

[Shri Raj Bahadur]

being indulged in by certain shipping companies and their agents who are stationed in Kerala, at Alleppey or at Cochin. I would only say this. Perhaps it might be recalled that on that day we wanted to finish that Bill and I was asked to conclude my remarks, if possible, by the same evening. Maybe I did not touch this particular point and did not make any specific reply. But I can only say that so far as the malpractices are concerned, if the hon. Member could give us a single concrete instance of an incident or of an action which amounts to a malpractice, we shall surely go into it and try to take whatever action is possible for us within the four corners of the enactments we have got for this purpose.

He said that despite the fact that there is congestion, goods are allowed to be taken to Cochin. I may remind him that Cochin has never experienced congestion during the past so many years.....

Shri V. F. Nayar: I did not say Cochin, I said major ports.

Shri Raj Bahadur: Apart from that, we are putting in four new berths in Cochin, and the port is in the process of big development. I must say it to the credit of the Administrative Officer there that the entire scheme of the Second Plan so far as the development of that port is concerned is going to be completed, I think, within the next nine to ten months' time; he will finish the entire Second Plan projects there.

Then my hon. friend said: Why can't we control the movement of goods from and to Cochin; why should we not allow those goods to be taken to Alleppey or to Quilon or, for that matter, to any other port? I ask, is it for the Central Government to do that? Let the Government of Kerala themselves exercise that power, if they have got it; let them not allow any goods to be moved to Cochin; let them put barriers or

barricades. It is entirely up to them. If you want me to control the movement of ships carrying equipment for the big steel project through Visakhapatnam, can I control it? The Russians will have to bring those ships loaded with all the equipment, and difficult equipment at that. As you know, the type of ships in which that equipment came was one of the reasons for the congestion that took place in Visakhapatnam: those ships were not equipped with dykes and cranes. We had to use floating cranes, and we had only one. The Russians did not have any other Class of ships. It is an open secret known to everybody that we had to pay a heavy amount of demurrage on that account. But could those ships be taken to Kakinda or Masulipatam? They could not have been. I only say that even though we had to pay about Rs. 50 lakhs by way of demurrage at Visakhapatnam, the equipment that came to Visakhapatnam could not have been taken to Kakinada or Masulipatam for that matter.

Similarly, the cargo that comes to Cochin cannot be taken to Alleppey or to Quilon. That is a simple point and we should bear that in mind. I think these were the only two points that he made, and with this I conclude my remarks.

Mr. Deputy-Speaker: The question is:

"That the Bill be passed".

The motion was adopted.

INDIAN POSTS OFFICE (AMENDMENT) BILL

The Minister of State in the Ministry of Transport and Communications (Shri Raj Bahadur): Sir, I beg to move:

"That the Bill further to amend the Indian Post Office Act, 1898, as passed by Rajya Sabha, be taken into consideration".

In the year 1955 a question was put to us in the Rajya Sabha. This pertained to the transmission of unauthorised lottery tickets and literature pertaining thereto by the post office. Apparently the intention of the House was that such transmission was not good, that it even infringed and violated the provisions of the law of the land and therefore something should be done to stop this practice; the post office should not be used for the purpose of the transmission of tickets and literature pertaining to unauthorised lotteries.

I think I shall do well, so that my point may be clear, to read the provisions of section 294A of the I.P.C., because that will explain how we stand in regard to these lotteries. The section reads:

"Whoever keeps any office or place for the purpose of drawing any lottery not being a State lottery or a lottery authorised by the State Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery shall be punished with fine, which may extend to one thousand rupees."

So it is obvious that so far as unauthorised lotteries are concerned, indulging in such a practice is a penal offence according to the law of the land. If literature pertaining to such lotteries is transmitted through the post office, should the post office be considered to be under any obligation to carry this?

I will state the practice that is obtaining at present. According to

rule 44(3) of the Indian Post Office Rules, 1933—

"No postal article containing lottery tickets or circulars relating to a lottery shall be transmitted by post unless the following conditions are satisfied:

(a) the lottery tickets or circulars relate to a State lottery or to a lottery authorised by a State Government; and"—Sir, this is important—

"(b) there appear on the outside of the postal article—

(i) a declaration by the sender of the postal article that the lottery tickets or circulars contained therein relate to a State lottery or to a lottery authorised by a State Government, mentioning the particulars (number, date, etc.) of the notification by the State Government notifying the State lottery or authorising the lottery, and

(ii) the name and the address of the sender."

A further rule says—

"If a postal article in course of transmission by post is actually found to contain any of the articles the transmission of which by post is prohibited by rule 44, it shall be returned to the sender."

When this question was raised in the Rajya Sabha, we naturally got it examined, and we were advised that rule 44 only requires us to return this literature to the sender. We had either to send it to the addressee or to return it to the sender—these were the only two alternatives before us.

There are provisions in the Indian Post Office Act and also in the Indian Post Office Rules which give certain specific powers regarding the disposal of such prohibited articles. I mean

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to refer to section 19 of the Indian Post Office Act which says—

“Transmission by post of anything injurious prohibited.—Except as otherwise provided by rule and subject to such conditions as may be prescribed thereby, no person shall send by post any explosive, dangerous, filthy, noxious or deleterious substance, any sharp instrument not properly protected, or any living creature which is either noxious or likely to injure postal articles in course of transmission by post or any officer of the post office.

No person shall send by post any article or thing which is likely to injure postal articles in course of transmission by post or any officer of the post office.”

Then I shall read section 20 of the Act.

“Transmission by post of anything indecent etc. prohibited.—”

“No person shall send by post—

(a) any indigent or obscene printing, painting, photograph, lithograph, engraving, book or card or any other indecent or obscene article, or.....”

There is another provision which is also made. In case there is an infringement of this provision, the power that is given is laid down in section 23 which runs as follows:

“Any postal article sent by post in contravention of any of the provisions of this Act may be detained and either returned to the sender or forwarded to destination, in each case charged with such additional postage (if any) as the Central Government may, by rule, direct.”

Here also, generally for all articles, the power given is to detain and return it or send it to the addressee. In

clause (3); however, special power has been given in respect of articles which I have mentioned now while reading sections 19 and 20, and it runs as follows:

“(3) Notwithstanding anything in sub-section (1)—

(a) any postal article sent by post in contravention of the provisions of section 19 may, under the authority of the Post Master General, if necessary, be opened and destroyed; and

(b) any postal article sent by post in contravention of the provisions of section 20 may be disposed of in such manner as the Central Government may, by rule, direct.”

Any article the transmission of which is prohibited under section 19 may be opened and destroyed under the authority of the Post Master General. That particular authority to open and destroy is limited to the limited category of items which have been mentioned in section 19. In regard to the rest, the power of the Post offices is only to return it or to send it to the addressee. What happens when unauthorised tickets and literature pertaining to unauthorised lotteries are transmitted by the Post office? Even if it comes to the notice of the Post Office that such an article is being transmitted, we remain almost powerless because we have got to send back all that to the addressee or the sender.

In a particular case in 1955, it was detected that as many as 40 bags full of such type of materials were sent to the post office for transmission. They were all tickets and literature pertaining to an unauthorised lottery. We consulted the Law Ministry as to what we could do in such cases. The answer given was that we can dispose them of only by returning them to the sender or by transmitting them to

the destination. That was all we could do. We cannot destroy them. The simple issue that this particular Bill which is before the House, raises is, should the Post office be under any obligation to return this stuff to the sender or to transmit it to the addressee. That is the limited issue before us. Should the machinery of the Post office be used or be allowed to be used for transmitting a thing which is considered to be illegal, which is considered to be an evil according to the law of the land? If we allow the Post office to do so, will the Post Office not be playing the role of an abettor? Therefore, it has been found to be necessary after all this examination and as a result of the question that was put in the other House, that we should take suitable powers to deal with the matter, so that the Post offices may save the tedium and difficulty of handling this work of either returning such articles to the sender or sending them to the addressees. That is what this Bill seeks to do.

Doubts have been raised in certain quarters that this will arm the postal clerk with powers of censorship, that letters may be opened and the sanctity of the mail will be violated. I can assure the House that it is not the intention of the Government to embark upon any measure of social reform through this Bill. It is not our intention to impose any sort of censorship through this Bill.....

Shri V. P. Nayar (Quilon): It may not be the intention; but how do you prevent it?

Shri Raj Bahadur... because even at this moment, in respect of articles the transmission of which is prohibited under section 19.....

Mr. Deputy-Speaker: The question asked on this side is, it may not be the intention, but how can Government prevent it.

Shri Raj Bahadur: I am very grateful to you for putting this question. I

think I will do well to read two rules under which the Post Master General has to function, under which the postal officials have to function so far as such articles are concerned. What happens if such an article is detected while it is being transmitted?

Shri Biren Roy (Calcutta-South West): How will this be detected? The thing is closed.

Mr. Deputy-Speaker: That is what he is going to explain.

Shri Raj Bahadur: I will answer the hon. Member's question first. I have said that in the case of an authorised lottery or State lottery, it is necessary, it is obligatory for the sender to clearly state that on the face of the letter, along with the relevant reference.....

Shri Biren Roy: It is not a question of a lottery. It is a question of an ordinary mail going. How are you going to see what is in it?

An hon. Member: X-raying.

Shri Raj Bahadur: It is neither X-raying nor anything else. It is a very simple question. In one letter carrying a lottery ticket or say, 100 letters, nobody can hope to earn anything. We know that malpractices are going on in the name of lottery. People are being defrauded. Frauds are being committed, we know. The conscience of the community is quite alive to this. We shall have to stand up against the malpractices that do much harm to the people. If a person embarks upon a scheme of carrying on a lottery, he shall have hundreds of thousands of such letters and he shall have to accept money orders for that. He will have to give address for that. He cannot remain undetected. It is impossible for him to remain undetected. If we get reliable evidence in regard to that, we will be fully authorised to open the letters of such a person within the four corners of the rules.

[Shri Raj Bahadur]

I will tell you by reading the rule how safe it has been made so far as the legitimate interests and rights of the people are concerned. The relevant rule is 122. It is a longish one. Permit me, Sir, to read it because this will set at rest the doubts that have been raised. These are instructions to the postal officials.

"122. Articles prohibited from transmission by inland post,—

(1) When there is good reason to suppose that an article passing through the post contains any goods the transmission of which through the inland post is prohibited by the rules in the Post and Telegraph Guide, it should be dealt with as follows:—

(a) If the article is suspected to contain any explosive, dangerous, noxious, deleterious or filthy substance, any sharp instrument not properly protected, or anything likely to injure the mails or any officer of the Post Office, it should, if detected in a section, be enclosed in a protecting cover....."

The postal official is not authorised to open it. If he has reason to suspect that there is something the transmission of which is prohibited under law, he will have to do as directed herein.

"If detected in a section, be enclosed in a protecting cover or bag and made over 'outside' to the first mail office where the train halts. If there be no mail offices in the Beat of the section, the article should be forwarded to the nearest head or sub-office with which the section is in direct communication. The article should be entered in a separate registered or parcel list or in the mail list according as it belongs to the registered letter mail, the parcel mail, or the unregistered letter

mail—the entry being followed by an explanatory note over the initials of the head sorter or mail guard drawing attention to the nature of the contents; and a receipt for the article should be obtained in the registered abstract, parcel abstract or the duplicate mail list, as the case may require from the official to whom it is made over. The nature of the contents of the article should at the same time be explained to that official."

This is in regard to detection in regard to prohibited article in a running section.

"If detected in a mail office or received by it from a section, the article should be made over at once to the mail carrier under the procedure described above for conveyance to the nearest Post Office except when it is suspected to contain explosives or when, owing to the nature of the article or the distance from the post office, it may not be practicable or convenient to transfer the article to that office. In the latter case the article should be detained in the mail office and the matter reported at once to the Postmaster General of the circle in which the mail office is situated for orders regarding its final disposal."

So, if detected in a post office or section or mail office, the article should be detained and an immediate report submitted to the Postmaster-General. That means the ordinary RMS sorter or postal clerk is not empowered to do anything about it. If he suspects, he will enclose it in a bag or separate cover and send due intimation about it to the higher authorities.

How does the Postmaster-General deal with it? This is provided in rule 66 of the P. & T. Manual, Volume

VIII. I will only read out the relevant portion because it is again a longish rule:

"The Postmaster-General is empowered by section 23(3) (a)...."
—which I have just now read out—

"...of the Post Office Act to direct, if necessary, that a postal article suspected to contain any explosive, dangerous, deleterious or filthy substance, or anything...."

Shri V. P. Nayar: What about explosive articles?

Shri Raj Bahadur: I will come to it when I come to the provisions of the Bill.

"He may, however, with the written consent of the sender, but not otherwise, authorise the sale of the contents of a leaky parcel and the remittance of the sale-proceeds to the sender. The Postmaster-General will record an order in each case showing clearly his reasons for authorising the opening or destruction of any such postal article."

Even in regard to explosives and other deleterious substances mentioned in section 19, the Postmaster-General must record an order in writing giving the reasons why he has done it. So, an ordinary postal clerk or the RMS sorter is not authorised to open it. He simply sends it on, and the Postmaster-General exercises his discretion in each case, after having been satisfied that the thing is such that it should be opened. After all, we shall have to rely on some person somewhere.

Mr. Deputy-Speaker: There is one difficulty. In all these three cases, the articles had been discovered either in the mail office, post office or in the running train. There was nothing to be discovered. It had only to be sent on for disposal or opening and destruction. There was not only suspi-

cion, but detection also had taken place by the man who was handling it, and then he merely forwards it. The objection is: when there is only suspicion that these packets or envelopes, whatever it is, contain something that is forbidden, what is the procedure?

Shri Raj Bahadur: I caught your point, but the rule is like that: "if the article is suspected to contain"—even on suspicion, he will do it. Suspicion can be from information given from some other sources, or *suo moto* obtained. If there is suspicion, he can detain the article and he can send it for disposal in the manner prescribed in this rule.

Now, how do we propose to operate this particular measure? The main section of the Bill is as follows:

"After section 19 of the Indian Post Office Act, 1898 (hereinafter referred to as the principal Act), the following section shall be inserted, namely:—

'19A. No person shall send by post—

(a) any ticket, proposal or advertisement relating to a lottery; or

(b) any other matter descriptive of, or otherwise relating to, a lottery, which is calculated to act as an inducement to persons to participate in that lottery.

Explanation.—In this section, "lottery" does not include a lottery organised or authorised by the Government.'

"In clause (a) of sub-section (3) of section 23 of the principal Act, after the word and figures 'section 19', the words, figures and letter 'or section 19A' shall be inserted".

All the powers and all the rules will, by suitable modifications, apply *mutatis mutandis* to such articles also as unauthorised lottery tickets and

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literature about unauthorised lotteries. This is how the power that we want to take through this particular measure will be used. I think with the explanation that I have given and the procedures that I have explained with regard to dealing with such articles, there should be no doubt.

Shri Biren Roy: One thing is not answered. After suspicion, how is it detected? You are going to open the letter or what?

Shri Raj Bahadur: I have explained that already. You will get information from somewhere, and once you get the information and there is reason to believe that a particular envelop or a particular packet contains tickets in respect of unauthorised lotteries or literature in respect of unauthorised lotteries, it will be enclosed in a separate bag and sent to the Postmaster-General.

Shri Biren Roy: If it is opened and found out that there is nothing wrong, what happens to that?

Shri Raj Bahadur: That risk is always there. In that case....

Shri Biren Roy: I want to know what happens to it. Is it destroyed or sent to the sender?

Shri Raj Bahadur: It is a question of choosing between two evils. Will you allow the post office to play the part of an abettor in the commission of an offence? Carrying on an unauthorised lottery or sending literature about an unauthorised lottery is an offence punishable under section 294A of the Indian Penal Code. Will you allow the post office to be used for the propagation or perpetration of that offence? That is the simple question. The post office should be left under no obligation whatsoever.

Shri V. P. Nayar: The post office, by any stretch of the imagination, can never be the abettor.

Mr. Deputy-Speaker: That was only by way of an argument; otherwise, the hon. Minister has made out his case that there was a contingency when the post office was burdened with heavy post, and they did not know what to do with that. On legal opinion being obtained it was found that the post office could not destroy it. Either it has to send it back to the sender or carry it to the consignee. Therefore, they are taking powers under section 23(3) so that they will be destroyed as is prescribed there.

Shri V. P. Nayar: That is very clear, but my point was that the hon. Minister is labouring to show that unless this law is passed, the post office will be an abettor. I cannot understand it at all, how the post office can become an abettor.

Mr. Deputy-Speaker: They want to absolve themselves of the responsibility to carry such post.

Shri V. P. Nayar: I suppose that will not be equal to abetment.

Shri Raj Bahadur: If it is known to us that unauthorised lottery tickets are being transmitted, if the postal clerk and the Postmaster-General know it and deliberately help in the transmission of such literature, what will it be, I ask my hon. friend who, I think, is a lawyer. I think it is nothing but abetment if deliberately the post office does it. The question of *mens rea* is there. If the *mens rea* is present in regard to the transmission of this particular thing, well, it becomes abetment.

Shri Easwara Iyer (Trivendrum): Not only knows it, but the knowledge of the crime must be reported.

Shri Raj Bahadur: Reported to the police, and then again we cannot destroy it.

Mr. Deputy-Speaker: Order, order. We will just hear the hon. Minister.

If he has any better suggestions to make, certainly he will be given opportunities. Now, the hon. Minister might continue.

Shri Raj Bahadur: I may be allowed to conclude my remarks.

Shri V. P. Nayar: Let alone the legal aspects, we shall deal with it.

Shri Raj Bahadur: Independently of the legal aspects, it is necessary for us to be armed and clothed with this power because we should not be asked to take all this stuff when we do not want to do it.

I can only assure that so far as the operation of the present rules is concerned in regard to the detection and destruction of prohibited articles, we have not yet received a single complaint about the misuse of that power. We have been using that power with good discretion and usefully in the interests of the State and in the interests of the public. So, I think with suitable modifications of our rules further, we can also ensure that there will be no misuse of the powers taken by the Bill.

Shri V. P. Nayar: May I submit that the time allotted for this may kindly be extended because from the hon. Minister's speech...

Mr. Deputy-Speaker: Let me place it before the House.

Motion moved:

"That the Bill further to amend the Indian Post Office Act, 1898, as passed by the Rajya Sabha, be taken into consideration."

Shri V. P. Nayar: I was only submitting that the time allotted seems to be an hour, and after the speech of the hon. Minister, I think many hon. Members would like to take part. He has raised certain controversial issues. So you may be pleased to extend the time.

Shri Raj Bahadur: May I submit I have raised no controversial issues? I have tried to explain the points that emerged in the course of the discussion.

Mr. Deputy-Speaker: If that be the will of the House and the hon. Members, I shall have to consult them. It was one hour by the consent of this House. This House had approved the recommendation of the Business Advisory Committee. Now, if it be the will of this hon. House, certainly I will not have any objection. May I know, whether the House wants it to be extended up to 5 O'Clock?

Hon. Members: Yes.

Mr. Deputy-Speaker: But at least we should finish it by 5 O'Clock.

Shri Raj Bahadur: How long will it continue?

Mr. Deputy-Speaker: Up to 5 O'clock.

Shri Naushir Bharucha (East Khandesh): I am afraid the hon. Minister in charge of the Bill has not made out a convincing case for the amendment of the Indian Post Office Act.

His main argument was that lottery is being prohibited by law except where it is organised by the State Governments. It is unfair to call upon the post office to transmit any literature pertaining to such lotteries or lottery tickets; and he argues that since it is the policy of the State not to permit any private lotteries or unauthorised lotteries, the postal authorities should be exempted from the onus now existing on them by virtue of the present law of either transmitting onward such lottery literature to the addressee or of returning it to the sender. He says that as the law stands, he cannot destroy it.

So far as the main principle is concerned, namely that unauthorised lottery should not be encouraged in

[Shri Naushir Bharucha]

any way particularly by transmission by post, everybody is agreed. We are agreed on this point that it is very necessary that some sort of action should be taken to curb unauthorised lotteries. But is this the only action? No. Unauthorised lotteries and transmission of such unauthorised lottery tickets by the use of post can be effectively checked by prosecuting the people either under the Indian Penal Code or under any other law.

The point that I am making is this. The Minister says, give us the power in case of suspicion to open the packets. I am against giving those powers, because tomorrow these powers will be exercised by the sorting clerk under instructions from his divisional superintendent, in our country where censorship of letters of people is not an unknown thing, notwithstanding the denial by the Minister or the postal authorities that such censorship for political purposes exists, the fact remains that such type of censorship does exist, unauthorised, illegal, which is being administratively practised by the postal authorities with the connivance, if not at the instance, of Government. And they now want power to enlarge the powers of the postal authorities for elimination of what I consider a petty evil at the worst. And I say that to enlarge the powers of postal authorities in this manner is extremely dangerous.

I am not satisfied with the rules that the Minister has read out, namely that precautions are taken. The major point has not been answered by the Minister in the first place. How does he have a suspicion about any article? What is there to show that a suspicion is genuinely based on sound grounds? So far as the sorting clerks are concerned, there may be a suspicion of a philosopher or a fool, and will they in every case put the article in a packet and write to the Postmaster-General and obtain his permission to destroy. I do not

know whether in administrative practice this is feasible at all. I say that this procedure which is contained in the rules is not feasible practically. I shall tell you why.

The existing section 23 authorises Government as follows:

"Notwithstanding anything in sub-section (1), any postal article sent by post in contravention of the provisions of section 19..."

So, that refers to individual articles. It does not refer to a class of articles. Therefore, strictly speaking, if you interpret this section, it means that for every packet of the same lottery sent by the same individual, the permission will have to be obtained. There cannot be a blanket permission given by the Postmaster-General. Therefore, this Bill is not practicable. As for exceptional cases, where explosives are sent or deleterious substances are sent these cases occur rarely, and in such cases, therefore, it is practicable to look into the individual articles. But when you have got to deal with thousands of letters of the same type, it is impossible to obtain the sanction. Even with the amendment of the law, does the Minister mean to say that for a thousand lottery packets or ten thousand packets for the matter of that, the Postmaster-General is going to give permission ten thousand times? No, that is not practicable. Therefore, they will obtain permission in the case of one lottery and then start opening everything.

The apprehension of the people is that their activities through post will come to the notice of Government and Government might use this means for the purposes of criminal intelligence, and political offenders, from their point of view, will be dealt with. I submit that if it is only the desire of Government to suppress lotteries, it can be very effectively done, because it is said that in certain cases

the offenders would be known. So, you can prosecute them. May I ask how many people who have been carrying on the business of unauthorised lottery have been prosecuted and convicted?

There are certain ways in which packets of lotteries can be effectively dealt with in transmission. First, they all come in the same type of envelope; secondly, the envelopes weigh the same, and probably the posting post office is the same in all cases. In this way, when you find that a mass of letters moves, all of a stereotyped size with the same envelope and the same texture of the envelope, you can detect that something is going on, and maybe, you can certainly find it out. Often, these are not sent by ordinary letters, but they are sent by book-post. In fact, I myself have been getting any number of lottery tickets through book-post, formerly, that is, about two or three years back; since then, they have ceased. So, these things can be detected. Why do Government not immediately hand over the matter to the police commissioner or the police authorities and let them take action? Who says that there is obligation on them either to transmit onwards to the addressee or to return it to the sender? No. There is also a third alternative possible for Government, namely that they can hand over every packet to the criminal intelligence department or to the police authority on the spot and let them take action. If Government try out this method and studiously prosecute people, I would like to see how many persons indulging in unauthorised lotteries would persist in using post for transmission purposes. The excuse given by Government is not at all convincing, and to my mind, there is far greater danger of secrecy and sanctity and privacy of postal communications being violated than of unauthorised lotteries being eradicated. I, therefore, do not at all support the provisions of this Bill.

श्री स्वराज सिंह (फिरोजाबाद)
उपाध्यक्ष महोदय, इस दिन का उद्देश्य देखने में तो अच्छा मालूम पड़ता है लेकिन जिस उद्देश्य को माननीय मंत्री महोदय पूरा करना चाहते हैं, इस विषय के ऊपर, मुझे लगता है, वह इस तरह से पूरा नहीं हो सकेगा। इसमें कुछ कमियाँ रह गई हैं जिनको पूरा करने की कोशिश नहीं की गई जान पड़ती। मैं समझता हूँ कि इसका प्रयोग राजनीतिक विरोधियों के खिलाफ भी किया जा सकता है। इस सम्बन्ध में मैं वह भी निवेदन कर देना चाहता हूँ कि अब भी जब कि कोई ऐसा कानून नहीं है, राजनीतिक विरोधियों के पत्रों को खोला जाता है और मुझे पता नहीं कि पोस्ट आफिस का यह व्यवहार कहाँ तक न्यायसंगत है।

श्री राज बहादुर : उपाध्यक्ष महोदय, मैं आपकी आज्ञा से जहाँ तक पत्रों को खोलने का सम्बन्ध है, उसको साफ करना चाहता हूँ। इस प्रश्न को इस समय नहीं उठाया जा सकता है। माननीय मरूबा साहब ने भी इस प्रश्न को उठाया है और जो रिलेवेंट मेकन इस सम्बन्ध में है, उसको मैं आपकी आज्ञा से पढ़ कर सुना देना चाहता हूँ। इससे उनकी जो भ्रान्ति है, वह दूर हो जायेगी।

Section 24 of the Indian Post Office Act reads:

"Power to deal with postal articles containing goods contraband or liable to duty.—Except as otherwise provided in this Act, where a postal article is suspected to contain any goods of which the import by post or the transmission by post is prohibited by or under any enactment for the time being in force or anything liable to duty is received for delivery at a post office, the officer in charge of the post office shall send a notice in writing to the addressee inviting him to attend either in

[Shri Raj Bahadur]

person or by agent within a specified time at the post office and shall in presence of the addressee or his agent or if the addressee or his agent fails to attend as aforesaid then in his absence open and examine the postal article:

Provided, first, that if the Director-General so directs in the case of any post office or class of post offices, the officer in charge shall call in two respectable persons as witnesses before he opens a postal article in the absence of the addressee or his agent:

Provided secondly that in all cases, the postal article after being opened shall be delivered to the addressee unless it is required for the purpose of further proceeding under this or any other law or enactment for the time being in force....."

So, if there is anything, the transmission of which is prohibited by law, then the post office, if it so chooses, has got the additional power to call the person when it wants to open the article.

The power of opening without calling the addressee is contained in section 23(2) which I may read again so it may cut short the debate:

"Any officer in charge of a Post Office or authorized by the Post Master General in this behalf may open or unfasten any newspaper or any book, pattern or sample packet, in course of transmission by post which he suspects to have been sent by post in contravention of section.....or of any of the provisions of this Act relating to postage".

16 hrs.

So there should be no apprehension that any advantage will be taken for political reasons. I think that is an

attempt to read too much into the provisions of the Bill, and that is imputing a motive which is hardly fair, keeping in view of the dignity of the House as also our mutual intentions to one another.

श्री बजराम सिंह : उपाध्यक्ष महोदय, मेरी मंशा कतई यह नहीं है कि मैं सरकार की नीति और उद्देश्य में कोई कांका व्यक्त करूं। मैं सिर्फ यही नवेदन करना चाहता था कि मंत्री महोदय ने जो पढ़ कर मुनाया ऐक्ट में से, उसके होते हुये आज यह चीज झमल में आ रही है कि राजनीतिक विरोधियों के पत्रों को खोला जाता है। इस सम्बन्ध में मैं निवेदन करूंगा कि न सिर्फ पत्रों को

श्री राज बहादुर : मैंने रक्षा चाही थी कि यह चीज जो प्रश्न हमारे सामने है उसने बिल्कुल परे है।

उपाध्यक्ष महोदय : माननीय सवस्य इस तरह प्रार्थू कर रहे हैं कि बावजूद इसके कि प्राविजन्त हैं मगर पत्र खोले जाते हैं, यह एक और मौका मिलेगा उन को खोलने का।

श्री बजराम सिंह : उपाध्यक्ष महोदय ने बिल्कुल ही सही कहा है कि यह जो कानून के जरिये से जो काम इस वक्त हो रहा है, उसे आप और मजबूती से कर सकेंगे। इस सम्बन्ध में मैं एक उदाहरण आपकी अनुमति से देना चाहूंगा। पिछले दिनों की बात है, दिल्ली में उर्दू सम्मेलन हो रहा था। उसमें एक मुशायरा उर्दू में हो रहा था। उसमें हिस्सा लेने के लिये मेरे एक मित्र आये थे। उन्होंने मेरे यहाँ से इस बात के लिये टेलीफोन किया कि जो उर्दू मुशायरा हो रहा है उस में आयेगे। बीच में टेलीफोन एक्सचेंज के कोई साहब थे जिन्होंने कहा कि मुशायरा मत कहिये, कवि सम्मेलन कहिये। उर्दू में नहीं हिन्दी में कहिये। हिन्दी राष्ट्र भाषा

है, आप जर्ज का नाम मत लीजिये । मेरे निवेदन करने का मन्तव्य सिर्फ यह है कि बिना कानून जब इस तरह की चीज हो रही है तो अगर कानून बना कर इंटरसेप्ट किया जाये तो धीर भी ज्यादा हो सकती है ।

उपाध्यक्ष महोदय : आप तो पत्रों में और पोस्ट आफिस में टेलीफोन को ले भाये ।

श्री बजरज सिंह : जी हां, मैं ने टेलीफोन का जिक्र इसलिये किया कि कानून के न होते हुए भी जब ऐसा होता है तब कानून से ताकत हासिल करके, जैसा मैंने शुरू में निवेदन किया, उसके उद्देश्य से आगे बढ़ जाने की सम्भावना है और अनधिकृत रूप से यह काम होने लगे । आप जो ताकत हासिल करना चाहते हैं, कांजिये, अगर कोई चीज राष्ट्र के लिये घातक है तो उसे बन्द कीजिये, वह अच्छी चीज नहीं है । लेकिन मवान यह है कि जो शक्ति आप हासिल करना चाहते हैं इस कानून के जरिये से, क्या वही तरीका है, और कोई तरीका नहीं हो सकता है ? मुझे खतरा यहाँ है कि इस तरीके से, उन शक्ति में, अपने राजनीतिक विरोधियों का कोई नाजायज तौर से दबा सकता है, जो कि आपका उद्देश्य नहीं होना चाहिये । मैं नहीं कहता कि आप इसके जरिये यह चाहते हैं कि उन्हें दबायें । मैं सिर्फ इतना निवेदन करना चाहता हूँ कि इस तरह की ताकत हासिल होने पर हो सकता है कि राजनीतिक विरोधियों को परेशान किया जाये । मैं सिर्फ यही चाहूँगा कि जब आप इस तरह का कानून बनाने जा रहे हैं तो उसमें इस बात का ध्यान रक्खा जाये कि उसका उपयोग कहीं ऐसी बातों के लिये न हो जो उद्देश्य, आपका, इससे नज़र नहीं आता । इस तरह की हिदायतें दी जयें ।

जो कानून आप बना रहे हैं उससे यह पता नहीं लगता कि जो बिट्टी जा रही है या पैकेट आ रहा है, उसको सूंघने से पता

लग जायेगा कि उसमें लाटरी के टिकट जा रहे हैं या उसका विनापन जा रहा है जो कि अनधिकृत है, जो समाज के लिये खतरनाक है और जो कि नहीं होना चाहिये । हो यह सकता है कि इस तरह का कानून बनने से, इस तरह की ताकत मिलने से ऐसे लोगों के पत्र भी खोले जायें जिन्हें नहीं खोलना चाहिये और जो गोपनीयता उनकी है वह नष्ट हो जाय । इसलिये मैं निवेदन करना चाहूँगा कि इस कार्य को पूरा करने के लिये गृह मंत्रालय मे मदद ली जाय । जहाँ तक लाटरी को बन्द करने का सवाल है, यह समाज के ऊपर अभिशाप है, इससे समाज का नुकसान होता है, इसमें दो रायें नहीं हो सकती, लेकिन इसको खत्म करने के लिये आपके बजाय पुलिस कार्यवाही करे । आपको देखना चाहिये जो इस तरह का काम चलाते हैं उन पर पुलिस मुकदमा चलाये और उसे खत्म करायें । आप पोस्ट आफिस के बजाय इसको गृह मंत्रालय मे सम्बद्ध कीजिये और उसके द्वारा समाज के इस अभिशाप को दूर करने की कोशिश कीजिये । जो ताकत आप हासिल करता चाहते हैं उसमें पोस्ट आफिस के लिये इस तरह की ताकत आप मत हासिल कीजियें । लेकिन अगर इसके बिना आपका काम नहीं चल सकता तो मैं अन्त में एक निवेदन ज़रूर करना चाहूँगा कि यह ध्यान रक्खा जाये कि पोस्ट आफिस में काम करने वाले जो लोग हैं, उनको हिदायतें की जायें कि लाटरी के बहाने वे किन्हीं राजनीतिक विरोधियों को परेशान करने की कोशिश न करें और उनके पत्रों की गोपनीयता को नष्ट करने की कोशिश न करें । यह ब्याल रक्खा जाये कि इस तरह की किसी चीज में हम न पड़ें । यह भी ब्याल रक्खा जायगा, मैं आशा करता हूँ, और इस तरह का कोई तरीका ढूँढने की कोशिश की जायेगी कि जिससे आप जो चाहते हैं कि लाटरी य इस प्रकार के अनधिकृत विनापन को जाना जा सके वह सम्भव हो सके । इसको जानने के लिये कोई नया तरीका इस्तेमाल किया

[श्री बजराम सिंह]

चाहे ताकि पता लग जाये कि किसी पत्र में क्या है। हर एक छादवी की बिट्ठी पढ़ने की कोशिश किसी तरह की न की जाये।

इन शब्दों के साथ में चाहूंगा कि मैंने जो सुझाव दिये हैं, मंत्री जी उन पर ध्यान देंगे।

Shri C. E. Pattabhi Raman (Kumbakonam): May I, with your permission, think aloud so far as the substantive portion of the present Bill before the House is concerned?

Chapter V of Act VI of 1898, which is the Indian Post Office Act, is quite specific. It deals with conditions of transmission of postal articles. We are governed by the various international postal conventions. You will permit me to reiterate that long before the birth of the United Nations, long before the League of Nations, internationally speaking, a union of States took place more or less on the first occasion so far as postal transmission was concerned. We are bound by those international postal conventions. Chapter V of the existing Act is clear enough. It says 'Conditions of transmission of postal articles'.

I shall straightway go to section 19. What does it say? It says:

"Transmission by post of anything injurious prohibited".

What did they have in view?

"Except as otherwise provided by rule and subject to such conditions as may be prescribed thereby, no person shall send by post...."

I stop there. What are the things that are prohibited?

"...any explosive, dangerous, filthy, noxious or deleterious substance, any sharp instrument not

properly protected or any living creature...."—

Suppose a man wants to send a small butterfly inside the post—

"...which is either noxious or likely to injure postal articles..."

Shri V. P. Nayar: If it is a cobra?

Shri C. E. Pattabhi Raman: So far as the main Act is concerned, we are now seeking to amend that section and have another new section—19A. What does it say? Let us read it as it now stands.

"No person shall send by post...."

It is not even a packet. That is what is worrying me. I know this has gone through the Rajya Sabha and I have no doubt they have had a lot of deliberation on this aspect. The new amending section says:

"After section 19 of the Indian Post Office Act, 1898, the following section shall be inserted, namely:

"19A. No person shall send by post—

"(a) any ticket..."—

That is, if a friend of mine sends me a Derby ticket from London, that may be good enough for being opened. As the Minister pointed out, on suspicion it can be opened. The permission taken is not a permission for each occasion. The Post Master or Postmaster General or whatever his designation may be, will take an omnibus permission, or a periodical permission. He won't say: "I suspect this letter has got something. May I open it?"

The provision with regard to giving notice of opening in section 24 will not apply when the general object seems to be to prevent lotteries. I can quite understand it. We feel strongly that lotteries must be pre-

vented. But I am very worried about this amendment. It says:

"any ticket, proposal or advertisement relating to a lottery".

This is wide enough.

Then, what does (b) say? It says, "any other matter descriptive of or otherwise relating to a lottery". That is to say, he need not send a lottery ticket at all. It is not necessary to send a lottery ticket at all; anything descriptive of or otherwise relating to a lottery even if that is sent (Shri Easwara Iyer: Even a letter) you give them powers to open such letters. (Interruption). All the other powers are given. I find you are not only amending the Act by adding section 19A, but you are adding 19A to section 61. There is the power of imprisonment also there. Section 61 is wide enough. It says:

"Whoever, in contravention of the provisions of section 19 or 20, sends or tenders or makes over in order to be sent by post any postal article or anything shall be punishable with imprisonment for a term which any extend to one year or with fine or with both."

That is what is contained in the original Act. What did they enact it for? Noxious, deleterious articles or explosives were not to be sent by post. For that, they provided punishment as it now stands. If sections 23 and 61 are amended, then these powers are given.

If, supposing lottery tickets are banned, then there is punishment certainly for people who send them. It is quite possible to read a constructive making over. I am not saying that if I do not like a person A, I can send a lottery ticket to him and get him booked. I am not suggesting that. But, as it now stands, it seems to be very wide. The sending of a lottery ticket may well be dealt with by amending the Penal Code or some other Act but you need not amend the Post Office Act. So

far as opening is concerned, it may be an advertisement or any other matter descriptive of or relating to a lottery ticket.

With regard to rules, I am glad the hon. Minister is ready with those rules. They are very wide. They say, on suspicion, they can act. They also say what is the procedure to be followed by the Post-master General or other postal authority so far as these letters are concerned. But, I do not know whether the rules by themselves are protective enough when the sections are clear. What can you do with the rules?

I am not opposing this Bill. You cannot prevent, for security reasons, any letter being opened. We must know that even in countries like America there is telephone tapping. In England, the other day, there was a big case going on.

Shri Braj Raj Singh: For Urdu Conference?

Shri C. E. Patabhi Raman: You can turn round and say, it is for lotteries. I am only giving a point. I am only saying that it is not possible to decry action that is being taken by Government for the sake of security reasons to open covers, or to tap private machines or telephone calls. Later on, it may come to an action for damages if an innocent man is affected. It is not that the Government do not have the powers already. They have those powers for security reasons. That is a different thing.

I submit this. This is very wide; and I wonder whether the hon. Minister would be able to have another amending clause also to it at some proper time defining very clearly what is that they wish to prohibit. It is not that a single ticket will be hit, but also any matter relating to it or any advertisement that will be hit.

Shri Easwara Iyer: Mr. Deputy-Speaker, Sir, this Bill seems to have

[Shri Easwara Iyer]

been brought, apparently, with good intention. But, I would say there is a good deal of explosive results that may happen if it is passed into law.

16-14 hrs.

[SHRI C. R. PATTABHI RAMAN in the Chair]

The hon. Minister says that he wants to prevent lotteries. Certainly, we also agree that unauthorised lotteries should be prevented. But, the instrument or machinery for the purpose of preventing lottery is sought to be made by giving the post office these powers. Wide powers are sought to be given to the postal authorities to open letters and to see whether it contains acrimonious or, according to this Bill, spurious literature or advertisement or anything descriptive of or relating to lotteries. This is what the clause says.

The Minister says that it is necessary to give powers in order to prevent this evil. Otherwise, the post office will become an abettor. It is a very startling proposition of law that the Minister is putting forward. Certainly, I was trying to revise my notions of criminal law and criminal jurisprudence when he said that the post office, by transmitting these letters, will become abettor.

Shri Raj Bahadur: Deliberately.

Shri Easwara Iyer: Even if they have knowledge and they transmit, will they become abettors? Certainly I am not going to embark upon an argument with the hon. Minister with regard to the question of law in this case and in this matter. But, I would respectfully submit that he would do well to revise his notions of criminal law. If the post office knows that a letter contains any such matter, they can report to the authorities concerned and prosecutions can be launched. It is not that

they will be abettors if this matter is transmitted. He wants to prevent the evil, the transmission of the literature regarding a lottery. It is a small evil.

There is a certain saying in Tamil, which the Chairman certainly knows and which I do not want to repeat in Tamil, that if you want to destroy a mouse you do not set fire to the house. But, that is what the Minister is trying to do. He is trying to set fire to the whole edifice of secrecy and decency by giving far-reaching powers to the authorities for the purpose of destroying this very small evil of these letters or these lottery tickets being transmitted to persons.

A reading of the clause itself is very illustrative. Clause 2 of the Bill says:

"No person shall send by post—

(a) any ticket, proposal or advertisement relating to a lottery;"

I will stop there. It may be an advertisement. It may be couched in the form of a letter from one friend to another friend.

Clause (b) would say,

"any other matter descriptive of, or otherwise relating to, a lottery, which is calculated to act as an inducement to persons to participate in that lottery."

If a person from England sends me a letter saying that there is a good lottery going on and says that it will be in my interests, since I am lucky, that if I take one I may win £50,000, and, along with that he also explains certain domestic matters, personal matters and legal matters and other things, will that be an advertisement coming within the mischief of this section 19A? I would request the hon. Minister to consider that.

Is it expedient, is it necessary that we should enact this measure in order to prevent this small evil?

The Minister says that they will be using these powers sparingly and cautiously. That is only a general course of conduct. If persons are detected sending lottery tickets through post, it will be easier for the postal authorities to find out those persons. When money orders come to those persons, it will be easier for the post office to find them. It will be easy for the postal authorities to find out from the general course of conduct of a particular person. Why should these powers be given to the postal authorities? You can straightaway inform the police authorities and get these persons prosecuted under the Penal Code. You can say, "here is a case where I strongly suspect that this is happening; you investigate".

I am not certainly drawing any inference from this. But, it may be that this power is conferred on the postal authorities not for the purpose of getting at these lottery people. It is something else. I would like to read between the lines and find out what it is. It is a weapon intended to legalise what the postal authorities are till now doing. It may be strongly denied by the Minister but they want to legalise what they are now doing illegally, that is opening all our letters on suspicion of political propaganda, etc. Certainly this is a case in which, as my hon. friend, Shri Bharucha would say, this power is not to be conferred upon the postal authorities.

The Minister would say that the power of opening can be given only to the Post Master General. I do not think so. Section 23 (2) of the Indian Post Office Act of 1898, says that any officer in charge of a post office or authorised by the Post-Master General in this behalf may open or unfasten any newspaper or any sample packet in the course of transmission by post.

Shri Raj Bahadur: Not letter.

Shri Kaswara Iyer: It is a question of interpretation as to what ex-

actly is a letter. Will it include small packet? Supposing I send something in the form of a small packet, whether it is a letter or otherwise is a question of interpretation. It is open to the authorities to define this by saying that it is a small packet.

This enactment itself, with great respect to the Mover of the Bill is very loosely worded. What is lottery? It is not defined here. Perhaps the Minister may look at the Indian Penal Code. I am at a loss to find what exactly he means by 'lottery'. If according to the Minister it means some arrangement for distribution of prizes on the basis of chance, that distinction could have been put in. We speak of marriage as a lottery. Supposing a person says that a couple became husband and wife by chance, is it lottery? This does not contain the definition of lottery. Certainly in the speed with which this Bill is being piloted herein, it has escaped the notice of the Minister. Or, as I submitted, this is not exactly to prevent the lottery coming in but for certain other purposes. Otherwise, the correct and precise definition of lottery would have found a place.

The Minister has also not given statistics about the un-authorised lotteries going about, the number of postal articles tapped in the post office and transmitted. The Minister has also not given us details about the increase or decrease in such things. Why should this Bill come now? What is it that is put in there? I would respectfully submit to this House that this House may throw out this Bill because it is a case where an infringement arises. If it is not a Fundamental Right, it is the legitimate right of every decent citizen of India which is infringed.

Shri Biren Roy: Sir, I would not like to repeat all the arguments of the previous speakers. But I want the hon. Minister to enlighten us about the provisions which give the right to the post-master or officer in charge of

[Shri Biren Roy]

a post office to open any packet or newspaper, article or something. He has stated just now that such power is not given but I am going to speak from my personal experience because I have been an international correspondent for the last twenty years. During the last two or three years, I have been receiving letters, many opened.

I do not know why these had been opened. I wrote once a letter to the Post-Master General, Calcutta. Even after I have been elected as a Member of Parliament, it happens. Only three days ago, I got a letter from Germany, from a bank director. It is a simple letter. His wife was the guest of mine only two weeks ago and he had not got any letter from here. That letter was opened and then pasted, like the customs opening, pasted with a kind of gummed paper. No reason was given. Perhaps the postal authorities think that because it is coming from a bank, it might contain something. A cheque may be enclosed and so on. I also complain that often many of the reply coupons—there are international coupons by which one can reply without purchasing stamps on payment of cash—are missing. Most of these coupons are missing whenever these are sent.

Not only that. What happens is this. They some times write: "opened by censor". In one particular instance, they wrote "stamps" taken away at some place which is not known. It is written on the top; the post-master himself has written it. After all, the person who is sending it will not take the stamps away. It is coming by air; nobody in the plane will take it. Somewhere it has been taken away and he had the cheek to write and send it to me saying that he had received the letter without foreign stamps.

Anyway, these are very simple matters. But the danger is that all private correspondence are now being opened. We know it is being opened. How are you going to stop it? There

was a salutary provision which he had read out. In case there is suspicion, the post-master can write to the party who can come when it is opened. That provision is already there. Let there be a witness or somebody. Find out what are the suspected things there, instead of trying to open it and then send it to the recipient. But what is the reason for adopting the present practice? Under what law? I do not know whether it is legal or illegal. I can produce these letters if desired.

When I asked this clear question, as he was explaining, as to how these detections are being made, somebody replied "by X-rays". I do not know. There is nothing of that type in the post office. If there had been it might not have been opened at all. It is just a plain sheet of paper—a bank letter. He could even read it, if necessary. There is nothing. Yet, it is opened and pasted on. Is it not a dangerous thing? Have we not even that immunity of correspondence? If that is so with the Members of Parliament, what is going to happen to ordinary persons? I do not know if it is an infringement of personal right, if not of the Fundamental Right. A person should be able to correspond safely. If it is abused, or violated, there are rules under which you can take steps. You can enforce that particular—very salutary provision. You say to the suspected person: "You come to the post office". In front of a witness, you open it. You find what is wrong there. But why are you opening it without any explanation, without adopting this provision and then sending it to the recipient? He cannot say anything. If one complains, no replies are received. This is a dangerous provision. You should also provide that the person will be called to the post office to receive that letter, if it is suspected to contain such things. If you find that it is a lottery ticket, you send it to the proper police authorities and take action. That is the only way to check it.

Mr. Chairman: Shri D. C. Sharma and then Shri V. P. Nayyar.

Shri D. C. Sharma (Gurdaapur): Mr. Chairman, this is a very pedestrian Bill but it has led to a very great flight of fancy and very lengthy flights of imagination. As I sat listening to the speeches made, I asked myself this question: "Are all these allegations, autobiographical details and infringement of civil liberty, real or imagined, and all these talks about censorship justified?"

Sir, to a man of my limited understanding it would appear that it is not the Bill which has provoked all this, but it is perhaps the dullness of the House that has made us think on those lines. I do not want to talk about this Bill in terms of civil liberties. Civil liberties are there in India, and I think they are there in a much greater degree than in many of the other democratic countries. The question of civil liberties has nothing to do with this Bill, because they are fundamentally guaranteed and I think there have not been any breaches of civil liberty laws so far.

It has been said that this power should not be given to the Ministry of Communications but it should be entrusted to the Ministry of Home Affairs. I cannot understand this argument. I think, on the whole, the Ministry of Communications which runs the postal department is a much less harmful Ministry even according to the estimation of the Members opposite than the Ministry of Home Affairs. The Ministry of Home Affairs is, I think, much more to be afraid of than the Ministry of Communications, and I have not seen any exalted sense in saying that the Ministry of Communications should forgo this power and transfer it to the Ministry of Home Affairs. If that happens, I think there will be a big argument about that, perhaps a much bigger argument than what we have had so far.

I think this is not a measure which is going to curtail our rights, whether civil or political. It is not a measure

which is going to arm the post offices in such a way that the post offices become a kind of administration for something like the Preventive Detention Act or something like that. I think this Bill refers to a social evil of which I do not know why my friends in the Opposition have become so forgetful today. It refers to an economic evil, and this Bill has been brought forward to put an end to this evil. Of course, human ingenuity is there and legal ingenuity is also there, and if one were to call into play these two things one can read any meaning into a sentence and any kind of significance into a statement. That is what has happened today.

The fact of the matter is that a lottery is a penal offence according to the Indian Penal Code. But there are persons who are ingenious enough to say that they can carry on lottery business through the post office. If you cannot carry on a lottery business in the house because it becomes punishable by law, you should also be not permitted to carry on lottery business through the post office; it should be made equally punishable by law. I think this is the simple objective of this Bill.

It was said that any letter can be opened on suspicion.

Shri Biren Roy: It is being done even today.

Shri D. C. Sharma: I think all these fears are not based upon any big number of facts. I do not want to say that all these fears are not justified. These fears may be there. But I think it is not this Bill which can put an end to these fears.

Shri Braj Raj Singh: Come to this side and you will experience it.

Shri Biren Roy: Sir, shall I have to produce all the envelopes to the

[Shri Biren Roy]

hon. Minister tomorrow to satisfy this gentleman.

Shri D. C. Sharma: I think it is no use sending any envelope to me because I know scientific methods of opening envelopes have gone so far and our post offices also have these scientific methods that you can open an envelope without there being any indication to show that it has been opened. I do not say that anybody should open another's envelope. What I mean to say is that it is not justifiable to load all those fears on the back of this Bill.

Shri Biren Roy: We have not opposed it. We have only stated that it should not be destroyed and that the man concerned should be called at the post office.

Shri D. C. Sharma: So, I say that this is a very limited measure and it refers to something which is happening in India. Only the other day I was told about a magazine. I do want to mention the name of it. There are many magazines of that kind which are still carrying on this lottery business. They are published in all the Indian languages. They are making any amount of money by doing that. They are having a big business of this kind. They are taking advantage of the credulity of the reading public. Their circulation is very high. How can you get hold of those papers? How can you prevent those papers from publishing lottery material? I think the Home Ministry has not been able to lay its hands on such journals. I think some provision in our Post Office Act is needed in order to curb the unsocial activities of those persons who are trying to get fat in a very easy manner, and who are trying to take undue advantage of the desires of some people to get rich without making due efforts for it.

But I believe that there should have been one thing added, when I look upon it as a social measure and even as an economic measure. I have been reading the encyclopaedia of social sciences. There they have said that it is not only an ethical proposition, it is not only a social proposition, but it is also economically demoralising the people who take to lottery in order to make money. I want to ask one question of the hon. Minister. If lottery is bad socially, bad economically and also bad ethically for an individual, a firm or for some kind of a corporation, how can it become desirable for a State? This is what I have not been able to understand. If you want to put 'x' under some kind of control because he is carrying on a lucrative business in lotteries, I do not see any reason why you should sanctify the lotteries which are undertaken by this State or that State.

My feeling is that all these lotteries should be swept away with the same broom, and there should be no distinction between authorised and unauthorised lotteries. I know sometimes it happens that when you want to build a hospital and you want money, you want to run a lottery in order to get some money for that. But I may tell you that that kind of money is tainted, that is not worth having for the sake of any welfare measure. Therefore, the suggestion that I would like to make to the hon. Minister is that he should see to it that all kinds of lotteries are banned in this free India, and the States or the Government should not be permitted to do what we do not allow our citizens to do.

At the same time I would say that the punishment that has been prescribed is, I believe, excessively deterrent. I do not think the punishment should be so great as that— I believe it is in Section 61. I believe the punishment should have been brought down to some extent.

Shri Biren Roy: Why?

Shri D. C. Sharma: It is because I feel that the punitive aspect of this measure should not be highlighted to that extent. We should use two approaches to it,—the social approach to which I have referred and the punitive approach. If you make it only a kind of punitive approach, I think the people who have indulged in these lotteries will find some other way of circumventing the whole thing. What I say is this. The lottery business should be liquidated, and liquidated in a way which does not make for this kind of deterrent punishment.

I would, therefore, request that this measure should be looked at from the proper angle. All these extraneous considerations which have been brought to play upon it should not be taken notice of. We should try to do away with this social malady. I think this Bill will be useful. At the same time, I request the hon Minister that after the Bill has been passed, he should lay a statement on the Table of the Sabha to show how far this Bill has been effective in putting an end to these lotteries, what action has been taken under the provisions of the Bill and whether there has been any false scent by which the post offices have taken action and some innocent person has been taken hold of on a mere suspicion, even when there was no real case of sending a line of advertisement on lottery. This kind of statement, I think should be placed on the Table of the Sabha after one year of the working of this Act so that we may know where we stand and so that we may know whether the fears of my friend which have been voiced on the floor of the Sabha are justified or not.

I think that is a safeguard which we need badly in order to see that there has been no widening of the powers given to the administration by this Act and to see that there has been no abuse of the powers given to it by this House.

Mr. Chairman: I have the list of Speakers here. I regret I cannot call any more Members. Shri V. P. Nayar may finish his speech quickly.

Shri Raj Bahadur: I would require 15 minutes.

Shri V. P. Nayar: I do not want to cover any of the grounds which have already been covered, but I fail to see the reasoning my hon. friend Shri D. C. Sharma made. He says that this is a social evil and therefore the Bill has come. I ask him whether this is the only social evil of this kind which we have to handle now. Does he not know that in the cities there is what is called speculative trade? There is what is called *fatka*, there is *satta*. Are they not social evils? But I have not seen him raising even his little finger for the prevention of these things.

Mr. Chairman: You mean the share market?

Shri V. P. Nayar: The volume of money involved in this, as compared to the volume of money involved in *satta* deals, will be very much negligible. So, I am not going into that.

Shri D. C. Sharma: I have got them in my notes, but I did not talk about them.

Shri V. P. Nayar: If the hon. Member has those notes, let us discuss it some other time. I only wanted to stress another aspect. Until the hon. Minister came out with his explanation, I was hoping that the Bill will not have any really mischievous possibilities. Now, I am doubly convinced that the Bill is not intended or is sought to be intended to fulfil the purpose in view, whatever may be the pure motives of the hon. Minister himself. I cannot, for a moment, think that the Bill is for a very sound and holy purpose, because I remember that as we came here in 1951 or 1952, the then hon. Minister of Communications said in the House that his department had right to open certain letters in order to get at the position of various political parties. I do not want to go into it either.

Shri Raj Bahadur: I question the accuracy of that statement.

Shri V. P. Nayar: I meant Shri Jagjivan Ram.

Shri Raj Bahadur: Even so, I question the accuracy of that.

Shri V. P. Nayar: He might question it. The other day we heard what it was about in the other system of communication—the telephone,—when a Member made an allegation that telephones were being tapped. I do not want to go into that now, but I want to point out certain aspects. The hon. Minister said that he was leaving the legal side. It was better also that he did so. But I was surprised to find out that the hon. Minister went on repeating that this will be an abetment, that he does not want the post office to function as abettors or the postal employees to function as abettors, because this is an act which has been declared to be an offence under the Indian Penal Code.

Mr. Chairman: The Minister explained that it will be abetting when we know it is a lottery, when we are in the know of things.

Shri V. P. Nayar: That is not the point, Sir.

Shri Raj Bahadur: That is the point.

Shri V. P. Nayar: If he goes through the particular provisions which penalise the holding of a lottery or keeping a lottery . . .

Shri Raj Bahadur: I shall answer that. The hon. Member can move to another point.

Shri V. P. Nayar: Let me explain myself. He cannot anticipate. If I am earnest in trying to make him understand a little bit of law, I should not be discouraged.

Shri Raj Bahadur: He is welcome.

Shri V. P. Nayar: I was only suggesting that always the intention of Government to prevent certain offen-

ces generally can have a larger effect by the medium of the post office. For example one can envisage the transfer, from place to place through the post office, of pornographic literature. It is an offence. Nobody can publish any obscene literature. Why do they not put a stop to it? We find in all railway stations and in every place, throughout the country, the most obscene literature being kept, because, technically, it may not infringe the law. That is not a very laudable purpose.

I should say that the hon. Minister has completely misunderstood the point. According to me, the best way in which we can think of abetment, especially when it concerns an offence which has to be visited upon by a punishment, is this: we have necessarily to go to the Penal Code. That is my submission. What does the Penal Code say? I cannot by any stretch of imagination understand how the word 'abetment' could at all be used in this case. I was trying to refresh my memory. Unfortunately, I did not have a copy of the Code, and without reading it, I thought the hon. Minister might question me.

Now, what is abetment? Section 107 says:

"A person abets the doing of a thing, who instigates any person to do that thing;—"

Is it the hon. Minister's case that the post office or the personnel employed in the post office instigates the running of a lottery? If it is not so, this law does not work. Secondly, the Code says:

"Engages with one or more other person or persons in any conspiracy—"

conspiracy is a necessary ingredient—

"for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing;" or

"intentionally aids, by any act or illegal omission, the doing of that thing."

Where is the case of intention? If I run a lottery or run a lottery house, I commit an offence under the Penal Code, but if I put certain letters in the post-box and the letters are taken from place to place by the postal employees, by any stretch of imagination how can we fix the guilt of abetment on any employee if (a) there is no instigation, (b) there is no conspiracy, and (c) there is no intention at all?

What is the intention? One cannot bandy about any words without understanding the real meaning as to how they are construed in law. What is intention? Even intention cannot be construed in the general sense because, for a particular offence, intention can only be understood in the sense in which it is defined in the Indian Penal Code. The Penal Code says:

"A person who, by wilful misrepresentation or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause—

Is the postal employee bound to disclose that he has known that there is a lottery literature in the box which he took? Then,

"or procure, a thing to be done, is said to instigate the doing of that thing".

Where is the instigation? So, however much the hon. Minister may desire that this should have amounted to an abetment, necessarily no case can be maintained that any act done in respect of such literature and passed on to the post office by any employee will amount at all to abetment. Even then the hon. Minister wants it. Why? For very clear reasons. We know that it cannot at all infringe this provision of the law. And what is the punish-

ment? Keeping of a lottery house is to be punished with imprisonment up to six months. It is not merely punishment for any abetment. For abetments there must be intention, instigation and conspiracy. If you go by conspiracy, it will be even worse. So long as we do not pass this law, the omission will not be illegal.

Pandit Thakur Das Bhargava: Therefore, he is passing it.

Shri V. F. Nayar: Then, this is not the way. Penal Code prescribes the punishment for a lottery house. Let us conceive that this is a menacingly growing offence. For argument's sake I grant that. I will not question that. But here the Penal Code chooses only to prescribe a punishment of six months. For the unintentional carrying of a letter the hon. Minister says that "because it involves a social evil, because the offence is to be prevented somehow, that we are taking this extraordinary power with us in order that we may exercise that power with the utmost caution to see that this evil is not there". But nothing can be more ludicrous than this sort of legislation, because, you know, the real aim is bound to be something different.

Because, if that is the intention of the Government, if the Government wants to see that this offence is not widespread, it is very easy for the Government to prescribe higher punishments. By all means, make the punishment seven years for running a lottery; I am not worried. Let it not merely be cognizable, let it be visited by a higher punishment; I am not worried at all. I am sure that the hon. Minister himself, or his colleague who sits there, will not have a malicious intention; I am prepared to grant that, because I know both of them. But this is a surreptitious way of getting certain letters opened, which the normal law does not provide for. So, I very strongly object to the inroads on personal liberties, whatever Mr. Sharma may say.

Shri Raj Bahadur: I am grateful to the hon. Members who have given support to this measure, and also to the hon. Members who have levelled points of criticism against that.

The points of criticism may broadly be brought under three categories, firstly, there is some political motive behind it; secondly, even at present letters are being opened, telephones are being tapped and so on and so forth; and thirdly, this argument about the possibility of a postal official playing the role of an abettor in case he unintentionally aids in the transmission of the prohibited literature. These are the three broad categories.

So far as the charge of censorship of letters is concerned, I think it is entirely foreign to the issue that we have in hand; it is not at all germane to it. As my hon. friend, Professor Sharma, said, they wanted to talk on all complaints about the mails, about loss of stamps and so on and so forth. To that extent, one has to agree with that.

Shri Biren Roy: That is not correct.

Shri Raj Bahadur: Well, opinions might differ. But, may I remind you that a similar challenge was thrown in the other House by Mr. Bhupesh Gupta that his telephones were tapped and a counter offer was given to him?

Shri Biren Roy: I did not mention the telephones.

Shri Raj Bahadur: You said about telephones also. I think we are given to too much suspicion towards one another.

Shri Biren Roy: I can produce the letter. No telephone was mentioned.

Shri Raj Bahadur: We cannot arrive at a conclusion in a case we build up the argument on the foundation of a suspicion.

Shri Braj Raj Singh: It is a fact, not a suspicion.

Shri Raghunath Singh: Then it should be proved.

Shri Raj Bahadur: There it could not be proved; though a challenge was thrown, nothing came out of it. It is not good to build an argument on these vague charges.

Shri Punasree: Very cleverly put.

Shri Raj Bahadur: It is very difficult for them to give a concrete instance. Now they are trying to throw the blame on the Government.

Shri Braj Raj Singh: I can produce two cases.

Mr. Chairman: The hon. Minister is only referring to the instances in the postal department.

Shri Raj Bahadur: He was referring to some poets who came for the Urdu *Mushaira*. I do not know whether all the poets came from this country or from abroad.

Shri Braj Raj Singh: They were from here.

Shri Raj Bahadur: It is up to this Government and to this House to take all measures to see that in the garb of a poet no person comes here.

Shri Raghunath Singh: Surely.

Shri Raj Bahadur: . . . and infringes the security or undermines the law and order position or anything of that kind.

Shri Braj Raj Singh: May I point out that these persons did not come from across the border?

Shri Raghunath Singh: Every nation will take necessary steps for the security of the country.

Mr. Chairman: It is possible to endanger the security of the nation even from inside.

Shri Raj Bahadur: I need not expatiate on this particular point.

I will be brief in regard to the other points. As I said right in the beginning, the power of opening letters as such is not being taken by this Bill at all.

10-56 hrs

[MR. DEPUTY-SPEAKER in the Chair]

By no stretch of imagination, by no amount of stretching the wording and the phraseology of the present Bill can you come to the conclusion that we are taking power to open letters that is impossible. It cannot be done. Under section 23(2), only in a certain number of cases could it be opened. I can again read with advantage that particular provision. It reads:

"Any officer in charge of a Post Office or authorised by the Post Master General in this behalf may open or unfasten any newspaper or any book, pattern or sample packet" (envelope has not been mentioned here, nor letter cards).

Shri Biren Roy: We do not object to that.

Shri Raj Bahadur: It would have been much more helpful, and would have contributed to the debate, if a charge was made at the time when power is taken to open letters. Now, as I have already submitted, there are sufficient safeguards already existing, both in the rules as also in the main enactment, the Indian Post Office Act, 1898, which has stood the test of time. Now, apart from other safeguards, section 24 reads:

"Except as otherwise provided in this Act, where a postal article suspected to contain any goods of which the import by post or the transmission by post is prohibited by or under any enactment for the time being in force, or anything liable to duty, is received for delivery at a Post Office the officer in charge of the Post Office shall send a notice in writing to the addressee inviting him to attend, either in person or by agent,

within a specified time in the Post Office, and shall in presence of the addressee or his agent, or if the addressee or his agent fails to attend as aforesaid then in his absence, open and examine the postal article."

Shri Biren Roy: That is what I want to enforce.

Shri Raj Bahadur: It is not the fault of the Post Office or the fault of the Ministry of Transport and Communications if anybody in this wide world is ignorant of this law, as ignorance of law is no excuse for any purpose. So, I would most humbly point out that both in the main enactment, as also in the rules, as I have already explained, there are sufficient safeguards. I cannot traverse the same ground again.

If a running sorter or a mail sorter or clerk in a post office has a reasonable suspicion that a particular article contains some unauthorised literature or unauthorised or prohibited article, he has power under the rules only to put it in a packet and send it to the Post-Master General, and the Post-Master General in each case will exercise his discretion judiciously. In case he thinks a letter contains unauthorised literature, he will record his views. He has to state the reasons why he has done so. With that safeguard, I think it will be putting a premium on the perpetration of crime on the security of the country in case we allow such literature to be transmitted by the post offices.

I will be brief. Regarding abetment, it is not my intention at all to enter into the arena of forensic battle with my hon. friends Shri Kaswara Iyer and Shri V. P. Nayar. He has himself been good enough to tell us what an abetment means. I will only say that the phraseology of the third part of section 107 is clear.

Mr. Deputy-Speaker: Whether it is abetment or not, it will not be material here.

Shri Raj Bahadur: I want to support my clerk so that nobody can go and grease his palm and make him a party to that.

I will not allow him to fall a victim and fall a prey to that. I will not allow that postal official to take cover under the subterfuge: "Of course, Sir, we can do nothing. We will have to transmit it." I will not leave ground for anybody to be corrupt or to be corrupted. That is the whole point. If any postal clerk, knowing as he does that it is unauthorised literature regarding an unauthorised lottery, play the role of an accomplice in transmitting it to the addressee, it is abetment and nothing else. He intentionally aids. But, as I said, it is not my intention to enter in a forensic battle with my hon. friend. I concede to him so far as better knowledge of law is concerned. I have been in the Bar for sixteen years but for the last seven years or so I have been away. Maybe, my wit is not as sharp as his today. But I do not want to enter in a battle with him on this point.

The point is: What is the intention of the measure? The intention of the measure is that the Post Office shall be prevented from being used for the perpetration of an evil. If you think that it is an infringement of a personal right, I most humbly would submit that I will not fall in line with that argument. I will not fall in with that kind of thought because it is obvious that a large number of people are being defrauded. But, I could say that in the name of these lotteries a very great evil is rampant. People are being squeezed of their money.

Shri V. P. Nayar: Why not punish them?

Shri Raj Bahadur: The human frailty . . .

Mr. Deputy-Speaker: The hon. Minister would provoke less interruptions if he addresses the Chair. He should at least appear to give an impression that he is addressing the Chair and not any individual.

Shri Raj Bahadur: So, I would only submit—I will not take the time of the House because I think that this Bill should be passed today—that this Bill is intended for a purpose which is more urgent and necessary. So far as infringement of personal right is concerned, I may just quote from a newspaper—it is one of the editorial's remarks—because the point of fundamental rights was raised in the other House.

"No fundamental rights are involved in the measure because postal authorities all over the world are recognised to have the power to destroy materials which are contrary to law. There was, for example, the scandal mongering journal, *The Confidential*, in the United States which has not been given postal facilities if it is sent through post, the U.S. authorities have the power to destroy it. The measure that Government have introduced is long overdue and will be an effective check of this transmission of promotional literature about unauthorised lotteries . . ."

Shri V. P. Nayar: What is the name of the 'paper'?

Shri Raj Bahadur: It is *Hitavada*. It is not a Congress paper.

I would only say, Sir, that we have not yet thought of punishing such organs which are just carrying these crossword puzzles, lotteries and all that, to which my hon friend, Shri Sharma, very rightly adverted.

Regarding Shri Sharma's point as to how it is desirable by the State to discriminate between the State authorised lotteries and the private lotteries, I will say that this matter has to be considered by the Ministry of Home Affairs. In principle he might be right. I will not enter into an argument with him on that, but sometimes these State lotteries are put to good use. No doubt, the common human weakness is taken advantage of. Nobody can doubt that, but we know