

12.06 hrs.

MOTION RE: CONDUCT OF ELECTIONS RULES

Shri Shree Narayan Das (Darbhanga): I beg to move:

"This House resolves that in pursuance of sub-section (3) of section 169 of the Representation of the People Act, 1951, the following amendment be made in the Conduct of Elections (Second Amendment) Rules, 1962, laid on the Table on the 19th April, 1962, namely:—

omit rule 3.

"This House recommends to Rajya Sabha that Rajya Sabha do concur in the said resolution."

The Conduct of Elections (Second Amendment) Rules 1962 is an amendment to the Conduct of Elections Rules 1961, made on 15th April 1961. Here I would like to read rule 93, as it existed originally:

"93. Production and inspection of election papers.—(1) While in the custody of the returning officer—

(a) the packets of unused ballot papers;

(b) the packets of used ballot papers whether valid, tendered or rejected;

(c) the packets of the marked copy of the electoral roll or, as the case may be, the list maintained under sub-section (1) or sub-section (2) of section 152; and

(d) the packets of the declarations by electors and the attestation of their signatures;

shall not be opened and their contents shall not be inspected by, or produced before, any person or authority except under the order of a competent court or tribunal."

Rule 3 which I seek to omit is an amendment of the last six words of Rule 93(1). It has substituted the

words "of the Election Commission or of a competent court or tribunal" for the words "of a competent court or tribunal". That is to say, these papers shall not be opened and their contents shall not be inspected by, or produced before, any person or authority except under the order of the Election Commission or of a competent court or tribunal.

In this connection, I would like to say that during the last 12 or 13 years that these rules have been in force, there has been no occasion for the Election Commission to open such papers as are kept in the custody of the returning officer and are only to be opened by a competent court or tribunal. I do not know what circumstances have prompted the hon. Minister to formulate this rule under section 169 of the Representation of the People Act, 1951.

So far as the papers which are kept in the custody of the returning officer under rule 93 are concerned, some of them are only required at the time when some election petitions are filed and election tribunals are constituted to look into the things. If the competent court or the competent election tribunal finds it necessary to look into these papers, they ask the returning officer to produce them, and they are examined and scrutinised. But even during the scrutiny, sufficient care is taken to see that the secrecy of the ballot is not revealed.

In this connection, I would like to point out also that the Election Commission has nothing to do with the hearing of the election petitions. Although the election petitions are filed before the Election Commission, they have only to see whether the rules framed in this regard under the Representation of the People Act have been complied with or not. The Election Commission has the right on certain points to reject or dismiss the election petitions at the time they are submitted, but if the election petitions are in order or according to the rules, the Election Commission has no right

[Shri Shree Narayan Das]

to look into the facts of the case, and everything goes before a competent tribunal which can look into all these papers. As I have said before, I have not been able to see the necessity of giving this power of production and inspection of these papers, which can only be inspected by a competent court, to the Election Commission.

The Election Commission is not a judicial body, it has got practically no judicial powers. There are two points I would like to urge. As has been pointed out already, under existing rule 93, the papers cannot be inspected by anybody save and except a competent court. The idea is that these pieces of paper which are packed by the returning officer and kept in his custody are pieces of evidence, and they can be inspected only in connection with some petition by a competent court if required for judicial purposes. Therefore, I have given notice of my motion that this modification should be made.

I have tried to find out whether such rules exist in other countries. Although I have not been able to find the rules in other countries, I have got some information about the U.K., on whose model our Representation of the People Act has been framed, although there may be some modifications here and there. Therefore, I would like, for the benefit of the House, to say that under their Parliamentary Election Rules, second schedule, there is a rule, rule 56, which says that when the counting is over and the results have been declared, all these papers are packed by the returning officer and sent to the Clerk of the Crown, and they are kept in his custody.

Then rule 57 deals with the order for the production of the documents, and I would like to read it for the benefit of the House. It says:

"57.—(1) An order—

(a) for the inspection or production of any rejected ballot

papers in the custody of the Clerk of the Crown; or

(b) for the opening of a sealed packet of counterfoils and certificates as to employment on duty on the day of the poll or the inspection of any counted ballot papers in his custody,

may be made—

(i) by the House of Commons; or

(ii) if satisfied by evidence on oath that the order is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of an election petition, by the High Court or a county court.

(2) An order for the opening of a sealed packet of counterfoils and certificates or for the inspection of any counted ballot papers in the said custody may be made by an election court.

"(3) An order under this rule may be made subject to such conditions as to persons, time, place and mode of inspection, production or opening as the House of Commons or court making the order may think expedient."

I will not take more time by quoting this. This fully indicates that such papers are only inspected in a court. The Election Commission is no doubt a very important body and the Constitution has charged it with the duty of holding the elections to the various legislatures and Parliament as also the election of the President. I do not deny that it is an important and impartial body, but I do not see any necessity of giving it this power of opening or inspecting the papers which are pieces of evidence and which can be produced only in a court. I have not been able to understand the circumstances that have prompted the Government to make this addition

which was not found necessary during the last 12 or 13 years.

With these words, I commend my motion and hope that it would be considered by the House and supported.

Mr. Speaker: Motion moved:

"This House resolves that in pursuance of sub-section (3) of section 169 of the Representation of the People Act, 1951, the following amendment be made in the Conduct of Elections (Second Amendment) Rules, 1962, laid on the Table on the 19th April, 1962, namely:

omit rule 3.

This House recommends to Rajya Sabha that Rajya Sabha do concur in the said resolution."

श्री सरजू पाण्डेय (रसड़ा) : अध्यक्ष महोदय, मैं ने अभी माननीय सदस्य, श्री श्रीनारायण दास, के भाषण को धीरे से सुना है। यह बात मेरी भी समझ में नहीं आई कि सरकार क्यों इस रूल को भ्रमंड करने जा रही है। पहले इलैक्शन रूल में इस बात की व्यवस्था थी कि इलैक्शन पेटिशन के कागजात को सिवाये अदालत के दूसरा कोई नहीं देख सकता। लेकिन यह बात समझ में नहीं आती कि ऐसी कौन सी स्थिति उत्पन्न हुई, जिस के कारण सरकार यह अधिकार इलैक्शन कमीशन को देने जा रही है कि वह भी इलैक्शन पेटिशन के सिलसिले में इन कागजात को देख सकता है। इस सिलसिले में मैं यह निवेदन करना चाहता हूँ कि मैं माननीय सदस्य, श्री श्रीनारायण दास, के प्रस्ताव के समर्थन में और सरकार के संशोधन के विरोध में बोलने के लिए खड़ा हुआ हूँ। यह बात समझ में नहीं आती कि सरकार समय समय पर क्यों इस किस्म के संशोधन जाती है, जिस से हमारे प्रजातांत्रिक अधिकारों पर कुठाराघात होता है। सब को यह बात मालूम है, इस सदन के अधिकांश मेम्बरों की और छारे देश को यह मालूम है कि इलैक्शन

कमीशन एक एकसीक्यूटिव बाडी है और उस को फ़ैसला करने का कोई अधिकार नहीं है। जिस को फ़ैसला करने का अधिकार नहीं है, लाजिमी तौर पर उन कागजात को देखने का अधिकार उस को नहीं होना चाहिए, जिन पर वह अपनी राय नहीं दे सकता। यह एक सैद्धान्तिक बात है, जिस को सरकार को नहीं करना चाहिए।

आप देखेंगे कि मामूली मामूली मामलात में पुलिस के कागजात को सिर्फ़ अदालत ही देख सकती है, दूसरा कोई आदमी उन को नहीं देख सकता है। किसी मुकदमे के सिलसिले में पुलिस अपनी डायरी में बीसियों बातें लिखती है, लेकिन सिवाये अदालत के किसी आदमी को उसे देखने का राइट नहीं है। फ़र्ज़ कीजिये कि इलैक्शन कमीशन कुछ कागजात को देखता है और अपनी राय उन में लिख देता है, तो उस का असर अदालत पर पड़गा और फ़ैसले से पहले वह एक ग़लत बात होगी, जो कि नहीं होनी चाहिए। अभी अभी मुझे मालूम हुआ कि गोंडा में इलैक्शन कमीशन ने पेपर्स को देखने की कोशिश की, लेकिन हाई कोर्ट में मुकदमा हुआ और उस ने कहा कि इलैक्शन कमीशन नहीं देख सकता है। हाई कोर्ट ने मना कर दिया कि इलैक्शन कमीशन को राइट नहीं है कि वह उन कागजात को देखे।

इन हालात में पता नहीं सरकार ने यह क्यों ज़रूरी समझा है कि रूल को भ्रमंड कर के इलैक्शन कमीशन को भी अधिकार दे दिया जाये कि वह भी कागजात को देख सकता है। इस तरह से तो इलैक्शन की गुप्तता खत्म हो सकती है। हम इलैक्शन को गुप्त रखना चाहते हैं और इस भ्रमंडमेंट के बाद वह सम्भव नहीं होगा। हज़ारों पेटिशनर दायर की जायेंगी, हज़ारों झूठे मामले दायर किये जायेंगे, सारी प्रोसीडिंग बड़ जायेंगी और नतीजा यह होगा कि हर एक आदमी पेटिशन दायर करेगा और इलैक्शन कमीशन से डिमांड करेगा कि वह कागजात को देखे।

[श्री सरजू पाण्डेय]

इलैक्शन कमीशन जिस तरह स्वतंत्रतापूर्वक फंक्शन करता है, उस के बारे में मैं ज्यादा नहीं कहूंगा। पूरी सरकारी मशीनरी पूरे तौर से पार्टी के मकसदों के लिए चलती है। इसका नतीजा क्या होता है यह मैं आपको बतलाना चाहता हूँ। मैं उत्तर प्रदेश की ही बात करता हूँ। वहाँ जब इलैक्शन कमिशन ने उम्मीदवारों के लिए बैलट पेपर्स बनाये तो वहाँ पर जो कम्प्युनिस्ट उम्मीदवार खड़ा किया गया था, जिसको नमूने के लिए ही पेश किया गया था, बैलट पेपर पर उस कम्प्युनिस्ट उम्मीदवार का नाम जय चन्द लिखा हुआ था और इसको छपा गया था। बाकायदा तौर पर चूँकि कम्प्युनिस्ट उम्मीदवार का नाम उस वक्त दिया गया, इस वास्ते वहाँ पर लोगों पर नैतिक प्रभाव डालने के लिए कि कम्प्युनिस्ट जय चन्द है, और ये कम्प्युनिस्ट लायल नहीं हैं, इस चीज़ को सारे सूबे में, इलैक्शन कमिशन की इजाजत से फैलाया गया।

श्री त्यागी (देहरादून) : वह कम्प्युनिस्ट उम्मीदवार नहीं था ?

श्री सरजू पाण्डे : वह बाकायदा उम्मीदवार नहीं था। मगर जय चन्द, अमी चन्द और फनां चन्द नाम दिये गये थे और उनका सिम्बल बनना था

श्री त्यागी : नमूने का बैलट पेपर जो था उस पर कम्प्युनिस्ट का नाम जय चन्द दिया गया था ?

श्री सरजू पाण्डेय : जी हाँ।

श्री त्यागी : इतिहासक से हो गया होगा।

श्री सरजू पाण्डे : इतिहासक से नहीं, बल्कि जान बूझ कर किया जाता है।

श्री सिंहासन सिंह (गोरखपुर) : इतिहासक से सही बात हो गई है।

श्री सरजू पाण्डेय : सही बात क्या है, इस में मैं इस वक्त जाना नहीं चाहता। कम्प्युनिस्टों का इतिहास इतना गन्दा नहीं है जितना आप समझते हैं। अगर आप इस पर बहस करना चाहें तो अभी इस पर बहस हो सकती है

अध्यक्ष मशहदय : मेरा क्या कसूर है ?

श्री सरजू पाण्डेय : इस सवाल को बार बार उठाया जाता है। मैं नहीं चाहता कि इसको उठाया जाये। इसको छोड़ दिया जाना चाहिये।

जो रूल पहले था उसमें लिखा हुआ है :—

Packets of the declaration by electors and the attestation of their signatures shall not be opened and their contents shall not be inspected by or produced before any person or authority except under the order of the competent court or tribunal.

उसको आगे आप इस तरह से एमेंड कर रहे हैं :—

....under the order of the Election Commission or competent court or tribunal.

यदि इसको इस तरह से एमेंड कर दिया जाता है तो इससे जो हमारे बुनियादी अधिकार हैं, उन पर आघात आप करते हैं। यह संशोधन नहीं होना चाहिये। अगर इलैक्शन कमिशन को यह अधिकार दे दिया जाता है तो बहुत सी अनुचित बातें हो सकती हैं। उत्तर प्रदेश के बारे में अभी एक बात मैं कह चुका हूँ। मैं वहीं से चुन कर आया हूँ। श्री सी० बी० गुप्त की वहाँ पर जीयरशिप है

अध्यक्ष महोदय : आप किसी का नाम न लें ।

श्री सरजू पाण्डेय : नाम नहीं ले रहा हूँ ।

उपाध्यक्ष महोदय : अभी आपने नाम लिया है । यह मुनासिब नहीं है ।

श्री सरजू पाण्डेय : माफ कीजिये मजबूर हूँ । उनको क्या कहा जाये । किस तरह से उनको रेफर किया जाय ।

मैं उनका नाम नहीं लेता । लेकिन राज्य सरकार के बारे में मैं कह सकता हूँ कि दुनिया भर की शरारतें वह इलैक्शन के दौरान में कराती है और अगर इसका सबूत चाहिये तो वह भी मैं दे सकता हूँ । अब अगर इलैक्शन कमीशन को यह पावर दी जायेगी तो लाजिमी तौर पर विरोधी लोगों के खिलाफ इसको इस्तेमाल करने का राज्य सरकार को मौका मिल जायगा और लोगों को न्याय नहीं मिल सकेगा । इसके बारे में कोई बड़ी आर्गुमेंट देने की जरूरत नहीं है । मैं ला मिनिस्टर साहब से निवेदन करूंगा कि वह इसको प्रेस्टीज का सवाल न बनाये । यह अधिकार इलैक्शन कमीशन को न दिया जाये और इसको केवल अदालतों तक ही सीमित रखा जाये क्योंकि हम समझते हैं कि कम से कम न्याय मिलने की अदालतों से ही आज उम्मीद की जा सकती है ।

Shri S. S. More (Poona): Sir, we are left guessing regarding the reasons the Government have to bring this sort of amendment: it will be useful for our discussion if the Government could put in their own statement.

Mr. Speaker: If some Minister wants to intervene and feels that he should just explain the reasons, that is a different thing. But the motion has been brought forward by a private Member.

Shri S. S. More: In the interest of facilitating discussion I am making this suggestion. Otherwise, everybody

is saying and we are wondering as to what are the reasons which have persuaded Government to do so.

Mr. Speaker: I quite appreciate that but it is for the Ministry. I cannot direct them to do this.

Shri S. S. More: I am only requesting the Minister through you.

The Deputy Minister in the Ministry of Law (Shri Bibudhendra Mishra): May I state the facts that led to the amendment of the rules? It was not with any ulterior motive, that it has been done. It was on the suggestion of the Election Commission itself that it was done. Besides the ballot papers mentioned in rule 93, there are also certain other papers connected with election such as the account of ballot papers, polling agent list and all that. The ballot papers cannot be examined without the permission of the court but the account of the ballot papers or the copies of the polling agents can be inspected. Now it so happened in two constituencies in Uttar Pradesh the leader of the opposition in the last U.P. Assembly wanted to inspect the ballot paper accounts and it was found that they were inadvertently put in the cover itself. What was to be done in that case? The party was entitled to inspect certain documents but those documents were kept in the packet of ballot papers by some mistake by the presiding officer or the returning officer. Either he should be denied the right that he has been given under the law and I do not think the hon. Members would consider it to be fair; or some authority should be given to the Election Commission to open it. The Election Commission thought that in the interest of proper conduct of elections, it should be given that power.

A question was raised whether under article 324 of the Constitution, wherein the Election Commission has the power to conduct elections such a thing could be ordered. The Commission was of the view that it would

[Shri Bibudhendra Mishra]

be better if rule 93 was amended so that power could be given to them to take the necessary step and remove the other papers that were put in by inadvertence and give them to the parties for their inspection. So, these were the circumstances that led to the amendment of the rule.

Shri Sinhasan Singh: Sir, this amendment gives wide powers to the Election Commission to go into the whole ballot papers of election even after the declaration of the result by the returning officer that so and so had been declared elected.

13.20 hrs.

[MR. DEPUTY-SPEAKER in the Chair.]

Some papers were open for inspection to everybody. The other papers which are meant to be secret could be opened only by order of a competent court or tribunal; that is, when election petitions are filed and so on and not otherwise. Article 324 provides for superintendence, direction and control of elections to be vested in an Election Commission. The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State are vested in the Election Commission. It starts from the preparation of the electoral rolls and goes up to the submission or the declaration of the election results. After the final declaration of the results, has it any power to go further into the elections or any part of them? The matter to be considered is whether any powers should be given to the Commission under article 324. I feel that the power of the returning officer ceases the moment he declares the election results and says under rule 65 that so and so has been elected. Rule 64 says:

"Declaration of election result:
The returning officer shall then,

subject to the provisions of section 65 if and so far as they apply to the particular case declare to be elected the candidate to whom the largest number of valid votes has been given, complete and certify the return of election in form 21 and send signed copies thereof to the Election Commission and to the Chief Electoral Officer".

The whole election ends when under rule 64, the returning officer makes the final declaration and gives the information to the Election Commission and thereafter the name, etc., of the elected Candidates are gazetted. There is nothing left, thereafter, either for the returning officer or for the Commission to go into it. How the trouble has arisen, as the hon. Deputy Minister has pointed out, is this way. It arose out of a certain dispute probably at Gonda. There is a provision for recounting. At Gonda after the declaration and preparation of the Form No. 20, recounting was demanded. After filling that form, recounting is allowed. Two recounts were allowed. When the counting was going on, the other party approached the Commission with the observation or request that the recounting was made maliciously and the papers had been shown and manipulated this way or that way; that valid papers were made invalid and invalid papers were made valid and so on. Some allegations were made against the returning officer. The Election Commission authorities ran up to Gonda when the trouble took place. The Commission wanted to go into the whole facts again, to find out whether the recounting was properly done or not. Thereupon the party who applied for the recounting went to the High Court and filed a writ petition. The Election Commission had not the power, after the declaration of the results was made by the returning officer that so and so had been declared elected after a recount, to inspect the papers again and to declare, after a recount, that some other person

had been elected. The man who was declared elected ran up to the high court and filed a writ petition to the effect that the Election Commission should not be allowed to re-inspect the papers which had been sealed by the returning officer after the declaration of the results of the election.

Thereafter, as the Deputy Minister said, the Election Commission probably felt it as an insult—might be, owing to human weakness which is there—and the Chief Election Commissioner went and persuaded the Government to see that power is given to the Election Commission even to inspect the papers after the declaration of the election results. That is the point. The Government have acceded to his request and have amended the rules. Probably it is a rare occasion in this House when the rules that are framed by the executive are discussed in Parliament. There is a Subordinate Legislation Committee which goes into such things; otherwise, the rules framed by the executive officers under the provisions of the Act go unheeded by Parliament, and the rules continue to exist there. But, somehow or other, this thing attracted the notice of Shri Shree Narayan Das, and he and myself sat together and felt that this rule should not be allowed to be amended.

All these rules that are framed under the Act are framed in consultation with the Election Commission. This rule, as it originally stood, was also framed in consultation with the Commission, but it then did not feel that the power should be given to them to re-inspect the papers even after the declaration of the results. All the rules that have been framed have been framed under section 169 of the Representation of the People Act, 1951, and this section starts by saying that the "Central Government may, after consulting the Election Commission, by notification in the official gazette, make rules" and so on. These rules cover the manner in which

votes are to be given, etc., and also include the following:

"the safe custody of ballot boxes, ballot papers and other election papers, the period for which such papers shall be preserved and the inspection and production of such papers".

So, everything was done after due consultation with the Election Commission. At that time, the Election Commission did not feel the necessity that it should be given the power to have the right of inspection even after the declaration of results. Now that such an incident has happened, the Commission wanted to have this power. My submission is, if this power is given, what will be the result. After the papers have been sealed, and a candidate has been declared elected and his name is gazetted, and the candidate takes the oath and takes his seat, the Election Commission cannot change the nature of the election nor can the Chief Election Commissioner declare that the person who has been declared elected by the returning officer has not been duly elected. That right vests only on the returning officer—to declare or not to declare a candidate to have been elected—and not with the Election Commission. The Election Commission cannot do anything after the results have been declared, except making a note that it has inspected the elections papers generally and say if there is something spurious, something wrong here and there, which may help one party or the other in the election petition when the party concerned files a petition later. But to give powers of re-inspection will mean that the Election Commission will be prejudging the result of the election petition. Giving the right to inspection means prejudging the result of the election petition which may or may not be filed by the defected candidate. So, there must be some purpose behind the conferment of this power to the Election Commission. What can the Election Commission do, what goods can the Commission deliver to anybody, except that it can make a note here and there

[Shri Sinhasan Singh]

against the returning officer, a note against the propriety or honesty of the returning officer? That means prejudicing the interests or prejudging the result of the election petition if any.

My submission is, the rule as it stands is a very sound rule. It is not only so here in India, but it is so in the United Kingdom as well. Even in the United Kingdom, on whose law of elections the whole of our election law is based, the right of inspection is not allowed to anybody except to the competent court, tribunal or the House of Commons. A man can inspect only on the order of the House of Commons or on the order of the competent court or the tribunal. The Commission is not given this right there even. So, why should this power be given to the Election Commission here? We have taken our whole procedure from those of the English election law, and there too, there is no such power given to the Election Commission.

Therefore, I plead with the Deputy Minister not to make it a prestige point that whatever they do they do the right thing and they never do the wrong thing. If a wrong thing is done, if unnecessary power is being taken, let him not insist that it should be there. When Parliament feels that this power should not be given to the Election Commission, and if any power is given to any man, it must be done with a set purpose. There is no purpose behind this. This power should not be given. After the election ends, after the declaration of the results, it is the tribunal alone which can declare whether the election has been valid or not. The results of the election cannot be changed by any other way except by an election petition. That is the law as it stands, and that law should be respected and honoured. Let not the Election Commission, however big it may be, be given such powers to re-inspect the papers which are meant to be secret, and which can be opened only in a court when there is an election petition, to give proper justice to the party.

Shri Tyagi: It is very good for my hon. friends to have argued against the inclusion of this power to inspect the papers, which has been conferred on the Election Commission. They have quoted the practice and the conventions in the United Kingdom. It is very good to quote them. Actually, I also submit that the services in the United Kingdom and the Government there also enjoy a great prestige as far as their methods of working are concerned. Unfortunately in India the traditions have been upset in this democracy by the present-day politicians. When I say politicians, I include all the parties, whether they are in power or in the opposition. It must be confessed openly—and I am fearlessly making the statement—that today the services in India have been demoralised to an extent that it is not possible for the people to trust them. Therefore, there are instances. Whereas in England, even a police constable will never tell a lie even at the cost of his life, here even High Court Judges can be influenced; this is what the position has come to. Whatever the lawyers might say, facts must be narrated before this House. I know the manner in which the High Court Judges are appointed. Some favourites are pointed out first; they are first chosen. So long as the list does not contain those favourites, the list is rejected, whether they are recommended by the Supreme Court Judges or the High Court Judges. This is what the executive is doing in the olden days, of course for the British, the District Magistrates did quite a lot, but if there was a case between Indians and Indians, in spite of any influences from higher circles, the District Magistrate would never demean himself to be unfair to one of the parties and they used to maintain justice.

Now the services depend on the executive. Therefore, through telephone calls and influences, they are prepared to do anything. That is the position. We, who are in power know it. Those who are not in power also know it. It is common knowledge.

now. I have seen myself returning officers and other election officers working in polling booths influencing on one side or the other. It is not that always every officer supported the Congress. There were quite a few who were Jan Sanghis. Against me, they were supporting the Jan Sangh candidate. When I checked him, he begged my pardon and there was no use taking action. The House knows and those who have gone into elections know what type of people they are.

I would recommend to the Minister to make it a penal offence and if not capital punishment, at least there should be immediate dismissal of a Government employee who is not working absolutely impartially in polling booths. A complaint that an officer was partial must be deemed to be sufficient to get him immediately dismissed. It must be made a penal offence and very heavy punishment should be given to such persons as are not keeping absolutely impartial in the matter of election, because election is the process which gives democracy a shape.

Shri Hari Vishnu Kamath (Hoshanabad: You said, even capital punishment.

Shri Tyagi: I said, if not capital punishment, they should be given the severest punishment, so that they may know that any little wavering from the path of justice would bring them into difficulties.

Suppose there are cases where, as reported in many cases, the returning officer reports that there were some ballot papers which were absolutely blank and vacant, without any seal. It is declared by the returning officer under his signature that so many ballot papers are invalid. A recounting is allowed and it is found by the higher officer that there is no blank paper at all and every ballot paper is sealed. Then, who is to verify which of the two officers is right? It is when this type of complaint

comes that the Election Commission should come into the picture and see that fair election is conducted. It is not for the Election Commissioner to give his judgement as to who is elected. But it is the constitutional right of the Election Commission to see to it that elections are conducted absolutely impartially. If there is any irregularity, no other man is the guardian, except the Election Commission, according to the Constitution.

Shri Sinhasan Singh: Inspection comes after the person is declared elected. The rule provides for the inspection after the result is announced. It is to that that we are objecting.

Shri Tyagi: An officer, who can mutilate the papers before counting, can do it after counting also. Therefore, the Election Commission must come in between. After all, the Election Commission is not required by these rules to nullify the judgement given by the counting officer and give its own judgement. No. The Election Commissioner only wants to be a witness to the fact that such was the position, so that there may be no further mutilation of the papers. That is all it guarantees, because there were various complaints by parties, mostly belonging to the opposition. The Election Commission has been given the duty of superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to the Parliament and to the Assemblies. So, from beginning to end, the Election Commissioner is in charge and he has to see that everything goes without any doubt. It is only with a view to enable him to see that there is no partiality and every move in an election is conducted in an impartial manner that he wants to be a witness to what has happened. He must at least be in the picture. That is the only right given to him, so that people may not say afterwards that hundreds and thousands of ballot papers were declared invalid.

During the last elections, very serious complaints were brought to

[Shri Tyagi]

the notice of the Election Commission, but the Election Commissioner could not proceed because he had no right to peep into the papers. So, certain parties had a feeling of injustice and injury. They should be satisfied. I think, whatever be the Government, as far as elections are concerned, every party, whether in the opposition or on the side of the Treasury Benches must have absolute satisfaction of impartiality and the spirit in which elections have been conducted. I am glad that generally the elections have been okay. I must congratulate the Election Commission and the Law Minister and his Ministry that such a huge task of elections has been conducted in a very fair manner mostly. Here and there, there have been complaints. Why should the Election Commission not be in a position to just put a check over those complaints also? I, therefore, feel there is no danger in giving the power to the Election Commission to see the papers. The Election Commissioner does not give his verdict. He does not change the papers. They are all there. But let him be in the picture.

Shri Shree Narayan Das: What is the purpose for which the Election Commission takes the right to inspect these papers, after the papers have been sealed and kept in the custody of the returning officer?

Shri Tyagi: As I said, returning officers are not High Court Judges. There is a feeling somehow or other that High Court Judges are angels and therefore anything could be entrusted to them. It is the majority view and the collective wisdom of this House also. Most of my friends are lawyers and they are accustomed to bow before the High Court Judges. I agree to that; it does not matter. But what about returning officers? Every returning officer is not a High Court Judge. Generally, they are executive officers in the Government. So, this power is being given to the Election

Commissioner with a view to safeguard the rights of those who are not in power and who are the complainants. Otherwise, the opposition always accuses us that we are influencing the executive officers. In that case, let the Election Commissioner come and see whether we have influenced the Deputy Commissioner or any other officer. The Election Commissioner entering into the scene is the guarantee to the opposition. Our country is very unfortunate because we have got such an opposition, who do not realise what their rights are. Sometimes we on this side have to officiate for the opposition.

Shri Hari Vishnu Kamath: You do it well.

Shri Tyagi: It is to their advantage and unfortunately they are opposing it. I hope they will realise that it is to the best advantage of those who are not in power that the Election Commission is being given the power at this stage to look into the papers.

Shri Gauri Shanker (Fatehpur): Mr. Deputy-Speaker, Sir, I am very glad and I congratulate our senior Member Shri Tyagi for having admitted this fact that there are executive officers who are being influenced by this side or by that side. But this Election Commission is also in the same category. I do not know how Shri Tyagi was just saying that there are certain advocates or lawyers who are used to bow down before the courts and who attach sanctity to that. But I fail to understand how it is that Shri Tyagi bows down before the Election Commission. How does he come to this conclusion that it is immune, that it is the proper authority and everything is final with them?

Shri Tyagi: Is my hon. friend a lawyer?

Shri Gauri Shanker: Yes, and that is why I say this. Sir, the whole thing is very clear. As soon as the

results are announced the Election Commission ceases to function. That is in accordance with the provisions in rules that are there. If there are certain drawbacks, certain lacunae, as has been pointed out by Shri Tyagi—that there are certain ballot papers left vacant and the Returning Officer acted wrongly—then the remedy lies in the election petition. The Tribunal can very easily look into those things and can do justice. The Election Commission should not be allowed to come in the way. I can point out two cases that happened in Uttar Pradesh. I am sure my hon. friend is well conversant with those cases. There was the announcement of the result and a certain candidate was declared elected by a margin of a few thousand votes. Then, as a result of recounting the person who was declared elected was declared defeated. I would, of course, welcome this idea, that all those persons in charge like the Returning Officers, the Presiding Officers and others, should be severely punished if they do certain wrongs. If the Returning Officer is going to declare.....

Shri Tyagi: She was rightly elected.

Shri Gauri Shanker: You say so. I say she was not rightly elected. She was declared defeated in the first instance by the Returning Officer, and afterwards as a result of recounting she was declared elected. What I am saying is that this should have been done through an election petition by the Tribunal and not by the Election Commission.

Sir, in accordance with the rules the Election Commission is meant only to supervise. The Election Commission has been given the right of superintendence only. It is only the Tribunal which has been given the right to decide a case in that manner or in this manner. If the Election Commission is given this right and if the Election Commission comes in and supervises the recounting and

declares a result which was otherwise declared by the Returning Officer, I would submit, Sir, respectfully, that the function of the Tribunal is done by the Election Commission in this respect at least.

One thing I would like to say, and this is, of course, in accordance with the principles of democracy. We can honour the verdict given by the judiciary. We are still of this view that the verdict given by the judiciary is to be honoured for the successful running of democracy. In the same manner and on the same principle, it would be most justified if the Election Tribunals are called upon to give the same kind of justice. If there was certain drawbacks, certain injustice done by the Returning Officer, they can very easily be looked into by the Tribunal in an election petition. Therefore, if the analogy which has been given by Shri Tyagi stands good and if the executive officers are not to be trusted, then I would submit that the Election Commission also should not be given this right.

Shri Tyagi: Does my hon. friend appreciate that I did not advocate the interference by the Election Commission?

Shri Gauri Shanker: That will come. You cannot avoid that. If the right of inspection is given and if there are certain occurrences and the Election Commission comes in, then as a result of recounting a result can be declared otherwise. Even if you do not give certain rights, rights come up by themselves. You cannot avoid that, if you give the right of inspection. That was what was done in Gonda. If Shri Tyagi has conceded that the executive officers can be influenced this side or that side, I would most respectfully submit that the Election Commission can also be influenced to that extent.

[Shri Gauri Shanker]

Therefore, according to strict principles of democracy, we have to concede one thing, that the decision or verdict given by the judiciary is to be honoured and respected. From that point of view, Sir, I would submit that this amendment which has been moved by my hon. friend is a welcome one and I stand to support it. It is in accordance with the principles of democracy. I can assure you that if this is done there will be no fear and only justice can be done by the Tribunal in cases on which election petitions are duly filed.

Sir, I support it.

श्री लहरी सिंह (रोहतक) : अध्यक्ष महोदय, इस मोशन के प्रस्तावक महोदय ने जो यह मूव किया है कि रूल ३ ओमित कर दिया जाय और एलेक्शन कमिशन को अधिकार न दिया जाय यह बहुत माकूल चीज मूव की है और मैं इस के लिए उनको मुबारकबाद देता हूँ ।

मैं अर्ज करना चाहता हूँ कि देश में डमोक्रेसी तभी तक चल सकती है जब तक कि आम आदमी के दिल में यह खयाल हो कि पोलिंग जो है वह ठीक हो रही है । जिस रोज आम आदमी के दिल में यह खयाल आ जायगा कि यह एलेक्शंस फार्स हैं, इन में कोई सच्चाई नहीं है और इन पर कोई यकीन नहीं है तो मैं आपको बतलाना चाहता हूँ कि फिर एलेक्शंस में लोगों की श्रद्धा नहीं रह जायेगी, लोग गवर्नमेंट्स चेंज करने के लिए एलेक्शंस का सहारा नहीं लेंगे, एलेक्शंस का इंतजार नहीं करेंगे बल्कि गवर्नमेंट को चेंज करने के लिए वह कोई और तरीका अखत्यार करेंगे । अब इसमें मौजूदा या किसी खास गवर्नमेंट का सवाल नहीं है बल्कि कोई भी गवर्नमेंट हो उसको चेंज करने के वास्ते लोग एलेक्शंस के भलावा कोई और तरीका अखत्यार करेंगे । डमोक्रेसी तभी मेंटेन हो सकती है जब आम

आदमी के दिल में यह खयाल पैदा हो और वह यह समझे कि वाकई यह एलेक्शंस ठीक हो रहे हैं ।

अब सवाल यह है कि रिटर्निंग आफिसर्स देश में कितने हैं और एलेक्शंस कितने होते हैं ? आप रिटर्निंग आफिसर को राइट देते हैं कि वह दोनों पार्टीज के उम्मीदवारों के वोटों को काउंट करे । आप यह भी राइट देते हैं कि अगर गलती हो वह दुबारा काउंट कर ले और दुबारा काउंट करने के बाद ऐक्ट में यह प्रोवाइड्ड है कि वह तमाम पेपर्स को बंद करके और सील करके अपने वहां रखता है । मैं नहीं समझता कि डिप्टी मिनिस्टर साहब ने यह कैसे कहा कि रिटर्न्स बलेट पेपर्स के साथ रख दिये गये थे ? अब हिसाब किताब और रिटर्न्स वगैरह तो बाद में दिये जाते हैं । आखिर रिटर्न तो तभी दाखिल होगा जबकि सब डिक्लेयर हो जाता है सील वगैरह लग जाती है । मैं डिप्टी मिनिस्टर साहब के स्टेटमेंट को फौलो नहीं कर सका । मुझे आशा है कि वह अपना जवाब देते वक्त इसको समझा देंगे ।

अब वहां पर अगर त्यागी साहब की बात मान ली जाय कि यह जरूरी है तो उस को अखत्यार तो कुछ भी नहीं है । उस को अखत्यार क्या दे रहे हैं ? अगर आप का खयाल है कि गलत हिसाब हुआ है और उस ने दीदी दानिस्ता गलत किया है तो वह जो आपका एलेक्शन कमिश्नर है वह क्या करेगा । वह कह देगा कि गलती क्यों रही या तो यह कहे कि दुबारा काउंटिंग के लिये कोई दरख्वास्त दे तो दूसरी बार एलेक्शन कमिश्नर वहां पहुंचे इन दोनों पार्टीज के सामने फिर काउंटिंग कराये तब तो काउंटिंग के कुछ माने हैं । जहां डाउटफुल हो वहां एलेक्शन कमीशन चला जाय और दुबारा काउंटिंग कराये तब तो कुछ बात भी हुई । लेकिन इसके लिये ऐक्ट में तबदीली करनी पड़ेगी जो कि आप कर नहीं

रहे हैं। अब दुबारा काउंटिंग एलेक्शन कमिश्नर करवा नहीं सकता। उनको जाकर खोल कर देखा करे और खोल कर देखने के माने यह होंगे कि सारा भेद वह देख सकता है। मालूम यह होता है कि बहुत से गवर्नमेंट सर्वेंट्स ने चुनाव में अपने वोट नहीं डाले, जिला परिषदों में और कई जगहों के चुनावों में मैंने देखा कि उन्होंने अपनी राय नहीं दी क्योंकि उनको यह दहशत दी गई थी कि अगर उन्होंने कांग्रेस के खिलाफ वोट दिये तो पोलिंग आफिसर निशान लगाने से मालूम कर लेंगे और इस डर से उन्होंने अपने वोट ही नहीं डाले। बहुत से गवर्नमेंट आफिशल्स ने इसी लिये राय नहीं दी। अगर अब सरकार इलेक्शन कमीशन को यह पावर देती है कि वह लिफाफे को फाड़ कर हर एक कागज को देख सकता है, तो फिर बैलट की सीक्रेसी कैसे कायम रहेगी? इन्स्पेक्शन के माने ये थोड़े ही हैं कि वह ऊपर से लिफाफे देख ले। इन्स्पेक्शन का मतलब यह है कि इलेक्शन कमीशन यह देख सकेगा कि किसने किस को राय दी है, जिसका नतीजा यह होगा कि बैलट की सीक्रेसी खत्म हो जायगी। मैं आपको याद दिलाना चाहता हूँ कि हम हमेशा डेमोक्रेसी और बलट की सीक्रेसी के लिये फाइट करते आये हैं। आजादी के बाद हमने बैलट की सीक्रेसी का उसूल कायम किया। लेकिन अब हम इलेक्शन कमीशन को वह सारी सीक्रेसी सौंप रहे हैं, उसको यह अस्तित्वा दे रहे हैं कि वह सारी वोटजें लिस्ट देख लें और ही कैन इन्स्पेक्ट ईच एण्ड एग्री थिंग।

14 hrs.

फिर सवाल यह भी है कि सब कागजात को देखने के बाद इलेक्शन कमीशन क्या करेगा। क्या वह प्रेजिडेंट को कहेगा कि फर्ना इलेक्शन में यह गलती हो गई है? क्या वह इन्स्पेक्शन नोट लिखेगा? मैं कहना चाहता हूँ कि अगर उस को यह अस्तित्वा दे दिया जाये कि वह यह कह सके कि इलेक्शन में यह

गलती हो गई है, तो फिर ट्रिब्यूनल की क्या जरूरत है। उस हालत में सरकार ट्रिब्यूनलज और कोर्टस को क्यों रखती है?

इसलिये मैं कहना चाहता हूँ कि अगर सरकार इंडिपेंडेंट, जस्ट और ईमानदारी के साथ इलेक्शनज चाहती है, तो वह एक्ट को बदले। रूलज में अमेंडमेंट करने से काम नहीं चल सकता है। अगर इलेक्शन कमीशन को रीकाउंटिंग का अस्तित्वा देना है, तो एक्ट में अमेंडमेंट की जाये। लेकिन सरकार उस को रीकाउंटिंग का अस्तित्वा न देकर इन्स्पेक्शन का अस्तित्वा दे रही है। इन्स्पेक्शन का नतीजा यह होगा कि बैलट सीक्रेट नहीं रहेगा और सब बातों का लीकेज होगा। उन सब कागजात को इलेक्शन कमीशन खुद थोड़े ही देखेगा? उसका सारा स्टाफ़ और क्लार्कस वगैरह यह काम करेंगे। वे लोग एक एक कागज को लेकर बैठ जायेंगे और हर एक कागज को अच्छी तरह देखेंगे। वे निशानों को देखेंगे और इसका नतीजा यह होगा कि बैलट की सीक्रेसी नहीं रहेगी। इसके अलावा इसमें और खराबियां भी हो सकती हैं और कागजात को टेम्पर विद भी किया जा सकता है। हम देखते हैं कि कोर्टस से फाइलज की फाइलज उड़ा ली जाती हैं।

अगर इलेक्शन कमीशन को और ज्यादा अस्तित्वा देने के लिये यह अमेंडमेंट की जा रही है, तो मैं अजें करना चाहता हूँ कि हमने पहले ही उस का बहुत अस्तित्वा दिये हुए हैं। हमारे देश में इलेक्शनज को सुपरवाइज करने और कंट्रोल करने का सबसे बड़ा काम इलेक्शन कमीशन के हाथ में है। इससे ज्यादा अस्तित्वा क्या हो सकता है? अगर रीकाउंट कराना हो, तो इलेक्शन कमीशन को यह अस्तित्वा दे दिया जाये कि वह सात आठ दिन के अन्दर खुद रीकाउंट कराए। लेकिन उस को लिफाफों को फाड़ कर सब कागजात को देखने का अस्तित्वा देने का नतीजा यह होगा कि एक तो बैलट की सीक्रेसी नहीं रहेगी और साथ ही इस बात का भी शुभव होगा कि इलेक्शन पेटीशनज के सिलसिले में

[श्री लहरी सिंह]

मदद दी गई है। इलैक्शन कमीशन में काम करने वाले स्टाफ के आदमी इन्ट्रिस्टेड लोगों को बता सकेंगे कि करप्शन के ये व्वाइडेंस उठाओ। अब तक तो रूल यह है कि इलैक्शन पेटीशन में करप्ट मीन्ज की जो एलीगेंसन्स एक दफा लिख दी गई, उन को अमेंड नहीं किया जा सकता है। लेकिन जब स्टाफ के आदमी, क्लार्क्स और सुपरिन्टेंडेंट वगैरह सारे कागजात को देख लेंगे, तो सारी बातें जाहिर हो जायेंगी। इससे आहिस्ता आहिस्ता ग्राम पब्लिक के माइण्ड पर यह असर होगा कि इस मुल्क में हमेशा रूलिंग पार्टी का ही बोल-बाला होगा और इस तरह इंडिपेंडेंट और जस्ट इलैक्शन नहीं हो सकेंगे। मैं अर्ज करना चाहता हूँ कि इलैक्शन कमिश्नर भी तो आई० सी० एस० या आई० ए० एस० के ही आदमी हैं और उनके नीचे स्टाफ में क्लार्क्स वगैरह काम करेंगे। इसलिये सरकार को ऐसी कोई गलती नहीं करनी चाहिए, जिससे हमारी डेमोक्रेसी को घक्का पहुँचे। इससे इलैक्शन कमीशन की पोलीशन भी अच्छी नहीं होगी और वह जस्ट और फ़ेयर इलैक्शन कराने में मदद नहीं कर सकेगा। अगर उस को किसी इलैक्शन में किसी गलती का पता चलेगा, तो वह या तो ला मिनिस्टर को लिखेगा और या प्रॉजिडेंट को लिखेगा। क्या उसको ऐसा करने का राइट है ?

इलैक्शन कमीशन को सात आठ दिन के अन्दर रीकाउंट का अस्तियार न देकर हम उसको लिफाफे फाइल कर सब कागजात देखने का मौका दे रहे हैं। इस मुल्क की डेमोक्रेसी के लिये यह कोई अच्छा कदम नहीं है। हमारी बहुत सी पब्लिक अमी नाब्रान्दा है। इसलिये जगह जगह पर इस बारे में चिन्नेगोइयां होंगी। इसलिये यह अमेंडमेंट बेमानी है। मैं डिप्टी मिनिस्टर साहब से पूछना चाहता हूँ कि इसमें हिसाब वाली बात कैसे आती है। वह एकट और रून्ज को देख लें कि रिटर्निंग आभिसर सब पर सील कर देता है और सील लगा कर

लिफाफे में रख देता है। इसलिये रिटर्निंग वाली बात कैसे आ गई ? कौनसी जगह पर वे रिन्ज होंगी ? रिटर्निंग तो पन्द्रह दिन के बाद, महीने के बाद दी जाती है। मैं समझता हूँ कि त्यागी जी इस बात पर गौर करेंगे।

श्री त्यागी : जो बैलट कूपन होते हैं, जो हिसाब होता है कि कितने बैलट पेपर गए, उन रिटर्निंग का कह रहे हैं।

श्री लहरी सिंह : वे भी सील हो जाते हैं। एक एक लिस्ट सील हो जाती है और अगर गलती से कोई कागज दूसरी जगह रख दिया गया हो, या लिफाफा गलती से चिपका दिया गया हो, तो रिटर्निंग आभिसर दानों कंडिडेट्स को बुला कर उस को ठीक कर देता है, उन पेपरों में रिटर्निंग का तो कोई सवाल नहीं है। ला और रून्ज ने उन के बारे में सीक्रेपी प्रोवाइड की है कि **नोबाडी कैन टच वेम**। उन को कोई टच नहीं कर सकता। उसमें एकाउण्ट्स कैसे चले गए ? इसलिये मैं कहना चाहता हूँ कि यह ग्राम पब्लिक का गुमराह करना है, बदनामी हासिल करना है और इससे कोई फायदा नहीं है।

Shri Man Sinh Patel (Mehsana):
Mr. Deputy-Speaker, I would like to support the motion of my hon. friend. Normally, when all the papers are sealed, it is only when there is some challenge or dispute about the result where the papers are allowed to be opened by a tribunal formed by the Election Commission or by a competent court. Here is a rule which empowers the Election Commission to do it, which may mean any officer engaged in the Election Commissioner's office. Also, the result may be challenged or may not be challenged. Even for a trivial matter such important papers are likely to be tampered with. Now, when the returning officer, on behalf of the Election Commission, is conducting the full scrutiny of it, it

is being done in the presence of all election agents, or the candidates concerned, then the final result is declared by the returning officer and then the papers are sealed. If there is any doubt in the mind of either the election agent or the candidate, it could be raised through an objection at the time of counting, or before the returning officer. But once the election result has been declared and the papers are sealed, I do not see any reason why Government should frame this rule to give additional power to the Election Commissioner. It has been stated times without number by members of the opposition, even by members on this side, that secrecy of voting is the gist of the elections in a democracy. So, any official who is in over all charge of the election as a whole should never be given this authority where there is a possibility of tampering with the papers by opening such important papers. It is not one high dignitary of the Election Commission, alone who is likely to open it. It can be done by any officer under him under his instructions. That tampering of papers can be done even when there is no dispute, for reason or no reason, because nothing has been mentioned here. Therefore, such a rule is likely to be misunderstood in the initial stage of democracy.

As I said, secrecy of the ballot paper has always to be maintained. It should be touched only when there is any dispute, and that too by persons who can and who are competent to settle and decide the dispute. That is to say, only a tribunal or a court which decides it can open the ballot papers for the purpose of giving a decision on the issues under dispute. Therefore, I fully support the motion of my hon. friend.

Shri Sumat Prasad (Muzaffarnagar): Mr. Deputy-Speaker, I have not been convinced by the reason advanced by the Deputy Minister for the change in the rule. At best, the

rule is superfluous. It may lead to various complications. Unless the Election Commissioner is given power to change the result announced by the returning officer if he finds any mistake in recounting, inspection and recounting do not serve any useful purpose. Very often it has been stated in this House that such things should be entrusted to judicial officers. I do not understand what purpose will be served by the change introduced by the Government. I whole-heartedly support the motion of Shri Shree Narayan Das.

श्री बड़े (खारगोन) : उपाध्यक्ष महोदय, जो एमेडमेंट शासन की तरफ से किया गया है, वह उसी तरह से मालूम पड़ता है जैसे कि पैचिंग और पैडिंग किया जाता है। हमारे त्यागी जी ने जो भाषण दिया है उसमें उन्होंने वकीलों के बारे में कहा है कि वे जजों को नमस्कार करते हैं, उनके सामने सिर झुकाने की आदत उनकी हो गई है। मैं कहना चाहता हूँ कि समस्त जनता उनके आगे सिर झुकाती है। इस वास्तं केवल वकील ही सिर झुकाते हैं यह कहना ठीक नहीं है। त्यागी जी ने यह भी कहा है कि हिन्दुस्तान में बहुत से लोग कुरप्ट हो गए हैं। क्या जो इनकशन कमिश्नर साहब हैं, जब त्यागी जी ने ऐसा कहा तो वह भी उनकी निगाह में थे या नहीं मैं नहीं जानता हूँ। कमिश्नर साहब डेमी गाड हैं और वह कुरप्टान से बाहर हैं, या उनको ब्रैड एण्ड बटर की जरूरत नहीं है या वह शासन के हाथ में खिलौना नहीं बन सकते, इसके बारे में त्यागी जी ने कुछ नहीं कहा।

एक बार जब बैलट पेपर्स सील हो जाते हैं और रिटनिंग आफिसर रिजल्ट डिक्लेयर कर देता है तो उस सील को और उन पेपर्स को ट्रिब्यूनल या कोर्ट के सामने ही खोला जा सकता है, वे पकेट्स उनके सामने ही खोले जा सकते हैं। जब रिटनिंग आफिसर यह डिक्लेयर कर देता है कि फलां आदमी जीत गया है, तो उसके बाद वह उन पेपर्स को सील कर देता है और जब उनकी सील कर दिया

[श्री बड़े]

जाता है तो कमिश्नर साहब क्या कर सकते हैं या क्या करेंगे। हम जो अपॉजिशन वाले हैं उनको यह शंका है कि कहीं बैलट पेपर्स लोगों को न दे दिये जायें या जो कर्मचारी हैं वे न दे दें। इस तरह की बातें करने में कहीं कमिश्नर शासन के हाथ में खिलौना बन न जायें यही शंका है। बड़े बड़े व्यक्ति जो शासन में हैं, जो अधिकारी हैं, जो मिनिस्टर हैं, उनके हाथ में अगर वह खिलौना हो जायेंगे तो क्या होगा? क्या टेलीफोन का इस तरह के अनुचित कामों के लिये उपयोग नहीं हो सकता है? एक बार सील जब पेपर्स को कर दिया गया और रिजल्ट डिक्लेयर कर दिया गया तो उसके बाद कमिश्नर साहब क्या करेंगे। अगर उन को यह अधिकार दे दिया जाता है कि वह पेपर्स को खोल सकते हैं तो हो सकता है कि वह मिनिस्टर के हाथों में या बड़े व्यक्तियों के हाथों में खिलौना बन जाएं और टेलीफोन पर ही सब बातें हो जाएं।

त्यागी जी ने कहा है कि हिन्दुस्तान में लोग बहुत कुरप्ट हैं, आफिगर्ज कुरप्ट हैं। अगर यह सही है तो जो कमिश्नर साहब हैं जो कुछ उनको टेलीफोन पर कहा जाएगा वह कर दिया करेंगे और मिनिस्टर के इशारे पर भाचना शुरू कर देंगे और टम्पर करना शुरू कर देंगे, तो क्या होगा, इस पर आपको विचार करना चाहिये। यह बात, जो आर्गुमेंट हमारे त्यागी ने दिया है, उसी के सहारे मैं कह सकता हूँ। जो एमेंडमेंट अब किया गया है, वह क्यों किया गया है, इस पर आपको विचार करना होगा। हमारे यहां दो आम चुनाव हो चुके हैं। इन दोनों ही चुनावों में इस तरह का कोई प्राविजन नहीं था। लेकिन स चुनाव में अपोजिशन वालों का बल बढ़ा है और इस वजह से इनको यह अमेंडमेंट करने की जरूरत हो गई है। मैं मध्य प्रदेश की बात आपको बतला सकता हूँ। वहां पर हमने देखा है कि कांग्रेस से यह टीका होनी शुरू हुई है कि जितने भी कर्मचारी हैं, पटवारी से लेकर करके कलैक्टर

तक, छोटे से छोटे से लेकर बड़े से बड़े तक, कांस्टेबल से लेकर एस० पी० साहब तक सब जनसंघ के हाथ में खेलते हैं और यही वजह है कि वहां पर कांग्रेस कैंडीडेट्स को हार हुई है। यू० पी० में इनेक्शन कमीशन को एक्जीक्यूटिव दे करके वहां पर यह चाहा गया कि 'केट्स को खोल कर देखा जाए। कमिश्नर साहब ने दो तीन बार इस बात को नहीं माना लेकिन जब उन पर बयान डाला गया तो लैक्शन कमिश्नर ने 'केट्स को खोला। यह सवाल जब कोर्ट में उठाया गया और कहा गया कि इलेक्शन कमिश्नर को जो अधिकार दिये गये हैं, यह उसके विरुद्ध बात जाती है तब कमिश्नर साहब शासन के पास दौड़े आए और उन्होंने इस तरह की एमेंडमेंट करने के लिये कहा और दोनों ने मिल करके इस प्रकार का एमेंडमेंट किया। पिछले दो इनेक्शन में इस तरह का अधिकार कमिश्नर साहब को क्यों नहीं दिया गया और क्यों अब दिया गया है, उसकी यही वजह है कि जो मैंने बयान की है। इसका कारण यही है कि जो जूता हमें काटता था वही जूता अब कांग्रेस के कैंडीडेट्स को काटने लगा है। इस वजह से उन को यह एमेंडमेंट करने की जरूरत पेश आई है कि वह पैकेट्स को खोल करके देख सकता है। पैकेट्स को खोल करके वह क्या करेगा? यहां पर इसी दिल्ली में यह दिखा दिया गया है कि पेटियों को खोला जा सकता है और यहां पर दिल्ली में ही यह भी बता दिया गया है कि जम्मू और काश्मीर में जाली बैलट पेपर लोगों के हाथों में दिये जा सकते हैं और उनको मिला दिया गया है। जब इस तरह की बातें हो सकती हैं तो यह आश्वासन कैसे दिया जा सकता है कि जो पैकेट्स को खोलने का अधिकार कमिश्नर को दिया गया है, उसका दुरुपयोग नहीं होगा और कमिश्नर या उनके कर्मचारी कोई अनुचित काम नहीं करेंगे? त्यागी जी ने कहा है कि जर्जों के सामने वकील जो करते हैं। वे भी नहीं करते हैं। सभी उनके सामने झुकते हैं। हमारे त्यागी जी ने यह भी कह दिया कि

सारे के सारे कर्मचारी कुरप्ट हैं । मुझे नहीं पता कि उन्होंने यह बात कैसे कह दी ।

श्री त्यागी मैंने यह नहीं कहा कि सारे अफसर कुरप्ट हैं ।

श्री बड़े : इंग्लैण्ड के और यहां के आफिसर्स को उन्होंने कम्पेयर किया है । इस बात को सुन कर मुझे बड़ा दुख हुआ है । किस तरह से हमारे देश के लोगों को वह कहते हैं कि वे कुरप्ट हैं । क्या इंग्लैण्ड में कुरप्शन नहीं है ? एक बहुत बड़े आदमी ने जो यहां आया और जिसने अंग्रेजी राज्य की यहां स्थापना की और जिसका नाम क्लाइव था, क्या वह कम कुरप्ट था । उस तरह का कुरप्ट आदमी कभी भी हिन्दुस्तान में नहीं हो सकता है ॥

यहां के कर्मचारी आम तौर पर आनेस्ट हैं । हो सकता है कि कोई कोई डिमिआनेस्ट हो । ऐसे तो चावल में भी कोई पटर रहता है । यह कहना कि सभी लोग कुरप्ट हैं, या खराब हैं, गलत बात है । हां जब ब्रेड और बटर का सवाल आता है तो आदमी कुरप्ट हो सकता है । वैसे तो जो जंगली जानवर होता है उसको भी अगर भूखा रखा जाता है तो वह भी पालतू बन जाता है । कांग्रेस ने टैक्स लगा करके लोगों को भूखा कर दिया है, मंगा कर दिया है । ड और बटर के लिये वह कुरप्ट हो सकता है । और इन्वैशन कर्मिशनर, इसके ऊपर है, ऐसा आप नहीं कह सकते हैं । अगर बाकी लोग कुरप्ट हो सकते हैं, तो वह भी हो सकते हैं ।

सलिये मैं कहता हूँ कि यह जो प्राविजन है यह गलत है और कर्मिशनर को यह अधिकार नहीं दिया जाना चाहिये । यह अधिकार केवल ट्रीब्यूनल और कोर्ट के पास ही रहना चाहिये जहां पर दोनों पार्टियां सामने रहती हैं और दोनों के सामने उसको खोला जाता है । इन्वै-कशन कमीशन के सामने दोनों पार्टियां नहीं

होती हैं इस वास्ते पैकेट्स को उनके सामने खोलना अनुचित है और यह ठीक नहीं है । इस वास्ते यह जो प्राविजन है और जो पावर इन्वैकशन कमीशन को दी जा रही है, नहीं दी जानी चाहिये । यह सुपरफ्लुअस प्राविजन है, ऐसा मैं समझता हूँ ।

जो प्रस्ताव सदन के सामने रखा गया है उसका मैं समर्थन करता हूँ ।

Dr. M. S. Aney (Nagpur): Sir, I was rather surprised at the stand that my hon. friend, Shri Tyagi, has taken. However, each one of us is entitled to form his own views on such information as is available to him. Probably his experience of the judges may be somewhat different from the experience of the general public. As a matter of fact, in a democratic Constitution the real guarantee of that Constitution working properly is not the executive officers who have to work it out but a tribunal which will look into the propriety of that particular law, and also its consistency with the principles of the Constitution. The tribunal is the last resort of the people to get the Constitution properly worked and also the laws to be properly worked and administered. So, a kind of faith in the people about the impartiality of the judges is a necessity for the success of democracy. My hon. friend, Shri Tyagi, is one of those who are as much enthusiastic as anybody else in claiming that this democracy has worked successfully during the last 15 or 16 years. In that case it means that the tribunals of this country have discharged their duties properly and impartially also.

The practice is whenever any amendment to a law which has been working for some time is to be brought, some good cause should be shown and that the law as it stands has not worked properly or that it has created certain difficulty which

[Dr. M. S. Anoy]

ultimately ended in the defeat of the objects for which the law was made and its failure to be useful in the state as it stands. The new rules under the Representation of the People Act have been laid on the Table but no explanation has been given for an important modification made therein. Even up to this time when it is under discussion we have not been furnished with any explanation by the hon. Law Minister or those who are in charge of it as to the propriety and the necessity of making this change.

Generally these rules are placed on the Table, and they generally go unnoticed. We claim that it is a matter of great right and we insist upon the Government whenever any Bill is passed that this clause, namely, that rules framed under the particular law must be placed on the Table, be inserted there. If there is no such clause, we take pride in suggesting an amendment to that effect. But it is very seldom that when the rules are placed on the Table within the time-limit somebody takes the care to go into those rules, studies them properly and finds out whether in framing those rules something has been done that the law has not meant or originally intended. I, therefore, sincerely congratulate Mr. Shree Narayan Das for putting his finger on a very vital point in these rules, in my opinion. The functions of the Election Tribunals are specified in the Representation of the People Act. After the election results are declared the Election Commission has virtually nothing to do afterwards. When this is the clear position, we are introducing a provision that it should be given power to open ballot boxes and examine the ballot papers.

This is the new clause that has been introduced here. In rule 93 of the said rules in sub-rule (1) for the words "a competent court or tribu-

nal" the words "Election Commission, or a competent court or tribunal" shall be inserted. That means the Election Commission has been given powers along with the courts to exercise the powers mentioned in that clause.

What is the necessity for doing it? Nobody has explained it. On the other hand, the secrecy of the ballot is likely to be violated if such powers are given to and exercised by the Election Commission. I have got very great respect for the Election Commission. If we give them powers like this we perhaps provide temptations for them to go astray from the path of duty. We should remove all temptations from their way, so that they can function impartially. From that point of view, I think the rule as it stood was all right, and had ensured fair elections.

I, therefore, request the Deputy Minister to consider this matter carefully and calmly and see whether there is any necessity for this at all. If it is so, we are open to conviction. I would ask them not to make it a point of prestige.

Shri Bhagwat Jha Azad (Bhagalpur): Mr. Deputy-Speaker, Sir, I strongly support the motion moved by my hon. friends, one on my right and the other on my left. I feel that Government has been ill-advised to frame such rules. It can be interpreted in many ways. I do not assume as my hon. friends of the Opposition have said that there is greater chance of foul play if ballot boxes and other packets are reopened by the Election Commission. I do not accept that position. But I would suggest that even in genuine cases where boxes are reopened and a decision is correctly taken, the confidence of the people, the candidates and the electorate as a whole in the Election Commission will be shaken.

Let me quote an instance. In the case of a candidate who has been defeated by a margin of hundred votes—I take that figure for the sake of convenience—if after the declaration of results, the Election Commission were to open the boxes, and reverse the verdict, nobody would believe that it has been rightly done. Apart from what my hon. friends on the Opposition said, public confidence and the electors' confidence in the Election Commission will be shaken. I therefore suggest that Government should withdraw this provision

As the old adage goes: Caesar's wife should be above suspicion. We would like to know what are the reasons which impelled Government to have this rule; what difficulties were experienced in the last two General Elections. If a candidate is defeated, the law provides ample opportunities for him to go before the Election Tribunal. According to the present rules, the candidate can demand counting, recounting, re-re-counting, as many countings as he wants. After these countings and recountings when the ballot papers are sealed, why should the Election Commission—which previously did not want to have this power—reopen the boxes. I think it is not in order. Even if it rightly done, I am sure it will shake the confidence of the public in the Election Commission

Apart from that I do not think any such rule exists anywhere else in the world. So far as the practice obtaining in the United Kingdom is concerned, Rule 57 under the heading 'Orders for Production of Documents' reads as follows:

"57.—(i) An order—

(a) for the inspection or production of any rejected ballot papers in the custody of the Clerk of the Crown; or

(b) for the opening of a sealed packet of counterfoils and certificates as to employment on duty on the day of the poll or the inspection of any counted ballot papers in his custody;

may be made—

(i) by the House of Commons; or

(ii) if satisfied by evidence on oath that the order is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of an election petition, by the High Court or a county court".

It is evident from this that it is a novel procedure which my hon. friend wants to introduce and we would like to know the reasons which impelled them to bring forward this rule. What were the difficulties which they experienced in the past? We are definitely of the opinion that if this rule is introduced the confidence of the people in the Election Commission will be shaken and it is very necessary for the success of our infant democracy that there should be a supreme body in which the people should have confidence. Therefore, this rule is unwarranted; it is not required; it will not be of any use. Even if it is correctly applied people will not believe it. Let me give an example. Suppose there are three Members, A, B and C, who stand for election. If after recounting the Election Commission were to reverse the verdict, people will only say that there was some foul play. Such suspicion will be stronger if the personality involved were to be a big leader or Minister. As I have pointed out, in England this right vests in the House of Commons, or a county court.

I strongly oppose the Government move and suggest that this rule should be withdrawn.

श्री बागड़ी : उपाध्यक्ष महोदय, इस देश में जनतन्त्र ही एक ऐसी देन है जिसको सामने रख कर हम सारे संसार में कह सकते हैं कि भारत इस जनतन्त्र के सहारे तरक्की करेगा। इस जनतन्त्र को जो खुराक मिलती है, जो शक्ति मिलती है वह सरकार से नहीं बल्कि जनता के विश्वास से मिलती है। अगर वह जिन्दा है तो देश की जनता के विश्वास के सहारे जिन्दा है। इसलिये जरूरी है कि हिन्दुस्तान की जनता के दिमाग में यह बात आ जाय कि जिस तरीके से जनता चाहती है, वैसा ही इस देश में होता है। और यह विश्वास इस नाते जिन्दा है कि जनता की खुफिया राय से सरकार बनती है। गरीब लोगों की और महकूम लोगों की राय को कोई नहीं जान सकता कि वह किधर राय देते हैं, ऐसा विश्वास उनके दिमाग में है। मैं कहता हूँ कि देश में जनतन्त्र की पूरी शरारतें टूट चुकी हैं, कर्पण और भ्रष्टाचार सब जगह हो चुका है, लेकिन सीक्रेट बैलट की वजह से जनता के मन में एक विश्वास है। अगर आप इस विश्वास को तोड़ देंगे तो यह पहला फावड़ा होगा, जो कि आप चलायेंगे इस देश में जम्हूरियत को दफन करने का।

हम दूसरों की बातें कहते हैं। पंजाब के चुनावों में कौनसी बात नहीं चली। कौनसी बात मिनिस्टर्स और चीफ मिनिस्टर के चुनाव के बारे में नहीं चली। ३४ परचियों से हमारा पंजाब का मुख्य मन्त्री जीता हुआ बताया जाता है और उसका पार्टी का लीडर बनाया गया है। अगर आज यह परचों को खोल कर देखने का आँकार दे दिया जाता है तो कौन आदमी पंजाब के चीफ मिनिस्टर के खिलाफ वोट दे सकेगा। आज भी लोग यह महसूस करते हैं कि कुछ लोगों को जबरदस्ती जीता हुआ बताया गया है। अगर आपने कानून बना कर न परचों को देखने का अख्तियार इलेक्शन कमीशन को दे दिया तो जनता के मन में विश्वास नहीं रह जाएगा क्योंकि सीक्रेसी खत्म हो जाएगी। हमने देखा कि पंजाब

के मुख्य मन्त्री को जबरदस्ती जितवाया गया और परचियों में जो कर्मा रह गयी थी उसकी वाद में हेराफेरी की गयी। इसी तरह से ३०० या ३५० परचियों से गुडगांव से एक मन्त्री को जीता बताया गया और कहा गया कि परचियों में हेराफेरी की गयी। लेकिन अगर यह खुफिया परचियां डालने का तरीका कायम रहता है तो जनता को यह विश्वास है कि जनतन्त्र में जो अभी कमियां हैं उनको जनता कभी न कभी पूरा कर लेगी। यह चीज जनतन्त्र को बुनियाद है। अगर इस बुनियाद को ही हम मिटा देंगे तो जनतन्त्र जिन्दा नहीं रह सकता।

मैं सिर्फ कांग्रेस की ही बात नहीं कर रहा हूँ। अगर यह कानून पास हो गया तो किसी को जोरावर से मुकाबला करना मुमकिन नहीं रहेगा। जनता को जब सीक्रेसी का विश्वास नहीं रहेगा और जब सीक्रेसी मिट जायगी तो जो जोरावर होगा, वह चाहे किसी दल में आवे, कामयाब हो जाएगा और जनता उसके खिलाफ वोट नहीं देगी। इस हालत में हिन्दुस्तान में जनतन्त्र जिन्दा नहीं रह सकेगा और अगर वह जिन्दा रहेगा तो वह हाई क्लाम के लोगों का, सरमायादारों का, डिबेटेटरशिप के किस्म का जनतन्त्र होगा और उसका आखिरी रूप अत्युच्च शक्ति जैसा हो सकता है।

मैं आपसे अर्ज करूंगा कि आज यह एक छोटी सी बात नजर आती है, लेकिन इस बिल को यहां देख कर मुझे लगता है कि हिन्दुस्तान में जम्हूरियत बिल्कुल किनारे पर खड़ी है। आप चाहें तो शक्ति के जोर से इस जम्हूरियत को समन्दर में डाल सकते हैं और इस देश के लोगों को तबाह कर सकते हैं। आपको यह एक मामूली सी बात मालूम होती है लेकिन इसकी वजह से हिन्दुस्तान के ४५ करोड़ इन्सानों के दिल में जो अग्नि भभकेगी उसको अगर आप कानून से दबाना चाहेंगे तो देश तबाह होगा। मैं

आपके द्वारा कहना चाहता हूँ कि चाहे शक्ति के नशे में या अनुशासन के डंडे के कारण या इसको डिगनिटी का मवान बना लेने के कारण या कायदे कानून की कमजोरी में आज ट्रेजरी बैंकों के हमारे भाई इस तरह की भावना व्यक्त कर रहे हैं और इस कानून के पक्ष में अपना वोट भी दे दें, लेकिन आगे आने वाला इतिहासकार कहेगा कि उन्होंने मुल्क के साथ बेवफाई की क्योंकि इस कानून से जनतंत्र की बुनियाद ही खत्म होती है। मैं चाहता हूँ कि इतना बड़ा खतरा मोल न लिया जाय। मुझे इतना ही कहना है, हेरा फेरी करके मिनिस्ट्रों को जिताने की बात को आप छोड़ दीजिये।

श्री शिवमूर्ति स्वामी (कोप्पल) :
उपाध्यक्ष महोदय, मुझे पांच छः साल का इलेक्शन पिटीशन का अनुभव है। मन् १९५७ के इलेक्शन के बाद का मेरा एक पिटीशन अब तक सुप्रीम कोर्ट में फैसला नहीं हो पाया है। शायद वह भारतवर्ष में सबसे पुराना पिटीशन है। यह पांच छः साल का मेरा समय अपने हक के लिये और मृत्यु के लिये लड़ने में जाया हुआ है। मैं चाहता हूँ कि हमारे रूल में कोई लूपहोल न रह जाए ताकि इलेक्शन कमीशन के पाम और एक अधिकार आ जाए। अभी तक इलेक्शन कमीशन को यह हक नहीं था जो कि इस बिल के द्वारा उसको दिया जा रहा है। मैं इसके पक्ष में नहीं हूँ और अपनी पूरी शक्ति के साथ इसका विरोध करता हूँ। मेरे अनुभव में आया है कि बैलट बाक्सों में बहुत से कागजात होते हैं जैसे पोलिंग एजेंटों के फार्म और दूसरे बैलट पेपर। अगर इलेक्शन कमीशन को उनको देखने का मौका दिया जाएगा तो उसको एक प्रकार से जूडी-शियरी की पावर दे दी जाएगी और अगर उसको मालूम होगा कि कहीं अन्याय हो गया है तो वह जिस कैंडीडेट को जीता हुआ डिक्लेअर कर चुकी है उसको फिर रिवर्ट

करेगी। यह अधिकार उसको नहीं मिलना चाहिये।

हमारे संविधान का मंशा इलेक्शन कमीशन को बनाने में केवल यह था कि वह इलेक्शन के काम को देखे और उसके नतीजे का ऐलान कर दे। उसके बाद उसका काम खत्म हो जाता है। इससे ज्यादा अधिकार इसको देने की आवश्यकता नहीं है।

अपने इलेक्शन पिटीशन के मिलसिले में बहुत सी अन्दरूनी बातें मेरे अनुभव में आई हैं लेकिन मैं उनको इस समय नहीं कह सकता क्योंकि अभी केस सब जुडीसी है। मैं केवल इतना ही कहना चाहता हूँ कि जो यहां सदस्यों ने अपने विचार आपके सामने रखे हैं और जो अपनी राय दी है उसका मंत्री महोदय आदर करेंगे और हमारे ऊपर इस संशोधन को न लावेंगे। अधिकतर वक्ताओं ने चाहे वे कांग्रेस दल के हों या दूसरे दलों के, सिवाय श्री त्यागी और डिप्टी मिनिस्टर के, इस अमंडमेंट का विरोध किया और अपना दृष्टिकोण हाउस के सामने रखा है। मैं समझता हूँ कि इस दशा में इलेक्शन कमीशन को यह अधिकार नहीं देना चाहिये। इससे बहुत से अन्याय होंगे। इससे लोकतंत्र को बचाना चाहिये। इसलिये मैं चाहता हूँ कि जो पहला रूल है उसी को कायम रखा जाए और उसको बदला न जाए।

इतना कहते हुए मैं इसका विरोध करता हूँ।

Shri Ram Ratan Gupta (Gonda):
Sir, I stand to oppose the rule proposed by the hon. Minister. My feeling is that the proposed rule is capable of tremendous mischief if it is allowed to be incorporated in the Election rules.

I do not know how far it will be fair for me to import personal knowledge into the discussion on this matter. But, I think I will be failing in

[Shri Ram Ratan Gupta]

my duty in the cause of serving democracy if I did not bring before the House the recent experience which I have been unfortunate enough to have of certain interference from the Election Commission in my own election. As a matter of fact, without having this power, somehow or other my constituency was chosen by the Election Commission office for direct interference. At the time of re-counting, the Election Commissioner himself, out of 3000 places where elections have taken place, chose to visit my constituency personally. He was there for two days. He organised the counting and re-counting of the votes in one of the constituencies of my district and subsequently left his Secretary there to supervise the re-counting in my constituency also. But, in the meantime, for certain reasons which I do not know, one particular officer of the Election Commission office was chosen to go and supervise directly the work of re-counting of my constituency. The manner in which he exercised his authority illegally on the basis of being an officer of the Election Commission office, it will shock the House if full details come out. Suffice to say that attempt was made to bring pressure on the Returning Officer that he should stop the declaration of results unconstitutionally for which there was no provision in the law. Not satisfied with that, when the result was declared, subsequently that officer with the Election Commissioner again went to Lucknow and they visited Gonda my constituency with the intention of opening the ballot papers which, if permitted, would have definitely given an advantage to my opponent and could put me in the wrong. I could prevent them from acting illegally only with the help of a writ in the High Court. When there are no such rules, when there are no such powers, by the very nature of the high office which they hold, they are able to exercise so much influence on the Returning Officers. Now, if those

rules give them direct authority and if they decide to interfere in any election, where will it end?

It is true that the principles on which our entire election machinery has been evolved clearly presuppose that the Election Commission should exercise only administrative control so that they can be justified in claiming that they are acting impartially. But, if they are involved in any of the detailed scrutinies at any stage during the election, human nature being what it is, I do not know what will happen to our infant democracy. In my case, unfortunately, my opponent was one of the persons who probably was here in Delhi in the Secretariat, as an I.C.S. Officer, for a long time. He may have got some personal relations with this officer and it is possible that it was with a view to oblige him on the basis of old acquaintance that this officer visited and tried to help my opponent illegally in recounting. But, this sort of cases in future can crop up in so many other instances also. Therefore, I humbly request the Government to think it over twice before bringing forward any such rule. I have not said even 1 per cent of what has happened in my constituency. I do not think it is fair for me to take this opportunity of going into all that, because Election petition is pending against me. All these matters will probably come up there. Whatever little experience I have gained, on the strength of that, I can say with confidence that if this rule is allowed to become operative the faith of people in Election Commission's impartiality is likely to be greatly impaired.

Shri Gauri Shanker: It is already operative; it has been already enforced.

Shri Ram Ratan Gupta: That is what I say. If it is allowed to continue to be operative, it is likely to cause a lot of damage to democratic institutions in this country.

Shri D. C. Sharma: (Gurdaspur): Mr. Deputy-Speaker, I have seldom seen such a unanimity of opinion in this House as today. But, my only regret is this, and I say this without meaning any offence to anybody, that the Minister of Law is not in the House at this time. Because, he alone can withdraw it. I do not think my good friend the hon. Deputy Minister has been authorised to take back this rule.

Shri Hari Vishnu Kamath: What a Minister can do, a Deputy Minister can.

Shri D. C. Sharma: I say that this important debate should have been listened to by the Minister of Law and he should have seen that unrivalled spectacle of unanimity of opinion in this House between the Opposition and the Congress.

There is a tendency amongst human beings and also human institutions that they want to grab more and more power in this world. I think I am a prey to that weakness. Every one is a prey to that weakness.

Dr. M. S. Aney: As Members we are not.

Shri D. C. Sharma: The Election Commission also has fallen a prey to that tendency. In Part XV of the Constitution, I find that the Election Commission has been given so many powers. It is responsible for the conduct of our elections from A to Z. It is practically the custodian of the democratic procedures in this country and it has been discharging its duty well so far. Of course, my friend over there has given his own case. I do not know what that case is. Some other Member also described his own case saying that the Election Commission has gone beyond its power in dealing with that case. I am not concerned with that. These are small exceptions. They do not prove the rule. The fact of the

matter is that the Election Commission, which has already so many things to do, is now going to be, if I can use that word, a kind of official burglar. What does a burglar do. He goes into a house and takes whatever he wants. I do not think I have used the word burglar in any wrong sense. I have used it loosely. I want to submit, now the Election Commission wants power to open election boxes and do whatever it likes. I think this cannot be permitted in any democracy, whether it is parliamentary democracy or peoples democracy or any other kind of democracy. I think by giving this power to the Election Commission, we are going to stultify the very principles and practice of democracy in this country.

There is another point and it is this. Reference was made to the two elections held in my State. I think that reference was unjustified. I say, on the floor of the House, that both these elections, whether the margin of difference was big or small, were quite constitutionally held elections. I do not think those elections have got anything to do with the matter before the House.

The Election Commission will be violating the sanctity of the ballot. People have been talking about secrecy of the ballot, Secrecy is there. We do not look upon the ballot as something conducive only to secrecy. We look upon the ballot as some thing sacred. If the Election Commission is given this power, I think the sanctity of the ballot is destroyed, the sanctity of election is destroyed and the very edifice of democracy which we have been building up in this country will be undermined. I, therefore, wholeheartedly oppose this rule.

Mr. Deputy-Speaker: The hon. Member should conclude now.

Shri D. C. Sharma: Just when I am getting into form, you are ringing the Bill. I shall conclude in half a minute.

I, therefore, submit very respectfully that this rule should be opposed, lock, stock and barrel, and it should be buried. I think that this motion should be accepted, and this rule should be given a go-by, because it will be good for us and good for everybody.

With these words, I support the motion.

Shri Bibudhendra Mishra: I have heard with great respect the speeches made. May I humbly submit that some of the points raised are based on misapprehension and are ill-founded?

It is apprehended by some that by this amendment of the rule, the power of the tribunals is being taken away. So far as the power of the tribunal is concerned, it is there. It is one thing when the tribunal makes an inspection, because the tribunal follows it up, and it has further powers. It makes the inspection and it has the right to see whether the counting has been made in accordance with the Act and the rules or not. It has the right to see whether the returning officer has been justified or not. But it is quite a different thing when an inspection is made by the Election Commission, because it must be remembered that the Election Commission has not been vested with the same power. Of course, there would be some, and there have already been cases, and there have been questions also in Parliament about it. Some people think, and may be, rightly, that since the verdict of the court has been that once the result has been declared by the returning officer, it is final and it cannot be challenged except by way of an election petition, powers should be vested with the Election Commission for a recount.

Shri Shree Narayan Das: For recount, there are already other provisions.

Shri Bibudhendra Mishra: There are people who feel that power should be vested with the Election Commission for a recount. That is what some people feel.

Shri Sinhasan Singh: Can the hon. Minister, through this amendment, give the Election Commission the power to recount? He is not giving the power for recount through this amendment because rule 63 provides that after a recount has been granted once, there cannot be any recount afterwards, unless it be that the hon. Minister is not amending that rule.

Shri Bibudhendra Mishra: The hon. Member may please hear me. I have said this power of recount which has been given to the returning officer has not been given to the Election Commission, and that there are people who feel that it ought to be given to them. I did not say that it had been given to the Election Commission. I did not say that these are the provisions under which it has been given. I want to make it clear, because there are people who feel that the Election Commission should be vested with that power. There have also been questions—I do not exactly remember—either in this House or in the other House of Parliament with regard to this. So, that is another aspect of the matter. But it is not proposed to give this power to the Election Commission by this amendment.

I have already made clear, and I have narrated the circumstances which had necessitated this amendment. I had stated that in the beginning itself. I had stated that in two of the constituencies of Uttar Pradesh, the Leader of Opposition in the other House wanted an inspection of the account of the ballot papers. I would

like to point out to hon. Members that under rule 93 (2) of the rules, an inspection of the account of ballot papers is provided for, and it so happened that wrongly and inadvertently, the account of the ballot papers had been placed in the same packet or in the same sealed cover which contained the ballot papers also. What was to be done under those circumstances? Obviously, the intention of the person who applied for an inspection of the account of the ballot papers was to file an election petition. Of course, such a case has not come up, but I know that it has happened in my own State, where the account of the polling papers had also been placed in the same sealed cover containing the ballot papers. In such a case, one of the two courses is open. Whereas a party has got the right to inspect certain papers which are not ballot papers, but which are connected with the election, and which may be necessary for the purposes of his election petition, he is deprived of the right to do so, because nobody else except the Election tribunal has got the power to direct or order the opening of the sealed cover; so, you deny the right that has been granted to somebody under the Act and under the rules.

Therefore, the Election Commission thought that it would be better that if those papers which do not come strictly under rule 93 (1), not the ballot papers but the other papers connected with the election petition which do not come strictly under rule 93 (1), were inadvertently put, as was done in that case, in the same packet or the same cover, they could remove them from the packet and give them to the party who has applied for inspection. That is all that they wanted to do. Let me make it clear again that it was never the purpose of the Election Commission to inspect the ballot paper of anybody at any time, and the amendment has not been brought into force with that intention, because an inspection by the Election Commission leads nowhere. If it has not got the power

of judicial review, if it has not the power of recounting, an inspection for the purposes of inspection will not lead it anywhere. So, the intention was only what I had pointed out.

May I also humbly point out that this rule has been gazetted only on the 31st March, 1962, long after the elections were over? So, it will be wrong to presume that it was done with an ulterior motive, just to serve the interest of the ruling party or some particular person, because the elections had been over by that time.

Shri Bhagwat Jha Azad: We, Members of the ruling party, all want that this rule should go.

Shri A. N. Vidyalkar: But the packets will be opened in the presence of all the parties.

Shri Bibudhendra Mishra: I have already narrated the circumstances. There was no question of opening the ballot papers at all. I have already pointed out the facts and I have stated that that was done for the purpose of separating the other papers connected with the election, which had been inadvertently put in the same cover as the ballot papers.

Shri Paliwal (Hindaun): Why can it not be provided that the ballot papers and the other papers will be packed separately?

Shri Bibudhendra Mishra: Let the hon. Member bear with me. I shall make the position clear presently.

As I have already stated, it does not serve any purpose if the power of inspection of the ballot papers is granted to the Election Commission, since they have no power of judicial review and they have no power to recount. Therefore, it was not done with any ulterior motive.

Moreover the elections are over, and there is no occasion for a few more years, I mean, a period of five years at least, when such a question will crop up, except when there are any by-elections.

Shri K. R. Gupta (Alwar): There will be so many by-elections.

Shri Bibudhendra Mishra: This question may come up in a by-election, but in a general way, it will not crop up for the next five years.

I have taken the sense of the House, and I want to make it clear that this was done with this object in view only, and in consultation with the Election Commission, Government will see that it is suitably amended so as not to cover the cases of inspection of ballot papers. I can assure the House that that will be done.

I only wanted to narrate the background and the circumstances under which this amendment has been made.

Shri Ram Ratan Gupta: But this limited purpose can be served by specifying in the rule that these papers should be separately packed. For that purpose, you do not want this power for Election Commission. Once that power is given, we do not know where it will end, when the general elections take place. So, you should withdraw it.

Shri Bibudhendra Mishra: Those rules are there. When I have said that in consultation with the Election Commission, the apprehensions of the Members will be allayed, and rules will be framed suitably, I hope the hon. Member will bear me out that the intention was not bad. That is all that I have to say about the rules.

Shri S. S. More: What about the motion?

Shri Bibudhendra Mishra: I am coming to that. I have not yet finished. I expect my hon. friend to withdraw the motion, in view of the assurance given by me that the apprehensions will be allayed.

Shri D. C. Sharma: Please withdraw the rule.

Shri Bibudhendra Mishra: I would like to make only one or two obser-

ventions about the speech made by my hon. friend Shri Tyagi. He has made sweeping remarks against the executive as well as the judiciary. I do not share his opinion and I do not want to say anything about it. But let me tell him, when he says that he is very anxious that the returning officer should perform his duty strictly and impartially and under the provisions of the Act and the rules, that I am equally anxious in that regard, and I agree with him; but, he has suggested that the offenders should get severe punishment. But, how can such offenders be brought to book, when a man like Shri Tyagi himself unfortunately, prefers not to make any complaint? He must also be vigilant. In a democracy, everybody must be strict and vigilant about his functions also. Otherwise, no law, however perfect it may be, can ever function properly.

Then, as regards the Election Commission, some doubts have been expressed about the honesty and integrity of the Election Commission.

Some Hon. Members: Nobody has done that.

Shri Bibudhendra Mishra: Yes, it has been suggested that the Election Commission would tamper. I shall be happy to hear that that is not so. It has been suggested that there is a likelihood that the Election Commission will tamper.

15 hrs.

On the whole, the Election Commission has functioned very well in this country. Let it not be forgotten that to some extent the Election Commissioner has been given the same status and importance as a Supreme Court Judge under clause 5 of article 324 of the Constitution.

In view of the assurance given by me that this rule will be clarified and in view of the statement made by me and the recital of the facts that led to this rule, I would request the hon. Member to withdraw his resolution.

Shri Bhagwat Jha Azad: Let us take the sense of the House.

Shri Shree Narayan Das: I am thankful to all those hon. Members who have supported my Resolution. I am also thankful to the Minister who has given the background and the circumstances which have impelled Government to make this amendment.

Shri Morarka (Jhunjhunu): He has given assurance.

Shri Shree Narayan Das: Previously when he spoke, he gave certain background so far as this amendment was concerned. I have not been able to convince myself of the arguments given by the hon. Deputy Minister. It has been made clear in the speeches that no useful purpose will be served by retaining this rule because after counting or recounting when the results are declared, all these papers are packed, and any person who is not satisfied with the counting has to go to the tribunal.

Shri Bibudhendra Mishra: May I ask him a question? This has not been answered by anybody. If any paper that is connected with the election—I do not mean ballot papers—which a party under the election law is entitled to inspect is put inside the ballot cover, how is he going to get it? (*Interruptions*).

Shri Harish Chandra Mathur (Jalore): Laws are not enacted to make mistakes.

Shri Shree Narayan Das: The only point made by the hon. Minister is that in certain cases, in one or two cases, some list of polling agents or some papers not coming under rule 93 may be packed and sealed along with the ballot papers, by mistake, and it is in order to enable the Election Commission to remove that that this power is given. To this I would say that at the time of the sealing of the papers, the parties concerned are there. They have the right to put their own seals on those papers. So if there was any

mistake on the part of the returning officer in putting in that cover some other paper, the party concerned must have objected at that time. If he failed at that time, the only course left to him is to state in his election petition that those papers were not available for inspection. Then the election tribunal will look into the matter and if it is satisfied that it is a genuine complaint, give the benefit to the petitioner.

Therefore, I would request the hon. Minister to reconsider this matter. He has seen the sense of the House. Almost all the arguments raised by hon. Members have remained unrefuted. I think the Election Commission will not gain anything by having this power. The Election Commission has wide powers for superintendence, guidance and control of elections. I do not know why the Election Commission itself has suggested this. The Deputy Minister said that it was at the suggestion of the Election Commission that this amendment was made. I do not understand why the Commission wanted this power, when these powers are not to be used, because after the declaration of the result, the papers are filed and are kept or produced before the court only and the court has the power to change the decision given by the returning officer.

Therefore, I think this rule is redundant. In view of the opinion expressed in the House, I would request the hon. Minister to accept my Resolution. If he does not, I would request the House to see that this Resolution is accepted by it.

Mr. Deputy-Speaker: Does he want to withdraw it?

Shri Shree Narayan Das: No.

Some Hon. Members: No, no.

Mr. Deputy-Speaker: Then I will put it to the House. The question is...

Shri Bibudhendra Mishra: Can it be postponed for some time, Sir?

Some Hon. Members: No, no.

Shri Morarka: It may be kept pending for some time

Shri S. S. More: It may be held over.

Shri Sumat Prasad: Let the Deputy Minister accept the principle of it. Then he can re-introduce the rule suitably worded.

Mr. Deputy-Speaker: We will vote on it later.

Shri Ram Ratan Gupta: Some time-limit should be fixed.

Mr. Deputy-Speaker: We will give him time till 5 P.M.

In the meanwhile we will take up the next item on the order paper.

15:06 hrs.

CUSTOMS BILL

The Deputy Minister in the Ministry of Finance (Shri B. R. Bhagat): I beg to move:

"That the Bill to consolidate and amend the law relating to customs be referred to a Select Committee consisting of 30 Members, namely: Shri Ramchandra Vithal Bade; Shri G. Basu, Shri Tridib Kumar Chaudhuri, Shri R. Ramanathan Chettiar, Shri N. T. Das, Shri Morarji Desai, Shri B. D. Leshmukh, Shri Vishwanath Singh Gahmari, Shri J. N. Hazarika, Shri Prabhu Dayal Himatsingka, Shri Hari Vishnu Kamath, Shri Narendrasingh Ranjitsingh Mahida, Sardar Surjit Singh Majithia, Shri Krishnan Manoharan, Shri Bakar Ali Mirza, Shri Mahesh Dutta Misra, Shri R. R. Morarka, Shri Shankarrao Shantaram More, Shrimati Savitri Nigam, Shri Ghanshyamlal Oza, Shri Prabhat Kar, Shri A. V. Raghavan, Shri Shivram Rango Rane, Shri S. V. Krishnamoorthy Rao, Shri R. V. Reddiar, Shri K. V. Ramakrishna Reddy, Shri M. Shankaraiya, Dr. L.

M. Singhvi, Shri Sumat Prasad and the Mover with instructions to report by the last day of the first week of the next session."

Dr. Melkote (Hyderabad): On a point of order. The names read out contain names of Rajya Sabha Members also. Are we expected to approve of the names of Rajya Sabha Members?

Mr. Deputy-Speaker: They are all Members of the Lok Sabha.

Shri B. R. Bhagat: The Sea Customs Act of 1878 which lays down the basic law relating to customs was enacted more than 80 years ago. Though it has been amended from time to time to meet the changing needs on specific points, no general and comprehensive revision of the Act has been undertaken. The provisions that were considered adequate for the purpose in the latter part of the last century had with time grown obsolete and hardly suit the needs of modern times. The Government have tried to interpret as liberally as possible the provisions of the existing Act, but even then certain difficulties have remained. The trade has also been pressing for various changes and facilities.

Another important factor which we have to take note of now is the evil of smuggling as a consequence of a strictly controlled economy. While drafting this Bill, we have tried to achieve the twin objective of facilitating in every possible way the smooth flow of genuine trade while at the same time ensuring effective measures against smuggling and evasion of duty. While revising the Sea Customs Act, opportunity has also been taken to consolidate the provisions relating to sea customs, land customs and air customs into one comprehensive measure.

While almost all the provisions of the Sea Customs Act are applicable to imports by air, the position in regard to land customs has so far been diff-