerned and as soon as may be thereafter shall send to the Election Commission an authenticated copy of the decision; and upon its receipt, the Election Commission shall—

(a) forward copies thereof to the authorities to which copies of the order of the High Court were forwarded under section 106; and

(b) cause the decision to be published in the Gazette or Gazette in which that order was published un-

der the said section." (66)

(Shri G. S. Pathak)

Mr. Deputy-Speaker: The question is:

"That clause 50, as amended, stand part of the Bill."

The motion was adopted.

Clause 50, as amended, was added to the Bill.

Clauses 51 and 52 were added to the Bill.

Mr. Deputy-Speaker: Does any hon. Member want to move his amendment to clause 53?

Shri S. M. Banerjee: Has not Shri Madhu Limaye moved his amendment?

Mr. Deputy-Speaker: No. The question is:

"That clause 53 stand part of the Bill."

The motion was adopted.

Clause 53 was added to the Bill.

Shri S. M. Banerjee: Sir we, want to speak on this.

Mr. Deputy-Speaker: I am sorry. I asked twice if any amendment was going to be moved. I am sorry, you are too late.

श्री मधु लिमये : उपाध्यक्ष महोदय, प्राप क्लॉज 53 को लीजिए। उस में मेरे संशोधन है।

Clause 54— (Amendment of section 126).

Shri M. Malaichami (Periyakulam): Sir, I beg to move:

Page 24,

after line 6 insert—

"(1A) No person shall make frivolous and malicious allega-

tions against officers in the discharge of their duties during the election period which are found to be false in a court of law." (102).

As many Members of this House have previously expressed the difficulties experienced at the time of dealing with election petitions and at the time of elections on account of some malpractices adopted, either by the contestants or by the officials, my aim in bringing forward this amendment is to see that officials who are honestly and efficiently discharging their functions at the time of elections should also have some protection from malicious and frivolous allegations. So, I would request the hon. Minister to give the requisite protection to the officials against allegations filed by election petitioners while filling election petitions which were found to be malicious and frivolous.

At the time of initiating my private Bill I explained in detail the circumstances and the harassment to which these officials are subjected when frivolous allegations are made against them. The allegations made against officials are referred to acts which have been committed at the time of elections. So, if these allegations are found to be false or frivolous subsequently in a court of law, they may also be taken as commissions done during the elections.

So, I request the law Minister to accept my amendment and to give the necessary protection to officials from frivolous and malicious allegations while they face so much hardship in efficiently discharging their functions.

Shri S. M. Banerjee: Sir, on page 24 this clause says:—

"No person shall convene, hold or attend any public meeting in any polling area during the period of forty-two hours ending with the hour fixed for the conclusion of the poll for any election in that polling area."

2182 (A1) LS—9.

I can understand it if it is 24 hours or if it is 48 hours but I cannot understand why it is 42 hours. This 42 hours condition is very difficult for any candidate to observe. I feel that either it should be 48 hours or make it 24 hours. It is a question of commonsense. If it is 48 hours, I can ask my people, if I am a candidate, that before 48 hours they should stop.

Shri Tyagi: This 42 hours is provided for so that a meeting can be held the previous night. Suppose, the meeting goes on till 10 o'clock at night. Well, up to 10 o'clock the meeting can be held and not after that.

Shri S. M. Banerjee: Suppose, the election is say on the 23rd February and we are told that no meeting will be permitted 42 hours before.

Shri G. S. Pathak: I am accepting it. You will kindly remember, Sir, that in the Committee I had suggested 48 hours, but then several Members said that six hours of the night should be excluded.

Shri S. M. Banerjee: Let it be 42 hours then.

Shri G. S. Pathak: I am opposing the amendment of Shri Malaichami on the ground that it is contrary to the very scheme of the Bill. Corrupt practice is committed by the successful candidate or by his election agent or anybody else with his consent. Now, here he wants the election petitioner, the unsuccessful party, to be held to be guilty of corrupt practice because he has been found not to have spoken the truth. This seems to me obviously improper, if I may use that expression, because everyone who goes to court, whether he is an election petitioner or any other person, incurs a liability under the law if he is not telling the truth. He can be hauled up for perjury. Action can be taken against him in a criminal court and costs can also be awarded against such a petitioner. Therefore I am opposing it.

Mr. Deputy-Speaker: Does he press his amendment?

Shri M. Malaichami: I wish to withdraw my amendment.

Mr. Deputy-Speaker: Has he the leave of the House to withdraw his amendment (No. 102)?

Amendment No. 102 was, by leave, withdrawn.

Shri Sonavane: Sir, Shri Banerjee's suggestion should be put in the form of an amendment.

Shri G. S. Pathak: Sir, I am myself moving it. I move:

Page 24, line 4,—

for "forty-two" substitute
"forty-eight". (109)

Mr. Deputy-Speaker: I shall put the Government amendment to the vote of the House.

Shri S. M. Banerjee: Sir, what I had said was that it would be difficult to count 42 hours; therefore, let it be 12 hours or 24 hours. He wants to increase 42 hours to 48 hours. Why not reduce it to 24 hours? I never wanted to prolong it. Let it be 24 hours.

Mr. Deputy-Speaker: I am sorry, you have not tabled any amendment.

Shri S. M. Banerjee: Then, let 42 hours remain.

Shri Priya Gupta: Let it be 24 hours.

Mr. Deputy-Speaker: You may vote against it. The question is

Page 24, line 4,—

for "forty-two" substitute
"forty-eight". (109)

The motion was adopted.

Shri Priya Gupta: Sir, you are giving no opportunity to speak.

Mr. Deputy-Speaker: The question is:

"That clause 54, as amended, stand part of the Bill."

The motion was adopted.

Clause 54, as amended, was added to the Bill

Clauses 55 to 63 were added to the Bill.

Clause 1 was added to the Bill.

Clause 20—(*Substitution of new Chapters for Chapter III of Part II.*)
—Contd.

Mr. Deputy-Speaker: Now, we will come back to clause 20 an amendment to which has been circulated.

Shri G. S. Pathak: Sir, I have not moved the amendment. It was a mere suggestion to Shri Kamath. If it is not acceptable to Shri Kamath, I am not moving it.

Shri Alvares (Punjim): It is acceptable to Shri Kamath.

Shri Ranga: It is not acceptable to us.

Mr. Deputy-Speaker: Some say that it is acceptable and some say that it is not acceptable.

Shri G. S. Pathak: If there a controversy, I am not moving it.

Shri Alvares: Let him move it.

Mr. Deputy-Speaker: He says that he will move it only if it is unani- mously accepted by the House.

Shri Alvares: How can he say that? We are all accepting it.

Mr. Deputy-Speaker: Mr. Banerjee, the Law Minister says that he is moving that amendment if the House un- animously accepts it. I find, Prof. Ranga is against it.

Shri Ranga: The whole of my Party is opposed to it. I have got definite reasons why I am opposing it.

Mr. Deputy-Speaker: So, he is not moving that amendment. The amendment is not before the House.

Shri Priya Gupta: I rise on a point of order.

Mr. Deputy-Speaker: There is no point of order. He has not moved the amendment.

Shri S. M. Banerjee: Kindly hear me.

Shri Alvares: He had made a promise to Mr. Kamath that he will move it. (Interruption).

Mr. Deputy-Speaker: He is not moving it.

Shri Alvares: You are now going back on your promise. (Interruptions).

Mr. Deputy-Speaker: Order, order. Unless he moves the amendment, I cannot place it before the House.

Shri Alvares: This was a balanced suggestion. When anybody from any political party leads a demonstration for food or otherwise and if he is in prison for two years, he may be disqualified. Here was a balanced suggestion that for social crimes also there will be a penalty. It is not that people committing social crimes will be exonerated. So, as a balanced suggestion, the Law Minister proposed to Mr. Kamath that he will introduce this amendment. Having done so, he now refuses to move it.

Mr. Deputy-Speaker: He only circulated it.

Shri S. M. Banerjee: May I make a submission?

Mr. Deputy-Speaker: There is no provision in the rules for submissions.

Shri Priya Gupta: I rise on a point of order.

Shri S. M. Banerjee: Sir, the amendments Nos. 72 and 75....

Mr. Deputy-Speaker: They are not amendments yet; they are only suggestions. Don't call them amendments.

Shri S. M. Banerjee: Kindly hear me. I am talking of the amendments of Mr. Kamath.

Mr. Deputy-Speaker: That is all over.

Shri S. M. Banerjee: On clause 20, no amendments have been disposed of.

Mr. Deputy-Speaker: The discussion was over and the Minister was replying to it and he made the suggestion that if the House unanimously accepts it, he was prepared to move it. There is no unanimity and, therefore, he has not moved the amendment.

Shri Umanath (Pudhkkottai): He said, if it is acceptable to Mr. Kamath.

Shri Priya Gupta: The Law Minister accepted the principle of Mr. Kamath's amendment.

Mr. Deputy-Speaker: Order, order. Please sit down.

Shri Priya Gupta: Let him move it.

Shri G. S. Pathak: May I make a personal explanation? This morning I suggested to Mr. Kamath that in case he wanted to have a substitute amendment for his own amendment, then this was the draft. I never said that I was moving an amendment. Mr. Kamath is not here at the present moment. Therefore, no question arises. If he had wanted to have a substitute amendment for his own amendment, then that amendment could be put to the House. But so far as I am concerned, I never said

[Shri G. S. Pathak]

that I was going to move an amendment which might be accepted un-animously or otherwise. I want to keep the records straight.

Shri Tyagi: You only gave a legal advice.

Shri Sinhasan Singh: On a point of order, Sir. The Law Minister says now that he did not move the amendment. I say, the record of the proceedings will bear me out, that he moved the amendment. After the amendment was moved, the Deputy-Speaker said, let the amendment be circulated and the amendment was circulated to us. The amendment was moved. The record of the proceedings will bear me out. Now, it is not proper for the Minister to say that he has not moved it. He had moved it and it was circulated to us.

Mr. Deputy-Speaker: He has not moved it. I only wanted the draft to be circulated.

Shri Sinhasan Singh: He moved it.

Mr. Deputy-Speaker: There is no point of order.

Shri Sinhasan Singh: The record of the proceedings will bear me out.

Shri Priya Gupta: He is correct.

Shri S. M. Banerjee: My submission is this. In the morning, when we were discussing clause 20 and the various amendments of Mr. Kamath, Nos. 72 to 75 and No. 28 of Shri Madhu Limaye, the Law Minister, in his wisdom, wanted to accommodate the substance and the spirit of Mr. Kamath's amendment. He said that that was not final and so he moved an amendment or rather suggested an amendment. When it was being read out, because it was a lengthy one, we requested you that it should be circulated and that the discussion on clause 20 should be held over.

Shri Ranga: Not only that. Shrimati Renu Chakravarty and myself, both of us, got up and said that there is danger in this thing.

Shri S. M. Banerjee: Now, this amendment, I am sure, has met the substance of Mr. Kamath's amendment. About the moral turpitude, he has not given the reasons why we should respect Mr. Madhu Limaye's amendment. He has not given any reason for that.

Shri G. S. Pathak: I have not said anything about the moral turpitude part of it. I am going to deal with Mr. Kamath's amendment has nothing to do with moral turpitude. I am going to deal with it now.

Mr. Deputy-Speaker: Mr. Banerjee, you cannot go into other matters now. The discussion on this matter is over. In fact, the Minister was replying to it. It is only on Mr. Kamath's amendment that he suggested the draft and I asked the draft to be circulated. So, other matter are irrelevant here.

Shri S. M. Banerjee: But the amendments are not yet disposed of. It was open to Mr. Kamath to ask for the division.

Mr. Deputy-Speaker: It can be asked for now.

Shri S. M. Banerjee: Since the amendments have not been disposed of, we have every right to speak on the amendments.

Mr. Deputy-Speaker: The discussion was over and, in fact, the Minister was replying to it.

Shri G. S. Pathak: Mr. Kamath's amendment should not be accepted for two reasons. Firstly, it does not specify any sentence.

Shri S. M. Banerjee: But we accept your amendment.

Shri G. S. Pathak: Secondly, hoarding and profiteering have not been defined. It is very vague and, therefore, I oppose it.

Shri S. M. Banerjee: You have made it clear.

Shri G. S. Pathak: About the expression 'moral turpitude', if that is introduced in that section, it may lead to dangerous consequences. In that case, you will have to examine the question of what kind of offences should be excluded. In one of the speeches, I found, it was said that offences under section 332 of the Penal Code, etc., where a police officer may be assaulted, do not mean anything, that they do not involve moral turpitude. That is how I understood the speech. Now, this will exclude the cases of burning of property, public property as well as personal property, removing of fishplates from the railways, all offences relating to property which may be attributed to something which is not moral turpitude. It is extremely difficult to define what moral turpitude is in relation to election law. Moral turpitude may have various nuances, various shades, in relation to various statutes. What would be a moral turpitude in relation to election law will be a serious question. Would you like a legislator who has taken an oath on the Constitution to adopt unconstitutional methods in order to achieve political ends. If it is found that any legislator is a party to the disruption of public order, is a party to the destruction of property, both public and private, (*Interruptions*) in that case you cannot say that such a person should not be disqualified. You should not exclude from the operation of the existing section many cases which are anti-social, which are crimes, and if you introduce moral turpitude, many people may have different ideas about what moral turpitude means in relation to election cases. I do not want to detain this House on this point longer. But it would be obvious if you take the list of various

offences in the Indian Penal Code or in other cases, that opinions vary as to what offences involve moral turpitude and what offences do not involve moral turpitude and some cases may be on the border line. The law is clear today and it should be clear because it is initially the Returning Officer who has got to decide whether a person is qualified or disqualified. We should not complicate matters by introducing uncertain elements. Therefore, I am opposed to this amendment. About a murder which takes place in a street, for example, it might be said. (*Interruptions*).

Shri Priya Gupta: There are many existing MPs., MLAs., and national leaders who have been charged for attempt to murder or murder in the British times. They have not been disqualified.

Shri G. S. Pathak:... it might be said that no moral turpitude was involved, but you cannot say that a legislator should not be disqualified if commits such offences. (*Interruptions*)

Shri Priya Gupta: Those MPs and MLAs who have been charged with murder in the British times have not been disqualified.

Mr. Deputy-Speaker: Order, order. He should not disturb like this. If he continues, I will have to ask him to go out.

Shri Priya Gupta: Will you disqualify those people also? You intend only disqualifying the present political workers who are charged with murder.

Mr. Deputy-Speaker: He cannot go on like this. Order, order.

Shri Priya Gupta: He should understand that.

Shri G. S. Pathak: There will be difficulties. Therefore, I would oppose all these amendments which try to introduce this element of moral turpitude in a section which is very clear.

Then I go to section 9A.

श्री प्रिय नृपत : ब्रिटिश टाईम के मंडर चाज मूलजाम भगत सिंह को भ्रज कमे पूजा जा सकता है । आप इस में किस तरह से भेद करेंगे ।

Mr. Deputy-Speaker: I shall ask him to go out if he continues like this.

Shri G. S. Pathak: Section 9A deserves a careful consideration at the hands of this House because it is an important one. I will not press my amendment No. 63, if Mr. Dixit's amendment No. 67 is carried because there is partial overlapping and a part of my amendment is covered by that amendment.

Mr. Deputy-Speaker: The Minister's amendment comes earlier.

Shri G. S. Pathak: That is right. I shall state what I have got to say about this section. I have, by my amendment, added one explanation. The reason why I have added it is this. In cases where the contractor or a person who enters into a contract with the Government executes the entire contract and some money remains to be paid by the Government, the explanation will take out a case of this kind from the operation of the section. That is the object of this explanation. I will explain the reasons. On the section as it stands, the Supreme Court has held that the contract still subsists even though some money may not be paid by the Government even after the other party to the contract has performed the entirety of the contract. The House knows that in England in 1957 this disqualification which arose out of contracts with Government was removed by law. Prior to that, there was this disqualification existing. When this disqualification was existing, then the question arose before the courts there and the courts decided that after person who had to execute a particular contract, has performed the entirety of the contract and the money is not paid by the Government, then he becomes the creditor of the Government. The

Government has got to pay the money to him and in that case, a few days' delay in the payment of the money would result in the disqualification of that person. That was the reason.

Shri J. P. Jyotsli (Sagar): If the amount is withheld, what will be done in that case?

Shri G. S. Pathak: What was stated by the English judges was this:

"...he had been converted into a mere creditor of the Government, whose claim had been ascertained, and whose right was to receive his money, and as to whom, it would be an injustice to say that a mere delay in payment on the part of the Government should have the effect of disqualifying him as a candidate. It appears to me very clear, when the terms of the act come to be examined, that it was not the intention of the legislature that the mere relation of debtor and creditor subsisting should, of itself, create a disqualification. If that were so, it would be impossible to avoid the absurdity that the mere omission of the government to pay a small sum of money a trifling balance, to a contractor who had completely fulfilled his contract—whether by reason of there having been a dispute that was not adjusted until shortly before the election, or even by reason of an accidental omission of a few pounds at the time of payment—should constitute the status of disability."

The Supreme Court held otherwise because of the language of the section. I want to introduce the explanation so that justice may be done to the people and he may not be disqualified when they are not at fault themselves. It is not their fault that the Government has not paid the money or the entire money at the proper time. That is the reason for this explanation.

Section 9A may be divided into two parts. The addition to the section

whereby corporations in which the Government has some interest should be the subject of this section—that part. I have found it stated in the debate that you will be disqualifying many many persons. There are many Corporations in which either the State Government or the Central Government has interest and all those who would enter into contracts with such Corporations would be automatically disqualified. That will be the result. Take the case of Food Corporation, for example. If a person enters into a contract with the Food Corporation to supply food to the Corporation, then he will be disqualified. There are so many Corporations—Warehousing Corporation, the State Trading Corporation, the Handicrafts, the Khadi, the Indian Airlines Corporation etc.—and these Corporations will be covered by this section and the result will be that every one who deals with these Corporations, who sells or enters into a contract for sale or to execute a contract, will be disqualified and the result will be that millions and millions of people will be disqualified for no fault of their own and simply because the Government have an interest there.

Shri Hari Vishnu Kamath: Not millions and millions, but it will be only a few thousands.

Shri G. S. Pathak: You can easily see how many people will enter into contracts in the matter of food and how many people in the villages will supply food.

You may also remember one thing that when Act 58 of 195 was passed, this particular question was discussed here. I say with the utmost respect to the House that Parliament should not change views without considering whether what it had done before has become superfluous now or has become out of date.

This question was discussed in the house when Act 58 of 1958 was passed, when the law was changed from what it was in 1951. Therefore, I submit that this part of the provision

should not be incorporated.

With regard to the remaining part, substantially I have got to give a little history in a few words. In 1951 there was a law which included not only persons who entered into contracts but also those for whose interest or benefit the contract was entered into or who held some trusteeship and who had to confer some benefit on any party because of that trusteeship. That was the law in 1951. In 1958 the law was amended and the present section was substituted in place of that law. May I be permitted to read out what the Joint Committee said on that earlier occasion?

This was what they had said:

"The Committee feel that in view of the expanding activities of the Central and State Governments as the biggest purchasers and suppliers of goods including foodgrains and other essential commodities, a large number of persons in the country will have some contractual relationship with the governments in these matters. Under the circumstances it will not be proper to disqualify all such persons who are having contractual dealings with the government from standing for election or being elected as members of Parliament or State Legislatures. The Committee feel that the better course would be to omit altogether the already existing section 70A."

But when the matter came up in the House, I believe it was Shrimati Renu Chakravartty who suggested an amendment that there should be no deletion but there should be the enactment of a section which you find in the existing law.

In this connection, it must be remembered that we have got to make our laws simple. The returning officer has got to decide summarily, of course, the question whether a person is disqualified or not. How can he decide summarily complicated questions of law and fact with which this

[Shri G. S. Pathak]

question will be attended namely whether there is a trust for whose use or benefit that contract was entered into and so on? It will be the duty of the returning officer to decide the question of disqualification at the time of the scrutiny of the nomination papers. Therefore, we have got to consider these practical aspects also. Therefore, I suggest that the amendment of Shri G. N. Dixit be accepted and the law should remain as it is namely that there will be a prohibition to enter, a prohibition or disqualification as a result of prohibition but confined only to the existing section.

You may kindly also remember that there is the question of a Member of Parliament entering into a contract with Government for making a speech on the radio. Would that also come within the scope of this or not? That is also a question to be determined. Therefore, we should not extend the operation of this section.

Having regard to these various aspects, I submit that Shri G. N. Dixit's amendment may be accepted; otherwise, my amendment may be accepted.

Then, I come to Shri A. N. Vidyalankar's amendment, namely amendment No. 78.

I oppose this amendment for the reason that the proper place where provision should be made on this subject is the Government Servants Conduct and Conditions of Service Rules. Otherwise, the government servant could say: 'Why should I be discriminated against?' When other people have got a right to stand for election, why should I be prohibited from standing for election for one year?' In case some provision is to be made in the conduct rules, that might be a matter which the Government might consider. But to disqualify a public servant in this manner would not be right. I think they are doing good service, people like Shri Dandekar.

Shri A. N. Vidyalankar (Hoshiarpur): In the rules, you cannot create such a disqualification.

Shri G. S. Pathak: It will be one of the terms and conditions of service, that he cannot stand for any particular period of time.

Shri A. N. Vidyalankar: Government cannot impose any disqualification to stand for the legislature in that way.

Shri G. S. Pathak: He wants to disqualify only for one year.

Shri A. N. Vidyalankar: Under the rules, Government cannot do it.

Shri G. S. Pathak: It should be known that when the conduct of a government servant is under inquiry, the resignation is not generally accepted. If you make a provision in the conduct rules that in that case the resignation should not be accepted, that should satisfy the needs underlying this amendment.

Then I am opposing amendments Nos. 51 to 55 for these reasons. For electoral offences, the disqualification is 6 years from the date of conviction. That is the report of the Committee. The amendment wants a further disqualification for 6 years so that he should be disqualified for two elections. I am opposing this.

Shri Hari Vishnu Kamath: Nothing wrong in this.

Shri G. S. Pathak: What is wrong! Take what has been said by English Judges that it is the electoral right of the people to elect; unless you want to take away those rights, you cannot make such laws, that there should be disqualification for 12 years.

Shri Hari Vishnu Kamath: Then even 6 years is wrong.

Shri G. S. Pathak: No, no.

Shri Hari Vishnu Kamath: That is his obiter.

Shri G. S. Pathak: For a reasonable period, you can disqualify.

Shri Hari Vishnu Kamath: What is 'reasonable'? For me, even disqualification for life may be reasonable.

Shri G. S. Pathak: Then he may move an amendment for disqualification for life. We will consider.

Shri Hari Vishnu Kamath: For some offences like corrupt practices, gross corruption,

Shri G. S. Pathak: The next one I oppose for the same reason. In 53, he wants that even after the contract has been performed on both sides, there should be another two years disqualification. I am opposing it.

Then 54—has it been withdrawn?

Mr. Deputy-Speaker: It has been moved.

Shri G. S. Pathak: I am opposing it. This says that if a Member has been suspended from the service of the House for three times, he should be disqualified for 6 years.

Shri G. N. Dixit: When Shri S. N. Das was going, he told me that he had withdrawn it.

Mr. Deputy-Speaker: It cannot be withdrawn like that.

Shri G. S. Pathak: I am opposing it because it raises very vital questions and it may affect the rights of the House itself.

Shri Alvares: Why 'may'? It does.

Shri G. S. Pathak: In England, it was done for some time. When the Speaker said 'expelled', it was disqualification for ever. There was great opposition. That practice has been abandoned there.

Shri Hari Vishnu Kamath: He has shown some wisdom this time.

Shri G. S. Pathak: Amendment No. 55 wants the substitution of five years for 'three years'. I am opposing this also.

Amendment No. 58 aims at taking away the power of the Election Commission to remove disqualifications. On that point, I have something to say. The Election Commission must have this power because there may be hard cases; there may be technical cases where the Court on an interpretation of the section may have to say that a corrupt practice has been resorted to.

Shri Hari Vishnu Kamath: Hard cases make bad law.

Shri G. S. Pathak: You will see that the law will be good if this provision remains. Why is it? I am taking the case, the analogy. The Governor has got power to remit sentences even though the judiciary has sentenced a person to a certain punishment. There must be some power residing somewhere to meet cases of the marginal type—hard, would be more correct—to meet hard cases. There may be somebody who has remained under a disqualification for a long time and when just a few days remain there is the next election, he may be relieved of that disqualification. Therefore, there must be some power which must reside in the Election Commission. Repeatedly, Mr. Kamath has referred to Mr. V. C. Shukla's case because his opponent was a PSP candidate.

Shri Hari Vishnu Kamath: It is a serious reflection. Whether it be PSP or SSP or Communist or Congressman, I want fair and free election. He may not be anxious but I am anxious; I am for a free and fair election.

Shri G. S. Pathak: What is forgotten is this.

Mr. Deputy-Speaker: You yourself said yesterday that he was your party-man.

Shri Hari Vishnu Kamath: Now he says that because he was my party-man I raised it. It is a reflection.

Shri G. S. Pathak: It is an incidental matter; you also happened to belong to the PSP. The position is this. It is grossly unfair that such aspersions be cast upon a person whose case was considered by the Election Commission. During the entire period when the Election Commission has functioned it has won the admiration of the people.

Shri Hari Vishnu Kamath: Who? (Interruptions.) We do not want this rigmarole here—admiration, this and that. Come to facts. (Interruptions.)

Shri G. S. Pathak: He may not have found a single case so far as the Election Commission is concerned. I am talking of the Election Commission. You are obsessed with Mr. V. C. Shukla. There is already a remedy available to an aggrieved party. Where the Election Commission judgment is without jurisdiction, or there is an apparent error on the face of the judgment, one can go to the High Court; or even to the Supreme Court. Why I say it is unfair is this. No one said that the election Commission had gone outside its jurisdiction.

Shri Hari Vishnu Kamath: The Supreme Court had dismissed the appeal of Mr. Shukla.

Shri G. S. Pathak: No, no.

Shri Hari Vishnu Kamath: What "No, no?" I say, "Yes, yes."

Shri G. S. Pathak: It is the order of the Election Commission. I am talking of the conduct of the Election Commission. I am not talking of the judgment in appeal. (Interruption)

Shri N. C. Chatterjee: How can he go to the Supreme Court from the Election Commission?

Shri G. S. Pathak: Therefore, I am opposing this amendment and this power should remain, with the Election Commission.

Shri Hari Vishnu Kamath: What about my amendment No. 75?

Shri G. S. Pathak: I am opposing amendment Nos. 73 and 74. The reasons have already been given. Then, there is No. 75.

Shri Hari Vishnu Kamath: That is an alternative amendment.

Shri G. S. Pathak: "The Election Commission shall not remove disqualification before the general election."

Shri Hari Vishnu Kamath: Accept that at least.

Shri G. S. Pathak: I do not accept it. Why should we impose these conditions on the power of the Election Commission? Is it not sufficient to do what the Joint Committee has recommended, namely, the Election Commission should give its reasons, record the reasons, so that everyone may be able to know why is it that he has removed the disqualification? That should be enough.

Shri Hari Vishnu Kamath: In this particular case, the Election Commission has functioned as an appellate court; the Supreme Court dismissed the appeal; the Election Commission functioned as a super Supreme Court.

Shri G. S. Pathak: The Supreme Court did not go into the facts.

Shri Hari Vishnu Kamath: Sir, on a point of order. He says anybody can move the Supreme Court against the Election Commission's orders. What has happened in Shri Shukla's case? Shri Shukla was unseated; disqualified by the high court. He filed an appeal in the Supreme Court, and the Supreme Court dismissed his appeal, and then after all that, the Election Commission functioned as a super Supreme Court. (Interruption)

Shri G. N. Dixit: Is it a point of order or a speech?

Shri Hari Vishnu Kamath: I know. Do not teach me.

Shri G. S. Pathak: So, I was saying that, with reference to the order of disqualification. This is all that I

have got to say on these matters and I oppose all the amendments.

Mr. Deputy-Speaker: I am putting amendment Nos. 28 and 29 to the vote. It is Shri Madhu Limaye's.

Amendments Nos. 28 and 29 were put and negatived.

Mr. Deputy-Speaker: I shall now put amendment Nos. 52, 53, 54, 55 and 56 of Shri Shree Narayan Das.

The amendments Nos. 52 to 56 were put and negatived.

Mr. Deputy-Speaker: Then there is Government amendment No. 63. The question is:

Page 13,—

after line 8, insert—

"Explanation.—For the purposes of this section, where a contract entered into by a person himself or by any person or body of persons referred to in this section with the appropriate Government or with any company or corporation (other than a co-operative society) referred to in this section, has been fully performed by the person himself or by the person or body of persons as aforesaid, the contract shall be deemed not to subsist by reason only of the fact that the appropriate Government or such company or corporation has not performed its part of the contract either wholly or in part." (63)

The motion was adopted.

Mr. Deputy-Speaker: Then Shri Dixit's amendment No. 67 is barred.

Shri G. S. Pathak: In Shri Dixit's amendment, there are two parts: one which was covered by my amendment and the other is not covered by my amendment. It would not be barred.

Mr. Deputy-Speaker: Do you mean to say it is covered by 63?

Shri G. S. Pathak: One part is the explanation, the latter part.

Mr. Deputy-Speaker: What are the amendments of Shri Kamath?

Shri Hari Vishnu Kamath: I have four amendments. (*Interruption*).

Mr. Deputy-Speaker: Order, order. He has got 72, 73, 74 and 75. Is that covered by Shri Kamath's amendments?

Shri G. S. Pathak: Not Shri Kamath's amendments; Shri Dixit's amendment.

Shri G. N. Dixit: What has happened to my amendment?

Mr. Deputy-Speaker: It is barred by the Government amendment.

Shri G. S. Pathak: I submitted that Shri Dixit's amendment is wider than mine. I accept his amendment, and if my amendment is carried, that does not mean that Shri Dixit's amendment falls, because it is wider. It consists of two parts; only one part overlaps, and that is why I said that if my amendment is carried, his does not fall.

Shri S. M. Banerjee: Is he accepting Shri Dixit's amendment or not?

Mr. Deputy-Speaker: Which is the part that has been covered by your amendment?

Shri G. S. Pathak: The Explanation.

16 hrs.

Shri Hari Vishnu Kamath: The Minister has made the confusion worse confounded.

Shri G. S. Pathak: The explanation is in my amendment and in his amendment also.

Mr. Deputy-Speaker: All right; I will put the other part of his amendment.

Shri Hari Vishnu Kamath: You cannot put part of an amendment. Part of he and part of the Minister cannot together make one.

Mr. Deputy-Speaker: All right; I will put the whole of the amendment No. 67.

Shri S. M. Banerjee: Please read it.

Mr. Deputy-Speaker: It says:

Pages 12 and 13,—

for lines 41 to 43 and 1 to 8 respectively. *Substitute—*

"Disquali- 9A. A person shall be fication disqualified if and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.

Explanation.—For the purposes of this section, where a contract has been fully performed by the person by whom it has been entered into with the appropriate Government, the contract shall be deemed not to subsist by reason only of the fact that the Government has not performed its part of the contract either wholly or in part." (67)

Shri Hari Vishnu Kamath: Is he opposing it?

Shri G. S. Pathak: I have said I am accepting his wider amendment and if that is carried, my amendment becomes superfluous.

Mr. Deputy-Speaker: There is no conflict. Amendment 63 has already been accepted by the House and it cannot be withdrawn now. Now I am putting amendment 67. The Explanation is the same.

Shri Umanath: When the Punjab Reorganisation Bill was passed, two

amendments were accepted which were supposed to be overlapping. Then Mr. Nanda wanted suspension of the rules on the next day and so on. Tomorrow the same thing may happen in this case also.

An hon. Member: Let us take it up tomorrow.

Mr. Deputy-Speaker: All right. We will take up this amendment tomorrow.

16.04 hrs.

[MR. SPEAKER in the Chair.]

MOTION RE: STUDENT UNREST AND TROUBLE IN RECENT MONTHS

Shri Harish Chandra Mathur: (Jalore): Sir, I beg to move:

"That the student unrest and trouble in recent months be taken into consideration."

At the very outset, I respectfully beg to submit that I wish that this discussion is not carried on party lines. I forget for the moment that I belong to any party. This student problem has nothing to do whatsoever with this or that party. I wish there are no accusations and counter accusations hurled at each other, if the whole thing has got to be viewed in a clear perspective and if we are to do justice not only to ourselves but to the younger generation.

I do not think it would be wise or appropriate to dismiss this question of student unrest as if it is a pre-election stunt. It is not so. I do not think it would also be appropriate to say that it is a world phenomenon, everywhere there is student unrest, we are also having it, and the students all the world over are such that we need be complacent about it. Situations in different countries are