

[Shri Bhupesh Gupta.]

consent. I had given notice and it is for you to consider it. If it is not considered now, I hope it will be taken up in the next Session. I hope I will have some direction over this matter. I consider it as a breach of privilege.

MR. DEPUTY CHAIRMAN: If the rules permit, this matter will be considered in the next Session.

Yes, Mr. Tankha.

SHRI BHUPESH GUPTA: I hope you have got the notice for Motion?

MR. DEPUTY CHAIRMAN: Yes, Mr. Tankha.

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THE REPRESENTATION OF THE
PEOPLE (AMENDMENT) BILL,
1958—continued.

PANDIT S. S. N. TANKHA: Mr. Deputy Chairman, I agree with various provisions of the Bill before the House and I also consider that in many respects the Act is being modified in the right direction. I especially welcome the provision in clause 11 whereby false statements and declarations in connection with the inclusion or exclusion of names from the electoral rolls are made punishable with one year's imprisonment or with fine or with both. In the same manner, I also welcome another provision occurring in the same clause whereby the breach of official duties by registration officers and their assistants is made punishable with five years imprisonment to the maximum. I also appreciate the endeavour of the Government to avoid impersonation by voters by the introduction of identity cards as a step in the right direction. We are all well aware, Sir, that impersonation by voters is rampant on a very large scale. People, or rather the canvassers and the agents of the candidates try to find out the names of the absent voters and then put in their own men to impersonate such persons. There is, however, one difficulty which

seems to strike me about this system of identification cards and that is in respect of the photograph of women voters. I think it will be very difficult for many women especially the *pardah nashin* ladies to agree to get themselves photographed. The hon. Law Minister, while I was talking to him in the Lobby yesterday, said that he would arrange for women photographers to take the photographs of women voters but, Sir, so far as I am aware, there are not any women photographers in the country much less a number large enough to be able to photograph the very large number of women voters. Therefore, Government will have to depend upon the male photographers to photograph the ladies to which the ladies will not agree, especially the *pardah nashin* ladies in big cities belonging to the middle and upper classes. If that is so, the introduction of this system will amount to disenfranchising them which is not a step in the right direction. I would, therefore, like the Government to consider this point carefully and to see how best this can be arranged and how best the practice of impersonation can be avoided by other means.

I now come to clause 6 of the Bill which amends section 17 of the 1950 Act, by deleting the words "in the same State". As Dr. Kunzru has very ably put it, this will affect the Members of the Council of States. While it is the privilege and will continue to be the privilege of candidates standing for election to the Lok Sabha to seek election from any constituency and to have their names entered in any constituency, candidates for election to the Council of States must need belong to that particular State from where they wish to stand and this will work as a hardship in many cases. Personally, I think Sir, there has been a time when the Government also took advantage of this provision by providing seats to some prominent persons who could not get in otherwise, to come to the Council of States and to give them the office of Minister. This will not be possible hereafter if this

provision as contemplated in the Bill is maintained. Therefore, I would submit that this should not be accepted.

SHRI V. K. DHAGE: There are no impersonations in the matter of election to the Council of States.

PANDIT S. S. N. TANKHA: Yes.

I agree with the amendment proposed in clause 7. The residence in a constituency should not relate to the qualifying date but I disagree with the provision contained in clause 8(1) which says:

"A person shall not be deemed to be ordinarily resident in a constituency on the ground only that he owns, or is in possession of, a dwelling house therein."

If the fact of the possession of a house, or ownership of a house, is not considered evidence of residence, then, what other better proof can there be for a person to give? Therefore, if this qualification is taken away, then the only evidence which will be possible on the point will be the statement of the person himself which he gives regarding the place where he resides. If that is the intention of the Government then I have no objection to it. If the Government is prepared to believe the man's word about his residence as being sufficient for the purpose of his name being entered in the electoral rolls, then, I think, the Government should have stated it clearly in the Bill that if a person states that he resides in such and such place, that should be considered enough for the purpose of his name being included in the electoral rolls. But that has not been done. The result will be that decision on the point would be left to the various election authorities to decide whether or not a person really resides in a particular constituency. And then, Sir, no right of appeal or review or anything else against an order on this point is provided under the Bill for agitating this matter further.

In this connection, I might just give you a personal instance, which will make my position clear. I wanted to go to Kashmir. The law is that the district magistrate of the district where the applicant resides shall issue a permit for visiting Kashmir. I wrote to the district magistrate of Lucknow, where I reside, from Delhi stating that I wished to visit Kashmir and a permit might kindly be granted to me. I received a reply from him that he could not do it and that I should apply to the district magistrate of Delhi. I again wrote back to him immediately and informed him that I was a resident of Lucknow and I owned house there. Also that I have a rented house there where my wife and my father were living. Further I am an enrolled advocate of the Allahabad High Court practising in Lucknow and that I come to Delhi only for short periods during the sessions of Parliament and go back to my residence immediately after. And as such I saw no reason why I should apply to the district magistrate of Delhi for the permit. Even then he did not issue the permit and I had to apply to the Ministry of Defence here and obtain it and then go. Now, when there are officers of this type, who fail to realise and fail to understand the law, what protection is there for the voters? How can the Government be sure that these officers will take a fair and just view of things. Therefore, I would submit that the proposed amendment will lead to difficulties and hardships. But if the amendment is adopted, then the man's statement should be accepted and it should not be questioned by the authorities. Now, Sir, while I agree . . .

SHRI B. B. SHARMA: It is open to the recording officer to decide.

PANDIT S. S. N. TANKHA: The officer will decide upon my statement. I should be believed. My statement should be accepted. It is not for him to say 'no, I am not prepared to have your name included'. That is what I say.

[Pandit S S N Tankha]

Then, Sir, in clause 9, while I agree with the proposition that the electoral registration officer should be allowed to delete the names of dead persons or names which are in duplicate, giving these powers to the officers without any restriction is very dangerous, to my mind. Then, Sir, you may be pleased to see the proviso to clause 9, the wording of which is:

“Provided that before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) . . .”

Now, any action under clause (c), is about a dead person, that it should be deleted. Then it goes on:

“on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him”.

Now, Sir, to whom is this notice to be given in the case of a dead person? I raise an objection and say that the name of ‘A’ be deleted because he is dead. Then, to whom is the registration officer to give the notice?

DIWAN CHAMAN LALL: To the person who raised the objection

PANDIT S S N TANKHA. I raise it. Then how is the officer to decide? There must be some means provided. You can give notice to the person who is alive, that his name occurs in duplicate and as such should be deleted from one place, or he is not a resident of this place, he is a resident of another place and as such his name should be removed. That is all right. But in the case of names of dead persons, which is most frequent in the electoral rolls what is to be done and to whom is the notice to go, is a point to be considered. Therefore, something

must be done under this provision to see that the names of dead persons are not removed without proper enquiry, or without satisfaction to the parties concerned.

(Time bell rings.)

MR. DEPUTY CHAIRMAN: That will do.

PANDIT S S. N. TANKHA: So far, in the earlier law, persons seeking election to the Council of States or to the Legislative Councils of the States were required to deposit a certain amount. Later that law was changed and there was no necessity for them to deposit the amount. Now, I find that the law is being again amended, requiring them to make such deposits. I would like to know why this is being done and why the Election Commission has made a recommendation of that kind. It is said in the explanation to this clause that this is being done with a view to avoiding a multiplicity of persons contesting the elections. (Time bell rings.) But this is not a sufficient ground to reimpose the system of deposit.

MR. DEPUTY CHAIRMAN: Mr. Bisht. Just five minutes.

SHRI J. S. BISHT. Mr. Deputy Chairman, if I were free in this matter, I would support the proposal for referring this Bill to a Select Committee, because I find that certain provisions are being inserted here by which the rights of 220 elected Members of the Council of States are being adversely affected. And that is probably due to the fact that the Bill was debated by the Lok Sabha or referred to a Select Committee consisting entirely of Members of the Lok Sabha. It came to our House without any reference to any Select Committee on our part and the result is that clauses 6, 7 and 8 have been put in here which do not affect the Members of the Lok Sabha, but which do definitely affect the Members of the Council of States. If you look into section 17 of the Representation of the People Act of 1950, you will find

that no person shall be entitled to be registered in the electoral roll for more than one constituency in the same State. The words "in the same State" were inserted by the Act of 1956, and for some good reasons. Therefore, it is not understood why now, within two years the Government has come forward or the Select Committee or Lok Sabha has come forward with a proposal that these very words "in the same State" which were inserted by the Act of 1956 are now being deleted. Because if you look to section 3 of the Representation of the People Act of 1951, you will find that a person shall not be qualified to be chosen as a representative from any State, etc unless he is an elector for a parliamentary constituency in that State, so that a Member of the Council of States cannot be elected from any State other than the State in which his name appears. Up till now it was open to him to have his name entered in more than one State, say in the State of Uttar Pradesh, or in the State of Bombay, for instance, if he so desired or he had a better chance in some other State. But now after the deletion of these words, the result will be to put him down to only one State whereas a Member of the Lok Sabha can choose any one of the five hundred constituencies into which the whole of India is divided for being elected to Parliament. I am quoting to you definite cases in this matter. There is already a Minister of the Government of India who was brought in by the Government—as my hon friend just pointed out—by virtue of the fact that the words 'in the same State' exist in section 17 of the Act of 1950. But for that, he would not have been a Minister here. He was already enrolled as an elector in the Parliamentary constituency of a particular State. He was elected to the Council of States from that State. In the meantime, he had himself enrolled as an elector for the Parliamentary constituency of another State while he was a continuing Member of the Council of States. When the biennial election came, he got elected from that State and then

he resigned from that State which was the State of Delhi, which I mention here.

SHRI V K DHAGE What mal-practice was that?

SHRI J. S. BISHT: Nothing at all. Nobody was affected. The country was not adversely affected. It is a perfectly legitimate thing to do. What was wrong about that? That is why we want that the words "in the same State" should be retained here. I quote another instance which my hon friend may take note of. Take the case of my hon friend, Mr Dhage, here. He has been a very valuable Member of this House—the leader of the Democratic Party—since 1952. He was elected from Hyderabad. Now, by virtue of the reorganisation of the States, he has been put in the Bombay State because all the Marathi-speaking people have been put in the Bombay State. In the next election which is due in 1960, it is quite possible that he might have a favourable chance from Bombay, but no chance from Andhra Pradesh. Why should he be debarred from that? If he can get himself enrolled there in the Bombay State in some Marathwada or Marathi-speaking districts, he should be allowed that chance. This will be the case in any other reorganised State. Take Mysore for instance. Many parts of it were in Hyderabad, now, they are in Mysore. Similarly, many parts which were formerly in the Madhya Pradesh are now in Bombay—the Vidarbha region. Mrs Munshi was put in Rajasthan. She was in Bombay State and she was elected by Bombay. After the reorganisation, she was elected from Rajasthan.

SHRI V K DHAGE: Mrs Alva is in Mysore now.

SHRI J S BISHT: I may quote many other instances. So, it is not such a petty matter as to be ignored. Therefore, I would strongly appeal to the hon Law Minister who is present here to look into this matter. With it go clauses 7 and 8 because clause 8

[Shri J. S. Bisht.]
amends section 20 in which "ordinarily resident" is defined, which is a very simple definition.

"(1) Save as hereinafter provided, a person shall be deemed to be ordinarily resident in a constituency if he ordinarily resides in that constituency, or owns, or is in possession of, a dwelling house therein."

"This is sub-section (1) of the present section 20. Now, sub-clauses (1), (IA), (1B) are put in—all in negative. "A person shall not be deemed to be ordinarily resident" or "A person absenting himself temporarily" and so on. I, therefore, appeal to him that no great harm will be done if the Bill is postponed for another three months. Instead of bringing it into force from the 1st of January, 1959, we can bring it into force from the 1st of April, 1959, and have it referred to a Select Committee so that the representatives of this House at least are not adversely affected.

श्रीमती शारदा भार्गव (राजस्थान) :
उपसभापति महोदय, मैं भी इस बिल को सेनेट कमेटी में भेजने का समर्थन करना चाहती हूँ। इसके कारण हैं। वैसे तो इस बिल में कई क्लॉजेज के बारे में मुझे संशोधन बताना था, परन्तु चूँकि आपने कहा कि ५ ही मिनट मिलेंगे, इसलिए मेरे स्थान में जो सबसे अधिक आवश्यक है, उसके ऊपर ही मैं कुछ कहना चाहूँगी।

मैं इस क्लॉज २५ (बी) के बारे में कहना चाहती हूँ। उसमें यह लिखा आ है :

"(b) for the production before the presiding officer or a polling officer of a polling station by every such elector as aforesaid of his identity card before the delivery of a ballot paper or ballot papers to him if under rules made in that behalf under the Representation of the People Act, 1950, electors of the

constituency in which the polling station is situated have been supplied with identity cards with or without their respective photographs attached thereto;"

यह तो हमारे अन्य सदस्यों ने भी कहा है कि सरकार को आइडेंटिटी कार्ड बनाने में बहुत खर्च हो रहा है, मैं भी इसको मानती हूँ। पर साथ ही ससे बड़ी कठिनाई जो होगी वह महिलाओं के साथ होगी। आपको ख्याल होगा कि पहले जनरल इन्क्वेशन में महिलाओं के नाम वोटर्स लिस्ट में श्रीमती या बहिन या माता के नाम संबंधित पुरुषों के नाम के साथ छुड़े थे। बाद में हमारी पार्लियामेंट ने निश्चय किया कि इस तरह के नाम वाले लोगों को वोट देने का अधिकार नहीं होगा और उनकी जिनके स्वयं के नाम लिखे होंगे, उन्हें वोट अधिकार होगा। इस प्रकार हमारे देश की लाखों महिलाएं अपने मताधिकार से वंचित हो गईं। मैंने एक रिप्रेजेंटेशन ले जाकर पंडित जो से, ला-मिनिस्टर से और इन्क्वेशन-कमिशनर से, इस संबंध में बातचीत की थी। इन्क्वेशन कमिशनर से जब मैंने बात की तो उन्होंने मुझ से साफ़ यह बात कही कि इसमें हमारी कोई गलती नहीं है, गलती केवल महिलाओं की है। जब उनके पास जाकर नाम पूछा जाता है, तो नाम नहीं बतातीं। आप यह समझिए कि ६ वर्ष पहले की बात है, इन्क्वेशन कमिशनर ने स्वयं मुझ से यह कहा था कि महिलाएं अपना नाम बताने को तैयार नहीं होतीं, अमुक की बहिन, अमुक की माता, इस तरह से लिखा देती हैं, और बाद में उनकी मताधिकार से वंचित कर दिया गया। तो मैं कहना चाहती हूँ कि जब इन्क्वेशन कमिशनर के अनुसार वे अपना नाम तक नहीं बताती थीं—हालांकि यह ग़लत है और मैं आपको बताऊँगी क्यों है—तब क्या आप यह समझते हैं कि वे अपना फोटोग्राफ़ दे देंगी ? मैं राजस्थान की रिप्रेजेंट करती हूँ और मुझे वहाँ इसका ज्यादा अनुभव है। राजस्थान में अब भी पर्दा प्रथा बहुत चलती है।

श्री हर प्रसाद सक्सेना : यह फोटो तो अरबन के लिए है ।

श्रीमती शारदा भार्गव : वह तो ठीक है कि यह अरबन एरिया के...। मैं दूसरी बात भी कहूंगी कि लेकिन पहले फोटो की बात कहूंगी ।

SHRI H. P. SAKSENA: If I heard the Law Minister correctly, he said that the question of photos applies only to urban areas.

श्रीमती शारदा भार्गव : मेरे पास केवल पांच ही मिनट हैं और उसे आप कम न करे तो अच्छा है । अरबन एरिया में भी पर्दा है । इसके साथ साथ महिलाएं अपना फोटो देना कभी पसन्द नहीं करेगी । रूरल एरिया में जहां फोटोग्राफ नहीं होंगे वहां के बारे में भी मैं कहना चाहती हूं कि आइडेंटिटी कार्ड का भी उपयोग गलत तरीके से हो सकता है । मैं आपको बताऊं कि पहले जनरल इन्वैक्शन में सही नाम न लिखे जाने का असली कारण क्या हुआ ? टोटल लिस्ट बनाने वाले जब किसी व्यक्ति के घर में पहुंचते थे और उनको वहां पुरुष या मालिक नहीं मिलता था या किवाड़ बन्द मिलते थे तो मैं आपको बताऊं कि पड़ोस से पूछते थे कि इस मकान में कौन कौन रहता है, उनके घर में कौन कौन महिलाएं हैं । पत्नी बता देते थे कि अमुक व्यक्ति यहां रहता है, उसका नाम बता दिया—एक उनकी मां रहती है, एक उनकी पत्नी है, एक उनकी विवाह रहती है । अंशजे से उनकी उम्र भी बता दी । वही लिखा कर प्रिन्ट हो गया । इस प्रकार सही सूची न बनने की वजह से बहुत सी महिलाएं मत देने से वंचित रह गयीं । इन्वैक्शन कमिश्नर के अनुसार जब वे अपना नाम नहीं बतलाती थीं, तो अब फोटोग्राफ या आइडेंटिटी कार्ड रख देने से भी वही बात होने वाली है । वहां पर जब आइडेंटिटी कार्ड तैयार करने वाला जायेगा अगर पुरुष या मालिक घर में न होगा तो पड़ोस में आइडेंटिटी कार्ड दे दिया जायेगा ।

तो सप्रकार इन आइडेंटिटी कार्डों में जिनमें फोटोग्राफ नहीं होगा, उनका दुरुपयोग हो सकता है । सरकार से मैं सहमत हूं और मुझे बड़ी प्रसन्नता है कि वे जिस प्रकार की भी गलतियां होती हैं या मतों का दुरुपयोग होता है, उसको मही करने के यत्न में हैं । यह बहुत सही है और उनके उद्देश्य से मैं पूरी तरह सहमत हूं और मैं चाहती हूं कि मतों का जितना भी दुरुपयोग या गलत उपयोग मिटाया जा सके उतना मिटाना चाहिये । पर यह फोटोग्राफ वाली बात कभी चलने वाली नहीं है ।

एक माननीय सदस्य : क्या किया जाय ?

श्रीमती शारदा भार्गव : महिलाओं के बारे में आपको मान्य है कि वे पुरुषों के सामने पदों करती हैं । मैं अपने अनुभव की बात कहती हूं कि राजस्थान में वे औरों के सामने भी अपनी शक्ल नहीं दिखातीं, पुरुष की बात क्या कहें । सब जगह यही बात है । तो क्या आप यह समझने हैं कि वे अपना फोटोग्राफ पब्लिश कराने को तैयार होंगी ? जरा आप प्रैक्टिकल होकर देखिये इसका परिणाम क्या होगा ? इसका परिणाम यह होगा कि जिस तरह से सन् १९५२ के इन्वैक्शन में लाखों महिलाएं अपने मताधिकार से वंचित हो गई थीं, उसी तरह से अब आप वंचित करेंगे और इस व्यवस्था से भी महिलाएं ही मताधिकार से वंचित होने वाली हैं ।

श्री जस्पत राय कपूर (उत्तर प्रदेश): फोटोग्राफ देने की बात नहीं है, यह तो उन्हीं के पास रहेगा ।

MR. DEPUTY CHAIRMAN: Order, order.

श्रीमती शारदा भार्गव : चूंकि समय बहुत कम है, मैं फिर आप से कहना चाहती हूं कि दो चार दोष जो इसमें रह गए हैं, उनमें संशोधन होना चाहिये । इसलिये मैं अपनी सह राय देना चाहती हूं कि आप इस बिल का

[श्रीमती शारदा भार्गव]

सेलेक्ट कमेटी में भेज कर इस पर फिर से विचार करें और इस कलाज के संशोधन करने की विशेष आवश्यकता है। आशा है, आप मेरा यह शो न स्वीकार करेंगे।

SHRI A. K. SEN: Mr. Deputy Chairman, Sir, the first point that has to be answered is the question whether we should or should not have sent this Bill to another Select Committee of this House. Sir, it is an amending Bill containing a very few important provisions, and the three important provisions that are there, according to me, have been and necessarily can be debated threadbare on the floor of the House, and I do not see any particular advantage in having a Select Committee for the purpose of going into these few provisions. In fact the Select Committee that we had in the other House recommended one important change, the deletion of section 7(d) of the Act of 1950 which the House rejected. The House rejected that clause

SHRI B. B SHARMA: That was good

SHRI A. K. SEN Good or bad the House has rejected it. It must be good; the House being supreme, its rejection must be held to be good.

I can understand the anxiety of hon Members from this House regarding the amendment to section 17 of the 1950 Act. Hon Members will recollect that we are bringing the law back to the stage in which it was in 1954. Only in 1956 was this change inserted, namely, the addition of the words "in the same State". Now it has been found to create so many difficulties by the same voter being registered in several constituencies in different States, and many complaints came recently from an area where a very contested by-election was fought, where the allegations were that a large number of voters were enrolled in Madras and also in Kerala and they were just being moved from one State to another for the purpose of voting.

SHRI H. N. KUNZRU: How can the voters be moved from one State to another?

SHRI A. K. SEN. It is only a few miles across the border. The complaint is that they were.

SHRI P. S. RAJAGOPAL NAIDU: It is a fact.

SHRI A. K. SEN. In fact complaints reached me personally, apart from the Election Commission, even before the election and also after the election. Well, for the purpose of allaying all fears I think it is absolutely healthy that no voter should be enrolled in more than one constituency, whether in the same State or outside. This limitation that it will only apply in one State and not when it is in another State is artificial. It has led to very grievous complaints, and it is absolutely necessary that we should not have this limitation only for a State and not for outside a State. There is no reason why it should be so. It is true that henceforward those few Members of this House who would be coming here through future elections, that they would have to come from the State constituency in which they are registered, and I do not see any harm in it. Those who have already been elected are here already; they are not affected; this Act is not going to affect their position. It is only to future elections that this Bill will apply, and I do not see any difficulty whatsoever in a person standing from the State in which he is actually enrolled. I do not see any reason to suppose that the rights of any Member of this House have been affected; the existing Members have not been touched at all; it is only for future Members that this Act will apply. It is also true that under article 80 of the Constitution the Members of this Sabha must represent the States, "not more than two hundred and thirty-eight representatives of the States". That is the language of article 80. Therefore it is all the more necessary that they come

from the State in which they are registered. Why should they come from another State? I do not see how their rights would be curbed if they cannot stand from another State where they are not registered.

SHRI SHEEL BHADRA YAJEE: But the Lok Sabha candidate can stand from everywhere.

SHRI A. K. SEN: It is the House of the People; this is the House of the States. It is in the very nature of things. You are not representing the people; you are representing the States, with due deference to every one of us. This is the very nature of your character under the Constitution. In any event, whether they represent a State or not, it is but proper that future Members should come from and represent those States in which they are registered. I do not see how their rights are curbed, and so far as the existing Members are concerned, they are not curbed at all.

SHRI V. K. DHAGE: It is the question of these very existing Members becoming the future potential Members. They can come only from the constituencies in a State in which their names are registered.

SHRI A. K. SEN: Like Mr. Dhage another hon. Member gave an example. He said that he has now been transferred from Hyderabad to Bombay. Well, if he has been transferred from Hyderabad to Bombay, he will in future come from Bombay in the next election if the territory in which he is registered has since been merged in Bombay.

SHRI V. K. DHAGE: If I might interrupt the hon. Minister, what Mr. Bisht pointed out was as to how you would construe "ordinary residence".

SHRI A. K. SEN: That is a different matter. We are now dealing with the curbing of rights of the Members at

this stage. So far as "ordinary residence" is concerned, that is a different matter to which I shall come presently. That disposes of the question regarding affecting the rights of the existing Members here, and I am sure it is clear that none of the rights is affected.

SHRI H. N. KUNZRU: They are affected, only you don't recognise it.

SHRI A. K. SEN: They are not affected.

SHRI H. N. KUNZRU: They are affected.

SHRI A. K. SEN: You remain where you are; Mr. Dhage remains where he is and others remain where they are.

DIWAN CHAMAN LALL: I do not want to interrupt my hon. friend, but is it not a fact that Members have a certain right today to stand from any State that they choose, not necessarily from the State where they are registered?

SHRI A. K. SEN: You have got to be registered; the only right now is that you can be registered in more than one State. So far one can be registered in more than one State. That right is being taken away now. It was put forward that it leads to great difficulty if a man's name is registered in more than one State; we have come across these difficulties.

MR. DEPUTY CHAIRMAN: He has to choose the State that he wants to represent.

SHRI A. K. SEN: I do not see what difficulty Mr. Dhage will have in future. We shall welcome him back here as the representative of Bombay instead of as the representative of Hyderabad. I do not see any reason . . .

SHRI V. K. DHAGE: Is the choice left to the candidate?

SHRI A. K. SEN: Of course, the choice is left to you in the sense that your 'ordinary residence' determines this; I mean, your 'ordinary residence' depends upon your choice. The choice is always yours. You determine your 'ordinary residence' and your 'ordinary residence' determines the State where you are registered. That is all.

SHRI J. S. BISHT: He will have to migrate from Hyderabad to Bombay.

SHRI A. K. SEN: No, no, he remains where he is; his territory has been transferred to Bombay; that is all.

SHRI J. S. BISHT: But he lives in Hyderabad.

SHRI A. K. SEN: If he lives in Hyderabad he has made his choice and therefore he cannot complain about it. Now if he is living in Hyderabad he cannot hope to be registered in Bombay. That we are going to stop.

SHRI V. K. DHAGE: I may be living in both the places.

SHRI A. K. SEN: All personalities in this House are always courteous, and if they were agreed on the principle that it is not desirable to allow a man to be registered in more than one State, then all these personal inconveniences—I do not consider them inconveniences at all, but all these personal inconveniences—must necessarily follow depending upon the choice he has made with regard to his ordinary habitation.

SHRI JASPAT ROY KAPOOR: I am afraid the whole question is a little misunderstood. My point is that a citizen of India residing anywhere in India can stand for the Lok Sabha from any constituency. A person residing in Bombay can stand from a constituency in Madras for the Lok Sabha, but it is not so the case with regard to elections to Rajya Sabha.

SHRI A. K. SEN: You don't want to equate yourself, do you, and even if you try to, you cannot with the Lok Sabha, because the Constitution has made a very great difference between your status and the status of the representatives in the Lok Sabha. You represent the States and not the people of any particular constituency

(Interruptions.)

SHRI H. N. KUNZRU: The Law Minister, I am afraid, is begging the question.

SHRI A. K. SEN: Hon. Members have made three points and I answer them.

SHRI TRILOCHAN DUTTA (Jammu and Kashmir): Suppose I belong to a particular State . . .

SHRI A. K. SEN: Let us not take any particular example.

SHRI TRILOCHAN DUTTA: All right, I am raising it generally. It is not necessary that a person belonging to the Bombay State must be returned to the Council of States to represent that State. After all the person who comes here has to be selected by that particular State to represent their interests. Now maybe that a particular State can find certain other person who is not ordinarily resident in that State but is better able to represent their interests. There should be no bar in that case.

SHRI A. K. SEN: Then he ought to be registered there; if it is found so desirable that he should represent Bombay and not his home State, he ought to be registered in Bombay. Why should he be registered in Bombay and at the same time be registered elsewhere? I cannot understand that; it is begging the question. If I represent Rajasthan better than Bengal, then I ought to be registered in Rajasthan.

SHRI JASPAT ROY KAPOOR: But only if you go and reside in Rajasthan

SHRI A. K. SEN: If I have the temerity to represent Rajasthan, I should also take the trouble of registering myself in Rajasthan.

SHRI P. N. SAPRU: There is no dual citizenship here. There is only common citizenship. Therefore by implication you are introducing this notion of dual citizenship.

MR. DEPUTY CHAIRMAN: Mr. Sapru, no question of citizenship is involved here.

SHRI A. K. SEN: If that is so, then I am entitled to get myself registered all over India. After all, we have to make these elections fair and fool-proof, and it is from that point of view that we are approaching this question, not from the point of view of exercising our right with regard to citizenship.

Then, Sir, something has been said with regard to the question of 'ordinary residence'. I said that the expression 'ordinary residence' occurs in the Letters Patents of the three High Courts. So far as the Civil Procedure Code is concerned, it uses the expression 'actual residence'. In the last Act it was defined only by paraphrasing it—'ordinary residence' means only ordinary residence. It did not carry the matter further.

SHRI B. B. SHARMA: Who will determine it?

SHRI A. K. SEN: The Election Officer will determine it.

SHRI B. B. SHARMA: That will be very invidious, because supposing . . .

SHRI A. K. SEN: Does the hon. Member want to determine it himself in the Rajya Sabha? He has to allow some officer to function.

SHRI P. N. SAPRU: Any appeal provided?

SHRI A. K. SEN: Yes. In the old Act, apart from the question of

'ordinary residence', there was the question of ownership and possession of a house. What the present Bill seeks to do is to delete the provision regarding ownership and possession of a house. Even under the old Act it was left to the Election Officer to decide all these questions. Sir, there is a good deal of misunderstanding in appreciating the nature of the amendment proposed. The amendment does not confer jurisdiction on the Electoral Officer which was not there already. The jurisdiction of the Electoral Officer was already there, not only with regard to 'ordinary residence', but also with regard to possession and ownership of houses. He determined ordinary residence; he determined possession and ownership. Now he determines only ordinary residence and not possession and ownership of houses. Now, Sir, the hon. Members have not suggested which other officer ought to be entrusted with this duty. They have done their duty well.

SHRI B. K. P. SINHA (Bihar): May I seek some clarification, Sir? Previously there was some foolproof and objective standard—ownership of a house, possession of a house. Now you are leaving everything to the subjective evaluation of an officer. What does 'ordinary residence' mean? It may mean six months to one man, and it may mean ten months to another man. So, there are varying standards varying with officers.

SHRI A. K. SEN: This is all objective. The hon. Member is a lawyer, and he can understand it fully well. It is purely objective. It is not dependent upon the subjective will of the officer. It is as objective as the other thing. And if he commits a mistake, then, Sir, as under the old Act, there is a provision by which the Chief Election Commissioner has the right to order a revision of the rolls under section 21(2). There is no other machinery which the hon. Members can devise better than this. It has worked very well so far.

(Interruption.)

SHRI B. B. SHARMA: May I seek some clarification, Sir?

SHRI A. K. SEN: I do not know what further clarification is asked for, because I think I have already clarified the position. I have shown how the jurisdiction is already there. These Electoral Officers have been the First Class Magistrates. And if this work is to be done judicially, it should be left to those First Class Magistrates who have been doing this work before also, subject to the final revising authority of the Chief Election Commissioner. And this system has worked well.

SHRI ANAND CHAND: May I pose one question, Sir? According to the old law, the term 'ordinary resident' had with it the words 'or owns a house'. Now those words are not there, and only 'ordinary resident' remains. The mere fact that he owns a house does not make him an ordinary resident. The whole contention has been . . .

SHRI A. K. SEN: That is not a question, Sir. The hon. Member is only making a submission.

SHRI ANAND CHAND: When it is so difficult even for us to follow the implication of 'ordinary resident', how difficult would it be for the Electoral Registration Officer to follow? That is my question number one. Secondly, Sir, with regard to the finding of the Electoral Registration Officer, there is no question of going in appeal to the Election Commission under the law . . .

(Interruption.)

SHRI A. K. SEN: In the last heated by-election with regard to the Bhowanipore constituency, what happened? Many questions were asked by Mr. Bhupesh Gupta. The Chief Election Commissioner did order a revision of the rolls, including 1,200 voters. But that does not matter. Under the old Act, Sir, 'ordinary resident' and the person who owned a house were different persons, and

both had to be determined in the alternative. The hon. Member thinks that 'ordinary residence' was coupled with the words 'or possessing a house'. But that was not so. The two are quite separate from each other. The word 'or' makes that position clear. Either he is an ordinary resident or he owns a house. In most cases, Sir, the Chief Election Commissioner had to determine whether he was an ordinary resident or not, and he followed the well-known meaning of the words 'ordinary residence'.

SHRI B. B. SHARMA: Suppose, Sir, I am residing here in Delhi as a Member of Parliament. I own a house and some property in my own village in U.P. Now when you are taking away that clause, I will not be entitled, on the basis of my owning a house in Azamgarh, to be enrolled as an elector in U.P., but I will be enrolled here in Delhi. Will that not cause some difficulty to me?

SHRI A. K. SEN: No; not at all. You read the Bill. We have said that a Member of Parliament who is away in connection with his work in Parliament remains an ordinary resident.

SHRI V. K. DHAGE: It is not a question of work in Parliament.

SHRI A. K. SEN: The question was about Parliament.

SHRI B. B. SHARMA: I am putting it again. Suppose a man is carrying on business in Delhi regularly, and because he goes for a month or so . . .

SHRI A. K. SEN: You are again bringing in another concept altogether, because a man may carry on business here without ordinarily residing here. Don't bring in two things.

SHRI B. B. SHARMA: Sir, business can be of various types.

SHRI A. K. SEN: That is a different matter. But the jurisdiction of a court over a man who carries on business does not depend upon his residence.

That is again another well-known judicial expression as Mr. Sapru will tell you that a man may not be ordinarily resident but he may carry on business and the court will have jurisdiction to try his case. Now that disposes of the question about ordinary residence and I think the only thing that remains is about identity cards. Most objections have come from our Lady Members. They forget that even *Purdahnashin* women have to subject themselves to being marked with indelible ink and they have to subject themselves to enquiries in the course of which they have to answer the questions. They have to say what their names are. So the example the Lady Member gave here that they refused to give their names and so have been disenfranchised, will not help them.

SHRIMATI SHARDA BHARGAVA: You have not followed.

SHRI A. K. SEN: I have followed.

SHRIMATI SHARDA BHARGAVA: The Election Commissioner said that it was the reason—that they did not give out their names. It was wrong. They are prepared to give out their names . . .

SHRI V. K. DHAGE: But not show their faces?

SHRI A. K. SEN: The hon. Lady Member had said that if they are not willing to give their names, they will be all the more unwilling to be photographed. She said so but at the present moment a strict *Purdahnashin* . . .

SHRI B. B. SHARMA: And get compared to the photograph and avail themselves before the Electoral Officer . . .

SHRIMATI SHARDA BHARGAVA: Sir . . .

SHRI A. K. SEN: Will you kindly allow the question to be answered instead of putting questions all the

time. At the present moment the *Purdahnashin* ladies are taken to booths where there are lady Presiding Officers and they only expose their fingers in the presence of lady Presiding Officers. If women object to their identities being checked by lady Presiding Officers, the law cannot encourage such tendencies because the rights of citizenship have to be exercised with every responsibility that a citizen bears for the purpose of allowing the State to have the democratic machinery function properly and fairly. So they cannot have all their ways. If they are so cussed that even before lady members they will not allow themselves to be photographed, the law cannot allow them . . .

SHRIMATI SHARDA BHARGAVA: Sir I have not . . .

SHRI A. K. SEN: Lady photographers photograph those who are *Purdahnashin* women and we are providing not only for photograph-identity cards but for identity cards without photographs or other means of identification. I cannot imagine why a lady who is so anxious to cast her vote intelligently either for one party or the other should object to allow herself being examined by ladies for the purpose of seeing that she alone votes and not somebody else in her place. What is the purpose of all this?

श्री किशोरी राम (बिहार): अगर यह फोटो वोट देने के बाद किसी म' के साथ प दिया जायेगा तो

MR. DEPUTY CHAIRMAN: Order, order. Please address the Chair.

SHRI A. K. SEN: No, Sir. This is a point which I want to explain not that I want to a void because this is a point over which there is a lot of misunderstanding. The rules that the Election Commissioner is going to frame are taking into account all these difficulties in our social system but I can assure hon. Members that in the

[Shri A. K. Sen.]

two constituencies in which the trials have been made in the city of Calcutta one a predominantly Muslim constituency and the other a predominantly, let us say, Rajasthani and other people residing where women are more conservative.

SHRI KISHORI RAM: Bihar is most backward.

SHRI A. K. SEN: You will not own that even if I say. There are two constituencies in Calcutta where tests have been made and no difficulty of this sort which the hon. Members have envisaged has occurred and more than that I think that answers Mr. Dhage's point. He said that unless everyone is given an identity card, this should not be enforced. The language of the section is that. The hon. Members will read that. It is only in that constituency where identity cards have been delivered that this requirement will be enforced, not in others.

SHRI V. K. DHAGE: No. What I said was that since you have amended Section 17 and also inserted the identity card, the question of impersonation becomes zero.

SHRI A. K. SEN: Yes.

SHRI V. K. DHAGE: Therefore section 20(1) need not be amended.

SHRI A. K. SEN: You are assuming that identity card business would be applied in the whole country. It is not so. It will be applied only to that constituency where it has been delivered whereas the other thing is meant for the whole country.

SHRIMATI T. NALLAMUTHU RAMAMURTI (Madras): Do I understand that the Government bears the expenditure for taking the photograph?

SHRI B. B. SHARMA: That is obvious.

SHRI A. K. SEN: Certainly otherwise it would have been a taxing statute. We would have had to take the powers of taxation. That answers all the objections. Therefore, I say that I have to unfortunately oppose this motion for reference to Select Committee.

MR. DEPUTY CHAIRMAN: Do you want to press your motion to vote, Mr. Anand Chand?

SHRI ANAND CHAND: Yes, I feel that it should be pressed.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill further to amend the Representation of the People Act, 1950, and the Representation of the People Act, 1951, be referred to a Select Committee consisting of the following Members:

1. Shri P. N. Saprú
2. Shri B. K. P. Sinha
3. Dr. W. S. Barlingay
4. Shri Jaspat Roy Kapoor
5. Shri P. S. Rajagopal Naidu
6. Shri J. S. Bisht
7. Shri Deokinandan Narayan
8. Shri B. B. Sharma
9. Pandit S. S. N. Tankha
10. Shrimati Yashoda Reddy
11. Shri H. N. Kunzru
12. Shri Perath Narayanan Nair
13. Shri Rohit M. Dave
14. Shri V. K. Dhage
15. Shri Anand Chand (the mover)

with instructions to report by the 1st day of the next session."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill further to amend the Representation of the People Act, 1950, and the Representation of

the People Act, 1951, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall take up clause by clause consideration of the Bill.

Clauses 2 to 7 were added to the Bill.

Clause 8—Amendment of Section 20

SHRI ANAND CHAND: Sir, I move:

1. "That at page 2, for lines 18 to 20, the following be substituted, namely:—

'(1) A person shall be deemed to be ordinarily resident in a constituency if he ordinarily resides in that constituency or owns, or is in possession of, a dwelling house therein.'"

MR. DEPUTY CHAIRMAN: The clause and the amendment are before the House.

SHRI ANAND CHAND: Sir I have moved this amendment in spite of what the hon. Minister has said because I feel that the law as it stands at the moment without putting in the amendment as suggested now in the Bill that has come from Lok Sabha would do no harm. I mean all the arguments advanced that it will make people reside in more than one constituency—I don't see there is any difficulty if people have houses, owning in five separate areas and they live part of their time in one of these areas in many States. I don't see any difficulty because they will only be voting once. So I think that this law has not worked harshly, that there is no difficulty in allowing the present Statute to stand as it is. Therefore my amendment is worded on the same lines as the existing law and I think the law as it has been amended by the Lok Sabha and put in here should be left where it was in the beginning.

SHRI A. K. SEN: Sir, I have already explained why the Election Commissioner thought it necessary to have the law changed because a person was being allowed in several constituencies simply because he owned or possessed houses all over the place. It is much better and much more scientific and logical to register only in the place where he ordinarily resides and mere possession of houses or mere ownership of houses all over the place should not entitle him to stand. I think it is only logical that we leave it as it is in the Bill.

MR. DEPUTY CHAIRMAN: The question is:

1. "That at page 2, for lines 18 to 20, the following be substituted, namely:—

'(1) A person shall be deemed to be ordinarily resident in a constituency if he ordinarily resides in that constituency or owns, or is in possession of, a dwelling house therein.'"

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 8 stand part of the Bill."

The motion was adopted.

Clause 8 was added to the Bill.

Clauses 9 to 39 were added to the Bill.

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

SHRI A. K. SEN: Sir, I move:

"That the Bill be passed."

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be passed."

The motion was adopted.

MR. DEPUTY CHAIRMAN: The House stands adjourned *sine die*.

The House then adjourned *sine die* at ten minutes past five of the clock.