

SHRI P.M. SAYEED: I beg to move:

"That the Bill be passed."

MR. SPEAKER: The question is :

"That the Bill be passed."

The motion was adopted.

12.58 Hrs.

STATUTORY RESOLUTION RE:
DISAPPROVAL OF THE CHIEF
ELECTION COMMISSIONER AND OTHER
ELECTION COMMISSIONERS
(CONDITIONS OF SERVICE)
AMENDMENT ORDINANCE AND CHIEF
ELECTION COMMISSIONER AND OTHER
ELECTION COMMISSIONERS
(CONDITIONS OF SERVICE)
AMENDMENT BILL

[English]

SHRIMATI GEETA MUKHERJEE
(Panskura) : I beg to move:

"That this House disapproves of the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Amendment Ordinance, 1993 (No. 32 of 1993) promulgated by the President on the 1st October, 1993."

Mr. Speaker Sir, we are moving this Statutory Resolution because we do not approve the practice of bringing forth ordinances for every thing. Whatever may be the subject matter of the Bill, if it is passed by way of an ordinance, we oppose such a move. This may or may not necessarily mean that we are opposing the provisions contained in the Bill. We only

want to put on record that this practice of ordinances is bad and that is why I chose to move the Statutory Resolution against it.

THE MINISTER OF STATE IN THE
MINISTRY OF LAW, JUSTICE AND
COMPANY AFFAIRS (SHRI H.R.
BHARDWAJ): Sir, I beg to move:

"That the Bill to amend the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act, 1991 be taken into consideration."

Sir, the question whether there should be a multi member Election Commission has been debated from time to time. In 1990, the Committee on Electoral Reforms headed by the then Law Minister, Shri Dinesh Goswami, had recommended that the Election Commission should be a three member body. In Parliament, the hon. Members have repeatedly made the demand for making the Election Commission a multi-member body. The hon. Supreme Court in Dhanoa's case has aptly described the need for making the Election Commission a multi-member body and I quote from the judgement:

"When an institution like the Election Commission is entrusted with vital functions, and is armed with exclusive and uncontrolled powers to execute them, it is both necessary and desirable that the powers are not exercised by one individual, however, all-wise he may be. It ill-conforms to the tenets of the democratic rule."

The hon. Supreme Court in the aforesaid case has also observed that it is an acknowledged rule of transacting business in a multi-member body that, "when there is no express provision to the contrary, the

business is to be carried on unanimously", and that, "the rule to the contrary such as the decision by majority has to be laid down specifically by spelling out the kind of majority - whether simple, special of all the members or of the members present, and voting, etc." The court further observed :

"In a case such as that of the Election Commission, which is not merely an advisory body but an executive one, it is difficult to carry on its affairs by insisting on unanimous decisions in all matters. Hence, a realistic approach demands that either the procedure for transacting business is spelt out by a statute or a rule either prior to or simultaneously with the appointment of the Election Commissioners or that no appointment of Election Commissioners is made in the absence of such procedure."

13.00 Hrs.

As hon. Members are aware, the President in exercise of the powers under Article 324(2) of the Constitution fixed the number of Election Commissioners other than the Chief Election Commissioner at two with effect from 1st October, 1993. With the Election Commission becoming a three member body, it became necessary to make provisions for transaction of business of the multi member Commission. Subsection (1) of the proposed section 10 confers power on the Election Commission to regulate, by unanimous decision, the procedure for transaction of its business as also allocation of its business amongst the Chief Election Commissioner and other Election Commissioners. However, until such time as the Election Commission makes provision for disposal of its business under subsection (1), the Bill specifies in subsections (2) and (3) of the said section the manner for

disposal of business by the Election Commission. Opportunity was also utilised to grant the salary and other perquisites admissible to a Supreme Court Judge to the other Election Commissioners. As Parliament was not in Session, the President promulgated the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Amendment Ordinance, 1993, on 1st October, 1993.

The present Bill seeks to replace this Ordinance by an Act of Parliament.

Sir, I commend the Bill for consideration of the House.

MR. SPEAKER: Motions moved:

"That this House disapproves of the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Amendment Ordinance, 1993, (No. 32 of 1993) promulgated by the President on the 1st October, 1993."

"That the Bill to amend the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act, 1991 be taken into consideration."

Time allotted for this Bill is two hours. Will it be possible for us to complete it in two hours?

SHRI H.R. BHARDWAJ: Yes, Sir.

MR. SPEAKER: Is the Home Ministry ready to take up Item Nos. 13 and 14?

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P.M. SAYEED) : Sir, we will take it up tomorrow.

MR. SPEAKER: Item Nos. 15 and 16 may also come up. The Minister of Parliamentary Affairs may inform the concerned Ministers. Item No. 17 may also come up.

THE MINISTER OF STATE IN THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT (DEPARTMENT OF YOUTH AFFAIRS AND SPORTS) AND MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRI MUKUL WASNIK): Yes, Sir.

MR. SPEAKER: The House stands adjourned for Lunch to meet at 14.00 hours.

13.02 Hrs.

The Lok Sabha then adjourned for Lunch till Fourteen of the Clock.

14.07 Hrs.

The Lok Sabha re-assembled at seven minutes past Fourteen of the Clock.

(MR. DEPUTY SPEAKER in the Chair)

ARREST OF MEMBER

[English]

MR. DEPUTY SPEAKER : I have to inform the House that the Hon'ble Speaker has the following telex message dated 11 December, 1993 from the District Magistrate/ District Superintendent of Police, Godda, Bihar, on 13 December, 1993:-

"Shri Suraj Mandal, Member of Parliament, has been arrested in connection with economic blockade by Jharkhand Mukti Morcha(s) in Godda District, Bihar, on 10.12.1993."

14.08 Hrs.

STATUTORY RESOLUTION RE:
DISAPPROVAL OF THE CHIEF
ELECTION COMMISSIONER AND OTHER
ELECTION COMMISSIONERS
(CONDITIONS OF SERVICE)
AMENDMENT ORDINANCE AND CHIEF
ELECTION COMMISSIONER AND OTHER
ELECTION COMMISSIONERS
(CONDITIONS OF SERVICE)
AMENDMENT BILL—Contd.

[English]

MR. DEPUTY SPEAKER: There are two amendments to be moved to the Motion for Consideration. Shri Dau Dayal Joshi - not present: Shri Girdhari Lal Bhargava - not present.

SHRI SAIFUDDIN CHOUDHURY (Katwa): The Chief Election Commissioner and other Election Commissioners (Conditions of Service) Amendment Bill, 1993 is a very important Bill; and it is dealing with a very vital Institution which is vested with the power to direct, superintend and control elections in our country.

Elections are life-line of our democracy and Election Commission is the nerve centre for the holding of elections. There is no denying the fact that over the years, by and large, our Election Commission has discharged its duties in a very responsible and dignified manner. Despite the fact that there were times in the past when many questions had been raised about certain decisions of the Election Commissioner, many a times in this House, we had to debate on certain actions of the Chief Election Commissioner, it was not to cast any aspersions on any individual but this House took up those issues with an attitude to strengthen this very vital institution

concerning our democracy.

With that view in mind, this time also, while supporting this particular Bill, we hope that the measures which are going to be taken through this Bill, that is, to make it a multi-member commission, will go a long way to strengthen this institution of our democracy.

I do not wish to take up the issues that were raised in the past, that had bearing on the functioning of the Election Commission, that had really put not only this House but the people at large outside also in a very desperate and frustrating atmosphere and raised questions about holding of various important elections. If I leave that aside then also the vital question that comes is, whether it is prudent for this country and for this Parliament to allow a situation to continue where such vast powers are vested in one individual.

The kind of powers that are given to the Election Commission and which are so far being exercised by one individual, what is the guarantee that there will not be any deliberate or non deliberate misuse of those powers? What is the guarantee that there will not be any other considerations coming into play in the matters of taking certain decisions which would have very important bearing for the future of our democracy or for the future of one or the other political party in our country?

These kinds of questions have been raised not very long ago. In the last session, in this House we had to, for quite some time, express our resentment, our agitation about postponement of biennial elections to Rajya Sabha from West Bengal and Gujarat; then Legislative Council elections; bye-elections to Assemblies and Lok Sabha and a particular situation

developed whereby even the question of whether elections to many other positions can be held or not was raised. A very unseemly confrontation took place, involving this vital institution of Election Commission, the Government and this also brought Parliament into it. Those crises were resolved through the intervention of judiciary.

Does that speak well for the Election Commission? Where are the guarantees then that in future also this type of crises will not take place? I understand that certain decisions taken in the past by the Election Commission came in for criticism. But appreciation could also be heard about the way the elections to the five State Assemblies and Mizoram took place recently. The conduct of the Election Commission was good and beyond question. We are happy about that. We are happy that elections to these five very vital States in the Hindi heartland took place in a well mannered way. The newspapers are also writing about it. The people are also talking about it. We have no dispute about that. These are the type of things that ought to be done by the Election Commission and we need institutional guarantees that in future only this type of good things will happen and no diversion or aberration will take place. The guarantees can only be created if such vast powers are not given to one person, but to more than one.

It is not a question that we are debating for the first time. While the Constituent Assembly was debating this particular clause about the Election Commission, even at that time, questions were raised whether it should be a multi-member commission, and whether so much power could be vested on one individual or not. At that time, Dr. B.R. Ambedkar had the following to say:

[Sh. Saifuddin Choudhury]

"My provision does contain nothing to provide against the nomination of an unfit person to the post of the Chief Election Commissioner or other Election Commissioners. I do want to confess that this is a very important question and it has given me a great deal of headache and I have no doubt that it is going to give the House a great deal of headache."

The kind of headache referred to by Dr. Ambedkar in 1948 had to be suffered by this House not very long ago but only during the last session.

The question was posed by Dr. Ambedkar himself. Where is the guarantee that an unfit person would not be nominated to it? I would like to mention this. While the Government are making it a multi member Commission with two or three members, I do not know how they are selected. That is also a very important question. The selection or appointment should not be done through executive powers. There should be an independent neutral authority to decide about a panel which will choose from among the renowned impartial knowledgeable people with a good understanding of the Constitution who may be available for this post. They should be appointed from that panel.

This is also very important that we not only make the Election Commission a multi-member Commission but the manner in which they will be appointed has also to be decided in a very fair and democratic manner. So, in a very disputed background the question of making the Election Commission a multi-member Commission came into our mind. But while we are really going to enact for that today, it is not with any rancour about a particular decision of the

Chief Election Commissioner that we are going to support this Bill. Even without any controversy that could have been there in the past this noble idea of making the Election Commission a multi-member body had to be accepted by this House. That principle had to be followed. It is not denigration of any individual. This does not mean any disrespect for the high office of the Chief Election Commissioner. This is to safeguard our democracy, to strengthen our democratic institutions, to really have some guarantee that it is not misused that we are supporting this provision. It is also true that questions have been raised about the way the Government enacted the Ordinance and appointed two Election Commissioners. That has been taken to court by the Chief Election Commissioner.

The Supreme Court had given a kind of an Interim Order. Now I do not know whether this is a kind of indictment of the Government or not. Some Hon. Members have moved disapproval motion to this Ordinance.

During the last Session, the whole House stood as one man and demanded that there should be a multi-member Commission. At that time, you wavered and you did not heed to that. The leaders had agreed to this. When just on the verge of elections, you made it a multi-member Commission by an Executive Order doubts are bound to be raised. This is not the way good things are done in this country. Certain good things were done by you but done in a manner which appeared to the people, with bad intentions and bad motives. So, we do not approve the way you had appointed two Election Commissioners through an Executive Order. That is why, there are disapproval motions.

On the basic question of making it a

multi-member Commission, in the interest of democracy, even the Supreme Court in S.S. Dhanou case in 1991 had to say the following, which I may recollect for your understanding:

"There is no doubt that two heads are better than one, and particularly when an institution like the Election Commission is entrusted with vital functions and is armed with exclusive and uncontrolled powers to execute them, it is both necessary and desirable that the powers are not exercised by one individual, however, all-wise he may be. It ill-conforms the tenets of the democratic rule. It is true that the independence of an institution depends upon the persons who man it and not on their number. A single individual may some times prove capable of withstanding all the pulls and pressures, which many may not. However, when vast powers are exercised by an institution which is accountable to none, it is politic to entrust its affairs to more hands than one. It helps to assure judiciousness and want of arbitrariness. The fact, however, remains that where more individuals than one, man an institution, their roles have to be clearly defined, if the functioning of the institution is not to come to a naught."

This is also very important. In 1991, the abolition of two posts of the Commissioners were upheld by the Supreme Court. This was done on two counts, the manner in which the appointment was given was disapproved by the Supreme Court and also there were no clearly defined guidelines, demarcation of powers, how will they act within this framework of Election Commission. Nowhere in the Constitution, it

is said that it is the Chief Election Commissioner who is to direct superintendence and to control the elections. It is the Institution, which is to control the elections. The Chief Election Commissioner and other Election Commissioners that Parliament by law may make. We have this provision in the Constitution. But for long time, despite our demand, this has not been brought into effect through passing of a law. Now you are going to do this. But the very background of this Ordinance created misgivings in the minds of many.

I very firmly say that we have nothing to criticise or denigrate any individual. One decision may be liked by some Parties and the other decision may be liked by some other Parties or individuals. Maybe certain actions were appreciated and certain actions were condemned. But there should not be any occasion in the future where democracy will come to a standstill, elections will be postponed doubts, will be raised and the vital pillars of our democracy, our State, will come into confrontation through an arbitrary action of any individual, who is holding a vital position in our system.

In order to end all that and in order to smoothly function our democracy, we need a multi-member Commission. And that is why, our Party supports this particular Bill, which has been moved by the Government.

SHRI SHARAD DIGHE (Bombay North Central): Mr. Deputy Speaker, Sir, I rise to support the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Amendment Bill moved by the Law Minister.

Now, our Constitution itself lays down that the Election Commission shall consist of Chief Election Commissioner and such other Election Commissioners as the

[Sh. Sharad Dighe]

President may deem fit. In the last Session I remember that several times particularly the Opposition Leaders had raised this issue that the Government should act immediately and establish multi-member Election Commission. When the matter was so urgent it was but natural that it was to be done by issuing an ordinance. It is no use in saying that we support the Constitution of multi-member Election Commission but we oppose the establishment by an Ordinance. When the matters were so urgent and the elections were also on the anvil, if any act is necessary to be done immediately, the Government is entitled to issue ordinance and then establish such an Election Commission.

As I stated, Article 324 itself envisages a multi-member Election Commission. This experiment was made as far back as 7th October, 1989 also when by notification two Election Commissioners were appointed, namely, Shri V.S. Sehgal and Shri S.S. Dhanoa, But, subsequently on 1 January, 1990 those notifications were rescinded and the matter had gone to the Supreme Court itself. It is, therefore, a welcome move that in the present circumstances the Government finds necessary to establish a multi-member Election Commission. Therefore, these steps have been taken.

The Bill now lays down the service conditions also but the vital parts of the Bill are Sections 9 and 10 which lay down the rules for transaction of business of Election Commission. I welcome the move of the Government to define also the procedure which is to be followed by the Election Commission. As regards the multi member Commission - as the earlier hon. Member has read out from the judgment by the Supreme Court in S.S. Dhanoa vs. Union of

India; reported in AIR 1991 Supreme Court at page 745 - they have also approved the establishment by saying that there is no doubt that two heads are better than one and particularly when an institution like the Election Commission is entrusted with multi functions and is armed with exclusive uncontrolled powers to execute them, it is both necessary and desirable that the powers are not exercised by one individual however much wise he may be. And the same judgment also lays down the necessity to formulate, in such circumstances, the precise powers and the rules of transactions for such a Commission.

In paragraph 15 of that judgement it is also stated that :

"It is further an acknowledged rule of transacting business in a multi-member body that when there is no expressed provision to the contrary, the business has to be carried on unanimously.

The rule to the contrary such as the decision by majority, has to be laid down specifically by spelling out the kind of majority, whether simple, special or of the Members present and voting, etc. In a case such as that of the Election Commission, which is not merely an advisory body but an executive one, it is difficult to carry on its affairs by insisting on unanimous decisions in all matters. Hence, a realistic approach demands that either the procedure for transacting business is spelt out by statute or a rule, either prior to or simultaneously with the appointment of the Election Commissioners or that no appointment of Election Commissioners is made in the absence of such procedure."

Now, the Government has exactly followed this guideline which was given by the Supreme Court and, therefore, in section 10 it has been made clear that the Election Commission may, by unanimous decision, regulate the procedure for transaction of its business, as also allocation of its business amongst the Chief Election Commissioner and the other Election Commissioners. So, as far as all these matters are concerned, the decisions are to be unanimous and all the business of the Election Commission shall, as far as possible, be transacted unanimously. The further it has been provided that if the Chief Election Commissioner and the other Election Commissioners differ in opinion on any matter, such matter shall be decided according to the opinion of the majority. So, this will practically solve the problem if there are differences between the Chief Election Commissioner and the other members of the Election Commission. Of course, there are some doubts in the Constitution itself as to the status of the Chief Election Commissioner *vis-a-vis* the other Election Commissioners. Article 324 itself lays down that he will be the Chairman. Not only that, it also provides that he cannot be removed ordinarily, but he can be removed in such a manner as a judge of the Supreme court. So, immunity is given to him as far as removability is concerned. That is not given to the other member of the Election Commission. Their conditions of service are to be decided by law, or till that time by the President itself, and when they are to be removed, there has to be a recommendation of the Chief Election Commissioner to this effect. So, from this point of view, it appears that the intentions of the framers appear to be that he should have little more status and therefore, in the debates of the Constituent Assembly also, Dr. Babasaheb Ambedkar stated that we, of course, do not propose to give the same status to the other members

of the Commission. We have left the matter to the President as to the circumstances under which he would deem fit to remove any other member of the Election Commission. So, at least as far as the removability is concerned, he has got a little more status and he is also the Chairman as far as this is concerned.

The Parliament has, of course, powers to frame law regarding the service conditions and also the procedure to be followed, as far as the Election Commission is concerned, and in exercise of those powers, we are laying down this procedure of decisions by majority. I have a little doubt in my mind and the Law Minister may clarify the position, that in view of the spirit of the whole article 324, whether this law will ultimately stand, as far as the Supreme Court is concerned.

No doubt, in the earlier case of the Supreme Court - which I have just now cited - there are indications that Parliament may frame rules or make law for the purpose of transaction of the business of this Commission. And that gives support to the powers of this Parliament to make law making it incumbent upon the Commission that in these matters the ultimate decision shall be by majority.

No doubt, even before we discuss this matter, the Supreme Court has already given interim stay saying that:

"Meanwhile until further orders, with a view to ensuring the smooth and effective functioning of the Commission and to avoid any confusion with regard to its administration, we direct that the Chief Election Commissioner shall remain in complete and overall control of the Commission's work."

[Sh. Sharad Dighe]

Now I do not know what will ultimately be decided by the Supreme Court. But I hope that this law will stand and it will help in the smooth working of this very respectable organisation of Election Commission whereby not only one head will decide all the matters but they will be decided by the whole Commission by majority.

With these words, I feel that many of the bitter experiences we are getting sometimes as far as the functioning of this Election Commission is concerned, those irritants may be removed by this procedure and from that point of view this law is welcome. We do not, of course, frame the law putting before us certain personalities. Ultimately these are permanent institutions envisaged by the Constitution and, therefore, we have to take great care not only to protect them, to maintain their freedom and to make them impartial but, at the same time, we must also see that they function smoothly and the main basis of our democracy, namely, elections are properly conducted and are not conducted by whims of a particular individual; but they are conducted in a wise manner by three heads applying to the situation and to the facts of the particular matter.

From that point of view, therefore, I support this Bill and I welcome it.

[Translation]

SHRI NITISH KUMAR (Barh) : Mr. Deputy Speaker, Sir, I think the intention of the Government behind this Bill is not sacrosanct. Twice the elaborate discussions have taken place on the functioning of the Election Commission during the last two sessions. In one session it was unanimously

decided to turn Election Commission into a multi-member body. The Government delayed it at that time. It was made a multi-member Commission only after the announcement of elections. The case was referred to Supreme Court. The Supreme Court delivered an interim observation that the Chief Election Commissioner would have an overriding power and regarding elections his decision would be final. The multi-member Commission seems to be gliding in multi-directions within only a few days of its reconstitution. The day this ordinance was promulgated some of us had expressed an apprehension whether the new Election Commissioners would even be provided seats for their sitting or not and our doubts proved to be well founded.

I cannot discuss about any person here and one should not discuss about any person. But when the doubts were expressed by everybody that the attitude of the Government was to evade the issue at every level and only when they were convinced with the fact that it would go against the interests of the party in order to curtail the powers of the Chief Election Commissioner. They turned this Commission into a multi-member Commission.

The Election Commission had once before also been turned into a multi-member Commission. Last time when they felt that the Chief Election Commissioner being impartial was not working properly in their opinion, they turned it into a multi-member Election Commission through an Executive Order. The later Government abrogated that executive order. The case was referred to the Supreme Court and the observation given by the Supreme Court has just been quoted by hon. Saifuddin Chaudhary. That shows that the intention of the Government was not veracious. And as a result thereof we are affronted with such a situation. The Supreme

Court has given an interim observation in this case also. We felt that they have precipitated this Ordinance. We thought that now since the case is in the Supreme Court and all the elections have been held and no other elections are to be held in near future, they should have adopted the proper procedure to constitute a multi-member Commission in pursuance of the final verdict of the Supreme Court.

Our objection is only on those points which I have raised and the same points had been raised by the leader of our party Shri George Fernandes at the time when it was introduced by the hon. Minister of Law. We are committed to see that the multi-member Commission is constituted and the work is distributed among them; and of course, after the multi-member Commission is constituted, the salary and the amenities to be provided to the Members are also fixed. The main thing would be to decide how the work would be distributed among them, what would be their powers, and all the more important is how the multi-member Commission would function. At the time when the matter relating to the Chief Election Commissioner and the powers of the Election Commission was raised, a controversy had cropped up. The Attorney General had been invited and his observation had also raised a controversy in the country. As per the observation of the Attorney General the Election Commission of constituted a part of the Government in a way and the opposition would never have agreed with that.

We take the Election Commission as an independent body and there should be no interference of the Government in its functioning. We would like to know as to what would be the mode of nomination of the members in a multi-member Commission; how the members would be nominated and

selected and whether it will be done at the instance of the ruling party and whether any specific criteria or Rules will be laid, and whether any tradition will be evolved. Will the Chief Justice of the Supreme Court or the Members of the Opposition benches or the Speaker of Lok Sabha, Chairman of Rajya Sabha would be consulted. It will have to be seen that the new Election Commission evokes trust and functions impartially.

I do not want to go into all those controversies that were raised and how a notice for impeachment motion by a few Members of Opposition against the Chief Election Commissioner was moved. Generally no discussion on the *modus operandi* of a person can take place in the House without a substantive motion. But what is the position today? Several papers have been distributed today on behalf of the Chief Election Commissioner. Election Commission following the correspondence which took place between the Chief Election Commissioner and the Cabinet Secretary that how the Chief Election Commissioner wanted to divulgate all facts to the Prime Minister but was not given an audience before him even after repeated requests, when the Opposition Members, especially, members of National Front and Left Front were creating controversies, the Prime Minister had not given any assurance and had in fact put it in deep freeze, even a person like me has started having a different opinion. But after a few days when the ruling party felt that things were being done against their interests, they woke up from slumber and started the work. But they started it only after the functions of Election Commission had already become talk of the whole country. Parliament cannot remain insouciant to what is happening all around. Today, it is a general opinion that Election Commission has done a right thing. Fair elections were

[Sh. Nitish Kumar]

held in five States and people voted in larger numbers. Though the enlightenment also played its role yet the role played by Election Commission cannot be ruled out. People are giving credit to Election Commission. That's why, Parliament cannot turn a deaf ear to the voice of the people. It will have to be respected.

The objective of Constituting a multi-member Commission was to have a proper delegation of powers and execution of work to improve the quality of work and not to try to obstruct the functions of a person who had been discharging his duties in a fair manner and who did not knuckle down under pressure.

The members who are appointed in the Election Commission have been badly treated. There was no fault of their own. They were eminent learned people and they offered their services in such a situation even then they have been treated badly. One member had to go leave and the other had to leave. One of the causes was a dubious policy of the Government. The whole Bill was inspired by dishonest intentions. Once it was constituted through an executive order and the next time through an ordinance. All political parties should have been consulted to find out a solution in this regard, as whom they can nominate a member and how it should function, but no such discussion has taken place.

My personal opinion is that the present Law is not sufficient to handle this situation. If we really want to improve the functioning of this institution in the right way then there is nothing wrong in it to hold elections again and again if the public do not give clear opinion. It will increase the work of Election Commission. In such a situation present Law

will not be sufficient to improve the functioning of Election Commission. Whatever is written in the Constitution, we can not override it by making a Law. The Provisions of the Constitution in respect of Chief Election Commissioner and Regional Election Commissioner cannot be changed. If it can be made multi-member Commission through present Law, then its members can not be equal to the Chief Election Commissioner. In the circumstances, such rules, should be made as the Election Commission can work impartially and properly, its function can be properly divided. The rules should also specify as to how the members can be nominated. It will be necessary to amend the Constitution to fix all these things.

Therefore, Mr. Deputy Speaker, Sir, we are not satisfied with this Law. The Government can say that opposition is committed to this. We are not denying our commitment but the present Law will not be sufficient for this, we have to amend the Constitution. For this, all the political parties including the opposition should be consulted and the Constitution should be amended unanimously. In this way, the functioning of the Election Commission can be improved.

This House should not convey this message that all this is being done to control a single person. Whenever it works on subjectively there is always a loss to the dignity of the institution. We will request the Govt. to withdraw this Bill and let the ordinance be lapsed. The message to control a single person in the country should not be conveyed. Whereas in public, the respect of that person has increased for holding free and impartial election. Under such circumstances, our full sympathies are with him. We have also full sympathy with the new members of Election Commission. But they are not responsible for their

predicament, the Government is responsible for that. In this situation, a Constitution amendment Bill should be brought and rules should be made to nominate the members of Election Commission. For this, opinion of all political parties, Speaker of Lok Sabha, Chairman of Rajya Sabha, Chief Justice of the Supreme Court should be taken and appointment of Chief Election Commissioner and other members of Election Commission should be made on that basis. With these words I conclude.

[English]

*SHRI V.S. VIJAYARAGHAVAN (Palakkad) : Mr. Deputy Speaker, I rise to support this Bill. The Constitution of India provides for a multi member Election Commission. Moreover, we have had a multi member Commission once in the past. The Supreme Court has in Danoa's case opined that it is better to have a multi member Election Commission. Therefore, I do not think that there is any legal infirmity in this Bill.

However, it is also a fact that whenever we had a multi member Commission, it had given rise to controversies. It is fact that clashes of ego of individuals have created hurdles before the commission and it has affected the smooth functioning of this body. I wonder whether such a situation will not come again. In an autonomous body like the Election Commission it is very essential to have people who are trained to look at things objectively for its smooth functioning. In every multi member body decisions are taken by majority. It is so in our Courts and therefore there is nothing unnatural about this procedure. What we need is an attitude of mind free from spirit of confrontation and conducive to the smooth functioning of the

organisation. It is also a fact that if a few people sit together and discuss a problem they will be able to avoid many mistakes. It is very necessary in a body like the Election Commission.

The next point is about conferring the same status of CEC and other Commissioners. I do not know whether and to what extent it is in consonance with the Constitution. Recently the Supreme Court in a judgement said the Chief Election Commissioner has got overall control over the Commission. The Supreme Court also said that only he can issue orders. Thus, the orders issued by the other Commissioners lost their validity. From the provisions in the Constitution regarding the Election Commission one thing becomes clear, namely that Chief Election Commissioner has a higher status than that of every Commissioners. If that is so, I do not understand how the salary and other service conditions of CEC and other Commissioners could be the same. I want the Hon. Minister to clarify this point.

When we discuss Election Commission certainly Shri T.N. Seshan comes into the picture. Some of his decisions cannot be justified. Postponement of the election to Rajya Sabha and also in Ottapalam and other constituencies are the examples. Shri Seshan hails from my constituency. But I cannot help saying one thing that it is because of him that the elections could be held free from irregularities, corruption and violence. We should not forget this truth. We must recognise his abilities. I once again support the Bill.

SHRI M.R. KADAMBUR
JANARTHANAN (Tirunelveli) : Mr. Deputy
Speaker, Sir, I rise to support this Bill which

*Translation of the speech originally delivered in Malayalam.

[Sh. M.R. Kadambur]

is meant to replace the Ordinance promulgated already. The House was hearing the hon. Member Shri Sharad Dighe speaking about the legal complications, this and that. But we have to ventilate the people's idea on this Bill.

Sir, India is a great country today in the universal map. It is great not because of its resources, many languages and varied culture but because it is a great democratic country. Because of that, India has got a unique place in the universal map. Therefore, it is very important for the Election Commission to assess what is the idea in the minds of the people of this great country.

I have been in this House for the past 8-9 years. The House is today debating on the Election Commission because of the functioning of the present Election Commissioner. Though the name of the individual should not be mentioned here yet we have no way. We have to mention that. So many cartoons, so many editorials have come forth in our country about this Election Commission when this great Shri Seshan has come to power. This Bill is concerned with the bringing in of more members to the Election Commission. We have to recall that when the present Chief Election Commissioner Shri Seshan was the Cabinet Secretary, at that time Shri Peri Sastry was the Chief Election Commissioner. At that time Shri Dhanova and Shri Saigal were also brought into the picture during his period only. Now, the same Shri Seshan is contradicting the Presidential nomination of Shri Gill and Shri Krishnamurthy which is very well known to the people of this country. To be short, the Election Commission which is functioning as an institution has failed to read the minds of the

people. The Palani by-election is quite an example. That election was postponed three times - one time on the condition of drought and one time by bringing in the law and order situation. But the Palani by-election has been conducted in a calm way by the people of Tamil Nadu. I feel what the Chief Election Commissioner had in his mind was proved wrong which is known throughout Tamil Nadu and elsewhere. He was partial. The election has proved that point. Therefore, I appreciate the Presidential nomination of the two more Election Commissioners. As our comrade Shri Saifuddin Choudhury has pointed out, the timing of the Ordinance is not correct. That created suspicions in the minds of the people of this country. Therefore, the timing of the Ordinance is more important in politics than the law itself.

Sir, I again want to say that so many editorials and cartoons have appeared about this Chief Election Commissioner. One newspaper has gone to the extent of writing like this: "More suited to the imperious style of the Red Queen in Alice in Wonderland than to that of judicial and judicious functionary in a democratic system." In that same editorial, it has been further stated like this: "He has a way of antagonising people with his arrogant manners and overbearing attitude." Therefore, the thing which our Government has done now will rectify the attitude of such people. The Institution of the Election Commission must read the minds of the people. Even in Russia, today only 38 per cent of the people have voted. But, in our country, with so much of terrorism prevailing, even in Uttar Pradesh, after the 1972 elections, 58 per cent of the people have voted. In Punjab, 70 per cent of the people have voted. So, it is very important to know what is there in the minds of the people. Any Election Commission has to keep this fact in its mind. Therefore, I

support this Bill. Also, though the timing is wrong, yet I support this Bill on behalf of the AIADMK party.

15.00 Hrs.

[Translation]

SHRI KAMLA MISHRA MADHUKAR (Motihari) : Mr. Deputy Speaker, Sir, the whole country including the whole House, entire National Front Left Front were concerned about the holding of elections in the country specially in Five States where the atmosphere is not right for holding elections. Here in Delhi a conflict was going on in the Election Commission. The Opposition was emphatically demanding that Election Commission should be multi member. The Government did not take any action on it and it had ignored the public opinion. The Government was in a fix. Whether it should implement it or not and at last it has appointed two more members. It has formed a multi member Election Commission by promulgating an Ordinance prior to declaring the election. What has been its result ?

15.01 Hrs.

[SHRI TARA SINGH *in the Chair*]

The Supreme Court of India has given its interim judgement which is expressive of the public opinion should it be fulfilled or not? When the judgement came, I was in my village at that time and the people told me that the Chief Election Commissioner has slapped on the face of the Government. Prior to this an uncertainty was prevailing over the country whether the election would be held in the five states or not. But the people heaved a sigh of relief. During the last elections, many people were killed but this time that thing was not repeated. That

is why, you can understand what will be the result of all this exercise.

Mr. Chairman Sir, the issue of Chief Election Commissioner has assumed a bigger dimension in Lok Sabha also because National front and leftist parties were demanding that a trial should be held against the Chief Election Commissioner. This has a reason because people have seen the role of Election Commission during the elections of 1991. That time the election of Patna Constituency countermanded and that issue was decided after one year. That time people contemplated in whose favour they should cast their vote. They have a feeling that Election Commission is not working properly. As a result of this and also as per your aspirations we have brought a proposal that Election Commission should be a multi member body. Better late than never.

Since long we were demanding that the Commission should be a multi member body it should not be taken for granted that a person, be it a very very good person cannot make any mistake or he can work in a complete impartial manner. When the safeguard of Democracy falls upon the Election Commissioner, we are of the opinion that absolute power should not be delegated to one person. You have brought this Bill that Election Commission should be made multi member. This is a right step. I got the opportunity to attend this House four times, and I have got enough experience. You had installed one more member in the Election Commission to safeguard your own interest. It is not the question whether Shri Seshan did a right thing or wrong. It is not the question of one person. The Election Commission should be multi member and the functions of Chief Election Commissioner and other Election Commissioner should be described clearly. You have tried to cover all the points. But as hon. Shri Nitish Kumar

[Sh. Kamla Mishra Madhukar]

has rightly pointed out who will appoint the Election Commission, will it work under the guidance of Executive or impartially? We all know that multi party system is increasing in our country. We should not think as to where we sit whether we occupy treasury benches or the opposition benches, but the composition of Election Commission should be made for the interest of Democracy and it should ensure the guarantee of impartiality. How this can be achieved? This Bill clearly indicates all the points that who will appoint this commission and whose views will prevail. It is also provided in the Bill that the views of the majority members will prevail but what will be the position when all the three members have different opinion. I would like to say that you should bring a comprehensive Bill where composition of Election Commission, powers of Chief Election Commissioner and the role of other Commissioners stages of judgement etc. should be clearly defined so that it can be discussed in Parliament to ensure the smooth and impartial functioning of the Election Commission in future. It is immaterial whether you are in the ruling party or in the opposition. I therefore, support this Bill.

[English]

DR. DEBI PROSAD PAL (Calcutta): Mr

This Bill is a departure from the earlier one, in the sense, that this Bill introduces a multi member Election Commission. The features of the Bill essentially are that the Election Commissioners are to be appointed apart from the Chief Election Commissioner and their conditions of service, salaries etc. will also be equal. But the major part of it relates to the transaction of the business, how it

should be regulated, that is also provided for the first time in this Bill.

Now, regarding the constitution of a multi member Commission, I think, it has been the experience throughout the periods that the vast powers which are given and which are vested in the Chief Election Commissioner may result in exercise of certain arbitrary conducts. It has been experience that in democratic process, fair and free elections is the heart of democracy. The entire superintendence, control and direction of the election both of the Parliament and of the State Legislatures; the President and the Vice President, have been vested in one body, the Election Commission. Up till now the Chief Election Commissioner was exercising this vast responsibility which the Constitution has vested in this Commission. But it has been found that if such vast power and tremendous responsibility for conducting the election of the whole country both of the Parliament and of the State Legislatures is vested in one single individual, however well intentioned he may be and however expert he may be, it might give room for arbitrariness. It may not assure judiciousness and that is why it has been found necessary that the Election Commission should consist of not only the Chief Election Commissioner but also two other members as the President under the Constitution may appoint.

The main features of this Bill are that the transactions of business are to be carried on normally on the rule of unanimity. In other words the conduct of the business is to be made according to the rules which are to be framed by the Election Commission unanimously. In the conduct of the business the rule of unanimity should be the principle. But if there is a difference between the Chief Election Commissioner and the other two Election Commissioners, the whole thing will be decided by the

principle of majority. In other words unanimity will yield in places where there are difference of views between different members of the Commission. That is an important feature which this Bill for the first time introduces.

It is true that whereas the transactions of the business should be conducted by the principle of majority, the Parliament has the power to decide it by appropriate legislations. But I will ask the hon. Minister to consider whether such a power can be exercised by Parliament by legislation although it is highly desirable in the context of the present situation, without the proper amendment of the Constitution.

Under article 324, sub-article 5, the Parliament has been given the power to make appropriate laws regarding the conditions of service and also the tenure of the Election Commissioners. The proviso to article 324, sub article 5 provides that the Chief Election Commissioner can be removed except in the same manner and on the same grounds on which a judge of the Supreme Court can be removed; in other words by impeachment. The only other article is article 324 sub article 2 which also gives the power to the Parliament to make appropriate law by which the appointment of the Chief Election Commissioner or the Election Commissioners can be made. But the Bill introduces what is called the regulation of the transactions of the business. The transactions of the business do not come strictly either under article 324 article 2 under which the Parliament has been given the power to make the law, or under article 324 sub-article 5 under which the Parliament has been given the power to make law regarding the conditions of service and the tenure. The only way it can be done, if the Constitution is not amended, is by stretching the appropriate provision, namely article 324 sub-article 2.

The Supreme Court also in the Dhanoa case has pointed out that the law can be made in the case of the conduct of the business. Thus, normally the rule of unanimity shall be followed unless by law or by rules, the rule of unanimity is yielded and the principle of majority is introduced by appropriate law. The principle on which this Bill has been introduced, I support it. In the conduct of business, the principle of majority may occur because all the three members may not be unanimous in their decisions; and in that way, a deadlock is likely to arise unless the principle of majority is followed and adopted. Thus, this Bill introduces a practical measure and also a measure which is intended to solve some of the deadlocks which are likely to arise, if the principle of unanimity is always adhered to.

I would also like to request the hon. Minister to consider as to whether the Election Commissioners and the Chief Election Commissioner will enjoy the same salary as is allowed in the case of the Judge of the Supreme Court. The earlier provision is that the Chief Election Commissioner will enjoy the status and the salary of the Judge of the Supreme Court. But, now the Election Commissioners will enjoy the salary of a Judge of the Supreme Court. The Supreme Court, in Dhanoa case has held that the Chief Election Commissioner is higher in rank and status than that of the Election Commissioners who are to be appointed. Therefore, may I know whether the same salary will appropriately be made available to the Election Commissioners on the same basis on which the Chief Election Commissioner is allowed the salary? This is an aspect which I will request the hon. Minister to consider.

In any event, the Bill is an appropriate one. We have seen, how havoc can be created in the elections. Recently, in the Rajya Sabha by-elections were postponed by the Chief Election Commissioner. However

[Dr. Debi Prasad Pal]

well intention, a man may have, when is given, practically without any supervision by any higher authority, normally, the result is that it is likely to give rise to arbitrariness of the individual concerned, sometimes.

Therefore, by introducing the Bill for a multi member Commission, the Government has done a very practical thing and taken steps to remove this type of anomalies and obstructions. Even the Committee which was formed under the auspices of late Dinesh Goswamy also have recommended to have a multi member Commission. The Supreme Court also in Dhanoa case has held that it is desirable to have it and that such a vast power should not be vested in one single individual. Therefore, from the stand point of policy and from the stand point of principle, the introduction of a multi-member Commission is highly desirable. I congratulate the Minister for introducing this legislation at the appropriate time. The transaction of business have also been given in Clause 10. The Supreme Court itself has pointed out in Dhanoa case, which is cited by many hon. Members who have dealt with this point, that the rule of unanimity is normally the rule. But a provision may be made either by an Act or by the rules for the principle of majority because sometimes events may occur when the decision may not be unanimous and the principle of majority is to be followed.

I think that this measure is a very healthy one. The Minister may also kindly consider as to whether there will be any constitutional difficulty. Otherwise, I fully support the Bill for the measures for which it has been introduced.

SHRI SOMNATH CHATTERJEE
(Bolpur): Mr. Chairman, Sir, all sections of the House have supported the Government's decision to make the Election Commission

a multi-member body. As a matter of fact, this Bill does not deal with the composition of the Election Commission as a multi member body because that has been done by an executive order under Article 324 of the constitution.

This is really a consequential legislation keeping in view the observations of the Supreme Court in Dhanoa's case, namely merely making it a multi member without defining the rights and the *inter se* position of the Election Commission and without defining clearly the rights of the different Election Commissioners, including the Chief Election Commissioner will not serve the purpose. That has to be done.

In Dhanoa's case because of absence of that, the Supreme Court said that it was not workable. But one point is very pertinent. This is not the first time that a demand for making the Election Commission a multi-member body has been made. Apart from that, very recently at a meeting held in the presence of the hon. Speaker, all the parties - leaders - including the hon. Prime Minister, had, in principle, agreed to make the Election Commission a multi-member body. But things were being procrastinated. No action was being taken. And ultimately, it has been made during the inter-session by an executive order.

But in 1971, an all party committee was formed by the then Speaker. I had the great privilege of being a member of that Committee in which all the parties were represented. The report, that was filed in early February 1972, had clearly recommended unanimously that the Election Commission should be a multi-member body. It was almost 22 years back. And it is not known. But every sentence of it holds good. That is the present view of this House also. With your kind permission, I quote from page 1 of Part II of the Report of the Joint Committee on Amendment...

"In order that elections based on adult suffrage in the country may be free and fair, it is essential that the election work should be spread and ramified throughout the length and breadth of the country and that even in the remotest villages this work should be done in a manner so as to inspire the confidence of the people. The election machinery should be such that it may function effectively in every village, town and city in an independent, impartial and fair manner. Gradually, elections have ceased to be a mere quinquennial affair but are held, if not every year, at least in every alternate year in some part or other of our vast country. The elections have, therefore, become a continuing process entailing enormous work on the Election Commission. The immensity of the task of the Election Commission and the complexities of the duties it is called upon to discharge are too obvious and do not require any elaboration. It is too great a burden for a single person to exercise supervision, direction and control over elections effectively and consequently he is likely to be exposed and vulnerable to charges of arbitrariness and partiality. The Committee, therefore, recommend that the Election Commission should be a multi-member body as envisaged in article 324(2) of the Constitution. While the decision about the exact number of Election Commissioners necessary to assist the Chief Election Commissioner in the performance of his duties may be left to Government to determine, the Committee consider that an enlarged Commission will be able to discharge more effectively the responsibilities relating to elections and in exercise of its quasi judicial functions, a broad based Commission is likely to reach generally acceptable decisions and command respect.

Every party was represented here in 1971. It was constituted by the then hon. Speaker with Shri Jagannath Rao as the Chairman.

This recommendation was made but unfortunately, it was allowed to gather dust in the corridors and archives and no action was taken. During the ministership of Mr. Dinesh Goswami, another committee was formed consisting of representatives of all the major political parties and there also - if I am not mistaken because I do not seem to have got a copy of it - there was a unanimous decision to make the Election Commission a multi-member body. During the days of 1972 or 1989, there was no controversy as at present. At present times, I know that the Election Commission has become a controversial institution because several decisions have been taken and many political party members have had reservations about them. There is no doubt about that. Therefore, there has been more and more stridence in the demand for making it a multi-member body. We are now referring to Dhanoa's case. Dhanoa's case was instituted by two former Election Commissioners whose appointments were cancelled by the Government after they were appointed by the succeeding Government. And, therefore, Supreme Court held that the appointments were made only for the purpose of creating trouble and they were not meant to function properly because of the simple reason that their powers were not defined. The Government did not make any attempt to define their powers as to how they would work either by way of majority rule or unanimously. Nothing was provided. And that is why, it upheld the abolition of the two posts of Election Commissioners but in that very judgement, although it upheld the abolition of the post of two Election Commissioners, as Mr. Saifuddin Choudhury has quoted from that judgement, there is a strong recommendation for the conversion of the Election Commission into a multi-member body because it is axiomatic that too much of power in one hand is never good and power corrupts. And here, nowadays, we have got an impression that superintendence or control of elections

[Sh. Somnath Chatterjee]

means that one is above law and nobody can challenge the one sitting as the Chief Election Commissioner and he is supposed to be able to do everything excepting converting a man to a woman. It has created tension also. I am not saying whether any decision is good or bad. I am not saying like that and I need not go into that but it has created controversy. One example is Mr. Sontosh Mohan Dev's outburst. I believe that he is under some sort of inquiry by the Election Commission. Of course, one misuse has been caught; I do not know about other misuses...*(interruptions)*...Well, if he has not done it, he will be exonerated. But I have not accused him. He has been accused by somebody else. Mr. Chairman, Sir, the point is, unfortunately, a constitutional authority has become controversial. There is no doubt that we are happy that last elections had been held properly and we congratulate it. Mr. Saifuddin Choudhury has also said it. But there should not be any occasion to raise doubts in the minds of the people in future. I should have thought that when the task is enormous, any officer would welcome assistance. He would say that he would have to take so many decisions and even with regard to judicial powers, people can act jointly. There can be nine or eleven judges of the Supreme Court sitting together and deciding on judicial matters. Sometimes, there may be majority opinion or minority opinion and with regard to quasi judicial powers which the Election Commission has to discharge, what is the difficulty if it is a multi-member body ?

One may say that one does not like a particular person. That is different. But the concept of multi-membership is a concept which should be accepted in principle. That is why, our Founding Fathers had thought of it way back in 1952 ! Even in 1952, they had that sort of an idea. They said that Chief Election Commissioner would be sufficient

and still they gave powers to the President of India which means obviously to the Government acting in the name of President, to increase the strength of the Office of the Election Commissioner. The Constitution does not want to dilute the position of the Chief Election Commissioner *per se* and he must be the *primus inter pares*. Security of his tenure is provided in the Constitution itself. Without impeachment, one cannot remove the Chief Election Commissioner. And it is not a nice thing to bring impeachment motions against any high functionary. We have had a very unfortunate spectacle in this House when we spent so many hours in deciding a motion of impeachment against a judge. It is not nice that we should be forced to bring an impeachment motion against a functionary like the Chief Election Commissioner. These things are bad and they leave a bad taste in one's mouth. We want that the different organs of our body politic should function in a manner consistent with the objectives of our Constitution. Here the objective is maintaining and upholding our democratic institutions for which proper elections are a must. This is a body which should not come into conflict with either the Parliament or the Executive or the Judiciary in a manner as it is happening sometimes now. This is rather unfortunate. I do not like that a constitutional authority of such high status should go to the Supreme Court or to any other court for that matter and file proceedings against the Government, imputing *mala fides* to it.

The Parliament is in unanimous agreement on this multi member concept. So many political parties stated that the Election Commission should be a multi-member body. In the year 1971, the all-parties committee unanimously decided that there should be a multi-member body. And this has been reiterated again and again by so many Electoral Reforms Committees that have been set up from time to time, the latest

being the Dinesh Goswami Committee. So, it is hightime that Government takes action and sees to it that there is a multi-member body with proper composition of membership. Our main grievance is that this Government chooses not to act or to act rather late. That is why we say that this Government always functions in such a clumsy manner. You give all sorts of opportunities to raise all sorts of doubts even when you, very occasionally of course, act right and proper. Rarely do you act properly. Most of the time your actions are improper and also untimely. Well, most of the time, you do not act at all unless you are forced by 'good' people like us! In this matter also, this is something that you have done after a lot of dilatory tactics and all that. Had you done it at the time when all the Members demanded a multi-member body, nobody would have said anything about you. You have resorted to take this step only when you have found yourself in certain difficulties. Therefore, immediately, motives are imputed, although occasionally I do believe and I can say it with confidence that you also act properly and correctly.

Now, we have to say a lot of things about the functioning of the Election Commissioner. Well, one can have the pleasure that he could give trouble to almost every political party. If one wants to have such sadistic pleasure, one may have it. But, giving trouble cannot be the test. The test should be whether it results in holding of proper elections or not. Sir, I believe it will only strengthen the democracy and democratic principles if the decisions of the Election Commission have unquestioned acceptability of all the political parties in the country. In that case, nobody would be able to raise a finger against the decision. Therefore, it should be above controversy. Everybody wants free and fair elections. However, I know that the Government never does what it says. Since that is the objective, the Election Commission, which is

a body to achieve that objective, should be frictionless with the executive, judiciary, bureaucracy and also other organs and it should have the greatest acceptability across the country. I strongly feel that all the parties must accept it. This is a decision which nobody should question.

Unfortunately, Sir, there are a number of motions pending in this regard. We do not want to continue the controversy, but there has been a motion which is still pending. We do not want to raise that controversy again and again. I appeal to, whoever is in which position, the Government to do it in good grace and to accept the decisions of the Parliament regarding its composition. The Government should work in a manner which is conducive to the very spirit of Constitution, which contemplates it to be a multi-member body. The Chief Election Commissioner should not grudge that other Election Commissioners are getting the same salary as that of himself. They are also men of status. They are senior officials. They have also served the country. I have nothing against them personally. I do not even know them personally. My party has nothing against them personally. Therefore, in such matters it will be better if consultation is there in this regard and proper persons are selected, but, it should be done in good grace. It should be accepted as a decision of the Parliament as a whole. The Government should try to make it workable in a frictionless manner which will maintain the basic structure of our Constitution, namely, a democratic system of Government which has to be based on free and fair elections.

The last elections have given us hope that it can happen. This time we have received much lesser number of complaints. Therefore, it is not that it is not possible. It should be done in a manner where people may think that justice is being done. It is always better to have more than one mind

[Sh. Somnath Chatterjee]

because one may not always think correctly. When the Chief Justice of India sits with his brother judges and takes a decision, even the Chief Justice may be in a minority. There have been occasions when the Chief Justice is in minority and other judges are in majority. In that case the majority opinion will prevail. Does it takes away the Chief Justice's status, or does it mean that the Chief Justice is a person not fit to occupy that position? That is never so. You may or may not agree, but, that is how these organisations, these institutions can work properly and can earn the confidence of people in this matter. I wish to avoid controversy. But, these things are going on for a very long time. For example the 1971 Report was not made unanimously by all Members of the Committee set up by the Speaker to deal with the election laws, such as amendment to the Election Law, keeping in mind who will be the Election Commissioner in 1971, 1972 and 1973.

It could not have been there. That was decided in principle. When the Supreme Court said that in 1991, that was also said in principle. At that time, the present incumbent was not the Chief Election Commissioner. When we all say that there should be a multi-member Election Commission, that does not mean that we are directing against a particular person. We are saying that for a better functioning of a very very important organ of the State and a very very important organ set up by the Constitution of India.

Sir, division of power and division of responsibility also means that there will be an assigned role for different institutions or different bodies for different purposes and election is such an important matter and we say that the Government has rightly decided to bring forward this Bill in order to decide what would be the functions of the Election

Commissioners and whether they will act in a majority or in a minority or whatever it is. It was lacking in Mr. Dhanoa's case. So, this had to be done. In that sense, I congratulate the Government which had made it a multi-member Commission. Please stick to it. In future if anybody is unwilling to work, you see that a properly and wholly acceptable person is appointed. I do not know whether he will be a former who will be sitting on the tractor, then getting down from the tractor and going down to Nirvachan Sadan. I have nothing against him or I have nothing for him. If he does not come down and does not go to Nirvachan Sadan, that may be more profitable. Otherwise, somebody has to be selected. If that has to be done, then, wider consultations should be done. Even, the Chief Election Commissioner's opinion may be taken. Why should it not? I have no objection. That is why, the principle is right. In future, we shall continue to have a multi-member body and please see that you conduct the case before the Supreme Court properly. We do not know why nobody had appeared up till now. We do not know why there was no attempt made to expedite the matter. An *ex parte, ad interim* order was made. The Supreme Court must have thought that the Government of India has no objection. They passed an *ex parte ad interim* order. Nobody had appeared.

Sir, with these few words, in principle, I support Bill.

[Translation]

SHRI HARI KISHORE SINGH (Sheohar): Mr. Chairman, Sir, the Government was in a bid before bringing this Bill. I do not understand what necessitated the Government to issue an ordinance. I can not make out what the Government wanted to do by bringing this Bill just one day before Mahatma Gandhi's birthday but the intention was clear because there were elections in 5 States and it appeared that the

Government could not function in an autocratic manner. There will be no scope for the Govt. to work in an arbitrary way. When this House was constituted, there were elections in your State and the new Government was to be formed but the elections were postponed there at that time. The Election Commission postponed the elections all of a sudden while the polling officers were on their way and some of them had reached at their polling stations. At few days earlier, elections were held at two or three places in Bihar but the country was postponed suddenly. Our colleagues were talking that elections in Tamil Nadu were postponed twice and it was expected that all the elections would not be favourable for the party and the same happened later on. Therefore taking into consideration the prevailing circumstances at that time the National Front and the Left Front moved a motion, which is still pending with the hon. Speaker. The hon. Prime Minister had given some assurances to the leaders of opposition parties personally and collectively regarding that. I would like to know the outcome of those assurances.

In the recently concluded assembly polls, the way, the Election Commission had functioned, had created doubt at every moment as to what step the Election Commission would take further and whether the results of these elections would be declared or not. Daily, there were tussles between the Election Commission, the Chief Secretary and the Governors of one State or the other. You can very well imagine the State of mind of the candidates for whom the counting was likely to start. I would imagine and feel their state of mind since I was actively participating in that election campaign.

Our party and the National Front support the multi-member Election Commission which has been constituted. But you should make it clear as to how those

members would be selected? My suggestion is that the persons recommended by the panel of the Chief Justice of the Supreme Court, the Chairman of Rajya Sabha and the Speaker of Lok Sabha should be appointed as the member of this important Commission. Secondly, my suggestion is that the Government should issue the directions in detail with regard to functions and powers of the members, in connection with the elections. The drama which happened and is still going on in the Nirwahan Bhawan is a disgracing incident. It is immaterial as to who is responsible for it. Such incident in Nirwahan Bhawan put a question mark on our democracy. Therefore, there should be detailed discussion also in this regard. Thirdly, my submission is that all of us undergo the election process, recent election were stretched for a lengthy period. There should not be such a lengthy period for election campaign. There should be a clear cut direction that the elections should either take place on a single day or on two days. The ruling party and some other parties have enough resources but the small parties having no black money, do not have resources. One can easily understand the position of such parties and their candidates in a lengthy period for election campaign. Therefore elections should be time bound and held according to schedule.

With these words, I extend my congratulations to the Government and specially the hon. Minister of Law, since it is never too late to mend. The hon. Minister has shown his alertness in it and he has given a momentum to a non-dynamic Government and he deserves congratulations for it.

[English]

SHRI UMRAO SINGH (Jalandhar) :
Thank you, Mr. Chairman. I would like to support this measure because the present

[Sh. Umrao Singh]

situation has proved that there are numerous cases of misuse of powers or use of arbitrary powers from among the powers which are being enjoyed by the Election Commissioner. Whether it is according to article 324 of the Constitution or Peoples' Representation Act, the power is not defined in the Constitution. It is only general power of superintendence, direction and control. That is a general phrase and under that numerous powers have been enjoyed by the Election Commissioner.

I would like to refer to some of them. The Commission has been given executive powers, like suspension of a poll, cancellation of a poll, countermanding of a poll, disqualification of a member and also making a disqualified member again a qualified member. These are the executive powers.

The the Commission has supervisory powers. There are judicial powers which are also being given to the Election Commission. These are regarding allotment of symbols, registration of political parties and connected matters.

There are legislative powers worth to the Election Commission. Regarding legislative powers, I would like to say that there is a code of conduct prepared by the Election Commission which is not binding but it has been made operative. If there is any violation of the code of conduct then the elections are cancelled, postponed, suspended or adjourned. So, the code of conduct which is prepared by the Election Commission is a sort of legislative authority assumed by the Election Commissioner.

Similarly, there is the power of delegation. The Constitution and the Representation of People Act empower the Election Commission to delegate its authority

to subordinate polling and returning officer and other authorities, but recently we have seen that the Election Commissioner has delegated its authority to the observers. I think, it is extraordinary and the Election Commissioner has not been empowered by the Constitution or by any other legislation for this. These observers can certify the conduct of a poll and the result of the poll can only be announced after they certify it.

Similarly, the commission they have the powers to give direction. These are very wide powers which are being given or are being enjoyed by the Chief Election Commissioner. I strongly feel that there is no authority under the Constitution in this country which enjoys so much of power whether it is legislative or judicial or executive. We have this Parliament, which is the supreme authority but still it has not got some of the powers which are being enjoyed by the Chief Election Commissioner. So, I strongly feel that there is scope for a multi-member Commission.

The Conditions of Service have already been provided according to the 1991 Act. Certain members from the Opposition have objected to the appointment of Commission and its members. We have already an enactment which has been passed by this House and which authorises the appropriate authority, the President to appoint the Chief Election Commissioner. Now the same authority can appoint other Commissioners also. So there is no necessity of clarifying or putting in the law or somewhere again enacting the power of authority as to who is to appoint the Election Commissioner. The Authority which can appoint the Chief Election Commissioner can appoint the other Election Commissioners also. I do not see any misuse of that authority.

According to the Bill, these are very

simple matters. In regard to salary, the Chief Election Commissioner and other members of the Commission are put on the same footing. In regard to age there was a difference. The Chief Election Commissioner was to retire at the age of 62. Now, that retiring age has also been raised to 65. I think, there is nothing wrong in that.

Similarly regarding pension, the Chief Election Commissioner was to get the pension which is being allowed to the Supreme Court Judge and a Member of the Election Commission was to get pension equivalent to that of a High Court Judge. They have been equated in the respective posts. There is nothing wrong in it.

According to the principles of a commission, whether it an election commission, or any other commission, or may be a court, Supreme Court or High Court the conditions of service and the conduct of business should be clearly identified. In the case of an Election Commission, if this amending Bill provides for rules for the conduct of the business, just as this House has rules for the conduct of business and all other authorities have got rules for the conduct of business, I think there is nothing wrong. It is an appropriate thing to take a decision by majority, if not unanimous according to a simple rule of law. When there is a multi-member commission or a multi-member body, just as this House or any other authority or a judicial authority like the Supreme Court or the High Court, the majority will prevail. There is nothing wrong in this case if it is included in the legislation that the majority will prevail. We will prefer an unanimous decision because this institution of the Election Commission is a sacred institution and if cases are decided unanimously that will get the appreciation of the whole country. But in case there is disagreement some provision has to be made and I think it is rightly included that the decision of the majority will prevail.

Now, some cases have been referred here about the arbitrariness of the Commission. I do not want to mention any particular period or a person. But we had seen a situation in Punjab where the Election Commission had taken very arbitrary decisions. In 1991 there were abnormal conditions in Punjab, there was insecurity and the general elections were being held in the country. All the four major political parties in Punjab, the Congress, BJP, CPI (M) and CPI which are also the major parties in the country, requested that elections in Punjab may be delinked from the elections in the country because more security forces were needed in Punjab and the conditions were not normal. But it was not accepted by the Election Commission and the elections were held along with the others. What was the result? As many as 28 candidates were killed, 25 of the Assembly and three of Parliament. Twenty-eight candidates were killed in a poll and that was the situation in 1991. At that time there were threats, intimidation and kidnappings. Even the terrorists were openly interfering in the election process. They were putting up candidates and openly supporting one candidate or one faction or the other. Under those conditions it was requested that the poll should be cancelled or postponed but it was not accepted. The result was that there were so many killings of the candidates.

There was another situation at that time. Some parties had announced that the poll would be a referendum in favour of Khalistan. It was openly announced and even then the plea was not accepted by the Election Commission, even though it was going to decide something against the integrity of the country, against the very spirit of the Constitution and the Representation of the People Act. Still the plea for the postponement of the election was not accepted; it was decided only when the present Government at the Centre came into

[Sh. Umrao Singh]

being, and ultimately the election was cancelled. When it was asked for by the parties, the Congress party boycotted the election on that plea. But it was not postponed. This shows a clear arbitrariness of the Commission and if there is a one member Commission such incidents can happen. There may be recourse to such incidents in future also. When some people in Punjab were saying that they would secede from the country, if they win and they put the poll as a referendum for Khalistan then, I think, no other evidence was required at that time to say that that election was not going to be fair, or the Election was not according to the Constitution or according to the Representation of the People Act, or according to the spirit or wishes of the people of the country.

This was a very sad situation which I wanted to mention.

16.00 Hrs.

We had faced not only bullets but also a situation, when there were certain people at the helm of affairs at that time, in 1990-91. I do not know whether they wanted Punjab to stay with India or they wanted Punjab to secede Punjab from this country. Indirectly supporting election means supporting Khalistan, supporting terrorism, and supporting secessionist movement, which was openly propagated by certain sections of the people at the behest of a neighbouring country. Had there been a multi-member Commission, such a situation would not have arisen.

There are few more things to be done. For example, two Constitutional Amendment Bills were brought before the House. We had seen open misuse of religion and misuse of religious places in Punjab and also in Uttar Pradesh. It has been laid that propagation of

religious feelings or propagating enmity against the classes of citizens and also misuse of the places of temples and other religious places is an offence punishable under the People's Representation Act. In the past not a single case had been brought to the Courts and not a single person had been disqualified on the basis of misuse of religion or misuse of religious places. If we want to have a fair election in the country and if we want to see that religion is not brought in our election process, then it is essential, that we have more electoral reforms. I appeal to my friends on the Opposition side to cooperate with the Government and see that the religious and the communal forces do not have any place in the future set up of our country. Otherwise, incidents occurred in Punjab, Assam and Uttar Pradesh are bound to our again and nobody can save this country and keep this country together.

We had undergone a very difficult situation in Punjab, wherein nobody, when he goes out in the morning, could say that he would come back in the evening safely and he would be able to see his family. That was the situation, we had seen. We had lost many of our colleagues. We had lost many ex-Ministers, ex-Legislatures and even some of our friends in the Opposition CPI, CPM and BJP. They were all killed because they were propagating against terrorism, against those who were propagating for Khalistan or any other slogan, which was against the stability of the country. Their fault was that they wanted a united India and they wanted a secular India. My submission is that if we want to have a secular India, if we want to have a united India, then we must see that anti-national forces, the forces of terrorism, the forces which propagate religion, and the forces which have their command from the religious places of neighbouring country should not be permitted to come into the election arena. I earnestly request the Law Minister and the Government to immediately

go into all these electoral reforms and bring in a legislation to reform the electoral reforms in the country.

[Translation]

SHRI VIJOY KUMAR YADAV (Nalanda) : Mr. Chairman, Sir, our party support the Bill in principle regarding the constitution of a multi-member Election Commission. For the last few months and nearly for a years, the Election Commissioner and his activities have been a subject of serious discussion and there has been many ups and downs in it. It is my ninth or tenth election to the Lok Sabha whereas this time I came here after winning the election. Probably none of the Election Commissioners except the present one, was aware of his powers. When during the elections in our State irregularities were committed by the executive or ruling party, and whenever approached the Election Commissioners with our complaints, they used to show their helplessness. The power was misused. We have raised fingers on the present Election Commissioner so many times during the last few days, but the elections of 5-6 States which were held recently have made it clear to the nation specially to the political parties that the existing rules of elections, the rights of Election Commissioner and under these rights, if the Election Commissioner and if he is capable, if he does not come under the influence of the ruling party and the executive, he can get conducted fair and peaceful elections. The results, of the elections, held recently have proved it.

People were critical about the Election Commission and the Election Commissioner but today the whole media is in its favour. I have seen the interview with the Chief Election Commissioner on television in which he has pointed out his practical difficulties and has said, that the elections in these 5-6

religious tension. If the elections are to be conducted peacefully then we would be in need of sufficient police and force, for which the Government can not make arrangements since it does not have that much of police and force. Therefore, he has pointed out that elections cannot be conducted in a short span of time. When the people heard the argument they all appreciated the point of view of C.E.C.

However, in principle it is quiet right that the Election Commission should be constituted a multi-member Commission and it is not a current topic but a very old one. It can be an ever burning topic whether a man in comparison to two or three men can give the right opinion and he would never be obsessed ? Therefore, not only there is a need to make it a multi-member Commission but also to ponder over these questions as to how it would be made a multi-member Commission and how the new members would be elected, how they would be appointed, what would be their service conditions. Many hon. Members have raised several issues but I would like to raise only one point.

Under the present set up the Chief Election Commissioner like the Judges can not be sacked unless an action is taken against him under the provisions of the Constitution but there is no such provision for the other two members. It means that whenever the Government desires it can sack them by giving its opinion to the hon. President. If we want to give them the power like that of the Chief Election Commissioner and often there is a complaint that the ruling party misuses these powers and if we want to stop it, we shall have to make the same provisions as we have made for the Chief Election Commissioner for sacking them. There is a need to make such provisions in the rules, if need be, we must go even for the Constitutional amendment. In the absence of such provisions, the future ruling

[Sh. Vijoy Kumar Yadav]

parties may arbitrarily use the existing powers and it would be difficult to define the status of the last two members. Thus there will always be a scope for complaint. Therefore my suggestion to the hon. Minister of Law is that he should consider this aspects to. They are being paid equally. It is right that the decision should be taken unanimously. You want to give them the equal powers in all matters but as far as the question of sacking them is concerned, both of them have been set aside. I want that it should be amended. This was the only point which I wanted. With these words I conclude and support this Bill in principle.

[English]

SHRI SYED SHAHABUDDIN (Kishanganj): Mr. Chairman. Sir, in the United States, in the city of Boston, there is a family of Cabot Lodges and it is said that Cabots speak to the Lodges and the Lodges speak to the Cabots, but the Cabot Lodges only speak to God. We do not have any Cabot Lodges in our country. In a democracy, there is no place for a Cabot Lodge who can only speak to God and who can speak on the basis of revelations or direct communication from God. Having said this, I do not have to dilate on the erratic, obstinate, arbitrary, sometimes temperamental and whimsical behaviour of the Chief Election Commissioner. I am not saying that all his decisions were wrong but surely they created an impression and an atmosphere in which there was a lot of misgiving about the manner of his functioning.

Conceptually there is no difference in the House on the need for the sort of legislation that the hon. Minister has brought. In fact, the importance of a Constitutional institution or authority of national importance like the Election Commission cannot be over

emphasised in a democracy. The point that I want to make is this that the Government has chosen not to take the House into confidence as to what prompted them suddenly one fine morning to advise the President to exercise his power under article 324(2) of the Constitution and to appoint two more Election Commissioners. The first sentence of the statement made by the hon. Minister is very prosaic. It says that the President, in exercise of his powers under article 324(2) of the Constitution, fixes the number of Election Commissioners, other than the Chief Election Commissioner of India, at two, with effect from 1.10.1993. He has not told anything to us as to why on 1.10.1993, the Government woke up to the realisation that the Chief Election Commissioner needed to be assisted, if I may say so, by two more Election Commissioners. I think the Government has its reason perhaps for keeping quiet and for not taking the House into confidence. But unless they do that, they are going to get lost, in my opinion, in a legal mess because, I am afraid, perhaps the Bill that we are considering today, even if it is adopted by the House, has every possibility of being struck down by the Supreme Court because, in my personal view, it flies in the face of the very wording of the article 324. Under article 324, as I read it, the Chief Election Commissioner is not, as my hon. colleague, Shri Somnath Chatterjee pointed out, the first among equals; he is superior. He is higher in status and in authority and you cannot wish it away. If you want to achieve what you want to achieve, and on which the entire House is with you, you will have to come forward with a Constitutional amendment. Otherwise, I am afraid, this is just my apprehension- that, as I said, you are going to get lost in a legal maze. Now, the ordinance already stands challenged.

There is already an interim order and the interim order - which was not even contested by the Government - has, in fact,

nullified the entire scheme in the mind of the Government. It reduced the poor additional election Commissioners to a nullity. They were refused any work. They had nothing to do. They were only sitting there, sucking their thumbs. And one of them went on leave and I do not know what the other has done. But surely, we do not want to subject the Election Commissioners, who are also constitutional authorities, to such a fate and to such a state.

Therefore, I would suggest that we should try to work out on the basis of the experience that we have had, a certain scheme which would last longer than the term of the present Chief Election Commissioner. Because there is the element of human weakness; there is the possibility of temperamental decisions by a single person who is vested with too much authority. And, therefore, I would not look at this question that is before the House in the light of the immediate election that has gone by, thankfully, without any mishap. On the one hand it has raised hope and on the other, Mr. Chairman, it has also given rise to certain apprehensions in my mind. People have questioned this - why should the electoral process take four weeks. In other countries constitutions are decided on the basis of one day's process. And supposing you were to hold elections all over the country, supposing there is the general election, what is the time that you would like it to take? Do you want six months to complete the entire operation? How much quantum of force would you need? Would you need the entire army and all these para military forces of the country to be deployed purely on the electoral process during that period? I would like to ask this question. These are the apprehensions that have also been raised by the conduct of the immediate election about which we are also thankful that nothing very untoward happened.

There is one more point that I would

like to make. The Bill has been titled - as the ordinance was - "The Chief Election Commissioner and other Election Commissioners (Conditions of Service) Amendment Bill, 1993". I would beg to ask the hon. Minister through you, how can the term 'conditions of service' be expanded to include 'transaction of business'? Transaction of business is totally different from conditions of service. Either there should have been two separate Bills or the Bill should have been titled properly. It simply does not follow. It does not hang together. It does not form one piece. It is not properly composed. I know the reason why you are putting that new chapter. But it does not belong there.

I always come back to this question - why is it that the Hon. Minister is trying to evade a constitutional amendment. Is he afraid that he will not be able to muster the necessary majority in the House? I assure him that on the question of a multi member Election Commission, the hon. Minister will, perhaps, have the backing of the entire House behind him. On that there is no doubt in my mind.

Therefore, he should have the courage. We in the Janata Dal have recommended that there should be a multi-member Commission, a 3 member Commission. But we have also pointed out that constitutionally the three members should be co-equals; none should be superior to the other and that the chairmanship should rotate every year among the three members according to some principle so that no one thinks that it is his *zamindari* or he is the supreme boss or that the other Election Commissioners are his subordinates. No. They are all equals. They should be appointed in the same manner they should have similar power and they should also be - of course as pointed out by another hon. Member - subject to the same process as far as the termination office is concerned.

[Sh. Syed Shahabuddin]

Therefore, I would suggest that let there be a more comprehensive Bill in the form of a constitutional amendment which should be based on the principle that the Election Commission should be multi membered and that those members should be co-equal and that it should lay down a procedure for their appointment which should not be vested purely in the Government. It should be based on a committee approach - a Committee consisting, perhaps, or including the Chief Justice of India, the Leader of the House - the Prime Minister and may be the Leader of the Opposition.

Then, that Committee should come out, with a panel of names that should come before the House, because the committee does affect the working of the parliamentary system as no other authority does. Therefore, a proper method of recruitment of three Election Commissioners should be devised by prior consultation with all the major political parties and that should be included in the Bill.

Sir, then there is one thing more. There have been many points of friction between the Chief Election Commissioner and the Government in these elections, but one point has not been noticed by many of the hon. Members here and that is the working of Article 324(6) of the Constitution. Who is to decide the categories and quantum of staff required for the proper conduct of elections? Can the Election Commission decide that unilaterally or should the Election Commission decide that in consultation with the Executive? How much staff are to be deployed and where should they be deployed, whether it is possible and whether they are available - all those factors will come in and only after mutual consultations, in a harmonious manner, that can be decided. As I said, you cannot reduce the situation to a point where the Election

Commissioner demands that the entire Armed Force of the country and the entire security apparatus be placed at his disposal. That will be reducing it to absurdity. Some checks should be there. Therefore, not only the number not only the manner of working, but also Article 324(6) of the Constitution requires to be reviewed.

Sir, I respect the wisdom of the Founding Fathers of the Constitution. But, as Dr. Ambedkar said, in one of the debates: "Constitution is made for gentlemen", Constitution has to be observed in terms of its conventions and in terms of the experience that the nation gathers. We have amended the Constitution in the light of our experience and therefore, I would appeal to the hon. Minister to amend the Constitution in this regard. I do not hold a brief for the present incumbent or against the present incumbent, but I would suggest that let us not be taken off our feet merely by one experience or by one individual. Let us try to improve the institution in a long term sense, let us think of the future, let us think of the survival of democracy in our country, let us think of how best the parliamentary form can work in our country and then, let the hon. Minister, in consonance with the spirit of the discussion here today, withdraw the Bill that is before the House and come back to the House with an appropriate and comprehensive Constitution (Amendment) Bill, which, as I said, will not only reform the institution, but also work out the modalities of its interaction with the Executive which is also very necessary.

With these words, I am afraid, Sir, I must conclude that, I am not in a position to support the Bill, as it shows.

SHRI P.C. CHACKO (Trichur): Mr. Chairman, Sir, I support this Bill moved by the hon. Law Minister before this House. This Bill contains the opinions of all the Members of this House and all the parties

represented in this House, expressed on various occasions in this august House, I am not worried that some of the hon. Members of the Opposition found some reasons to oppose this Bill, even though ultimately they supported this Bill, because in a democratic set up, I think, there has to be dissent and some of our Opposition parties are characteristically, in the habit of opposing anything which is being brought by the Government. The hon. Member Shri Syed Shahabuddin also finally did not support this Bill, may be it is his conviction that he did not support this Bill. He said as one of the reasons for not supporting the Bill that the transaction of the business in the Election Commission is not clearly understood from the Title of this Bill. I am afraid that if his suggestion is accepted, then this Bill will have to have a very long Title. Everything which is in a Bill need not be reflected in the Title. Sir, it is very obvious that this Bill has been brought before this House with a definite purpose. Firstly, it is to make a Multi-Member Election Commission and secondly, the transaction of the business in the Election Commission has to be clarified. Why has this Bill come? Unfortunately, some of the Marxist Party Members who gave their opinions in this House are not present now, but their colleagues are here.

One thing is very clear, Congress Party which is ruling the country today is very conscious about the democratic obligations which the party is having to the people of this country. The Opposition says, "We have made the suggestion at that time but the government did not accept it. So, making it now is not good and we cannot support it." This is very strange. This august House at a particular time may be considering something which was happening outside. This Bill is a very important one and the people are very anxious that this Government makes legislation early to make the Election Commission, a multi-member commission. As the history is well known I

do not want to go into the details. At the time of Mr. V.P. Singh Government, the multi-member commission was abolished. Again a commission was appointed, all these are part of history. When it has become necessary that a multi-member Election Commission has to be constituted, the opinion came from all corners of this House and that spirit is well taken by this Government. The allergy of some Party to Ordinance is quite difficult to understand because I do not think any precious time should be lost in this process, after the expiry of the last Session of Lok Sabha. When we thought of elections sufficiently early in October itself, Govt. have promulgated this Ordinance. I do not want to go into the hair splitting interpretation of the Constitution which is being made by some hon. Members. They have said, this is not going to stand in the Court and the Constitutional Amendment is necessary. Shri Syed Shahabuddin has also expressed the opinion.

From the Government side, we are fully aware that article 324(2) empowers the Government to make the legislation of this kind and it will stand the scrutiny of law. With that confidence only, the Government has put forward this Amendment Bill. Time of the discussion of the Bill really generates some interest because of some happenings outside. How should the Election Commission function? According to the people of this country, and the political parties of this country, what do we expect of the Election Commission? The forefathers of our Constitution, in the Constituent Assembly discussed the question of Election Commission. As long back as in 1951 itself, it was decided that it might become necessary for a country of the size of India to have a multi-member Election Commission. Now this multi-member Election Commission was decided respecting the opinions of various political parties and the public opinion.

[Sh. P. C. Chacko]

The way it was taken by the Election Commission is very strange and surprising. In India, unlike what was envisaged at the time of making the Constitution, elections have become a daily affair. By elections are coming very often. The State Assemblies are not able to complete their terms. Therefore, elections are becoming necessary very frequently and the work load of the Election Commission has gone up. Nobody can dispute this fact. But some people say, the Election Commission is not having enough work; he could finish important work in half an hour and thereafter, he would be feeling like listening to music. If this is the explanation anybody is giving, this is very unfortunate. It is a fact that the elections are to be held in time, at the wish of the people. Elections should be conducted on time. What is the best machinery to have the elections to be conducted on time is the concern for Parliament, the concern for the Government. That is why, we have come out with a suggestion, which is also the suggestion of various political parties in this House, for a multi-member Election Commission. It should be welcomed by all and the multi-member Election Commission should be taken in the right spirit.

About the functions of the Members, directions have been given very clearly. I do not know why anybody is having doubts on this. In any commission, it is decided either by "unanimity" or "majority". Nobody would, even remotely oppose it, as the basis of "unanimity" or "majority". In any commission or committee, which is a multi-member one, the only option before any committee or commission is, it would be decided by "unanimity" or "majority" decision. These two options are made before the Commission. I think, this country has experience of 45 years in the process of deciding such things. The basic faith of the people in the democratic forces has never

been challenged and their constant faith in the system is unshakable.

So, if you want to do justice to these basic democratic aspirations and beliefs of the people, the Election Commission should have responded more responsibly to the suggestions made by the Government. If anybody thinks that one single Member can do all the work and multi-Member commissions is not necessary, I do not blame them. Articles are appearing in the newspapers stating that multi-member Commission is not necessary. Some people say that constitutionally and technically, it is not necessary to have a multi-member Commission. But the common man in this country is not able to appreciate that idea.

When elections are postponed, the opinion of the people is not respected. When elections are postponed beyond a reasonable time, it is the opinion of the people which is being ridiculed. In a big country like India, elections are to be conducted at different levels. If, for any reason, elections are sometimes postponed, it is sometimes causing surprise to all the Parties and to the Government also. Nobody was responsible for it. All of us were criticising this postponement. We were indulging in self-criticism. What does it mean? As it happens, elections are postponed without any valid reason. It happened in West Bengal Rajya Sabha elections. Criticism was made by some quarters. The criticism should be fair. If the elections are to be conducted in time, in a reasonable manner, then considering the work-load of the Commission, it should be a multi-member Election Commission. This suggestion is also challenged in the Supreme Court. It is very unfortunate. I do not understand why this decision of the Government is being challenged in the Supreme Court. The hon. Supreme Court will take an appropriate decision. The matter is still pending before the Supreme Court. I am not making any

reference to that. But it is unfortunate that a matter of this kind which is the will of the people, which is the opinion of all of the political parties is being challenged before the Supreme Court.

Anyway, this multi-Member Election Commission idea is being appreciated by all people. Now some people think that this Government is doing everything in a clumsy manner. This is the oft-repeated allegation by people like Shri Somnath Chatterjee. I do not want to answer that question. The Congress party is the guardian of the democratic rights of the people of this country for the last 45 years and we need not have any study class from Shri Somnath Chatterjee about democracy or about the basic things of democracy.

If somebody from West Bengal CPM teaches us about free and fair elections, it looks very strange. This Government's decision cannot be questioned. The purpose for which it is brought cannot be questioned. This Bill and before this, the Ordinance which are brought forward for the effective functioning of the Election Commission and for the exercise of its powers, cannot be questioned. It should have been taken in a better spirit by all political parties and by the Election Commission itself.

It enshrines and embodies the aspirations of the people of this country. Recently the people had to face a very difficult situation. I think this is a final answer that this Government, in its wisdom, has found out and, that is why, without any loss of time, an Ordinance was promulgated. This is one of the very few items where there should have been one hundred per cent unanimity. I am not questioning anybody's opinion. When the Parliament is discussing this, there are certain people who want to decry this and who want to approach the Court to create impediments in the way of its implementation. This is a very sad state

of affair. When such a situation is prevailing outside the Parliament, it is the unanimity of opinion of this Parliament which should have given them a resounding answer. That unfortunately did not happen.

Anyway, it is the duty of this Government to the people of India. That is why, this Bill is brought before this House.

I support this Bill with all the power at my command.

[Translation]

SHRI BHOGENDRA JHA (Madhubani)
: Mr. Chairman, Sir, we have been in favour of a multi-member Election Commission. This matter has been raised in the House time and again and no one has opposed it. We have given notice against the Ordinance in case there is no provision of multi-member Election Commission in the Ordinance. I support the multi-member Election Commission. Instead of issuing an ordinance, was it not possible for the Govt. to introduce a Bill 10-12 months earlier? They knew it in January itself that elections would be held in five States. A Bill could have been introduced in February, March, April or May. But this was not done. It was introduced only when election process started. Hence, it was apprehended that this ordinance has been issued in order to favour the ruling party. These two members could have been impartial in real sense. Desired results can be achieved by taking right decisions, keeping in view the place, the time and the persons concerned. At that time the Supreme Court rightly issued a stay order to stop the implementation of the Ordinance. It is an evidence of all this exercise that the elections held in five States were free, fair and peaceful. It was said that the elections would be a people's verdict on the events which took place in Ayodhya on 6th December. Even now the ordinance is pending in the Supreme Court, the

[Sh. Bhogendra Jha]

Government could have expedited it. If the Bill has been introduced thereafter, would it not be construed that we have challenged the Supreme Court's decision. It does not mean that the Supreme Court has stopped the implementation of the Bill. It is still under consideration.

[English]

THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H.R. BHARDWAJ): There is no stay of the Ordinance. You are saying something.

[Translation]

BHOGENDRA JHA : I did not refer to the ordinance. The original ordinance is under consideration. Since then we are trying to pass it in the form of a Bill. Does it not mean that we are challenging the Supreme Court ? I suppose we could have passed the Bill in taking the Supreme Court in confidence. We are still and always in favour of a multi-member election commission. Everyone was of the view that deliberations could have taken place before issuing the ordinance and we could have discussed it with various leaders, or it could have been considered by our Standing Committees, resulting in some changes in its terminology. For a minority Government, it is better to seek the views of others.

One more thing I would like to say. My friend Sh. Shahabuddin also said that the position of Chief Election Commissioner is somewhat different from other Election Commissioners. That is why we have stipulated in the Objectives of the Bill that the decisions would have to be taken unanimously. People have quoted High Court and Supreme Court in this regard. The Judges decide the cases on majority basis.

But as far as the procedure is concerned, the Chief Justice holds different position. I think, in future this would create some complications. It would further lead to problems. No one would remain the head. As such, I think that the Bill contains a great anomaly. This may lead to a problem that nobody will take responsibility and this point has already been raised. During the recent elections, another Election Commissioner started issuing orders and then the Supreme Court stopped it by issuing a directive and elections were held smoothly.

The Government of Rajasthan had recently demanded the dismissal of Chief Election Officer and the Election Commissioner, dismissed him. I don't remember such an incident had happened since 1952, when on the recommendation of a State Government, the Chief Election officer of the State had been removed by the Chief Election Commissioner. I hope the minister would like to clarify this.

I support the Bill that has been introduced. But the ordinance was issued at such a crucial moment as resulted in an anarchy. The things were set right by the Supreme Court. The common feeling is that the election commission or the Chief Election Commissioner conducted the Assembly elections strictly and in a right manner. The people who used to be against him in the past are now satisfied with his work.

We also support a multi-member election commission and hope that our apprehensions would be removed by the minister.

[English]

DR. KARTIKESWAR PATRA (Balasore): Hon. Chairman, Sir, I rise to support this Bill brought forward by our hon. Law Minister. One thing is that the

Constitution of India is the essence of all the constitutions of the world. There may be some lacunae but by and by they may be rectified in the process. Our law is like the level of water, that is, it is like *Ambusaman*. There have been no statutory guidelines for the appointment and functioning of the Election Commission since Independence. In the meanwhile, there have been some attempts made to have some amendments. But it could not be possible. When the Constituent Assembly tried to have the law in this regard, at that time, there were also some lacunae and Dr. Ambedkar clearly considered the point and said this his provision did not contain anything to provide against the nomination of an unfit person to the post of the Chief Election Commission or other Election Commissioners.

16.45 Hrs.

[MR. SPEAKER *in the Chair*]

He further said :

"I do not want to confess that this is a very important question and it is giving me a great deal of headache and I have no doubt about it that it is going to give the House a great deal of headache."

Sir, the entire House witnessed the headache prior to this Bill being brought before this House. There was turmoil over the functioning of the Chief Election Commissioner. This House even heard the views of the Attorney General of India because on the 2nd August, 1993, the Chief Election Commissioner postponed the by-election to Gujarat and West Bengal Legislative Assemblies, the by-election to Lok Sabha constituencies relating to Bihar, Maharashtra, Palani in Tamil Nadu and Kerala and also Assembly by-elections in several States. So, there was turmoil in this

House and everybody thought that the decision to postpone the elections was due to the open defiance of the Commission's authority by the Central Government. It was also the view of the Chief Election Commissioner, at that time. There were so many occasions when several petitions were filed in the Supreme Court and also there were several occasions in this House and the entire people of this country also witnessed the fighting between the views of the people and a single person who is the head of an institution.

Sir, in this House, in October, 1989

MR. SPEAKER: We cannot discuss those incidents; let us understand that we cannot discuss the actions taken by the Election Commission.

DR. KARTIKESWAR PATRA : I am not discussing them.

MR. SPEAKER : You are giving the dates.

DR. KARTIKESWAR PATRA : I am giving the date on which the Union Government had appointed two senior retired officials as Election Commissioners. In the Constitution also, it has been provided that a multi member Election Commission should be there. But, unfortunately, during the Prime Ministership of Shri V.P. Singh, it was abolished and then, a single member Election Commission was appointed. It was viewed seriously by the Court and later on when this was discussed in the House, they were supposed to bring in a Bill for rectification of this anomaly in the Election Commission. But it could not be possible to do so.

Sir, I welcome the hon. Prime Minister and our Law Minister who brought this Bill to halt the censure of the total democratic set up in this country.

[Sh. Kartikeswar Patra]

I want to make some suggestions on the Bill that has been brought before this House. I want to support the views expressed by the hon. Member, Shri Syed Shahabuddin, on the appointment of the Chief Election Commissioner, that is, among the members of the Election Commission, by rotation, one member should be appointed as the Chief Election Commissioner and the status, functioning and the emoluments sanctioned should be equal to all the members. All the members should be on an equal footing. By rotation for a year or two one member should be appointed the Chief Election Commissioner. The majority view of the members of the Election Commission should prevail and the popular views should be granted.

This is my humble submission before the House and before the Minister.

[*Translation*]

SHRI TEJ NARAIN SINGH (Buxar) : Mr. Speaker Sir, I support this Bill. As far as the legal procedure is concerned in this regard under Article 324 of the Constitution, the Government has the right to have an ordinance issued by the President. It is evident from several facts that the recent statement of Mr. Seshan reveals that he perhaps desires supremacy. Since we have an independent Judiciary, he is not going to get this power. A two Judge bench of the Supreme Court has held that the election commission is an autonomous body, but its decisions can be challenged. In this situation, it is not proper to say that nobody can restrict us.

Secondly, as far as the question of a multi member election commission is concerned, it is not a new concept. When late Rajiv Gandhi was the Prime Minister, we had a three member election

commission. Although after some time it was again made one member commission. As far as the question of vesting the Chief Election Commissioner, with veto power, I think under Article 145(5) of the Constitution even the Chief Justice of the Supreme Court has not been vested with this power. The decisions of the Supreme Court are taken on a majority basis. If decisions in Supreme Court are taken by a majority then majority decisions taken by the Election Commission are in my opinion are not unjustified. I think this Bill is right and it should be passed. But as far as the ordinance is concerned, it was not issued at a right time. It should have been issued six months ago. But issuing an ordinance right just before the election, has created an atmosphere of distrust among the people that perhaps, the Government has some ulterior motives behind it. I, therefore, oppose this ordinance and support the Bill, that has been introduced. With these words, I conclude my speech.

[*English*]

SHRI SRIBALLAV PANIGRAHI (Deogarh): Mr. Speaker, Sir, I have the pleasure to support this Bill. From different angles the hon. Members who have participated in this debate have already given their views. It is not that only we support this Bill; this Bill reflects overwhelmingly the unanimous opinion expressed on the floor of this House earlier.

Of course, today some hon. Members from the other side are speaking in a different voice; and I wonder about it. Even those who are party to some sort of a motion here, are today saying that they support this measure to make one member Commission, a multi-Member Commission. It is worth the demand from all corners of this House; and it is going to be materialised. In fact, it has already come; and an ordinance has been promulgated. Not only different parties, but even the Chief Election

Commissioner himself has welcomed this. In the first week of September, in a programme, at a function.....

MR. SPEAKER : It is not necessary please, to say all these things.

SHRI SRIBALLAV PANIGRAHI : This is a new point.

MR. SPEAKER : There are other Bills to be passed. If there is any new point, please say its substance.

SHRI SRIBALLAV PANIGRAHI : What I say is that even the Chief Election Commission who has

MR. SPEAKER : Yes. He has welcomed it, very good.

SHRI SRIBALLAV PANIGRAHI : This way, I cannot do, Sir.

MR. SPEAKER : It is not necessary for you to repeat the same point.

(Interruptions)

SHRI SRIBALLAV PANIGRAHI : We welcome this Bill. But, presently, we are not in a happy situation regarding the Election Commission. The ordinance has been challenged in the Supreme Court itself by no less a person than the Chief Election Commissioner.

MR. SPEAKER : It is an interim order, and that point has already been made.

SHRI SRIBALLAV PANIGRAHI : Yes. That is an interim order. Some points need to be sorted out; and some clarifications are sought for about the functioning, powers, etc. There is also one danger ahead of it. In today's newspaper, it has come out. It is a new point. In today's newspaper, it has come out and the headline is there. If identity card

system is not introduced, then the elections are not going to be permitted after January 1995. You may again say that this is not coming under its purview. But, as a whole, we feel exercised and we feel concerned about all these things. The Government has to take serious note of all these things; and take precautionary measures right from now. Election reforms, of course, is an area which we have to give top priority. Another aspect is that, as you know, in the parliamentary life in India, we begin with a very objectionable way and we begin with some sort of a falsehood regarding the statement of expenditure.

MR. SPEAKER : Is it a part of this Bill?

SHRI SRIBALLAV PANIGRAHI : I am coming. Again, there will be a row in the House. Some time later, you will find it. Today, it is a part of the news item which had never been opened up in the past. The Election Commission is going to enquire into all these things. We congratulate the Election Commission for the manner in which the free and fair elections have been conducted recently.

In the Election Commission, three members will be there; it is welcome and there is no controversy. Everybody was demanding it. In 1991, a Bill was already there. A case before the Supreme Court has set the trend in this regard; and we have gone ahead in that direction.

17.00 Hrs.

I will give an example about the functioning of some departments in the universities. There are universities. And there are departments having more than one professor. Even the junior professor is made head of the department in rotation. It is a question of accommodation. It is a question of spirit with which they work among

[Sh. Sriballav Panigrahi]

themselves. Therefore, it is not a question of personal ego. One has to shed the personal ego, etc., particularly so far as constitutional authority is concerned. Therefore, in that spirit, the three members could work.

MR. SPEAKER : The point is made. The chairmanship should be enjoyed by the members by rotation.

SHRI SRIBALLAV PANIGRAHI : Yes, Sir. I am coming to that point precisely. The three members are there.

MR. SPEAKER : It is understood. You come to the next point. *(Interruptions)* We have given enough time.

SHRI SRIBALLAV PANIGRAHI : Yes, Sir. I will conclude since you are in a great hurry.

MR. SPEAKER : There are other things to be done.

SHRI SRIBALLAV PANIGRAHI : I appreciate that other work is there. But the spirit of the debate of the Constituent Assembly with regard to this provision has also to be looked into. Equal status, removal, pay, salary, functions, etc., everything is there. He has to be regarded as chairman when there is a multi-member commission. The Chief Election Commissioner will be the chairman. So, there should be a thorough study of all these things. A due regard should also be given to the Constituent Assembly. If it calls for an amendment to the Constitution, I would request the Government to consider that also.

With this, I support the Bill and conclude.

[Translation]

SHRI RAMASHRAY PRASAD SINGH (Jahanabad): Mr. Speaker, Sir, I rise to

support Multi Member Election Commission Bill introduced in the House as already supported by our party. The left parties had suggested long time back that there should be a multi member Election Commission but I do not know why the Government did not accept this proposal at that time and now a multi member commission is being constituted, so it has created some sort of apprehension in our minds. The Government should consider and accept the good suggestions brought forward by those parties too which are not in power. Such suggestions should not be rejected.

Mr. Speaker, Sir, elections in a democratic set up are like life saving drugs. You must have also heard and I have also been submitting time and again that our democratic system is being polluted. Had the high morale of the past been adhered to, we would not have been facing the problems which at present we are facing in the country on this account. Religion and casteism have been dragged into politics and the election system has been polluted. The ruling party has polluted it just to keep themselves in power. That is why the people have lost faith in them today. They dismissed the Governments of four States and imposed President's Rule there, the Governors of the States were their own men and they had been Chief Ministers or Ministers at one time or the other in their regime. That is why nobody raised any objection. The election procedure has by and large been appreciated by the people whether they were directly involved or not. Shri T.N. Seshan has shown how the elections should be conducted. He deserves appreciation for it. He has taken measures to strengthen the democratic system in the country. If this system is to be further strengthened, then decisions of the majority should prevail. Election procedure should be specified so as to ensure smooth functioning of Election Commission. No Bill in respect of Election Commission should be introduced out of

obsession. With these words I conclude.

SHRI SHARAD YADAV (Madhepura)
: Mr. Speaker, Sir, we all had demanded for a multi member commission. I had suggested this on behalf of my party. There is difference of opinion about the Constitution and powers of the Commission. I would like to submit a few points in this regard. It is our weakness that we get pleased or disappointed very easily. It is being widely publicised that elections have been conducted in a very fair and impartial manner but, I can definitely quote incidents where in several constituencies the votes have been rejected. In some constituencies where a candidate was not in a position to do much of election campaigning the other candidate got advantage of the situation and was able to score more votes. My submission is that if the number of members is more, the chances of justice being dispensed is more. If a thorough investigation is conducted we would draw a conclusion that despite the so called stern measures taken by the Government, there have been a number of cases of corrupt practices. Many candidates who were to win, but were defeated. I do know a number of candidates in whose constituencies unfair means were used. There is no doubt that violence to certain extent has been checked but I do not agree that full justice has been done.

Regarding the multi member commission we had suggested to include such worthy citizens as the speaker of Lok Sabha, the Chairman of Rajya Sabha, the Chief Justice of Supreme Court etc. But nobody should be allowed to function in a wayward manner. If the party leaders try to contact the person who has got the authority they must be attended to. They cannot be denied of this right by anybody. Corrupt practices on a wider scale took place in the recent elections. The candidates who had almost been defeated, were made to win by taking recourse to unfair means.

I have due respect for the Election Commissioner but he should not be whimsical and wayward functioning cannot be allowed. Democracy can not be run in this manner. The dignity and the decorum of the House has always been maintained by you and we have not seen a better person than you in this regard. A person holding a high position has to maintain some dignity, he should not be whimsical and above all if somebody wants to talk to him he cannot refuse. The entire bureaucracy cannot be wrong and one person can not always be absolutely right irrespective of his clean image. There are many honest and dedicated persons in politics.

This ordinance has created some apprehension in the minds of people that the Congress party intends to prevent Shri Seshan from taking appropriate measures by making the Election Commission as a multi member body. That is why Shri Shahabuddin opposed it. His objective was that this Institution should be made impartial and we too wanted it, we don't have any objection in making it a multi member commission but the Chairman of the Commission should be changed by rotation. Certain proposals made in the committee report were not agreed to. But now I would not take up this point. However, I would like to urge upon the Government not to go to extreme. Our people if they make a little achievement, feel themselves so great as if they are on the top of the world. A firm decision should have been taken after a thorough study. We did demand for a multi member commission. If our suggestions were also included in the Bill that has been brought in the House, the picture would have been better and democratic set up more strengthened. I have made our position clear in this regard so that no Member may have any misconception with regard to our party. Though I do not agree with the provisions of the Bill yet I support the intention of the Bill and agree with multi member system. With these words I conclude.

[English]

SHRI H.R. BHARDWAJ : Sir, I am very happy to thank all the Members who have participated in this debate, which is so important for the smooth running of democracy in our country. Nobody can deny that the power of superintendence, direction and control of elections is vested in the Election Commission. Now, this is the Tenth Lok Sabha and several elections have taken place in India. We have done quite a lot to maintain democracy in this country. But over the years, there was a demand for a multi member Election Commission. Hon. Member Shri Somnath Chatterjee referred to the report of the Joint Committee of both the House which was presented way back in 1972. The Joint Committee recommended that there should be a multi member Election Commission. Thereafter, there was the report of the Late Dinesh Goswami Committee. With certain variations, this committee also recommended that there should be a Multi Member Commission. Recently, in view of certain controversies that erupted suddenly on some occasions - I would not like to go into the details of those controversies at this juncture - all the Parties met and there was a unanimous demand from all the parties that we should revert to a multi member commission and give shape to it as immediately as possible. Here I concede that we did take a little time. The thinking and deliberations of the Government in making certain provisions and coming to some decision have taken some time and some delay has occurred. To that extent, I concede that we are a little late. Nonetheless, I am very happy to say that this is the unanimous view of this hon. House and I believe you all agree with me. There is no dispute on one aspect and that is every political party supports a multi member body.

With regard to the suggestion that there should be more democratic method of selection process, I have noted it down.

When hon. Members from Janata Dal have spoken, I have noted it. I may also mention here that I have read the report of the Dinesh Goswami Committee and I am quite aware of its provisions. I must thank everybody again because you all have cooperated and supported the move for the introduction of a multi member Election Commission.

Certain doubts have been expressed in some quarters. I need not take the time of the House. Article 324 of our Constitution itself provides that besides one Chief Election Commissioner, there can be other Election Commissioners.

The power flows from Article 324 itself. So far as the law is concerned, I will not take much time of the House except to say that Entry 72, which is in the Union List and Article 324(1) and (5) read together, give powers to this Parliament to make provisions regarding the Election Commissioner's working as well as their service conditions. On the other day I replied that we have the legislative competence to legislate on this matter.

One or two hon. Members mentioned that we are providing a new system of transaction of business in the Act without amending the Long Title. In this connection, you may please refer to new Sections 2 and 3 of the Bill. It is expressly provided in Section 2 of the Bill which says :

"In the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act, 1991 (hereinafter referred to as the principal Act), in the long title, for the words "and for matters", the words "and to provide for the procedure for transaction of business by the Election Commission and for matters" shall be substituted."

Section 3 says :

"In Section 1 of the principal Act, for the words and brackets "the Chief Election Commissioner and other Election Commissioners (Conditions of Service)", the words and brackets "the Election Commission (Conditions of Service of Election Commissioners and Transaction of Business)" shall be substituted."

So, it is being provided in the long title itself that it will cover both the working of the Election Commissioner and transaction of business.

Recently, we had a debate where the Advocate General of practically almost all the States participated and they debated on the issue as to whether we should have it or not. There was a unanimous view of the intelligentsia and also the bar that we should have one such provision. They all supported it. On this issue, there is absolutely no controversy and it is welcomed by this House.

So far as the powers of the CEC are concerned, much has been said about it. I am conscious that once you appoint a person as Chief Election Commissioner nothing should be done to denigrate his position. Now, what are the provisions which are provided in the Constitution with regard to his status? Firstly, he is the Chief Election Commissioner. Nobody can dispute that and his position stays once he is appointed as CEC.

Secondly, he cannot be removed from the Office except by a procedure which is provided for the removal of the Supreme Court judges. This is not applicable to other Members of the Election Commission.

Thirdly, you cannot remove other Members, without his recommendation.

We have maintained these provisions.

Merely giving the same salary to his colleagues does not in any way mean that his position is being denigrated. Just as we all are equal as Members of Parliament and suppose I get a little more perks as the Minister, that does not denigrate anybody's position. CEC is the Chairman of the Commission and if anywhere we say that he is not the Chairman of the Commission then that may amount to denigrating his position. But, his position as CEC has been maintained. His Service condition is not changed. It is too much to apprehend that. It is rather difficult to agree that we should not give respect to other Members who are performing the same work - if not same, the same type of work. They are also the Civil Servants like the CEC. I think out of the two, one was Law Secretary and the other was Agriculture Secretary. I think they were the seniormost secretaries. We are giving them the same perks. I do not think anybody should have a grievance. Therefore, this provision of giving this salary is rather wholesome.

With regard to the other provision as to how the Chief Election Commission should function, it has been provided and it is universally accepted that where an institution functions it is always expected that it will function unanimously and if not unanimously then by the majority. You cannot have any other principle in an institution where more than one person is functioning. If you think there is any, you can suggest the same to us. All of you must put your heads together, discuss the things and come out with a workable solution. If there is unanimity in this regard, we will definitely accept it. In UPSC you have a Chairman who distributes the work amongst its members.

If it is adopted, there will be a division of work amongst Election Commissioners. Even amongst the Ministers, there is a division of work. It is a very wholesome

[Sh. H.R. Bhardwaj]

practice. If the institution sits together and decides that it will function like this, that would be good. Suppose the Election Commission decides that the Election Commissioner 'A' will deal with such and such a State and the Election Commissioner 'B' will deal with such and such a State and on important matters like taking decisions on registration and so on, it will function as a Commission, that would be good. If it comes out unanimously, well and good, otherwise, the majority decision will prevail.

The Chief Justice of the Supreme Court sits along with his two colleagues. There also the decision of majority prevails. Many times I had seen that the Chief Justice had been left in a minority and he had accepted the majority decision. So, for the development of the institution, it is necessary that the institution must find out a workable solution. The law can only ask him to function within the frame work of law. If people start functioning in their own way, then the law must prevail.

The law provides that the multi member Election Commission will function by unanimity. If there is no unanimity, the majority decision will prevail. I do not think anybody will have any objection for this in a democratic set up.

Now, regarding court cases, I would like to say that I do not want to discuss them in detail. That matter is coming up tomorrow. Some State Governments viz. the Government of West Bengal, Madhya Pradesh and others, have also intervened in this case. Some other State Governments are likely to intervene. If you have any apprehension on the provision of any Ordinance or any Act of Parliament, the proper method which you can adopt is to test it in the court. We are passing this Ordinance with an objective, which is

supported by all of you and all the other political parties. We would like to make our submissions before the Court that the provision of multi members is not against an institution and we have no motives behind it. I would like to make it very clear that this Government has no motive behind this Ordinance. We have brought forward this Ordinance mainly because we were a little delayed in executing what you had instructed us to do in this House. I will explain that a little later. But we had taken that step in the best interests of the institution. How can you say that by having two more Members, we are going to interfere with the working of the Election Commission? So, we would like to have a proper argument in the court and whatever the court decides, we will accept.

Some suggestions were made that we should go in for a Constitutional Amendment. Sir, I have a legislative competence under the present provision and I can use that. Why should I go in for a Constitutional Amendment? I am prepared to discuss the question regarding electoral reforms with all the parties. What Mr. Yadav has said is very relevant viz. some people may be satisfied on some aspects and some other people may be satisfied on some other aspects.

I had been receiving complaints in my department also. We have to resolve them. We will resolve them by strengthening the institution and let the institution also try to strengthen itself. Let us not get involved in controversy on an issue like this. Without proper functioning of Election Commission, nobody can guarantee free and fair polls. This must also be understood that the Election Commission is an institution under which the Chief Electoral Officers of the States function as also other machineries from the States viz. SDMs, Police, the Police Chief and so on. The successful completion of elections is their success as also the success of thousands of other

people. There is no doubt that the Leaders also gave them direction. But the execution was done at the grass roots' level. We cannot forget those dedicated workers who stood on their feet, day and night and made this election a success. It is their contribution, the contribution of all of you and also the contribution of the people of India. If there were any apprehensions, they saw to it that the elections are conducted peacefully and in a disciplined way. They did not raise frivolous issues. So, we are happy. But, much can be done by way of a co-operative attitude. Today, I am very happy and I am also very grateful to all of you that you gave this support. I am prepared to discuss with you the whole gamut of electoral reforms for strengthening democracy. The sooner we come closer on these issues, the better it is. No individual is important. The institutions have to be stronger and once the institutions are stronger.... (Interruptions)

[Translation]

SHRI SHARAD YADAV : Mr. Speaker Sir, through you I seek reply from the Government in respect of the following points. I have information pertaining to five cases. If petitions are filed in these cases in the Court it is well and good but how does the Government propose to look into the matters where corrupt practices have been used. A BSP candidate had won the election with a margin of 4,000 votes but was declared not elected. Just because he was poor and there was nobody to support him. Such incidents have happened in 17 districts. Whereas we do commend the good work done in this field we do want to know what action the Government propose to take so as to do away with such corrupt practices.

SHRI H.R. BHARDWAJ : So far as the monitoring of the entire work is concerned, that will be done by the Election Commission. If the hon. Member has any

other complaint I will enquire into it and furnish the information to the hon. Member, the result cannot be nullified, so far as the complaint of any hon. Member is concerned it is our duty to refer it to the Election Commission and seek clarification from the concerned State Government and if any specific issue is involved we may seek the permission of Mr. Speaker to hold a discussion on it in the House.

[English]

MR. SPEAKER : No, no, I shall have looked into it.

MR. H.R. BHARDWAJ : With the permission of the Speaker.

May I just briefly point out what the Supreme Court says because much has been said in Dhanoa's case? This Ordinance is verbatim in accordance with the direction of the Supreme Court. We have carefully read it. I will state briefly just what the Supreme Court has observed. The Supreme Court has observed as follows :

"It is further an acknowledged rule of transacting business in a multi member body that when there is no express provision to the contrary, the business has to be carried on unanimously. The rule to the contrary such as the decision by majority, has to be laid down specifically by spelling out the kind of majority— whether simple, special, of all the members or of the members present and voting etc. In a case such as that of the Election Commission which is not merely an advisory body but an executive one, it is difficult to carry on its affairs by insisting on unanimous decisions in all matters. Hence, a realistic approach demands that either the procedure for transacting business is spelt out by a statute (which is this

[Sh. H.R. Bhardwaj]

Ordinance) or a rule (We have not resorted to rule; we have brought it before Parliament) either prior to or simultaneously with the appointment of Election Commissioners or that no appointment of Election Commissioners is made in the absence of such procedure."

What in Dhanoa's case the Supreme Court found is that the appointment and transaction of the business rules or laws should be brought simultaneously. We have brought both things together setting out the procedure. So, this apprehension that we have not given this procedure properly is unfounded with great respect I submit.

So, for all these misgivings, we have taken the first step, which is supported by this House. We are prepared to discuss the electoral rolls in detail as and when it is required.

So, I request that this Bill may be passed.

MR. SPEAKER : Now, at 5.30, we were expected to take up Half-an-hour Discussion. We have received a letter saying that the discussion should be postponed. Now that application will be treated as per the rule. We continue with this business.

SHRIMATI GEETA MUKHERJEE (Panskura) : In the very beginning, when I moved it, I made it clear that the Statutory Resolution was not meant to be against the Bill; it was just because it was an Ordinance. I made it very clear. So, there is no question of my pressing it.

But I would like to ask only one question. I can quite appreciate that the situation will very much depend on the Supreme Court's decision tomorrow.

If the decision remains, whatever it is, have you thought out how you will come out with the impasse that has been created at the moment?

MR. SPEAKER : This is hypothetical at this stage. Let me know whether you would like to withdraw it or not. You cannot say this way or that way.

SHRIMATI GEETA MUKHERJEE : Yes, I seek leave of the House to withdraw my statutory resolution.

*The Statutory Resolution was, by leave,
withdrawn.*

MR. SPEAKER : Now, I put the consideration motion to the vote of the House.

The question is :

"That the Bill to amend the Chief Election Commissioner and other Commissioners (Conditions of Service) Act, 1991 be taken into consideration".

The Motion was adopted.

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

The question is :

"Clauses 2 to 10 stand part of the Bill."

The Motion was adopted.

Clause 2 to 10 were added to the Bill

MR. SPEAKER : The question is:

"That Clause 1, the Enacting Formula and the long title stand part of the Bill".

The Motion was adopted.

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

SHRI H.R. BHARDWAJ : I beg to move :

"That the Bill be passed."

MR. SPEAKER: The question is :

"That the Bill be passed."

The Motion was adopted.

17.33 Hrs.

STATUTORY RESOLUTION RE:
DISAPPROVAL OF THE
MERCHANT SHIPPING (AMENDMENT)
ORDINANCE

[English]

MR. SPEAKER : We shall now take up item No. 15 and 16 together.

SHRI BASUDEB ACHARIA (Bankura) : I beg to move :

"That this House disapproves of the Merchant Shipping (Amendment) Ordinance, 1993 (No. 34 of 1993) promulgated by the President on the 27th October, 1993."

I express my disapproval of the ordinance on Merchant Shipping. The ordinance was promulgated on 27th October 1993. Now the Bill has been brought to replace that ordinance.

Sir, the present Bill is contrary to Merchant Shipping Act of 1958. The purpose of the Merchant Shipping Act of 1958 was to foster the development and ensure the

efficient maintenance of an Indian Mercantile Marine Act in a manner best suited to serve the national interest.

If the Bill is passed, this will definitely harm the national interest. What was the compelling reason for the promulgation of this ordinance? As the Winter Session was summoned after the promulgation of this ordinance, the Minister could have brought an amending Bill instead of an ordinance. One reason cited by the Government is that because of low international price this will be an opportune moment to jump into the international market to purchase ships.

Sir, one year back the Government had announced a policy on shipping. At the outset it was stated in that policy that the aim of the policy - that was the guiding policy of the Government - was increasing self-reliance in the carriage of the country's overseas trade. This Bill is quite contrary to what was stated in that policy.

Then there is a question of reservation of one hundred per cent coastal trade for national shipping. This Bill does not mention it also and is quite contrary to what was stated in that policy.

It is not a fact that the Shipping Corporation of India is now a losing concern. It has earned a profit of Rs. 14 crore in the year 1990-91 and Rs. 44 crore next year and last year Rs. 144 crore. At least one Shipyard, the Cochin Shipyard has been making profits. When our own companies are earning profit and there is idle capacity in the shipyard what is the reason for more liberalisation? By adopting a policy one year back it was liberalised and the Government control was slackened. What is the compelling reason to make it more and more liberalised and to decontrol the shipping industry?

Shipping industry is a very important