

17.00 hrs.

Mr. Chairman: The question is:

"That the Schedule stand part of the Bill."

The motion was adopted.

The Schedule was added to the Bill.

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

Shri Y. B. Chavan: Sir, I beg to move:

"That the Bill be passed."

Mr. Chairman: The question:

"That the Bill be passed."

The motion was adopted.

17.01 hrs.

GOA, DAMAN AND DIU (OPINION POLL) BILL

The Deputy Minister in the Ministry of Home Affairs (Shri Vidya Charan Shukla): Sir, on behalf of Shri Y. B. Chavan, I beg to move*:

"That the Bill to provide for the taking of an opinion poll to ascertain the wishes of the electors of Goa, Daman and Diu with regard to the future status thereof and for matters connected therewith, be taken into consideration."

Shri Hari Vishnu Kamath (Hoshangabad): Sir, I rise on a point of order. I am loath, reluctant, to obstruct or delay the passage of this important Bill because it has sought to meet the wishes and needs of a large body of Indian citizens in one of the Union Territories—Goa—but I am anxious that whatever is transacted in this House must be in accordance with the Constitution and the Rules of Procedure.

Now, Rule 76 of the Rules of Procedure says:

"No motion that a Bill be taken into consideration or be passed

shall be made by any member other than the member in charge of the Bill . . ."

Today's List of Business says that it is Shri Y. B. Chavan who is the Minister in charge of the Bill.

Shri Vidya Charan Shukla: It has been decided . . .

Shri Hari Vishnu Kamath: It has not been decided. The rule further says:

" . . . and no motion that a Bill be referred to a Select Committee of the House, or a Joint Committee of the Houses or be circulated for the purpose of eliciting opinion thereon shall be made by any member other than the member in charge except by way of an amendment to a motion made by the member in charge:

The proviso says:

"Provided that if the member in charge of a Bill is unable, for reasons which the Speaker considers adequate, to move the next motion in regard to his Bill at any subsequent stage after introduction, he may authorise another member to move that particular motion with the approval of the Speaker."

Then the Explanation is:

"Notwithstanding the provisions contained in the proviso the member who introduced the Bill shall continue to be the member in charge."

Now, under "Definitions", "Minister" is defined. (*Interruptions*).

17.05 hrs.

[**MR. SPEAKER** in the Chair]

So, under rule 76 the Minister has to give adequate reasons if he does

*Moved with the recommendation of the President.

not move the motion for the consideration of the Bill. I well understand that when Shri Chavan was appointed Home Minister the papers carried a report that Goa affairs and boundary affairs will be handled by the Prime Minister. Also, I do not dispute the competence of Shri Shukla to pilot this Bill. I know him for years now and that is sufficient. But I would plead that a Bill of this kind should be piloted by a Cabinet Minister, a Minister of the Cabinet rank, Cabinet status.

Shri C. K. Bhattacharyya (Rajganj): Is it also provided for in the Rules?

Shri Hari Vishnu Kamath: Notwithstanding the fact that Shri Shukla is able in his own way—I do not question his capability—even though Shri S. K. Patil is not present here now, he could have been asked to pilot this Bill, or some other Cabinet Minister should have been asked to pilot this Bill.

Apart from this, there is one other objection. Under rule 76, I would like to know whether he has given the reasons, in private, if not publicly, for not piloting the Bill. The other aspect of the matter is, "Minister" is defined.

"Minister" means a member of the Council of Ministers, a Minister of State, a Deputy Minister or a Parliamentary Secretary;"

Then

"member in charge of the Bill" means the member who has introduced the Bill and any Minister in the case of a Government Bill;"

But my interpretation is that it distinguishes between Private Bills and Government Bills. For Private Bills the member who introduces the Bill is the member in charge. But, in the case of Government Bills, the Explanation to rule 76 says:

"Notwithstanding the provisions contained in the proviso the member who introduced the Bill shall continue to be the member in charge."

unless and until he has given reasons to the contrary. Has he given any reasons as to why he is not in a position to move the Bill? I do not dispute the right of Shri Chavan to withdraw from the discussion, or agree not to move the Bill. But I do want that the rules should be observed in toto, if it is possible, and in spirit at least, if it is not observed in letter and spirit. We have to see what the rules want. Otherwise, anybody can come in and say: Shri Chavan has introduced the Bill; I want it to be taken up for consideration. Shri Naskar, for instance, can move it; oh, he is a Deputy Minister, Shri Pattabhi Raman can move it. That will end in chaos, which is indistinguishable from disorderly conduct of business. I would, therefore, request you to ask the Minister to give an explanation why he is not moving the Bill for consideration. I hope Shri Chavan has not left Parliament House. I do not know why he should have run away from this Bill at all. He should not have; he should have been present.

Shri Joachim Alva (Kanara): He has not run away. You know the reasons very well.

Shri Hari Vishnu Kamath: I would, therefore, ask in the first instance whether the Minister has given any reasons, which you consider adequate, for not moving the Bill for consideration. If the reasons are not adequate, then, of course, you will take your own decision. If they are adequate, then that is the end of the matter.

The Minister of State in the Ministry of Law (Shri C. R. Pattabhi Raman): As the hon. Member himself has stated: "member in charge of the Bill" means the member who has introduced the Bill and any Minister in the case of a Government Bill. Now the definition of "Minister" is "a member of the Council of Ministers,

[Shri C. R. Pattabhi Raman]
 a Minister of State, a Deputy Minister or a Parliamentary Secretary". The right to introduce a Bill "on behalf", is really a formality; even though it is in the name of Shri Chavan, that does not preclude any other Minister from moving for the consideration of the Bill because a member in charge of the Bill can be a Minister in the case of Government Bills, and "Minister" includes even a Parliamentary Secretary. I do not think I am justified in taking more time of the House.

Shri Nath Pai (Rajapur): Sir, the weight of precedents on this point is so heavy, with due respect to my colleague, Shri Kamath, who normally raises these points and commands our respect and attention, the preponderance of evidence of past precedents is completely against the submission that he has made and, therefore, I think, we can go ahead with the Bill.

Shri Hari Vishnu Kamath: I would request you to give your ruling and not my hon. colleague, Shri Nath Pai.

Mr. Speaker: I am inclined to agree with Shri Nath Pai when he is opposing Shri Kamath particularly.

Shri Vidya Charan Shukla: Mr. Speaker, Sir, this is a small Bill which seeks to provide for taking of the opinion poll of the people of Goa, Daman and Diu to ascertain their wishes about the future status of this Union territory.

Everybody knows that Goa, Daman and Diu were liberated a few years back. Then we passed a Constitution (Amendment) Bill and gave them the status of a Union territory. In December 1963 a Legislature and Council of Ministers were constituted in this Union territory. Since then there have been demands from various sections of the people for the merger of the territory of Goa into Maharashtra and certain other sections have been demanding the *status quo* there.

Shri Basappa (Tiptur): There is a demand in Mysore also.

Shri Shinkre (Marmagoa): There is no demand in Mysore.

Shri Nath Pai: He is a Member from Goa.

Shri D. C. Sharma (Gurdaspur): There has been a demand on behalf of Punjab also.

Mr. Speaker: Punjab and Mysore might settle among themselves because the Members are sitting together, but across the benches there ought not be any dispute.

Shri Nath Pai: We have the authentic voice of Goa in this House.

Shri Vidya Charan Shukla: Government has been considering this matter and we came to the conclusion that a final decision in the matter should be taken very quickly because if the future of this territory remains uncertain, developmental work in the territory suffers. It was found that unless this controversy was settled for good, sizeable progress that this ex-colony should make would not be possible.

We also considered the ways and means of how this opinion of the people of Goa should be ascertained. There were suggestions made that this should be done during an election. There were also suggestions that this should be done by arranging an opinion poll. We ultimately decided that an opinion poll was the best means of ascertaining the wishes of the people because, as everybody in this House knows, if an issue of this kind is raised during a general election or even during a by-election, not only this issue but personalities of the persons who are contesting would get involved in the way the people will cast their votes. The ideologies of the parties on behalf of which the candidates might get elected would also get involved. So, to get a pure verdict of the people it was essential that an opinion poll was separately arranged and a clear verdict of the people obtained.

This decision to hold an opinion poll in Goa was announced on the 2nd November, 1966, and this Bill has been introduced in pursuance of that decision.

Now, I will come to a few clauses of the Bill which describe the arrangements that will be made to conduct this opinion poll. The main clause is clause 3 and that sets the issue on which the opinion poll will be taken. It is our intention that this opinion poll should take place sometimes before the General Elections. Therefore, clause 15 of the Bill says that the date of the poll will be fixed by the President.

Clause 4 of the Bill provides that electors of the Assembly constituencies in Goa, that is, the persons who have registered themselves as voters in that area shall participate in the poll in that area and voters in Daman and Diu will participate in the poll in those areas. There is some controversy about this matter. So, I would elaborate this point a little further. Under section 19 of the Representation of People Act, 1950, every person who (a) is not less than 21 years of age on the qualifying date and (b) is ordinarily the resident in the constituency, is entitled to be registered in the electoral roll for that constituency. The term 'qualifying date' has been defined in section 14 of the Act to mean the first day of January of the year in which the electoral roll is prepared or revised. Section 17 of the Act provides that no person shall be entitled to be registered in the electoral roll for more than one constituency. The term 'ordinarily resident' has been defined in section 20 of that Act. This section does not prescribe any specific time-limit as such for acquiring the qualification of 'ordinarily resident'. Section 23 of the Act provides that any person whose name is not included in the electoral roll of a constituency may apply for inclusion of his name in that roll and if the Chief Electoral Officer or the

Electoral Registration Officer is satisfied that the applicant is entitled to be registered, his name can be included in the electoral roll. It has also been provided in that section that if the applicant is registered at the time of application in the electoral roll of any other constituency, the Chief Electoral Officer or the Electoral Registration Officer, as the case may be, shall inform the Electoral Registration Officer of that constituency and that officer shall, on receipt of this information, strike off the applicant's name from that electoral roll. We do not want to deny anybody the right to participate in this opinion poll if he is legally entitled to do so.

As I have said earlier, section 23 enables the Goans to register themselves as voters in Goa if they can establish that they are ordinarily resident in that area. If they are already registered elsewhere, the names will be struck off from the roll in which at present their names are entered. This facility can be availed of by these persons even now and upto a few days before the actual date of the opinion poll. It is, however, essential that they should satisfy the authorities that they are ordinarily resident in Goa.

In order that the opinion poll is conducted in an impartial manner, we have decided that the Chief Election Commissioner will hold this opinion poll under his superintendence and it will be held under his direction and under his control. He will designate the Opinion Poll Commissioners for Goa, Daman and Diu and appoint Assistant Poll Commissioners to assist the Opinion Poll Commissioner.

Clause 10 provides for polling stations being set up at various points and clause 11 provides for the appointment of presiding officers and polling officers.

The hours of poll are to be prescribed by the Chief Election Commission under clause 16. Under

[Shri Vidya Charan Shukla]
 clause 19, the voting is to be done by ballot in accordance with the rules to be framed by the Government of India in consultation with the Chief Election Commissioner.

Clause 20 makes a provision for postal ballot. Under clause 27 of the Bill, the provisions of Indian Penal Code dealing with offences relating to elections are being made applicable to opinion poll with necessary modifications.

The provisions of Representation of People Act, 1951 relating to electoral offences and requisitioning of premises, vehicles, etc. for election purposes are also proposed to be made applicable in relation to the opinion poll under clauses 29 and 30.

In short, the procedure that we wish to follow here would be more or less the same that we follow in elections to State Legislatures and to Parliament except that the voting will be on the issues mentioned in Clause 3 of the Bill and not in favour of any candidate. There are certain amendments and I shall express my opinions thereon after the members have spoken.

I hope this Bill will commend itself to the House.

Mr. Speaker: Motion moved:

"That the Bill to provide for the taking of an opinion poll to ascertain the wishes of the electors of Goa, Daman and Diu with regard to the future status thereof and for matters connected therewith, be taken into consideration."

Shri Hari Vishnu Kamath: I have got a point of order. This is a point raised under the Constitution. The earlier one was under the Rules of Procedure. This is a major point and I would request you, I crave your indulgence, to give an earnest consideration to this matter.

I yield to none in my anxiety for the early passage of this Bill so that the future of this Union Territory will be resolved or decided as soon as

possible. This is the first Bill of its kind in our country, in free India. It is called the Goa, Daman and Diu (Opinion Poll) Bill, 1966. If the Chairman of the Drafting Committee, the members of the Drafting Committee; the architects of the Constitution and the Constituent Assembly had accepted the amendment that I had moved providing for a referendum in the Constitution, there would have been no difficulty in bringing a Bill like this before the House. That amendment providing for a referendum on certain issues, on certain matters, was rejected summarily and it does not find a place in the Constitution.

Now we are faced with, in effect if not exactly in so many words, a referendum. You call it an opinion poll, but forsooth it is a referendum. Now the Constitution as it has come down to us in 1950 and which still governs our institutions here, Parliamentary and otherwise, does not provide for a referendum. The Government has sought to invoke powers under Article 324 which vests certain powers in the Election Commission and the Chief Election Commissioner. I suppose no authority, particularly no Constitutional authority, can be asked to discharge, can be saddled with, functions or duties with which he is not specifically charged under the Constitution. What does Article 324 say? I am reading Clause(1):

"The Superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the conduct of, all elections to Parliament held under this Constitution, including the appointment of election tribunals...."

That, of course, we have deleted now under the latest Amendment Bill which we passed last week—I mean, the election tribunal.....

I am sorry, it has not yet received the President's assent; so, it is still there.

"...including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States shall be vested in a Commission (referred to in this Constitution as the Election Commission)."

The Election Commission consists of the Chief Election Commissioner and other officers. Now under the opinion Poll Bill, he is asked to discharge certain other functions. I do not wish to go into the details of this because it is obvious that he has referred to these clauses, namely, clauses 6 and, I suppose, 7. Clause 6 reads:

"The Chief Election Commissioner shall designate or nominate one opinion poll commissioner in relation to the opinion poll in Goa and one opinion poll commissioner in relation to the opinion poll in Daman and Diu and each such opinion poll commissioner shall be an officer of Government."

Mutatis mutandis Clause 7 also reads in the same way; It is on the same lines.

The first aspect of the point that I am seeking to raise is that there is no provision for a Bill of this kind in the Constitution. I think the basic law of the land governs all Bills, the nature of the Bills and the competence of the House itself to consider the Bills. No Parliament including this Parliament can consider Bills which are manifestly outside the Constitution. And that is their own fault. They have to stew in their own juice because they did not accept the provision for a referendum which was moved in the Constituent Assembly. There is no provision in the Constitution for a referendum nor is there any provision for an opinion poll also.

Then, I would submit that the Chief Election Commissioner cannot be burdened with functions with which he is not specifically charged under article 224 of the Constitution and the other

articles governing the institution of the Election Commission and the constitutional functions, authority and powers of the Election Commission.

Shri Joachim Alva: When the Constitution was framed, Goa was not part of the Indian Union.

Shri Hari Vishnu Kamath: The other aspect of the constitutional point of order is this,

Shri N. C. Chatterjee (Burdwan): There is residuary power given.

Shri Hari Vishnu Kamath: My hon. friend might show it.

The other part of the point of order is this. The Bill provides for an opinion poll as to whether this territory will merge in Maharashtra or the *status quo* will continue, that is to say, whether Goa will merge in Maharashtra or the *status quo* will continue and whether Daman and Diu will merge in Gujarat or the *status quo* will continue with regard to those areas also. Mathematically speaking we have to consider the permutations and combinations of the various contingencies which may arise. What will happen if Goa votes for *status quo*—it may not perhaps, and it will not—and Daman and Diu vote for merger? Again, what will happen if Daman and Diu vote for *status quo* but Goa votes for merger? Now, an important part of the second point comes. If both vote for merger, that is to say, if Goa and Daman and Diu, the constituent parts of this Union Territory vote for merger, then what will happen? Apparently, this Bill has been brought well in time for the next general elections. In case both these groups of areas vote for the *status quo* there will be no difficulty. If both vote merger, then articles 1 to 3 of the Constitution will come into operation, because at the moment, India, that is Bharat, shall be a Union of States and the term 'States' includes the Union Territories as shown in the First Schedule.

[Shri Hari Vishnu Kamath]

and the First Schedule includes Goa, Daman and Diu as a constituent unit of the Indian Union. If there is vote for a merger, then what will happen? These territories cannot be merged straightway. These cannot be merged automatically without a Bill being brought forward for amending the Constitution. Do Government promise today that in case the vote goes in favour of merger, they will bring forward a Bill and a special session of Parliament will be convened for passing the Bill to amend the Constitution so as to merge these territories with Maharashtra and Gujarat, well in time for the general elections? For, unless such a Bill is passed, the Union territory of Goa, Daman and Diu cannot be merged in Maharashtra and Gujarat for election purposes and they will continue as they are till that Bill is passed. This Bill will be infructuous unless Government give an assurance today that a Bill to amend the Constitution in case there is a vote for merger would be brought forward before the House and Parliament would pass it, and then electoral rolls will be prepared, and delimitation would take place, because there may be some new adjustments which may have to be made, and that all this procedure would be gone through before this territory of Goa, Daman and Diu is merged in Maharashtra.

Therefore, I would like briefly to sum up in this way.

First, whether this Bill is in accordance with the provisions of the Constitution in the sense that an opinion poll is not provided for in the Constitution nor is a referendum provided for under it; second, whether the Election Commission is competent under the Constitution to discharge the functions that are being assigned to it under this Bill; and third, whether a Bill to amend the Constitution, in case the opinion poll goes in favour of merger with Maharashtra and Gujarat, will be brought before the House well in time before the next general elections, so that elections will

be held in Goa, Daman and Diu as part of Maharashtra and as part of Gujarat respectively. These are the three aspects of the point of order I am raising.

Shri Nath Pal: He has raised a weighty point. May I in a very short time give an equally weighty reply? In the first place, the unconstitutionality of any legislation is to be agitated in the Supreme Court by any party which is aggrieved. I will not waste so much time; I am not used to, but I will quote the relevant article, article 248, which is very specific on the point.

Shri Hari Vishnu Kamath: Do not waste time showing your ignorance of the rules and the Constitution.

Shri Nath Pal: Article 24: say:

"Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List".

There is no such preclusion. We are passing a law, and this law is not excluded. Therefore, we are entitled to proceed.

Shri Hari Vishnu Kamath: He has not followed the point.

Mr. Speaker: I have followed and I will give the answer.

Shri N. C. Chatterjee: I only want to point out that the Constitution-makers deliberately made this Parliament the residuary legatee, and certain specific powers were given to us—articles 245 for Parliament, article 246 for State Legislatures. But then we did not stop there. We have been made the residuary legatee. Here we have made a conscious departure from other Constitutions. The marginal heading of article 248 is 'Residuary powers of legislation'. Then the article itself says:

"Parliament has exclusive power to make any law with res-

pect to any matter not enumerated in the Concurrent List or State List".

This is a matter not enumerated in the Concurrent List nor in the State List. If you look at the safeguards, it goes further.

An. hon. Member: What about Beru Bari?

Shri N. C. Chatterjee: "Such power shall include the power of making any law imposing a tax not mentioned in either of those Lists".

Therefore, we have got complete power.

Shri Hari Vishnu Kamath: Article 248 does not apply.

Shri N. C. Chatterjee: It does.

First of all, let us take up the question whether we have got the power. The power is derived from Chapter I of Part XI. It deals with legislative powers. Laws can be made by Parliament and by the Legislatures of States with reference to the lists. I am pointing out that if they are not either in the Union List or Concurrent List or in any List for that matter, we have got complete residuary power.

Shri Nath Pai: And the power is not specifically excluded.

Shri N. C. Chatterjee: Yes. According to that Article we have got the power.

Shri Kamath made a point concerning articles 2 and 3 without any reference, without any referendum, without consulting the wishes of the people of a particular territory, Parliament can, under article 3, form a new State, increase the area of any State, diminish the area of any State alter the boundaries of any State or alter the name of any State. Later under article 4, clause (2).

"No such law as aforesaid shall be deemed to be an amendment of this Constitution..."

You can do it even by an ordinary law without going through that complicated procedure.

श्री बड़ें (खागोन) : अध्यक्ष महोदय, श्री एन० सी० चटर्जी ने श्री कामथ द्वारा उठाए गए एक पायंट का जवाब नहीं दिया है...

अध्यक्ष महोदय : वह मैं दूंगा ।

श्री बड़ें : ... कि इलेक्शन कमिशन को जो पावर नहीं है, क्या हम यह बिल पास कर के वह पावर उस को दे सकते हैं ।

Shri N. Dandekar (Gonda): In the first place, I agree with Shri N. C. Chatterjee that article 248 really covers the matter of competence of this House to legislate this Bill. There is also item 97 of List, I, Seventh Schedule:

"Any other matter not enumerated in List II or List IV including any tax not mentioned in either of those Lists".

I have no doubt that this Parliament, both Houses together, have every right and competence to undertake an enactment of this kind.

I am, however, troubled about two other matters, both of which Mr. Kamath mentioned, but in a slightly different way. Though you Sir said you would be explaining how, I do wonder how the Chief Election Commissioner can be entrusted with duties of the kind with which he is not statutorily concerned, because if that were so, it would be possible, for instance, to invest the Chief Justice of the Supreme Court with the power of running a tobacco shop or something of that kind, or to undertake State Trading. I would suggest that it is a serious matter to add in this way to the functions of the Election Commission, which are defined. The Chief Election Commissioner is only one of the members of the Commission, and I frankly have some doubt as to whether he can be saddled with the functions proposed under this Bill.

[Shri N. Dandeker]

I shall put the third point in a slightly different way from the way in which Mr. Kamath put it. I do not want to complicate the thing by supposing that the opinion poll in Goa goes one way and that in Diu and Daman goes another way. Let us suppose that the opinion poll in all these territories of Goa, Diu and Daman goes one way, namely, let us say, they should merge. Then, unless the Constitution is amended first before the General Election takes place whereby the particular territory is merged into the State into which it is to be merged, you may have this extraordinary situation that an opinion poll says it should be merged, but meanwhile the election takes place and, shall we say, the United Goans come in a majority who are against merger. You would then have the most extraordinary situation where the opinion poll says "merge", and you have the legislature which says "do not merge". I do not know what would happen and the kind of situation, apart from anything else, of law and order and utter confusion that might prevail if over the head of such a legislature so composed, the Union Parliament were to pass legislation to merge Goa, Diu and Daman into whatever State it is going to be merged.

So, I think first the opinion poll result should be known. If merger is not the decision, I do not see any difficulty, but if merger is the decision, unless the territorial merger first takes place by constitutional amendment before the General Elections take place, I really cannot see how utter confusion can be avoided. I think it would and could result in an awfully serious situation of the kind I described.

Let me repeat it. If supposing Goa votes for merger with Maharashtra but the territorial readjustments of the constituencies is not made before General Elections take place, and suppose the United Goans come in a majority, as they well might, what happens? You get a situation in which the Government of Goa itself might be involved in a law and order situation

vis-a-vis the Government of India; and I cannot see how you can get away from it without trying to avoid this sort of conflict by an appropriate amendment of the Constitution.

Shri Joachim Alva: Did not the ruling party face the route of an election?

Shri H. N. Mukerjee (Calcutta Central): I do have a feeling that in regard to all the points pressed by Mr. Kamath certain difficulties arise, in regard to which we have to have some kind of assurances from Government. Otherwise, the whole proceedings might be infructuous.

I think Mr. Kamath was not quite right in pointing out that since the Constituent Assembly had rejected the idea of a referendum, it is not open to this Parliament by way of legislation to ask for something which is in the nature of a referendum. Of course, I do not go to the other extreme which some of my friends here have tried to adopt in the matter. This House is entirely a sovereign body. Of course we are sovereign under the throne of the Constitution. In regard to the other two points which were raised by Mr. Dandeker also, the answers have not been forthcoming and I cannot quite conceive what answers can be forthcoming. The Election Commission is a body to which we attach the very highest importance. It is almost on a par with the Supreme Court and the UPSC and it would be very wrong if we look upon it as a limb of Government at the beck and call of the administration, ministers, deputy ministers and parliamentary secretaries. It would be very wrong if we pass a Bill which calls upon the Election Commission to undertake jobs which under the Constitution it is under no obligation to do. I do not pose to be a constitutional expert, but I do not quite see how the Election Commission itself can go ahead interpreting the Constitution so that it may extend its ambit and undertake such jobs as are envisaged in this Bill. I say this, even though like Mr. Kamath, I entirely approve of the Bill and I wish

it to be passed as soon ever as it is possible. In view of the provision in the Constitution which strictly delimits the area of operation of the Election Commission, it may not be open to the Election Commission, merely because the Government wants it, to do X or Y job. To that some answer has to be forthcoming. I cannot quite envisage what it can be.

The third point which Mr. Kamath pointed out seems to be unanswerable. I do not quite see why Mr. Chatterjee did not tackle it. I do not understand why we shall pass legislation which on the basis of the programme of legislation before us we cannot follow up. There is no point in our passing legislation asking for certain parts of our country to express their opinion in regard to merger with another State, one or the other, and then leave it hanging high and dry and nothing happens. Therefore, unless the Government as Mr. Kamath suggested comes forward with an undertaking before the House, there is no point. Whether the Constitution amendment is necessitated or not is a different proposition. Anyhow, consequential legislative proceedings have got to be guaranteed in order to make sure that the results of this opinion poll should be given legislative expression. Otherwise, there is no good asking for an opinion poll which would be entirely infructuous. I am sorry I have been taking the time merely to repeat some of the points, but I do feel that these two points are really unanswerable, and unless some answer is given it is wasting the time of the country if we go ahead with this legislation which otherwise we approve of.

Mr. Speaker: All points have been stated and Members should be brief.

Shri Shinkre: Sir, I do not hold any brief for the Government. They have brought this Bill so late in the day. I think the objections raised by Mr. Dandekar, although apparently valid do not go really deep into the matter. If we agree that under article 248 we can legislate in this matter, it neces-

sarily follows that the Election Commission will have the statutory power under the provisions of this Bill. Article 324 says what the Election Commission should do. It does not say that the Election Commission may not occasionally be entrusted with some other work that had provided. I would add as this interpretation comes exactly as a result of commonsense—Parliament enacts the law. The Election Commission has been created in this country under the Constitution for electoral purposes. There is this measure which the Government wants to enact. The provisions of this Bill for all practical purposes include elections; only there are no candidates. All the procedure adopted in this Bill is that of election. There is no bar in article 324 that it should not be entrusted with any other work which is similar in nature. I do not think the objection of Shri Dandekar holds.

Shri Alvares (Panjim): May I offer an explanation of the point raised by Shri Dandekar so that there is no confusion. There are two possible courses open in this Bill. One is to vote for *status quo* and the other is to vote for merger with Maharashtra. I do not visualise any confusion, because if the vote goes in favour of Maharashtra, then the Government will have to bring a Bill for amending the Constitution, to provide for the merger of Goa with Maharashtra and that can be done in the lame duck session or even later. If, as is unlikely, the opinion poll votes for the *status quo*—

Mr. Speaker: Lame duck session would be held after the election.

Shri Alvares: It does not matter. It is quite possible that the session will be held after the election. It cannot be held before. There is nothing to be confused about. After the session, the Government can bring a Bill amending the Constitution, providing for the merger of Goa with Maharashtra, and then, after delimitation of the constituencies, provided for the territory of Goa in merger with Maharashtra, a separate election may be

[Shri Alvares]

held. In the alternative, if the opinion poll confirms the present position, then 28 seats will be provided under the Union Territories Act and an election in these circumstances can be held for the Goa territory.

Shri Sivamurthi Swamy (Koppal):

Our work will be wasted unless the Constitution is amended. The Constitution should be amended and then the Chief Election Commissioner can be entrusted with this work relating to opinion poll. The Constitution should be amended and then only this Bill will be valid. Otherwise, it is infructuous.

Shri Basappa: I do not know whether it is the intention of the Government to hold simultaneously the election in respect of the General Elections and also the opinion poll. In case the election is held simultaneously with the opinion poll, then a lot of confusion will be created in the minds of the voter. The issues involved are quite different and therefore, I want to know whether they want to have both the things simultaneously or at different times. It must be done at different times, so that the issues may be clear and the voters may know the issues on which they are asked to vote. In this simultaneous holding of both, there is bound to be confusion.

Shri Vidya Charan Shukla: As I said in my speech, we have requested the Chief Election Commissioner, not the Election Commission, to do this job. We have requested the Chief Election Commissioner to supervise and direct this poll. It is not as if the Election Commission is being entrusted with this work.

The second point that was raised by Shri Kamath was, what will happen about the Constitution amendment. What we propose to do after this opinion poll is held is to have one election for parliamentary constituencies only. The Legislative Assembly of Goa is not going to be elected. This kind of confusion and trouble that Shri Dan-

deker was envisaging is not therefore likely to arise in this case.

Shri Nath Pai: The hon. Member over there said that it is functioning like a tobacco shop and—

Mr. Speaker: No second opportunity is given.

Shri Hari Vishnu Kamath: We could not follow the answer, Sir.

Shri Nath Pai: My hon. friends Shri Dandekar and Shri Kamath have tried to raise some points, and I think they feel a genuine difficulty. Perhaps this is a question of interpretation as to whether the Chief Election Commissioner can be burdened with additional duties which are not enumerated in the first place. This is a question of the canons of interpretation. The duties which are analogous to those which are clearly and specifically defined are always implicit. I would like to point out to my two learned colleagues that when a duty in a given law is specifically and clearly defined, the duty similar to or analogous to or that is in conformity with or akin to it is implicit.

Now, what is an opinion poll? I was listening to the hon. Members very patiently. (*Interruption*) I am concluding. Shri Dandekar, who is always lucid in his remarks made rather an outrageous analogy, saying that it is like asking the Supreme Court judges to just run a tobacco shop or a coffee shop. What is an election? In an election, we try to ascertain the wishes of the people. What is an opinion poll? That is for ascertaining the wishes with regard to a specific issue in respect of a specific Bill. I do not say that the two duties are so different. I do not think that the two duties are apart—the duty of giving judgment by the Supreme Court and the running of a tobacco shop. Since both are identical. I do not think article 324 is a bar to this.

Shri C. K. Bhattacharyya: We appeal to you, Sir, to give your ruling and settle this domestic quarrel.

Mr. Hari Vishnu Kamath: Domestic quarrel is on the other side, not here.

Mr. Speaker: Several points have been raised. So far as the residuary powers are concerned, they vest in this Parliament, and Parliament can pass any legislation whether it is enumerated in this list or not. Item 97 has also been quoted. So, we are authorised to take up this legislation. There is no doubt about that.

It has been said that there would be confusion, difficulties and complications. We are not concerned with them at this moment. Let Government consider what difficulties they have to encounter and whether they have to bring any further legislation. For the present, we have to see the Bill before us and see whether we can proceed with it or not. Because of the fear that another legislation might be necessitated or there may be complications arising, we need not stop here. I have looked into the provisions of the Bill as it is, whether there is something objectionable in it due to which we cannot proceed with it.

• **Shri N. Dandekar:** We must act with a sense of responsibility.

Mr. Speaker: Mr. Kamath has argued that under article 324 there is no provision for referendum and so the Election Commission cannot undertake this work. According to my reading of this article, it has been specified that elections would be the responsibility of the Election Commission alone and the Government cannot employ any other machinery to conduct the elections, in order to ensure fair and free elections. If the Government wants to employ any other machinery for this opinion poll, it is free to do so. But if it entrusts this work also to the Chief Election Commissioner and he is prepared to undertake it, there is nothing in the Constitution to preclude him from doing so.

Shri Hari Vishnu Kamath: I want a clarification. If Parliament or Government decides to entrust the Election Commission with some other function, is he obliged to take it up?

Mr. Speaker: I have not said he is obliged. I said, if he is also prepared to do it, he can do it.

Now, I was asked by the Swatantra Party to call Mr. Chatterjee first because he has some court business. But Mr. Alvares says he comes from Goa and he should have the first chance. Mr. Alvares.

Shri Alvares: I agree with the Minister who moved this Bill when he said that it is a small Bill, but an important one. The Bill seeks to resume an interrupted process of history when the people of Goa and Maharashtra were together and would have continued to work out their common development but for the intervention of the Portuguese in the form of a colonial power in Goa. The Bill now offers this opportunity to the Goan people to decide once again after a period of 520 years whether they want to resume this association or to continue in isolation. From that point of view, the Bill is an important one and I would commend it to the House.

The Bill has come rather late in the day. It should have been introduced long ago if the Government wanted to give the Goan people an opportunity once again—I emphasise the words 'once again'—to determine their future political status. Government's hesitation in this has been remarkable. The elections to the Goa Assembly and to Parliament, represented by my colleague Shri Shinkre and myself, was fought on the specific issue of merger of Goa into the State of Maharashtra. Whatever the Congress may say after it lost the elections disgracefully losing all deposits except one, it is relevant to the situation today, because it is this fact that has been recognised now belatedly by the

[Shri Alvares]

Government. Then the pro-merger government headed by the Chief Minister, Shri Bhandarkar, was charged with the responsibility of furthering the cause of merger of Goa into Maharashtra. After a repeated number of processes, Shri Shastri offered the Chief Minister the alternative of mid-term elections to decide once again the future of Goa. While we stuck to the position that the 1963 December elections had decided this question once and for all, in our anxiety to accommodate the Opposition and the opposing point of view we agreed that mid-term elections may be held in order to determine what the people of Goa want. The Prime Minister then and the Prime Minister today conveyed to the Government of Goa that it was Government's irrevocable decision that mid-term elections should be held. I do not know what happened in between and the issue of the Opinion Poll came before us. We could have as well asked the Government to adhere to their first decision to hold mid-term elections, but once again, in a sense of fairplay, in order that the future should be decided without any rancour and that there should be residuary ill-effects left, we agreed that the Opinion Poll should be held. I am glad, Sir, that this Bill has finally been introduced.

In regard to this Opinion Poll Bill, may I say that the Government tactics have not been fair to those who advocate merger, they have not been fair to the Government that stands for merger with Maharashtra. Today we have read in the papers that the Chief Minister has already submitted his resignation to the Governor. Why should this be so? Why should this Government not trust the Chief Minister of Goa as they trust their own Government in fifteen other States? Why should it ask that the Chief Minister of Goa must resign in order that the Opinion Poll may be free and fair? Could we not impose this condition, if the condition of the resignation of the Chief Minister is a *sine qua non* of free elections, in other

States and say that in all the other States before the next general elections the Congress Ministries must resign on the basis of the demand of the resignation of the Chief Minister in Goa?

This is what we call 'elbow squeezing'. May I say that it is unfair of this Government to ask the Chief Minister to resign particularly when the Chief Minister of Goa made it clear that it is not his intention like other Congress Chief Ministers to carry on *ad infinitum* but to remain only in order to facilitate the merger of Goa with Maharashtra.

18.00 hrs.

Having said this, may I suggest that it is also not necessary for the Government to apply the squeeze in order to dissolve the Goa Assembly. Why can't the Goa Assembly continue as the Punjab Assembly continued? We have a precedent. There cannot be two norms one for the Congress Government and another for the non-Congress Government. Shri Kamath had argued, in the case of Kerala, that after the last elections in Kerala if the Government had given the Opposition an opportunity to form the Government the Opposition would have been able to do so. He proved mathematically that they would be able to form a Government in Kerala. But the Government were in a haste to dissolve the Assembly even before the members had taken their oath. But in the case of Punjab—I have no quarrel at all—the Punjab Assembly was continued and put in suspended animation till the 1st of November when the assembly seats were bifurcated. I have no quarrel with that. But I would ask, on behalf of Goa, for the same procedure. The same principle should apply and the Assembly should not be dissolved but should continue in suspended animation till the result of the opinion poll is known. Of course, there are two contingencies provided in the Bill. One is that of the opinion poll voting for the *status quo*; the other of the opinion poll vot-

ing for merger with Maharashtra. Where is the hurry now to dissolve the Assembly? The Assembly can continue and, in the event of the opinion poll declaring for merger with Maharashtra, the Assembly can be dissolved then, when the Government will introduce a Constitution Amendment Bill, providing for the merger of the Union Territory of Goa with the State of Maharashtra. But, in the eventuality of the opinion poll . . .

Mr. Speaker: Is he likely to conclude very soon?

Shri Alvares: Sir, I will take a little more time. I hope you will agree to give me more time.

Mr. Speaker: Then, he might continue his speech tomorrow. We will now take up the Half-an-Hour Discussion.

18.02 hrs.

PRIMARY EDUCATION IN
CALCUTTA*

श्री मधु लियये (मुंगेर) : अध्यक्ष महोदय कलकत्ता हिन्दुस्तान का भव से बड़ा शहर है, और उस में प्राथमिक शिक्षा की इस वक्त जो हालत है उस का मवान इस बहस के द्वारा में आज उठाना चाहता हूँ। कलकत्ता शहर में प्राथमिक शिक्षा की जो खराब हालत है वह कलकत्ता महापालिका के लिये, पश्चिम बंगाल की सरकार के लिये और श्रीमती इन्दिरा गांधी की केन्द्रीय सरकार के लिये एक शर्म का विषय है।

श्री न० प्र० यादव (मीनामकी) : अध्यक्ष महोदय, सदन में काम नहीं है।

अध्यक्ष महोदय : घंटी बजाई जा रही है। . . . अब भी काम नहीं है। हाउस एडजर्न किया जाता है।

18.05 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Thursday, December 1, 1966/Agrahayana 10, 1888 (Saka).