

ALLOTMENT OF TIME FOR CON-
SIDERATION OF THE INDIAN
TARIFF (AMENDMENT) BILL,
1961.

MR. DEPUTY CHAIRMAN: I have to inform Members that under rule 162(2) of the Rules of Procedure and Conduct of Business in the Rajya Sabha, I have allotted 45 minutes for the completion of all stages involved in the consideration and return of the Indian Tariff (Amendment) Bill, 1961, by the Rajya Sabha, including the consideration and passing of amendments, if any, to the Bill.

REFERENCE TO NOTICE OF
MOTION FOR PAPERS

SHRI BHUPESH GUPTA (West Bengal): I have rather an important matter to bring to your notice. I have given notice of a Motion for Papers under rule 156. An Indian Newsreel, showing the process of election . . .

MR. DEPUTY CHAIRMAN: You have given it only this morning. It will be considered.

SHRI BHUPESH GUPTA: Only tomorrow is there. The Newsreel is being shown about the process of election. All election symbols are there excepting that of the Communist Party.

MR. DEPUTY CHAIRMAN: It is all right. I will consider it.

SHRI BHUPESH GUPTA: Thank you very much, Sir, but please do consider it.

THE CONSTITUTION (ELEVENTH)
AMENDMENT BILL, 1961

THE MINISTER OF LAW (SHRI A. K. SEN): Sir, I beg to move:

"That the Bill further to amend the Constitution of India, as passed

by the Lok Sabha, be taken into consideration."

Sir, this is a rather non-controversial amendment of the Constitution which from the working of the Constitution during the last twelve years has been found necessary. Hon. Members will see that we are seeking to amend article 66 of the Constitution for two purposes, first of all, to make the election of the Vice-President, in consonance with the actual practice of such election. When the Constitution was framed, unfortunately the expression used was as follows:

"Article 66(1).—The Vice-President shall be elected by the Members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation."

Now, a joint meeting naturally means the convening of both Houses of Parliament, the Speaker of the Lok Sabha presiding over the deliberations and conducting all the deliberations and yet, under article 324, the entire work of election is vested in the Chief Election Commissioner. The work of nomination, screening of nominations and various other things must naturally precede the convening of the joint meeting. In actual practice, what happens is people come, cast their votes in the ballot box and go away. What was intended naturally was an electoral college composed of Members of both Houses of Parliament not a joint meeting as such because then the whole question will arise as to who is to conduct the proceedings.

SHRI BHUPESH GUPTA (West Bengal): How do you say that this was intended?

SHRI A. K. SEN: It is my submission and it is for the House to accept it or not. I am certainly at liberty to make my own submission having regard to the very circumstances which are

contingent on such matters. We, therefore, propose, first of all, that the first amendment should be as indicated in clause 2 of the Bill, namely, that the election shall be by members of an electoral college consisting of members of both Houses of Parliament. This will not bring the matter in conflict with article 324 and it will be possible for the Chief Election Commissioner to hold the election without the intervention of a joint meeting wherein again the Speaker will necessarily have to intervene.

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): But the word is joint meeting, not joint sitting.

SHRI A. K. SEN: Yes, but joint meeting is joint sitting.

SHRI BHUPESH GUPTA: Not sitting. Sitting and meeting are different.

SHRI A. K. SEN: Whatever it is, it needs clarification.

Now, the second amendment has been necessitated because of the fact that at the time the Constitution was framed, it was possibly not contemplated that various seats would remain unfilled due to the fact that election in a country like India would have to be carried out in far-flung areas including the snow-bound areas of the Himalayas where elections would not possibly be held along with elections in the rest of India, and any vacancy in the composition of the Lok Sabha would make the election challengeable on the ground that all the Members forming the electoral college were not there at the time of the election. In fact, the point was taken in a case though the Supreme Court did not decide it, and ever since we have had this matter examined on the highest authority and it has been found necessary to seek an amendment to set matters completely at rest so that there will be no difficulty in the future in regard to this matter and no challenge would be possible on the ground that there would be any

vacancy in the electoral college. That is the reason why we are seeking to add to article 71, a fresh clause, after clause (3) which is enacted in clause 3 of the Bill itself. It will now be incorporated as clause (4) of article 71 of the Constitution. It will read thus:

"(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him."

There is another possibility and that is, even after the full elections, possibly a few resignations would make the electoral college incomplete and, therefore, just by voluntary resignations the election of both the President and the Vice-President may be obstructed if any one wants to in future. Till now the electoral college has behaved with responsibility as is expected but since this loophole has now appeared and has come to our notice, it is necessary that before the election we fill it up.

This is the purpose of the amendment, Sir, and I recommend this measure for acceptance.

SHRI T. S. AVINASHILINGAM CHETTIAR (Madras): May I ask a question, Sir? Have they considered the maximum percentage of vacancy? He may kindly clarify it. He may indicate the number of persons barring which the election will not take place.

SHRI A. K. SEN: Even 5 per cent. may be there by voluntary resignation. Supposing all the opposition parties combined and just before the Presidential election said, "We have counted it and it is . . ."

SHRI BHUPESH GUPTA: You mean, a satyagraha may be committed?

SHRI A. K. SEN: There is that possibility of obstructing the election of the President or the Vice-President.

Shri A. K. Sen.]

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Nevertheless, I said this in the Rajya Sabha that if there was any apprehension in the mind of the opposition parties that the Chief Election Commissioner, though that is unthinkable, would rush with an election with the electoral college substantially unfilled, I would be prepared to consider any amendment which would be reasonable in the circumstances and which would fix a percentage, which may not be unreasonable from the point of view of contemplated possibility, of voluntary resignations to make the election of the President impossible but the opposition parties did not suggest any such amendment in the other House. If they had . . .

SHRI BHUPESH GUPTA: We would do it here.

SHRI A. K. SEN: Neither the P.S.P. nor the Communist Party brought forward an amendment though I repeatedly . . .

SHRI RAJENDRA PRATAP SINHA (Bihar): We have got it here.

SHRI A. K. SEN: Now, an amendment means going back to the other House and I am afraid that I cannot repeat that offer. This is the reason why I made this offer in the other House so that it might be considered. If it could have been considered . . .

SHRI BHUPESH GUPTA: What is the difference between an amendment moved by us and amendment moved by the Congress?

SHRI A. K. SEN: The difficulty is that if this amendment is now accepted here, before the next general elections we shall not have this Constitution amendment. That is the great difficulty and that is why it was made clear to the other House. But at that time none of the opposition parties accepted my offer though I repeated it as the proceedings will show—several times I repeated the same things . . .

SHRI BHUPESH GUPTA: You could have yourself done it.

SHRI A. K. SEN: I am afraid, Sir, that it will be impossible for the Government to consider any amendment now because it will mean going back to the other House.

SHRI BHUPESH GUPTA: On a point of order, Sir.

SHRI A. K. SEN: There is no point of order.

SHRI BHUPESH GUPTA: On a point of order, Sir. The hon. Minister has made a rather damaging statement. Even before the amendments have been moved the hon. Minister says that it would be impossible for the Government to consider any amendment. Now is it proper for the hon. the Law Minister to make the statement even before the amendments?

MR. DEPUTY CHAIRMAN: He is answering a question.

SHRI A. K. SEN: Mr. Chettiar has put a specific question relating to this amendment and he asked me what the views of the Government would be, and I explained the attitude of the Government in regard to such amendments. I am entitled to do so, if not for the enlightenment of Mr. Gupta, at least as a courtesy to the query made by Mr. Chettiar, a very esteemed Member of this House.

PANDIT HRIDAY NATH KUNZRU: (Uttar Pradesh): Did not the Law Minister promise in the other House to bring forward an amendment himself to the effect that if there was a deficiency of 5 per cent. among the Members elected to both the Houses that will not vitiate the election?

SHRI A. K. SEN: What I said was that if there was the apprehension of the opposition parties—because some apprehension was indicated—then, if they moved such an amendment I

would be prepared to consider it and, if necessary, bring an amendment myself according to such drafting changes as were warranted. I made that offer three times. Dr. Kunzru is quite right. I made the offer not once but three times, but not one opposition Member indicated any such amendment. On the contrary, some of them raised the question of *mala fides* and everything for bringing this Bill.

The question was proposed.

SHRI BHUPESH GUPTA: Mr. Deputy Chairman, Sir, we have had a brief speech from the hon. the Law Minister, and right at the beginning he said that it was the intention of the Constitution-makers—well, you may call them the founding fathers—whatever they are—to have this arrangement that he is now putting forward. Now where does he read this intention? I would like to know it. Then he said that it was his opinion. Now, Sir, there is a custom, a convention in this matter; when a statute is very clear and unambiguous, we do not go into the question of intention. These are the normal rules of interpretation—we do not go into that. When it is ambiguous and some doubt arises, only then we go into the question of intention. As far as the statute, as far as article 66 is concerned, here, Mr. Deputy Chairman, nothing is ambiguous or unclear. “At a joint meeting in accordance with the system of proportional representation” that is what is provided for, and I think the Constitution-framers, like Dr. Kunzru and others, did know the meaning of the words, “a joint meeting”. “A joint meeting” is a very simple expression and, in the context, is a meeting of the two Houses. Now, where is the ambiguity about it so that it becomes necessary for the hon. the Law Minister to fall back on what he considers or imagines to be the intention? Now, Sir, you cannot play fast and loose with the interpretation of the Constitution. Secondly, I would have understood the hon. the Law Minister's position if he had pointed out from the proceedings in the Cons-

tituent Assembly that this is what was meant by the speeches of a number of hon. Members when this particular or corresponding article came in for discussion. He has not done that even. Therefore, the proceedings of the Constituent Assembly are not in his favour. We know the intention was so clearly stated here that Members of the Constituent Assembly did not have to debate over this matter, or there was no controversy as to what these particular words meant. Therefore, in the proceedings of the Constituent Assembly you do not have any such thing to be cited in favour of the Law Minister. So his theory of intention is blown sky-high. Now, he can say that he feels like changing the Constitution. It is open to the Government and open to the push-button democracy to have the Constitution changed whenever they liked—I know it. He can get up and say: “I think that that arrangement was wrong. Now, in the light of experience, or according to our new-found wisdom the Constitution article has to be changed.” That would have been a very forthright approach in this matter rather than trying to humour us by talking about what is called ‘intention’. Now he said that he made an offer in the other House, to have certain amendments accepted, amendments along the lines as suggested in the other amendment in this House by the hon. Mr. Sinha. Well, he made offers. What prevented him? Does he believe in always making offers? What prevented him, from himself putting this offer into practice? It is not good for a politician or a Minister or a man in private life, who always goes on making offers? And here he made. If he thought that some substance was there, then he could have himself, as the hon. Dr. Kunzru pointed out, sponsored an amendment. This is not the first time that he would have done so. This would not have been something out of precedent, because the Government do sometimes bring in, on their own, amendments, after second thoughts, over such matters and get these

[Shri Bhupesh Gupta:] amendments passed. Why was it not done in this particular case? We have not had a satisfactory explanation.

Then, Mr. Deputy Chairman, he asked us to rely on the Election Commission. Yes, we will rely; but we do not rely upon the Government. I shall give you an example. The Election Commission stands for free and fair elections. You will certainly have it in mind where the purpose is frustrated, because of certain vacancies and so on, where he may not like to have elections. What happens is that the Election Commission lays down rules for free and fair elections—as I was just pointing out. There the Government is showing a new thing in the country, to teach people about election processes, the voting, and so on, giving all symbols there except the symbol of the Communist Party. Such things they do. Therefore, Mr. Deputy Chairman, we must bear it in mind that what the Election Commission may try to do, these gentlemen on the Treasury Benches may try to upset by making other arrangements, as I have shown. I have got a telegram from Andhra where the election newsreel is being shown by the Ministry of Broadcasting, and so on, where people are taught how to vote, and so on. All these symbols are shown but the Communist Party symbol has been taken out. I just gave an example.

SHRI A. K. SEN: In Bengal there is a saying—A known Brahmin needs no sacred thread to declare him as such.

SHRI BHUPESH GUPTA: Yes, it seems the sacred Ministers are giving up all their threads. The trouble is this. Now, he should have known it, all this thing. Therefore, Mr. Deputy Chairman, I am not satisfied. And let us not be intimidated that our amendments will not be accepted, because the other House cannot meet. Once you committed a mistake; we were summoned by air to meet and to pass certain things; a three-day

Session took place. Now, when the Government goes wrong, it can call us, send telegrams, as it had done on the last occasion. We all came then to pass something and then to disperse. It was a good bargain for the Members, because travelling allowance and everything came along. But the Government had it done. Now here, if they think it is something good, it is quite possible to summon the Lok Sabha Members here. Let them come, draw travelling allowance, accept the wisdom of the Rajya Sabha and have it passed. Now Government will not do it. Therefore, let us not talk about all this kind of thing.

Now about the Bill, about the text of the Bill. I have given, Sir, a thoughtful amendment, and I wish to raise certain questions of principle. Quite recently I had brought forward a Constitution (Amendment) Bill regarding the tenure of office of the President, and later I withdrew it after fully satisfied with what the Prime Minister had said in this House, and I would be quite prepared to do the same thing with regard to my amendment here if I get satisfaction from the Government.

Now, Sir, the election of the Vice-President is very very important. We are concerned with the election of the Vice-President here. In the United States of America, where the Vice-President, so long as the President is in office, has some normal ceremonial functions, there, the U.S. Vice-President is directly elected by the votes of the people. People can go and talk about whatever they liked, for or against a particular candidate. In our country it is not so. We have a Constitution. Well, I may say that it was not intended but we have it that way that we Members of Parliament here and Members of State Assemblies become just a vote recording machine. The nomination or nominations come and we are called upon to go there and record our votes this way or that way for or against particular candidates or for a particular candidate if there is only one candidate. This is

how it is done. We have no other function whatsoever. Now, the first point that I want to make in this connection is that from the point of view of indirect election it is repugnant to democratic principles and it is something which should not have been intended by the Constitution-makers if it were at all intended and I take it that it was not intended in this manner perhaps because anybody can talk about intentions. What is here? Whether it is an electoral college or not, we just vote. We just see in the newspapers. We are given the names of the candidates and we just go and vote. Why should it be like this? My suggestion is that in the case of the Vice-President—election of the President we are not discussing here now—we shall have a say in the matter; that is to say, a meeting of the electoral college should be called. I have given an amendment to that effect—and the meeting should discuss this question. Let us have a joint meeting of the two Houses or constitute an electoral college. Whatever way you adopt, I say that there should be a discussion on the proposals for Vice-Presidentship.

MR. DEPUTY CHAIRMAN: You want a debate?

SHRI BHUPESH GUPTA: Yes; a very interesting thing. I would not call it a debate. It is not a debate in the sense that there will be the Opposition and all that. Suppose, three names are there. We meet and we express our opinion. For example, I can support a Congress Party candidate and be with the Congress Party man. Other members here or in the other House may feel that he should be supported if he is a party man. All Congressmen are not of the same stuff and suppose a Congressman is nominated. I shall come to that later. Here we do not have any chance; I do not have an opportunity as Member of this House to explain to the other Members as to why a candidate whom I support should be supported by them. I do not have that opportunity at all. You may say,

'Why don't you go to their houses and plead with them?' But that is not the democratic process; nobody does it. I should have an opportunity here in this very House to get up and say that I think he is the right candidate and you should vote for him or he is a candidate whom you should not vote for. And we shall discuss the candidate on merits. Similarly, suppose according to them I take a very wrong view, Members opposite should be given the chance to explain to me as to why I should accept their point of view and give up my wrong standpoint in the matter. There should, therefore, be a discussion and exchange of opinion on the kind of candidate or person whom we want to fill that high office in our State. And that is democracy. Today we are just asked to give our votes. You see, these points were not raised in the other House; we are wiser people in many ways. Now, it is a decision of your majority; I am not saying your decision is wrong. Twice your decision has been a magnificent decision, excellent decision. Therefore, I am not questioning that. We in the Opposition would never have put up a candidate against him. I am talking about the principle here. The majority party decides upon a candidate. The Congress Parliamentary Party meets in the Central Hall and the Congress Parliamentary Party decides as to who should be the candidate and the matter is settled there; absolutely settled, of course, not in law but in point of fact because they control such a huge majority. The voting machine will work and he will get elected. My regret is that I do not have even the chance to argue why the nomination of the Congress Party should be changed or why they should not vote for some person or why they should vote for somebody else.

SHRI K. SANTHANAM (Madras): Is the hon. Member trying to establish a new fundamental right of abusing a candidate before he is elected?

SHRI BHUPESH GUPTA: Even if Mr. Santhanam is a candidate I will

[Shri Bhupesh Gupta.]

not abuse him. (*Interruptions.*) Suppose Bhupesh Gupta is put up as a candidate and the matter comes up for discussion, will you throw bouquets at me or will you abuse me? You will call me all kinds of things. Well, you may be kind to me individually but you will run me down as a party-man. There is no doubt about it. I will give you that right; let me also have that right. I shall give you that right to run down Bhupesh Gupta if he is put up as a candidate. You take it as cricket, as it is called; you believe in Anglo-Saxon culture.

SHRI AKBAR ALI KHAN (Andhra Pradesh): It is contrary to the basic principles of democracy to discuss personalities.

SHRI BHUPESH GUPTA: You may be right sometimes as I conceded straightway that you have been twice right. You were right in 1952 in making your choice and in 1957 you were again right and the Communist Party co-operated with you by not putting up any candidate when we contested the Presidentship by putting up a joint candidate. I am not quarrelling with that. My quarrel is with the principle. Mr. Deputy Chairman, the office of the Vice-President is an important one. Some people think it is not very important. We think it is very important because he presides here and so it is very important for us. We have intimate touch with the Vice-President in this very House particularly and we should be more concerned about who fills that position because by reason of that he comes to occupy this Chair and he becomes the presiding officer, like you his Deputy, in this House. Naturally, we are intensely interested. I am worried about who is going to be the next Vice-President and who will be the presiding officer here as the Chairman of the Council of States or the Rajya Sabha. I am very much worried because we would like that that tolerance which has been shown here, that wisdom, that knowledge, that high humour and that great in-

telligence we have been experiencing in this House from our Vice-President and Chairman of the Council of States in that capacity should not be missing in the case of the next Vice-President. That is what I am concerned with and I think you all share that view. You take the decision all by yourself; I say that we want to be a party to making that decision and therefore there should be a discussion.

SHRI SHEEL BHADRA YAJEE (Bihar): What has all this to do with the Bill?

MR. DEPUTY CHAIRMAN: You are now repeating your arguments.

SHRI BHUPESH GUPTA: I am only just coming to my argument, Sir. We are all now in a farewell mood. Therefore, Mr. Deputy Chairman, it should be a matter of discussion and debate. It is very important as I said. And what is the guarantee that the Congress Party controlling the majority, as I take it they will control the majority even after this election . . . (*Interruptions.*) There is no guarantee whatsoever; you may not, win Mr. Ashok Sen, but the majority will be there. Two friends are fighting but that is another problem.

Anyway, what is the guarantee? No guarantee at all. We do not know; we are not even consulted. When the majority party decides its nominee for the Presidentship or Vice-Presidentship, even as a matter of convention I do not think even Dr. Kunzru is consulted; certainly he is a very neutral man that way, but we are not consulted. I don't think even the P.S.P. has ever been consulted. No; nobody is consulted and therefore it is one-party business and it becomes in fact an imposition. Therefore it is not good. In our view the Vice-President should be a non-party man, a neutral man, who has no touch with the party, who is held in high esteem by all sections in this country, who is above party considerations, who

evokes a certain measure of confidence and brings dignity and lustre to this great office. We want such a person to be there. Where can I plead it under this arrangement? Once the Congress has put up a candidate all I can do is to put up another candidate and get defeated. I cannot argue with my colleagues in this House. I may be right or I may be wrong. If it is the President, it is more a ceremonial office. We put him on a level different from that of the Vice-President as a dignitary of the State. Now, we project ourselves to the world at large in some ways through the Vice-President. Therefore, it is important in seeing that the personality is of such a stature that he brings credit and dignity to the country. As it is, he is doing it today. That should be the approach. Suppose, somebody slips on that score while giving the nomination, I have no better alternative than coming to this House. The Vice-President has to function here as the Chairman *ex-officio*. The Constitution lays down that. He should be very courageous, one who is not afraid of the Treasury Benches at all, who holds the scales evenly between all the sides of the House and who allows democracy to be asserted rather than to be suppressed by the majority rule. I want this kind of person because while he functions he draws the attraction of the whole country by what he does here. The daily expression of the functions of that office is given in the newspaper and people read it. We know this House has its own dignity. But then for the creation of that prestige and dignity the present Vice-President has played an important role.

SHRI M. R. SHERVANI (Uttar Pradesh): What has all this got to do with the Bill?

SHRI BHUPESH GUPTA: You have not understood it. So, I am defining the qualities of the Vice-President, because I did not see the hon. Member before. He seems to be new to this House. He should know that we

are dealing with the election of the Vice-President. Therefore, we are interested in telling something about what kind of person should be occupying this office and in that connection I am telling you that you should provide there such a procedure as will enable us even to discuss also as to who should be the Vice-President.

SHRI A. K. SEN: With all due respect to the hon. Member, I beg to support the point raised by the hon. Member from this side, in saying what he has said. While he may be relevant in discussing the office, to discuss personalities is completely irrelevant.

SHRI BHUPESH GUPTA: It is not at all irrelevant, because you are amending that particular article of the Constitution and yet you are not giving us an opportunity to express our opinion as to what manner of person the Vice-President should be.

MR. DEPUTY CHAIRMAN: Do not bring in personalities.

SHRI BHUPESH GUPTA: Why is he raising that? I am not bringing in any individual at all. I am bringing in the office. When shall we discuss it? Have I to bring forward another amendment to the Constitution to discuss it? If you like, I shall do that. Therefore, it is very very important. I say it is all the more important in view of the fact that in the course of the next few months we may have to face the situation when we will have to find another Vice-President. Therefore, we are directly interested as to who should be the Vice-President of the country, how he is elected, whether he is . . .

MR. DEPUTY CHAIRMAN: You are repeating your argument.

THE DEPUTY MINISTER OF LABOUR (SHRI ABID ALI): What else can he do?

SHRI BHUPESH GUPTA: Therefore, Mr. Deputy Chairman, I shall get your line clear in this matter if there are no obstructions from the other side

SHRI ABID ALI: So long as he is relevant, there will be no obstruction.

SHRI BHUPESH GUPTA: Therefore, I have given my amendment:

"Provided that a meeting of the Electoral College so constituted has considered on a motion or motions by one or more members, the nomination or nominations of candidate or candidates for election as Vice-President."

That is to say, after discussion, the election takes place. The electoral colleges in other countries sometimes have an opportunity of discussing it. And sometimes here when we elect some people to a particular committee or so on a motion, we can discuss it. A motion comes here. You place it before the House. Whether it is five minutes or ten minutes, we can certainly get up and say something about the candidate or about matters relating to the filling of that office. But here we do not get any chance whatsoever. The electoral college is not given the least chance to express its opinion.

MR. DEPUTY CHAIRMAN: You are again repeating your arguments.

SHRI BHUPESH GUPTA: Therefore, I say this thing should be accepted.

MR. DEPUTY CHAIRMAN: Come to the next point.

SHRI BHUPESH GUPTA: The next point is Congress.

(Interruptions)

MR. DEPUTY CHAIRMAN: Order, order. You have to speak on the Bill.

SHRI BHUPESH GUPTA: Yes. The next point is the Congress Party which controls the Government, because I do not trust this Government.

SHRI ABID ALI: Who tells him to trust it?

SHRI BHUPESH GUPTA: I am not talking about Congressmen. I may trust many of you, but I do not trust this Congress Government which sits on the Treasury Benches.

MR. DEPUTY CHAIRMAN: Order, order. What has that to do with the Bill. We are on the Constitution (Amendment) Bill. The election of the President and the Vice-President, why do you bring in all these extraneous matters? You have got the election platform outside, but not here.

SHRI BHUPESH GUPTA: Therefore, I am not going there. You are going there. I hope you will succeed.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI ABID ALI: He will not go there, because people will not hear him there.

MR. DEPUTY CHAIRMAN: You must be relevant to the Bill.

SHRI BHUPESH GUPTA: Mr. Deputy Chairman, relevancy comes that way. I know that thing. It is not very savoury at all. And when I say unsavoury things, I anticipate interruptions and obstruction from that side.

SHRI ABID ALI: Always irrelevant.

SHRI BHUPESH GUPTA: Now, all I say is that the Government is controlled by the party which controls the majority. It is the majority party . . .

MR. DEPUTY CHAIRMAN: You are again repeating it. You have said that also.

SHRI BHUPESH GUPTA: Therefore, Mr. Deputy Chairman, all I say finally is this. I regret that this matter should have been brought by the Government in this way. Even in bringing forward this Bill they did not consult us. We have had experience of very many offices like that. The Government should have

consulted the Opposition. Instead of doing that before, they prepared this Bill to amend the particular articles of the Constitution. We could have given them certain suggestions as to how the Constitution should be amended in order that this place should be filled in a manner which would be to the satisfaction, by and large, of all sections of the country. We have been denied even this little opportunity. You will understand, therefore, that out of some feelings of disappointment and frustration, if you like that way, having not been consulted on the subject, I speak. And if I may say something new . . .

SHRI ABID ALI: Frustrated man.

SHRI BHUPESH GUPTA: Therefore, finally, I hope that my amendment will be accepted and when the election of the next Vice-President takes place, we should be given an opportunity to discuss the whole thing, to criticise the nominee of the Congress Party and suggest alternative names, and fight out the case on the floor of the House so that the traditions set up in this very House by the present Vice-President are maintained, so that we can have a person who is acceptable generally to the country who is above all petty party considerations of this Congress Party and above all of the Treasury Benches, and who has the courage to put the Treasury Benches in their right place. This is all that I say.

SHRI ABID ALI: Do it in China.

SHRI JASPAT ROY KAPOOR: Mr. Deputy Chairman, I whole-heartedly support clause 3 of this measure which I consider to be very necessary and essential because some doubts have been raised with regard to the questions involved hereunder. So far as clause 2 is concerned, while obviously it is actuated by the best of considerations, I do not think it is at all necessary. I think it is worth while keeping before our mind the four phases of Parliament. One is meeting of Members of Parliament.

Another is the sitting of the Lok Sabha or the sitting of the Rajya Sabha or a joint sitting, which is entirely different from merely meeting of Members of Parliament. Now, the third aspect is the session of Parliament. Parliament is in session even if there is no sitting of Parliament. Lastly, Parliament is in recess. So, there is a good deal of distinction between all these four facets of Parliament. Firstly, what is a meeting of Members of Parliament? 'Meeting of Members of Parliament' simply means that Members of Parliament in their individual capacity may meet at a place. It will not be a sitting of the Lok Sabha or Rajya Sabha or a joint sitting of Parliament. We have used all these words in the Constitution. So far as the election of the Vice-President is concerned, we have used the words "joint meeting of the Members of Parliament". But with regard to the other functions of Parliament we have in every other article used the word "sitting". If there is to be a meeting of the Lok Sabha where any business is to be transacted, it is not a meeting of the Members of Lok Sabha, it is a sitting of the Lok Sabha. Similarly, when both the Houses meet together to transact any formal business jointly it is a joint sitting. That is the word used in our Constitution. Then there is a session of Parliament. Even when the Parliament is adjourned *sine die* it continues to be in session, and that being so, no Ordinance can be promulgated so long as any House of Parliament is in session though not sitting. Therefore, after every adjournment of Parliament *sine die* the President prorogues, and only thereafter the President is authorised to promulgate Ordinances. These are the four different cases altogether.

May I in this connection draw the attention of the Law Minister to article 118, clauses (3) and (4):

"(3) The President, after consultation with Chairman of the

[Shri Jaspat Roy Kapoor.]

Council of States and the Speaker of the House of the People, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Houses.

(4) At a joint sitting of the two Houses the Speaker of the House of the People shall preside".

It is not meeting, it is sitting. So, it has been specifically provided here that when the two Houses meet in the form of a sitting to transact any formal business, the Speaker shall preside. So far as the question of a joint meeting of members is concerned, nowhere has it been provided as to who shall preside, nor need it be. This question was raised in the Constituent Assembly. If I remember right, when I raised the question as to who will preside over a joint meeting, I was made wiser by the then President of the Constituent Assembly by pointing out to me that this meeting was not to be in the nature of a sitting and that it only meant that Members of Parliament would assemble together at a place and of course would cast their votes. The idea I suppose then was that though there might not be and should not be a formal sitting to discuss anything—for obviously it would not be desirable to discuss the question in a formal way as to who should be the Vice-President and who should not be, as my hon. friend, Mr. Bhupesh Gupta, would like it to be—Members of Parliament should meet at a place, discuss it among themselves in the lobby informally, exchange views, canvass among themselves, cast their votes and go away. If there is to be a sitting, as my hon. friend, Mr. Bhupesh Gupta, would like it to be, though he has not used the word "sitting" in his amendment . . .

SHRI BHUPESH GUPTA: Electoral college.

SHRI JASPAT ROY KAPOOR: ... then the whole thing would be discussed whether the candidate is desirable or not. That will be an absolutely big nuisance, and advisedly, therefore when this Constitution was in the making, the word used there was meeting and not sitting, so that we may have both the advantages: all the Members of Parliament meeting at one place, discussing things among themselves privately and individually—not in the form of a formal sitting and in the form of transacting formal business—and casting their votes during such hours of the day as may be fixed by the Chief Election Commissioner. I submit, therefore, that there is absolutely no necessity for amending the Constitution so far as article 66 is concerned. The apprehension of my hon. friend, the Law Minister, if I could say so with all respect to him, is without any foundation. As it is even if on any occasion there is more than one candidate in the field, we can always assemble in Delhi and cast our votes without of course meeting in a sitting. So this difficulty as to who will preside over that meeting does not simply arise because it will not be a sitting. I have, of course, no objection to this amendment because this is of an innocent nature, but Constitution is something very sacred, and we should try to amend it only when it is absolutely necessary. Of course, if we amend it, there is no harm; but better still we do not amend it unless and until it is absolutely necessary to amend it. That is my respectful suggestion, and I am emboldened to make this suggestion because of the very reasonable and, if I could say so, generous attitude exhibited by the Law Minister that he is prepared to accept reasonable amendments. Mine is not an amendment. Mine is a suggestion which he could easily accept simply by not insisting on clause 2 of this measure.

I would like the Law Minister to tell us, if his amendment is accepted, where the Members of Parliament

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 dent, our ideas are coloured by the functions and the duties of the President and the Vice-President in a very different country like the United States of America. There is a vital difference—I would like the House to appreciate—between the Presidents and the Vice-Presidents of the United States of America and India. Let us take first the Vice-President of the United States of America is second in command, and he automatically takes over from the President the moment the President is not there or for whatsoever it may be, just as—you will recall—in the case of Mr. Truman who took over automatically on the death of Mr. Roosevelt, whereas in India there is no such provision. If you look to the various articles of the Constitution, you will find that the Vice-President will function in any vacancy caused in the office of the President for an interim period. Even Parliament has the power to make alternative arrangements for a new President or for the duties of the President to be performed by a person other than the President. Then the President has to be elected within a fixed time after the vacancy is caused because the Vice-President cannot continue for the rest of the term as is in the case of the United States of America. Now we may have the word 'Vice-President' but the most important function of our Vice-President is to be the Chair-man of this House. And I would submit with all my regards and respects for the office of the Vice-President, that the Vice-President of India is more or less analogous to that of the Speaker of the Lok Sabha. If you look to the various articles of the Constitution, the points I am making will be quite clear to you. Sir, that being in the mind of the Constitution-makers—the duties and the functions of the Vice-President—they made a provision for the election of the Vice-President as well. As was very ably pointed out by the previous speaker, the Vice-President is to be

elected at a joint meeting of both the Houses of Parliament. In case of any vacancy occurring in the office of the Vice-President or if the Vice-President wants to resign, the matter has to be reported to the Speaker. There is a specific article in the Constitution to that effect. I would draw your attention to article 56(2), which reads—
 (a) . . .
 "Any resignation addressed to the Vice-President under clause (a) . . ."
 Mr. DEPUTY CHAIRMAN: We are not concerned with it. These are election matters. We are only now concerned with the election. Why do you refer to all these matters?
 SHRI RAJENDRA PRATAP SINHA: I do not know how you say that what I am saying is not concerned with this because I am opposing the Bill that is before us. I must convince my colleagues. I must convince you why I am saying like that because I have not got satisfaction. Apart from certain procedural difficulties that the hon. Member of this Bill envisages or anticipates, he has not pointed out that these are the difficulties that have occurred. There is no other justification for amending the Constitution. My contention is this that we should not change the Constitution lightly. No convincing argument has been placed for amending article 66(1) by clause (2) of the Bill. What is the argument that has been advanced? That I am trying to refute. I was stating the position under the article which I was quoting, when you interrupted me. I would like to read out that article for your information. Sir
 "Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be communicated by him to the Speaker of the House of the People."
 Now, the Speaker of the Lok Sabha has a very paramount place so far as

candidate or that candidate. That will obviously be creating a nuisance. (Interruption).

MR. DEPUTY CHAIRMAN: Order, order.

SHRI JASPAT ROY KAPOOR: There fore, I submit that while we should not accept Mr. Bhupesh Gupta's amendment and while we may accept the amendment to article 71, I would request the Law Minister to consider whether it is at all necessary to amend article 66 and whether there can be any possible apprehension of any such difficulty arising at all, in view of what I have submitted.

SHRI RAJENDRA PRATAP SINHA:

Mr. Deputy Chairman, we are considering a very important measure because we are asked to amend the Constitution. I am very sorry that the leader of the Communist Group for whom I have got great regard and respect has made a very light show of the whole thing and he wants it to be treated in a very light manner. We are considering a very important issue and we should give due weight to the measure that is before us. Sir, I have given, along with my other colleagues, very serious thought to the Bill that is before us because we do not very much favour the amendment of the Constitution in a light manner or even at the slightest provocation or pretext. We are not against the amendment of the Constitution as such, but certainly we should try to avoid bringing in amendments to the Constitution as far as it is possible. I entirely agree with the previous speaker, with the sentiments that he has expressed, that we should not amend the Constitution lightly. Sir, in order to understand this measure properly, we must have a proper comprehension of our Constitution, the position of the President and the position of the Vice-President in our Constitutional set-up. Sir, because we are using the words 'President' and 'Vice-President'

will meet. Will they be expected to go to their respective legislative headquarters and cast their votes when the election of the Vice-President is held and all that? If that is his intention, that will virtually deprive the Members of Parliament of the opportunity of meeting together and just exchanging views among them. I know it is all very theoretical. In practice these things are settled in advance and there is hardly any canvassing like that. Theoretically speaking that would mean that the Members of Parliament would not be enabled to meet together at one place for this business.

SHRI BHUPESH GUPTA: Are you in favour of meeting in the lobby or in the Central Hall? I know why he is opposed to it. He should explain. He is in favour of discussion in the lobby but not in the House. What secret is there?

SHRI JASPAT ROY KAPOOR: For obvious reasons. What my hon. friend wants here is that we shall meet in a joint sitting, the Speaker should preside which is probably his intention, there should be a formal motion, discussion and an ample opportunity to my friend, Mr. Bhupesh Gupta, to pour out venom against some particular candidate who is not in favour with him. That will be creating a big nuisance on what will be a sacred occasion.

SHRI BHUPESH GUPTA: Can the hon. Member say that we will become a nuisance there? It is a reflection on the whole House.

MR. DEPUTY CHAIRMAN: Order, order. You please sit down Mr. Bhupesh Gupta.

SHRI JASPAT ROY KAPOOR: There will be no nuisance so long as we conduct ourselves according to the provisions of the Constitution, but what Mr. Bhupesh Gupta now wants is that without sitting to transact business we shall meet and talk all sorts of things with regard to this

the election of the President and of the Vice-President is concerned. Now, the difficulty which was envisaged was this—how shall we have the meeting? It was pointed out that nomination and all other paraphernalia connected with the election of the Vice-President would have to be done in the joint meeting. I do not see that it is all necessary because it is already provided in a different article of the Constitution that Parliament may by law provide how these elections shall take place. Under that that article we could provide for the procedure. That was the idea of the Constitution-makers—as to how the election of the Vice-President should take place. Now, what is the reason of amending the article of the Constitution, converting it into an electoral college? Why? The Constitution-makers have provided for a certain procedure. What has happened in between that warrants a change in the Constitution itself. That is my question.

MR. DEPUTY CHAIRMAN: Change is only in the procedure.

SHRI RAJENDRA PRATAP SINHA: That is what I am objecting to.

MR. DEPUTY CHAIRMAN: Instead of at a joint meeting, they vote separately. That is all.

SHRI RAJENDRA PRATAP SINHA: That is what I am objecting to. After all, we should not try to make changes in the Constitution lightly. There must be some valid reasons and enough grounds for it.

MR. DEPUTY CHAIRMAN: 'Electoral college' is not a change. It is only a question of how they vote. That is all.

SHRI RAJENDRA PRATAP SINHA: But we should retain the provisions as they are. If you want to change the Constitution, if you want to change the procedure of the election, there must be enough justification for

changing the Constitution. In my mind the Government has no advanced enough justification. The justification is that they have envisaged or anticipated some difficulties. I say that their fears are groundless; there is no fear of it. There may be no difficulties. It is possible to hold the meeting, it is possible to convene the meeting, and get the election of the Vice-President done as provided in the Constitution. It is possible. Why change it into an electoral college? Now, in support of it, I have said that the position of the Vice-President is quite different from that of the Vice-President of the United States of America. There the elections are held exactly in the same manner as in the case of the President because the Vice-President automatically succeeds the President in the event of any vacancy in that office. That is not the case here. If that had been the position of the Vice-President of India, the Constitution-makers, I am sure, would have provided for the same method of election of the Vice-President as the President. They have not. They have made the position of the Chairman and the Vice-President together, analogous to the position of the Speaker of the Lok Sabha. Therefore, there is no justification in changing the whole procedure that is already set. This is why my contention and, therefore, I oppose clause 2 of the Bill *in toto*.

SHRI ARJUN ARORA (Uttar Pradesh): You said you would oppose it. When will you do that?

SHRI RAJENDRA PRATAP SINHA: I am opposing it. In English language you always speak like that. When the voting takes place, we will do that.

MR. DEPUTY CHAIRMAN: You can continue after lunch. The House stands adjourned till 2-30.

The House then adjourned for lunch at one of the clock.

The House reassembled after lunch at half past two of the clock. MR. DEPUTY CHAIRMAN in the Chair.

SHRI RAJENDRA PRATAP SINHA: Mr. Deputy Chairman, Sir, I have been wondering what kind of democratic conventions we are building up in this country. Sir, in England, which is known as the "Mother of Parliaments", the convention is that the Government would not like to proceed with a measure when they sense a strong opposition in the Opposition parties what to say when they sense that opposition in their own party. Sir, I have gone through the proceedings of the Lok Sabha and I have not found a single Member, irrespective of the parties, supporting this Bill or measure. Every Member of the Congress Party who chose to speak on this Bill has opposed this. So far as this House is concerned, Sir, we had the benefit of only one Congress Member speaking on this measure and he has also not seen the wisdom of supporting this Bill.

SHRI JASPAT ROY KAPOOR: Only a part of it.

SHRI RAJENDRA PRATAP SINHA: May be a part. Now, Sir, what I feel is that the hon. Minister should feel ashamed of bringing forward such a measure. I am glad the hon. Minister is here now . . .

SHRI BHUPESH GUPTA: Speak again so that he knows what you say.

Shri RAJENDRA PRATAP SINHA: . . . so that I may catch his ears, not his eyes. I would repeat, Sir, that the reason is on our side, and I have found that every Member of the Lok Sabha, who has spoken on this Bill, has opposed the provisions of this Bill. I am not talking of the Opposition Members. I am talking of the Congress Members. He has not got the support there of a single Member of his own party.

SHRI BABUBHAI CHINAI (Maharashtra): Question.

SHRI RAJENDRA PRATAP SINHA: In spite of that, Sir, because of party conventions and the way in which our parties function, they have been able to get this measure passed in the other House. But I have the satisfaction that the reason and the mind even of the Congress Party is with me, and I submit, Sir, that he should feel ashamed of bringing forward a measure which has not got the support of a single Member of his own party.

Mr. Deputy Chairman, Sir, now I shall come to clause 3 of the Bill. I have not been able to appreciate, in spite of the eloquence of the Law Minister, the justification for such a provision in our Constitution. The Law Minister is a gifted person so far as the qualities of debating are concerned, but in this respect, I feel, he has miserably failed because he has not been able to convince his own party members. Sir, are we to believe that the Constitution-makers had not envisaged the situation, the contingency, which now the Law Minister envisages? I submit, Sir, that the Constitution-makers deliberately did not put such a provision in the Constitution. I bow to the wisdom of the Constitution-makers for not having made such a provision. What have they provided, let us see, and what are you now going to provide? I shall draw your attention to article 71(1) of the Constitution which says:—

"All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final".

Having provided this, they have deliberately not made any provision for any contingency arising out of any vacancy caused in the electoral college which elects the President and they have done it with a purpose. What is that purpose? To my mind, Sir, they believed in and they had a confidence in the wisdom of our Supreme Court. They did not look upon the Supreme Court as our hon. Law Minister seems to look, namely,

that they will always give a perverse judgment or they will be always devoid of common sense and wisdom.

SHRI A. D. MANI (Madhya Pradesh): He does not say that.

SHRI RAJENDRA PRATAP SHARMA:

He does not say that. What for this Bill has been brought forward? Now, this has been explained in the Notes on clauses. I will read it out:

"It is possible that elections to the two Houses may not always be completed before a President or a Vice-President is elected. In Dr. Khare's case, when the notification for the election of the President was issued, elections in certain snow-bound areas in the North had not been completed. There may be vacancies for other reasons also. It is therefore desirable to make it clear that the election of a President or a Vice-President cannot be challenged on the ground that there are vacancies in the appropriate electoral college for whatever reasons."

Sir, I submit that the Constitution-makers, and so do I and so do all the Members of the Congress Party who have spoken on the provisions of this Bill, have got full confidence and faith in the wisdom and good sense of the Supreme Court. I am pretty sure, Sir, that the Supreme Court would not have set aside the election of the President if a petition had been made to them after the election was over. I could see the inkling, I could peep into the mind of the Supreme Court quite differently from what the Law Minister has looked into. I would say that I have no fears. Surely, the Supreme Court would not set aside the election of the President merely on the flimsy ground that there was a casual vacancy of a few seats in the electoral college. That is why, Sir, the Constitution-makers have provided that whenever any doubt is created, the Supreme Court would look into the circumstances of the case and then give a decision. Now, what is the hon. Minister going to do, what is he

out to do? He wants to distract, to lessen the powers that have been vested in the Supreme Court. How and what would be the results flowing out of the provision that we are now going to make? The provision that we have in view is this:

"The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him."

Do I accept that the Constitution-makers had not the wisdom to envisage what the Minister is now going to do? He is not putting any limit now on the quantum of the vacancies. I fear that you can get the President elected by a minority vote. Now, I would tell you that the total number in the electoral college which elects the President is 3,898 members. This is composed of the elected Members of the State Legislative Assemblies and the Members of the Lok Sabha and the Rajya Sabha together. I have also before me the number of seats that the different State Legislatures have got. I anticipate the position that President's Rule may be declared in two or three or four or five States. The Assemblies may be dissolved on the eve of the election of the President because the party in power knows that such and such Assembly will not vote for so and so, the candidate that the party in power at the Centre wants to put up for the coming election of the President. Do you mean to say that this contingency was not envisaged by the Constitution-makers? They knew this that there was a possibility of such a thing happening and therefore, they had provided like that. They have given that authority to the judiciary which has to mediate, look into and decide on such matters whether the executive is functioning in a perverse manner or in a democratic and right manner. The Law Minister says that we are taking away nothing from the Supreme Court. You are taking away the most vital power vested in the Supreme Court. This is

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what the Law Minister has said in the other House: "We are taking away nothing, this is the most innocent measure". I say that this is not an innocent measure. It deserves all the seriousness that we have got to give in amending any provision of the Constitution. It is very easy for the Government at the Centre to advise the President to dissolve three or four or five Assemblies and get the President's election done when there were no Members in those States. It was not possible to do that under the existing provisions of the Constitution because anybody could petition to the Supreme Court as provided in the Constitution under article 71(1) and request the Supreme Court to enquire into the doubts that might have been raised for manipulating such an election. What shall we do now? I do not say that the present Government is going to do it but we are legislating for ten to twenty years not for today. If such a situation arises, what is the Constitutional safeguard for protecting the most democratic way of electing our President?

SHRI GOPIKRISHNA VIJAIVAR-GIYA (Madhya Pradesh): I wish to point out that the dissolution of the Assembly itself is also questionable in the Court.

SHRI A. D. MANI: You cannot go.

SHRI RAJENDRA PRATAP SINHA: That is not possible. Do not divert my mind by such arguments. What I say is that it is a very dangerous measure that has been brought before the House and I appeal to you in the name of democracy, in the name of safeguarding the future Constitution and the proper election of the President of India, not to allow this measure to be passed. Heavens will not fall if we do not pass this measure.

DIWAN CHAMAN LALL (Punjab): Will the heavens fall if you do?

SHRI RAJENDRA PRATAP SINHA: Certainly they will fall, it will jeopardise the very existence of a properly elected democratic President tomorrow.

DIWAN CHAMAN LALL: How?

SHRI RAJENDRA PRATAP SINHA: I have been trying to explain that to you. What is going to happen if on the eve of the election of the President you dissolve three Assemblies of the States where you feel that you will not get votes for the President?

DIWAN CHAMAN LALL: That has nothing to do with this amendment.

SHRI RAJENDRA PRATAP SINHA: Certainly it has to do. In order that you may not be defeated by the votes of those States, you can dissolve the State Assemblies and hold the election because you are not putting any restriction that the vacancies must not be more than any particular number. I very much welcome the offer made by the Law Minister in the other House when he was prepared to limit the vacancies to 5 per cent. I accept it. If you provide for that, I have no quarrel and I will vote with you. Hon. Mr. Narasimhan had proposed this amendment. 'Provided the vacancies are not more than 2 per cent. That the hon. Minister said that he was prepared to accept if it was 5 per cent. It is quite all right. We have no quarrel with the percentage. I have therefore given my amendment that the vacancies should not be more than 5 per cent. What does it mean? Five per cent. will be equal to 195 Members. Even if out of 3,898 Members, 195 Members are not there, the election of the President will go on. It cannot be challenged. I am prepared to give this latitude. I know what Mr. Gupta has in mind because I know that Assam has only 105 Members, Gujarat 132 Members, Kerala 126 Members, Orissa 140 Members and Punjab 154 Members. Like that, if even one Assembly is not there, I do not mind your electing the President. I can accept this proposition but there must be some limit beyond which if there is a vacancy, there should be a bar on the election of the President. What you are now trying to do is that you can get the President elected even if there

are 500 or 700 Members or only the two Houses are in existence. You have made a provision if the Constitution in the case of emergency to dissolve all the Assemblies, if it comes to t but even then you can elect a President. I do object to it. Ours is a federal Constitution and I would like the States to have a say in the election of the President of India. I looked into the Constitutions of other countries to see if there is such a limitation placed in any one of them, a limitation like the one we are proposing now. The Constitution of the United States of America is an important one that we have in view and I looked into the limits placed on the election of the President of the U.S.A. I find that there they want a two-thirds majority, not a mere majority. Here in our country, it seems even a minority can elect the President. I will read out the provision in the Constitution of the United States of America. I read from Peaslee's Constitutions of Nations, Second Edition, page 587, where the Constitution of the United States of America is being dealt with. There it is stated in respect of the election of the President:

"the quorum for this purpose shall consist of the member or members from two-thirds of the States, and a majority of all the States shall be necessary."

Sir, in all amendments to our Constitution, we have provided that a two-thirds majority is required, but for the election of our President, here you have waived that and not even a simple majority would be required. Even a minority of members composing the electoral college for the time being can elect the President. Sir, is this a right thing to do? I ask that question. Are you establishing a healthy, sound democratic basis for our country? This is a point, I submit, that we must take into very serious consideration and I am pretty sure that if the House accepts my amendment, nothing would be lost. The Bill can be referred to the other House and passed in the lame duck session in March, long before the election of

the President. The Constitution can be amended.

SHRI BHUPESH GUPTA: Lame duck or shot duck?

SHRI RAJENDRA PRATAP SINHA: Whatever it may be. Suppose we have this percentage of 5 as proposed in my amendment and as was mentioned by the Law Minister—I accept it as a relevant point—5 per cent. of the members choose to resign and thus thwart the Presidential election, what happens? Well, I am prepared to discuss that point and meet it. I am not unreasonable like him. I may not argue, although in the legal profession to which he has the honour to belong, arguments are the only basis for anything. I am prepared to add, if the House approves, the following to my amendment to meet that objection which I do regard as a valid objection. After all, we must provide for all contingencies. As it is, my amendment seeks the insertion of the following:

"Provided that such vacant seats in the electoral college are not more than five per cent. of the total strength of the electoral college electing him."

I want to restrict the vacancies to 5 per cent. and in that case they can proceed with the election of the President and if the vacancies are more than 5 per cent., then you will please wait till the elections are completed. Then this objection has been raised and it is a genuine one, although I don't expect the Congress Party to be in the Opposition or that any opposition party in India would be so perverse as to thwart the election of the President by such an undemocratic and unparliamentary act as resigning. Even then, to meet that objection, I propose adding these words to my amendment:

"Provided further that any vacancies due to resignation or death of members shall not be taken into account".

Now, what else do you want? I have here provided that if the vacancies

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are caused by resignation—a perverse act in parliamentary life—we shall not take that into account. Let us proceed with the election of the President. Certainly, we must provide for this contingency and the minority of members composing the electoral college should not be put in a position to elect the President. That will be throwing overboard all the safeguards which our Constitution-makers in their wisdom have provided in the Constitution itself. We should have faith and confidence in the wisdom and common-sense of the Supreme Court.

MR. DEPUTY CHAIRMAN: We have to finish this business. You have already taken half an hour.

SHRI RAJENDRA PRATAP SINHA: May be, Sir, but this is a very important question and we look to you as the custodian of the rights and privileges of this House to give us some time. This is a very important matter. If I am talking irrelevant things or if I am repeating my arguments, you can pull me up, Sir, but I am making these suggestions for the benefit of Members of Parliament for their consideration. You will kindly give me this latitude. This is an important Bill and we are prepared to sit up to 12 in the night even.

SHRI M. R. SHERVANI: But no point has been made yet.

SHRI RAJENDRA PRATAP SINHA: I have made my point and every other Member has understood it. If my hon. friend over there has not, well, I can't help it.

There is another point which I would like to bring to your attention and which has agitated the minds of people in this country and the minds of Members of both Houses of Parliament. Sir, the whole purpose of this Bill is given in the Notes to the various clauses and from these it seems that they want to deprive the people inhabiting the Himalayan regions, more particularly those in the snow-bound regions . . .

SHRI A. D. MANI: Second class citizens.

SHRI RAJENDRA PRATAP SINHA: I am coming to that. They want to deprive them of the right to send their representatives to the electoral college which will elect the President of India. That is their reason. Sir, I am amazed that such a reason should have been put forward, particularly at a time when all kinds of external and internal propaganda are going on in the snow-bound regions of the Himalayas among the people there, saying that they are treated as second class citizens as my hon. friend just now pointed out. If I am wrong, Sir, the hon. Minister will kindly correct me. But I have here what Mr. Hem Raj has said, Mr. Hem Raj, Sir, is a member of the Congress Party. He is not a member of the Opposition, and he has been elected from that snow-bound region. I would like to let you know what he has said in this respect. It is very important, Sir.

SHRI A. K. SEN: In the other House?

SHRI RAJENDRA PRATAP SINHA: Yes.

MR. DEPUTY CHAIRMAN: You cannot read out his speech here.

SHRI RAJENDRA PRATAP SINHA: I will not read it, Sir. In this connection he has said that he is opposed to it and he has expressed his great dissatisfaction that the Government should try to permanently debar the members from those areas from taking part in the election of the President and with that in view, they have brought forward this measure. And he said he was aghast to learn that in Lahaul and Spiti the people were being told such a thing was going to happen and they were naturally disappointed. And propaganda was being carried on there by some interested parties saying: "Look here, you are not citizens of India. You cannot elect the President of India. You belong to China and so you are being debarred from it." By certain interested persons, by certain parties,

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such a propaganda is carried on there. Why are you giving a handle to such propaganda?

SHRI A. K. SEN: Which party?

SHRI RAJENDRA PRATAP SINHA: Mr. Hem Raj refers to it and it has been referred to many times in this House, that the Communist Party has been carrying on such propaganda and it is a well-known fact. I am not speaking out any secret. It is well-known and now you are giving them this handle to carry on such propaganda.

SHRI A. K. SEN: You are meeting Mr. Gupta now.

SHRI RAJENDRA PRATAP SINHA: Yes, he comes from your State, fortunately?

SHRI BHUPESH GUPTA: Fortunately or unfortunately.

SHRI RAJENDRA PRATAP SINHA: The point I am making is that we should not give the people there this impression that they are going to be debarred from taking part in the election of the President of 3 P.M. India. We should not advance this reason. I do not know in what wisdom the hon. Minister has brought forward this measure. Even if that was the wisdom and even if that was his argument, the way in which he has bluntly put forward this argument is disgraceful. Not only that, Sir, we must make every citizen of India feel that he can take part in the election of the President of India. (Interruption.) He is in the habit of listening like this.

I took into account the way in which we have held the last two general elections and also the way in which we will hold the ensuing election. You will find, Sir, that you have got six constituencies in the snow-bound areas. The constituencies are, in Himachal Pradesh, Parliamentary constituencies, Mahasau, Mahasau Reserved, Mandi and Chamba and in Punjab, the Kangra Parliamentary constituency from which Mr. Hem Raj hails and the Kulu Assembly con-

stituency. Now, these are the constituencies which are snow-bound during the time that the general election takes place. Therefore, Sir, during the first general election which was held in October 1951-February 1952, elections in the snow-bound constituencies of Himachal Pradesh were held in June, 1952 and the election of the President and the Vice-President took place earlier in the months of May and April respectively. Now, in respect of the second general election, elections were held from 24th February to 15th March, 1957 and elections for the five Parliamentary and one Assembly constituency were held from 24th May to 7th June 1957, the election of the Vice-President on the 27th April and that of the President on the 10th May, 1957. So, in the last two elections, unfortunately the members hailing from these areas were not given any opportunity to vote for the President and this has caused a great disappointment and resentment in that area. I would like the Government to take note of this. Now, Sir, I am very happy that the Election Commission wants to undo this great wrong and injustice that is being done to this area and it has been announced that the election would be held from February 19 to 25, 1962 and in the snow-bound areas during the last three or four days of April, 1962. The elections of the President and the Vice-President are proposed to be held after elections are over in the snow-bound areas and completed. This is my information and it is for the hon. Law Minister to confirm this.

SHRI A. K. SEN: That answers the long argument about second class citizens.

SHRI RAJENDRA PRATAP SINHA: My hon. friend says that this answers the point about second class citizens but he is not prepared to look into his own statement, the Statement of Objects and Reasons for moving this Bill. If that is the only case, if the Bill has come only because of that factor, then there is no leg to stand upon and he should withdraw this

[Shri K. Santhanam.]

Bill. What is the reason for having this Bill? If what the hon. Minister says is correct, then why make a Constitutional provision of this nature? What I submit, Sir, is that we must not make such an omnibus provision like this. The Law Minister should accept our proposals and not press for the retention of clause 2, as I pointed out this morning, and accept our amendment to clause 3 with the further amendment that I have suggested in my amendment. If that is done, I shall accept this Bill; otherwise, I shall oppose the measure as it has been proposed before us.

SHRI K. SANTHANAM: Mr. Deputy Chairman, I am surprised that some Members are opposed to clause 2. I thought it was a simple and logical provision. As a matter of fact, the only difference it makes to the present provision is that if the election of the Vice-President is done out of session then all the Members of Parliament will not be bound to come to Delhi to register their vote and go back. Beyond that, there is no difference. Sir, my hon. friend, Mr. Sinha, said that there was difference between the Vice-President of India and the Vice-President of the United States of America. Quite true, there are differences but not in the manner he suggested. The Vice-President of the United States of America is also the Chairman of the Senate and, Sir, there is one vital difference between the Speaker and the Vice-President. The Speaker's election is not under the jurisdiction of the Election Commission while the election of the President and the Vice-President is under the jurisdiction of the Election Commission and, therefore, Sir, this so-called joint meeting provided now under the Constitution is merely an assembly of the Members of the electoral college; only it has made it obligatory for the assembly to meet at Delhi. All that the amendment means is that this legal obligation is taken away and if the election is held out of session, the Members will be able to register their votes in their

own capitals as in the case of the Presidential Election and, therefore, by bringing the election of the Vice-President on a level with that of the President, the Bill has made for a more logical set-up. It may, however, be admitted that if clause 2 was the only clause, probably the hon. Law Minister would not have cared to bring forward the Bill. It is clause 3 that has made him bring forward a Bill and having brought forward a Bill about the election, he has made a rational amendment to existing article 66. Sir, I was really surprised at the arguments of my hon. friend, Mr. Sinha, that the Constitution-makers left the question of casual vacancies to be dealt with by the Supreme Court. Sir, in my reading of the Constitution, it is not so. Our Constitution is of a set pattern. The major provisions regarding electoral colleges, qualifications, method of voting, etc., have been prescribed in the Constitution and for all the other minor provisions, Parliament has been enabled to make laws. Sir, our Constitution has provided for electoral colleges for the election of the President and the Vice-President and for the election of the Members of the Rajya Sabha and the State Legislative Councils. If we read the articles, we will find that they are more or less of the same wording. Article 71(3) says,

“Subject to the provision of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.”

Similar provision is made in article 327 with reference to Parliament and the other State Legislatures. Therefore, Sir, I think that so far as clause 3 is concerned, this Bill could have been brought forward as an ordinary piece of legislation under article 71(3). It may be said that these matters are to go to the Supreme Court and so a law of Parliament may not bind the Supreme Court. That is not a correct reason. In the Representation of the People Act we have made many provisions by which certain authorities

have been mentioned as having the final jurisdiction in regard to certain matters and such matters cannot be raised before any court, whether it be a district court or a High Court or the Supreme Court. Similarly, even if the Parliament says that the Election Commission shall, one month before the date of election of the Vice-President, make a list of the members of the electoral college entitled to vote and also says that that list will be final, there can be no appeal, and that will be the logical method of solving the difficulty. Sir, if casual vacancies or other vacancies were the only trouble, then probably there would be no difficulty about this Bill. But, Sir, similar disputes may come in other ways. First of all, who is a member? Sir, there are four kinds of members—members who have been declared elected by the Returning Officer but who have not been gazetted by the Election Commission; then members who have been elected and gazetted by the Election Commission but who have not taken the oath of office; then again, Sir, there are members who have taken the oath of office but who may be disqualified because they have not given a proper return of election expenses; and again, Sir, there are members against whom election petitions have been filed. Therefore, there may be disputes as to which class of members should be included in the electoral college and which not. Then, Sir, it will go to the Supreme Court, because, once a dispute arises, it will go to the Supreme Court. It is necessary to provide for all these, and I say a proper Bill providing for the election of the Vice-President by a law of Parliament in accordance with article 77(3) is needed; that would have been a more comprehensive and a wiser measure than the present one; it deals only with vacancies. Sir, I am glad to see that the hon. the Law Minister has admitted that the provisions are rather wide. Though I do not agree with the exaggerated fears because, as he said, the Election Commission is there to regulate the elections for the offices

of the President and the Vice-President, and it is an independent authority. But then the Election Commission is bound by one provision of the Constitution—a new President has to be elected before the old President's term expires. Subject to that condition, I am sure that the Election Commission will see that members are not excluded unreasonably. But even then, it would have been wise, it would have been graceful on the part of the Government; when once they have admitted that the clause as they have framed it is too wide and is likely to be capable of wrong interpretations and wrong fears—though they may never mature—I think it would have been more graceful on the part of the Government if it, had brought such an amendment and got it accepted by the House. That should be the proper attitude of the Government, not to say that the other people in the Opposition did not bring the amendment and so we did not care. It is we who are the majority that should take care that every law that we pass is precise, is accurate, is sufficient and never more than sufficient. All these things, it is our duty to do. If not, why are we here then? We have been sent by the people to scrutinise every law and to see that it meets the needs of the people, and so I was rather surprised that the Law Minister could himself accept that he was prepared to limit the scope of the amendment but that due to some mistakes or failures of the Opposition the necessary amendment was not made. I hope it is not too late, even now, for him to do something in the matter and save our reputation. I do not care for what the Opposition says. After all we are responsible to the people; we are to see that our laws are as perfect as we can make them.

Thank you, Sir.

PANDIT HRIDAY NATH KUNZRU:
Mr. Deputy Chairman, what I should like to examine is whether the Bill that has been brought forward by the Law Minister is needed. Now, let us take the first part of the amendment

[Pandit Hriday Nath Kunzru.]

which relates to the election of the Vice-President. Sir, it was argued by the Law Minister that the procedure for the election of the Vice-President under article 66 has been assimilated to the procedure to be followed in the case of the election of the President under article 54. Now, Sir, article 54 is a very small one and I shall therefore take the liberty of reading it out to the House.

"The President shall be elected by the members of an electoral college consisting of—

(a) the elected members of both Houses of Parliament; and

(b) the elected members of the Legislative Assemblies of the States."

Now, Sir, this requires that the members, not merely of both Houses of Parliament, but of the Legislative Assemblies of the States also should take part in the election of the President. Obviously, in these circumstances, there is to be not a joint sitting of both the Houses, but an electoral college which will elect the President. Now how is the Vice-President to be elected under article 66? According to article 66, clause (1):

"The Vice-President shall be elected by the members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot."

You will see, Sir, that the Members of the Legislative Assemblies of the States take no part in the election of the Vice-President. I do not know therefore how the Law Minister persuaded himself that the Constituent Assembly meant that the Vice-President should be elected by an electoral college. If he had said that it would be more convenient if the method of election were changed. I could understand that. But I cannot

understand his saying that the Constituent Assembly, which provided different procedures for the election of the President and the Vice-President, meant that the Vice-President should be elected not "at a joint meeting in accordance with the system of proportional representation" or that it meant the same thing as election by an electoral college. You are not—in the amendment that has been brought forward—trying to express more clearly what the Constituent Assembly meant, but changing the meaning of what the Constituent Assembly laid down. Now, Sir, is it necessary to change the procedure laid down in the Constitution for the election of the Vice-President? I cannot see really any objection to the present procedure of a joint meeting for the election of the Vice-President. I should like to make another point. A joint meeting does not necessarily mean the same thing as a joint sitting. You look at the various articles of the Constitution; where the Constituent Assembly desired that there should be a joint sitting of both Houses it has said so clearly and the word that it has used is 'sitting' and not 'meeting'. Take, for instance, legislation. When there is a difference of opinion between the two Houses, either the Bill may be dropped, allowed to lapse, or the differences may be resolved by a joint sitting of both Houses. In a joint sitting of both Houses the Speaker of the Lok Sabha will preside but at a joint meeting of both Houses it is not necessary that the Speaker should preside.

SHRI J. S. BISHT (Uttar Pradesh): How is a joint meeting held and for what purpose will it be held?

PANDIT HRIDAY NATH KUNZRU: When we see that in the Constitution wherever a joint sitting is desired the word used is 'sitting' and not 'meeting' we have to conclude that a joint meeting is not the same thing as a joint sitting.

SHRI JASPAT ROY KAPOOR: It is not a joint meeting of the Houses

but a joint meeting only of the Members of the two Houses; not a meeting of the two Houses but only of the Members.

SHRI K. SANTHANAM: It is arranged by the Election Commission.

PANDIT HRIDAY NATH KUNZRU: I shall read out from the Notes on clauses because the Law Minister said at least in another place that difficulties would arise when there was a contest for the Vice-Presidency. But he says here:

"Even where there is a contest, conformity with article 66 can only be more formal than real in that important proceedings relating to the election, like the receipt of nominations, scrutiny of nominations and withdrawal of candidature, take place before the members of the two Houses of Parliament assemble at a joint meeting, and only the polling and declaration of results take place at that meeting. In practice also, there can be no meeting in the usual sense . . ."

DIWAN CHAMAN LALL: Why?

PANDIT HRIDAY NATH KUNZRU: You better ask the Law Minister.

DIWAN CHAMAN LALL: Why don't you ask him?

PANDIT HRIDAY NATH KUNZRU: Why should I? The doubt arises in your mind. It says:

"In practice also there can be no meeting in the usual sense, but the electors will be coming in as and when they like, casting their votes and going away. The requirement that members should assemble at a joint sitting seems to be totally unnecessary and is also likely to cause practical difficulties."

What he says is if there is a joint sitting of both the Houses, there will be difficulty but he himself says that in the case of a joint meeting it is not necessary that this difficulty should arise in practice. I do not therefore understand the purpose of bringing forward this Bill.

SHRI J. S. BISHT: To resolve any dispute that may arise.

PANDIT HRIDAY NATH KUNZRU: What is the dispute that is likely to arise?

SHRI J. S. BISHT: Some think it should be a meeting; others think it should not be a meeting. That is the dispute.

PANDIT HRIDAY NATH KUNZRU: Well, the thing is that that should be resolved in a different way.

I shall now come to the other parts of the Bill. In clause 3 of the Bill it is said:—

"In article 71 of the Constitution, after clause (3), the following clause shall be inserted, namely:—

'(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him'."

There is, I believe, a great deal of difference between the incomplete election of, say, the Lok Sabha and the occurrence of casual vacancies among the members. The question that we are discussing is whether it is right that the electoral college as proposed by the Law Minister should elect the President and the Vice-President while the House is *ab initio* incomplete. If the elections were to take place once in all the constituencies, if once all members had been returned to the Lok Sabha, I can understand the Law Minister coming forward with a Bill saying that no casual vacancy occurring after the complete election of the Lok Sabha will vitiate the election of the President or the Vice-President but I cannot see how he proposes to convince us that when the House is initially incomplete it should be allowed to elect the President and the Vice-President. Have the people who have not been elected till the election of the President or the Vice-President takes place no right in the matter? Are they to be disregarded

for ever? So far as I remember, Shri Hajarnavis said in the other place that these members will not be, so to say, disenfranchised for ever because the election Commission was going to make every effort this year to see that the elections were completed at least in some of the snow-bound areas also.

SHRI A. K. SEN: All over.

PANDIT HRIDAY NATH KUNZRU: If that is so, there is no reason why this Bill should be brought forward.

SHRI J. S. BISHT: There may be other vacancies.

PANDIT HRIDAY NATH KUNZRU: Is it reasonable to suppose that if after the election of the House a man dies or resigns, the vacancy so caused will debar us from electing the President or the Vice-President till these vacancies have been filled up? I do not think so. In my opinion there is a world of difference between the vacancies occurring because of the incomplete election of the electoral college and vacancies occurring after the elections have taken place. In any case if all that the Law Minister wanted to guard against was any dispute arising because of the existence of a casual vacancy, he could have limited the language of his amendment to apply to this deficiency only.

I have one more point to urge. really the Bill itself says what I have said. The method of election of the President under article 54 is being changed but article 54 is not being amended. Another article of the Constitution is being amended but it indirectly affects article 54; it virtually means an amendment of article 54. Under article 368 any amendment of article 54 would require to be ratified by the majority of the Legislative Assemblies of the States. Now the Government is trying to get round this difficulty by amending article 71 leaving the language of article 54 unchanged. I do not think that this is a fair procedure. This is keeping the law in the letter perhaps but violating it in spirit. I hope that in a matter like this, in so important a

matter as the amendment of the Constitution, Government will not set so bad an example to us. The Constitution has been in force for nearly twelve years and the Government has come forward during this period with eleven amending Bills. Is this desirable? I personally think that the Government should take a risk rather than come forward with such an amendment now. Again, if all that the Law Minister desired was that no dispute should arise in connection with the election of the President or the Vice-President because of the existence of a vacancy, he could, as he has said in the other House, have brought forward an amendment to his Bill, but his excuse for not doing so is that the opposition parties could not agree to any amendment which would be accepted by all of them. I do not understand it.

SHRI A. K. SEN: It is not so. I said that if the apprehension was really genuine I would be prepared to consider any amendment to this effect proposed by any Member of the Opposition.

PANDIT HRIDAY NATH KUNZRU: Who is to decide whether the apprehension is genuine or not? If the Law Minister is to decide it, then of course the offer that he made was only rhetorical. It had no substance at all. Now, here he comes to us and says, "Though I am prepared in spirit to accept such an amendment, I cannot accept it at this stage because that would mean that the Bill must go back to the other House and the other House is not in session." Whose fault is it that this Bill has been placed before us so late? Is it not the fault of the Government? Why did it not see to it that this measure was discussed much earlier so that this House might have a chance of considering the Bill before the other House was adjourned *sine die*? It is the fault of the Government and it cannot plead its own fault for its inability to accept a reasonable amendment suggested in this House. For the reasons that I have given I am unable to see any necessity for the Bill that has been

placed before us. Indeed, I deprecate attempts on the part of the Government to bring forward amending Bills every now and then. There can be no doubt that the Bill will be passed by a majority of the Members of the House, but if the Government pays any regard to the views of the Opposition, it should realise that it has not succeeded in convincing a single Member of the Opposition of the necessity for such a Bill.

DIWAN CHAMAN LALL: Mr. Deputy Chairman, it is always a great pleasure to listen to my friend, Dr. Hriday Nath Kunzru. It reminds me of the fact that I had a great-grandfather who was a general in the army and which army in peace-time was always called upon to sharpen their swords. They sharepened their swords every morning with no intention of using those swords. I am quite certain that my friends, Mr. Sinha and Dr. Hriday Nath Kunzru, who sharpened their legal swords, have no intention of using them to cut the throat of the Law Minister.

SHRI AKBAR ALI KHAN: Not the throat of Shri Bhupesh Gupta?

DIWAN CHAMAN LALL: Shri Bhupesh Gupta's amendment is a very mild one. It is an amendment which does not go to the substance of the matter raised by Mr. Sinha and Dr. Hriday Nath Kunzru. It is a different thing altogether. Now, Sir, my friends have been really barking up the wrong tree. They have raised constitutional hares which are purely imaginary. What is it that the Law Minister is attempting to do in respect of this amendment? Let us be quite clear in our mind. Now, Sir, he is wanting to amend article 66 and article 71 of the Constitution. Why is he wanting to amend these two articles? In regard to article 66, he is wanting that the Vice-President shall be elected by the members of both Houses of Parliament not assembled at a joint meeting but a joint meeting constituting an electoral college. Now, what is wrong in that?

SHRI K. SANTHANAM: No meeting is necessary.

DIWAN CHAMAN LALL: My friend, Mr. Santhanam, pointed out quite clearly that no actual meeting is necessary for this purpose. What is necessary is that the Members who have been elected should be summoned and they should go and cast their votes. They need not sit in a chamber like this. They can go and cast their votes outside. Now, what my learned friend is wanting to avoid is an actual meeting for the purpose of electing the Vice-President. He is wanting to turn the membership into an electoral college for this purpose.

Now, Sir, my friend, Dr. Hriday Nath Kunzru, referred to article 54 of the Constitution. It says:—

“The President shall be elected by the members of an electoral college consisting of—”.

What my learned friend is wanting to do is not to amend article 54 in any sense. All that he is wanting to do is to assimilate the provisions of article 54 to the election of the Vice-President. That is all that he is wanting to do. I do not know how my friend, Dr. Hriday Nath Kunzru, takes it upon himself to decide that an amendment of article 66 or article 71 of the Constitution would necessarily involve an amendment of article 54 of the Constitution. I am unable to follow that argument. As I have said, what my friend is wanting to do is to assimilate the provision of article 54 in the provisions relating to the election of the Vice-President. That is all.

PANDIT HRIDAY NATH KUNZRU: May I interrupt my hon. friend? When I spoke of the attempt of the Government to get round the Constitution, I referred to the amendment of article 73 and not the amendment of article 66.

DIWAN CHAMAN LALL: Now, I am going to deal with not article 73, but article 71.

PANDIT HRIDAY NATH KUNZRU:
I am sorry, I mean article 71.

DIWAN CHAMAN LALL: It is not article 73. It is article 71. Now, if you look into article 71, it says:—

“(1) All doubts and disputes arising out of are in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.

(2) If the election of a person as President or Vice-President is declared void by the Supreme Court . . .”
Something happens. Then, it reads:—

“(3) Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President.”

Now, obviously Parliament has the authority to regulate all matters concerning the election of the President or Vice-President. In this connection, I do not know whether my learned friend, Dr. Hriday Nath Kunzru, recalls—he has got a very good memory and he has got an excellent mind—that there is such a thing called the Presidential and Vice-Presidential Election Act, 1952, which does regulate certain matters. And I am not convinced in my mind that what my friend, Dr. Hriday Nath Kunzru, says in regard to the effect of the amendment of article 71 has any reference whatsoever to the amendment of article 54. It has no reference whatsoever. I do not know how he draws this conclusion, that an amendment of article 71 would necessarily affect article 54. Nothing of the kind. I think that the two things are entirely separate. They have no connection whatsoever one with the other.

Now, Sir, there are three matters that have got to be considered. The first of them is the question of a joint meeting. I have already referred to that. What is the necessity for it?

The necessity for it, as I pointed out, is that at a particular stage a meeting is called because a joint sitting cannot be called. The words “joint sitting” cannot be used because at that particular stage there is no President to call a sitting of Parliament. There will be no sitting of Parliament as such, and at that stage, therefore, the only thing that can happen, is a meeting. It cannot happen as a joint sitting. Somebody has got to call a joint meeting, as the President is not there to call a joint sitting. Somebody else has got to do that. Even if the word “meeting” is used in contradistinction to the word “sitting”, the procedure is very very simple indeed. Members take their ballots, go up, vote and disperse. They do not assemble as we formally assemble here for this purpose, nor are they called upon to assemble in a formal manner. Therefore, would the heavens fall if this particular aspect of the problem, as the Law Minister has pointed out, is made clear, as clear as light? What will happen? Nothing will happen. It is only a convenience that would be granted to the Members, and any doubts in respect of that would be resolved. What happens when there is a doubt? You go to the Supreme Court. This is meant to avoid this particular reference to the Supreme Court. Suppose, there is a vacancy, suppose a vacancy occurs no matter for what reason, as the Law Minister has pointed out in his amendment, whatever the reason. It says:

“The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.”

The reason may be that the elections have not been completed in certain areas of the north because they are snow-bound and it is not possible to go and complete the elections in those particular areas in time. They are very few seats in any case.

PANDIT HRIDAY NATH KUNZRU:
May I ask my hon. friend to consider

what the effect of this amendment would be had it been made in article 54 directly. If it had been said in article 54 that the election of the President shall not be called in question merely on the ground of the existence of a vacancy, that would have amounted to an amendment of article 54. And that has been avoided by trying to bring in a new clause, 71(4).

DIWAN CHAMAN LALL: May I point out to my learned friend that he is harping unnecessarily on article 54 of the Constitution? Article 54 of the Constitution has nothing more to say than this that the President shall be elected according to this particular procedure. That is all. It has no reference to any vacancies that might occur, it has no reference to any disputes that might occur, it has no reference whatsoever to the point being raised before the Supreme Court. My learned friend has not understood the point. Those points are covered by other articles of the Constitution, not by article 54. They are covered by article 71 and several other articles of the Constitution—going to the Supreme Court, and so on. My learned friend has said that he wants this amendment to remove any doubts which might lead, as it has led my late lamented friend, Dr. Khare, to go to the Supreme Court in a similar matter . . .

SHRI A. K. SEN: He is still alive.

DIWAN CHAMAN LALL: I am very happy to hear that—just as it led him to the Supreme Court in a very famous case. I suggest that in order to avoid disputes my learned friend, the Law Minister, has brought in this particular provision so that we may not be compelled to go to the Supreme Court to raise these issues which affect the President and the Vice-President, two of our greatest dignitaries under our Constitution. Surely it is democracy to sustain the dignity and prestige of our President and the dignity and prestige of our Vice-President. That is democracy. We have elected them, and when we have elect-

ed them, let not any Tom, Dick or Harry—let me use that expression—take it upon himself to go to the Supreme Court and challenge the election of the President or the Vice-President

Sir, my learned friend, Mr. Sinha, who was here a minute ago—apparently he is not to be found in his seat—said: “I peep into the mind”—these are his words which I took down when he was speaking—“I peep into the mind of the Supreme Court differently to the Law Minister. Merely because a few seats are unfilled, therefore the Supreme Court will not object to the election.” That is all that the Law Minister is saying. If a few seats are unfilled, then it should not give the right to anybody to go to the Supreme Court to challenge the election. That is all that he is saying. My hon. friend has given his entire case away by admitting this particular fact although he says that he knows what is in the mind of the Supreme Court better than almost any Member of this House. There was a very famous Chief Justice of Great Britain who said once: “I do not know what is in the mind of so and so because nobody knows what is in the mind of the devil”. Nobody knows what is in the mind of anybody, but let me give credit to my friend, Mr. Sinha, as he happens to know the mind of the Supreme Court better than the Law Minister does. But anyhow what he is suggesting is exactly what the Law Minister has done, namely, that there should be no doubt about this matter whatsoever, and nobody should take it upon himself to go to the Supreme Court to challenge the election of the President or the Vice-President. At the same time my friend, Mr. Sinha, in a most contradictory manner said that if this amendment was passed, it would lessen the powers of the Supreme Court. How would it lessen the powers of the Supreme Court? It will lessen the nuisance value of people who resort to the Supreme Court, but it will not lessen the powers of the Supreme Court because anybody has got a right to go to the

[Diwan Chaman Lall.]

Supreme Court in a legitimate matter. How does he think that the Constitution-makers had not the wisdom when they adopted this? Wisdom is a relative term. There are many many things that experience shows us have to be put right, and we must try and put those things right which according to our own experience it is necessary to do in the interests of the nation.

There is one person sitting here to whom I would like to pay my tribute, who was responsible in a large measure for a good bit of this part of the law that has been enacted under our Constitution. He did a wise job of it, a very good job of it indeed. There are matters that have arisen which are a little different, namely, the questions regarding nominations, regarding withdrawals, this, that and the other, and all this will avoid these difficulties that arise in regard to nominations, withdrawals, and so on and so forth. I am referring to our very worthy Secretary of the Rajya Sabha who did a grand job of work, and I am glad that I am privileged to pay this tribute to a very able officer of ours, of this House.

May I make a request to my learned friends not to rush after imaginary hares in the hope of finding something that may help them to beat down these amendments and to call in question the wisdom of the Law Minister in this respect? The Law Minister is doing nothing else but his duty by this nation in making it easier for us to perform our functions as elected Members of this House and of the other House in electing the President and the Vice-President.

Sir, I commend these amendments.

SHRI SANTOSH KUMAR BASU (West Bengal): Mr. Deputy Chairman, Sir, I do not propose to be very long over this matter as I do not desire to delay the passing of such a very useful and necessary measure even to the slightest extent. My es-

teemed friend, Diwan Chaman Lall, has demolished the arguments which have been put forward against this Bill. I do not desire to add much to it. To my mind, Sir, this Bill is a very simple measure. It tries to reduce to the minimum speculation, doubts and disputes with regard to the election of the President and the Vice-President. As Diwan Chaman Lall has in this country who can rush to the Supreme Court with any kind of plaint against an election which has been held in a proper and valid manner. It is our desire to reduce to a minimum such doubts and disputes so that even if anybody tries to cross the portals of the Supreme Court with an application, such an application may be thrown out.

Now, there is one thing, Sir, to which I might refer. Dr. Kunzru referred to article 54. I do not really see the point in his argument when he referred to that article. The relevant articles are articles 66 and 71 and these are the two articles which have been sought to be tackled by this measure. Taking an absolutely common-sense view of this matter upon which so much stress was sought to be laid by my hon. friend, Shri Rajendra Pratap Sinha, I submit that this measure is a pre-eminently common-sense measure, clear, simple and direct in the amendment which is proposed, so that the purpose which is underlying this measure can be achieved in a sure and certain manner.

I would not desire to take up the time of the House any more. There is one other matter also to which I would refer, to which I think, Shri Santhanam referred, namely, that this could have been done without an amendment of the Constitution by bringing forward a Bill to be passed by Parliament. I respectfully invite his attention to the words in article 71, clause (3), which reads:—

'Subject to the provisions of this Constitution, Parliament may be law regulate any matter relating to

or connected with the election of a President or Vice-President."

Therefore, the opening words are, "Subject to the provisions of the Constitution." We cannot escape the provisions of the Constitution so far as the election to these highest offices of the State are concerned. Whatever can be done by way of a law of Parliament must be done subject to the provisions of the Constitution and it is for that reason that we have got to deal with the Constitution itself and bring forward an amendment. It does not introduce any kind of change in the electoral system.

SHRI K. SANTHANAM: May I point out to my friend that the same provision is there for election to the Rajya Sabha and for election to the Legislative Councils, where also these vacancies will occur?

SHRI SANTOSH KUMAR BASU: Well, in any case, we are now talking of the election to the offices of the President and the Vice-President, and any measure that has got to be brought here must be brought subject to the provisions of the Constitution. There is no escape from the position that the Constitution will have to be amended.

I seldom see eye to eye with my friend, Shri Bhupesh Gupta. But on this occasion, I am glad that he has utilised this opportunity to pay a brilliant and eloquent tribute to our Vice-President because we may not have any other occasion to pay such a tribute in this House. I am sure every Member of this House will agree with him and associate with him in that tribute in a whole-hearted manner.

MR. DEPUTY CHAIRMAN: Mr. Mani, you have to be very brief.

SHRI A. D. MANI: Ten minutes?

MR. DEPUTY CHAIRMAN: Five minutes.

SHRI A. D. MANI: I will not be able to do justice.

Sir, I should like to say that I am very unhappy that the Government has brought forward this Constitution (Amendment) Bill just six months before the next Presidential election, and if anything has convinced me that the Bill is totally uncalled for and unnecessary, it was the two eloquent speeches made by my respected friends, Shri Santhanam and Diwan Chaman Lall. Sir, I should like to draw the attention of the House to the exact observations made by the Supreme Court when they dismissed the petition of Dr. Khare. They have said:—

"Elections have to be held in numerous constituencies and different dates have to be fixed for holding the actual elections in different constituencies according to the various exigencies relating to the particular localities in which the constituencies are situated."

And I want the House to listen to what they have subsequently said:—

"No good ground has been established for holding that there has been any discrimination such as is prohibited by Article 14 of the Constitution."

It was submitted by Dr. Khare in that case that four members from the Himachal Pradesh had not been elected and two seats in the Punjab had not been filled. Six members had not been elected, and the Government has the finding of the Supreme Court itself that where there are vacancies of this character, they should not stand in the way of the President being declared elected. This was the finding of the Supreme Court. I see, therefore, no reason for the Government saying that doubts have arisen. If at all, the doubts have been set at rest by the Supreme Court on this point.

There were other questions which had been raised by my friend, Shri Santhanam, who said that there might be vacancies as a result of resignation or the unseating of a member as a result of an election petition or the death of a member. If this was the object of the Government in bringing forward the Bill, clause 3 might have been amended as follows after the words 'of any vacancy' . . .

"arising from the death or resignation or unseating of any member."

That would have completely satisfied any doubts about this matter being challenged before the Supreme Court or any other court. But what the Government has done now is to put a blanket clause saying that the Supreme Court, as the court, shall not enquire into the matter on account of the election being challenged on account of any vacancies existing. This is going too far. We do expect the Government to be responsible and give opportunities to all electoral colleges to elect the President. But fifteen years hence, twenty years hence, if an arbitrary government comes into existence here, they may see that elections in certain States are not completed in order to get the President elected; they may have an election in which all qualified people do not take part. I think when we amend the Constitution, we have got to be very careful to see that not only the requirements of the present are met but the requirements of the future also. I would ask the hon. Law Minister why it was necessary to bring this amendment at all in view of what the Supreme Court itself had said. If we do not hold elections in the Himachal Pradesh or in Punjab, that is not going to affect the results of the Presidential election. Further, I would like to make one submission. The election of the President is a sacred matter. Every constituency in the country must be able to participate in the election. And I am

very glad that the Election Commission has so arranged the elections now that even Himachal Pradesh would take part in the Presidential election. Already the Election Commission has knocked the bottom out of clause 3 of the Bill. On this ground, clause 3 is totally uncalled for.

Sir, regarding the election of the Vice-President, I would like to make a submission. Our country is a very informal country. We take things for granted. The Vice-President is a person who is going to succeed the President if there is a vacancy on account of death. He holds a very important position. He presides over the meetings of this Chamber. When a person of that kind is to be elected, do you want him to be elected by correspondence course? I mean, I would like to put this question. It is a solemn matter on the occasion of the President coming to address Parliament, the Chairman of the Rajya Sabha and the Speaker of the Lok Sabha walking along with him, and the President arriving in state. We want to maintain the dignity of this office by this thing. If we are going to have a joint meeting, it gives us a solemnity of the occasion and we should give the office of the Vice-President the dignity that it requires.

There is one other point which I want to . . .

AN HON. MEMBER: Joint meeting?

SHRI A. D. MANI: I want a joint meeting to be held.

SHRI BHUPESH GUPTA: Do you want the Members . . .

SHRI A. D. MANI: I have very little time . . .

MR. DEPUTY CHAIRMAN: Order, order.

SHRI A. D. MANI: We are thinking in terms of a party which has got an overwhelming majority. Fifteen

[Shri A. D. Mani.]

years hence parties may be so equally divided that there may be furious canvassing for the Vice-Presidential election. If I am a candidate in that election contesting that office, should I not be given the right to do last-minute canvassing when the House meets?

4 P.M.

SHRI NAFISUL HASAN (Uttar Pradesh): No, no. Again dignity.

SHRI A. D. MANI: No, no. For example, when the dignity is assailed, it may be open for anybody who will be a Member of the House at that time to say let there be no contest, let there be an adjournment, we will elect a non-party man as Vice-President. It gives an opportunity to all people to do canvassing at the last moment. I see no reason for the sake of a few rupees, annas and pies that clause 2 should have been brought in which, as the hon. Member from Uttar Pradesh pointed out, is really an amendment of article 54. I think, Sir, that both these amendments are uncalled for and I would ask the hon. Law Minister what he has been doing all these five years. The judgment in Dr. Khare's case was given in 1957. This Bill has been brought in in 1961. What was the terrific emergency . .

SHRI A. K. SEN: For you to come.

SHRI A. D. MANI: . . . for the Government to bring in this Bill just before the Presidential election? I think, Sir, the Bill is uncalled for and the Opposition, I think, has made a very good case for requesting the Government to withdraw this Constitution (Amendment) Bill.

SHRI A. K. SEN: Mr. Deputy Chairman, Sir, I am glad that even after hearing all the speeches, I am unrepentant for having brought forward this Bill as I shall endeavour to prove presently.

SHRI BHUPESH GUPTA: Accept my amendment and I will support you.

SHRI A. K. SEN: Sir, may I deal first of all with the points raised by Mr. Sinha and Pandit Kunzru? If we look at clause 3 of article 71, we shall find that any regulation made by Parliament by law, relating to and connected with the election of Vice-President or President, is subject to the provisions of the Constitution. These are the first few words:

"Subject to the provisions of this Constitution, Parliament may by law regulate any matter relating to or connected with the election of a President or Vice-President."

It is not necessary to elaborate, Sir, that there is a distinction between a joint meeting, as envisaged in article 66, and a joint sitting. That is quite clear. I never said, Sir, that a joint meeting, referred to in article 66, was the same thing as a joint sitting. Therefore, the procedure connected with such a joint meeting, starting from the nomination of all candidates right up to the termination of the election including the declaration of result, will have to be regulated by law made by Parliament, which law in its turn must be subject to the provisions of the Constitution.

Article 324 of the Constitution, as I endeavoured to point out in the very beginning, says:

"The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with the elections to Parliament and to the Legislatures of States shall be vested in a Commission . . ."

hereinafter referred to as the Election Commission. Reading article 324 with article 71 clause (3) and article 66, it is quite clear that even if there is a

joint meeting, Parliament cannot by law divest the function of the Election Commission in holding the elections of the Vice-President and the President. It has to be in accordance with article 324. Therefore, such a joint meeting will have to be supervised, controlled and regulated by the Chief Election Commissioner.

Here is, Sir, the opinion with regard to that mischief by no less a person than the President of India who happened to be the President of the Constituent Assembly. I did not want to quote him because it is not in consonance with his dignity that he should be quoted so much and so often. But since Dr. Kunzru and Mr. Bhupesh Gupta . . .

SHRI BHUPESH GUPTA: We do not quote him at all, generally.

SHRI A. K. SEN: . . . challenged the *bona fides* of the Government in this very simple matter, which I thought was extremely non-controversial, it is my duty to say on this point that the President had said that if a joint sitting is not considered as a session of Parliament, then the superintendence, control etc. of such a meeting will vest in the Election Commission, because a joint meeting is only a step in the procedure for holding the election and does not in any way impinge on the powers, status and proceedings of Parliament.

(Interruptions.)

MR. DEPUTY CHAIRMAN: The Law Minister should not use the President's name for the purpose of influencing the debate.

SHRI A. K. SEN: It is a question of the Constituent Assembly. I am not using the name of the President. I am using his authoritative interpretation as President of the Constituent Assembly. (Interruption.) Why is Mr. Gupta so afraid . . .

SHRI BHUPESH GUPTA: I support you because you are quoting him

as the President of the Constituent Assembly.

SHRI A. K. SEN: I am not using his name at all. I said, here is the opinion of no less a person than Dr. Rajendra Prasad, who was the President of the Constituent Assembly.

SHRI BHUPESH GUPTA: Mr. Sen, may I help you a little, I think, on a point of order? Sir, you are quite right in asking him not to use what the President had said. But here he is quoting the President of the Constituent Assembly. It is a mere coincidence that today he happens to be the President of India.

MR. DEPUTY CHAIRMAN: No, his name should not be used. He is the President now.

SHRI A. K. SEN: Very well, Sir, I shall use it on my own.

SHRI SANTOSH KUMAR BASU: Had it been the pronouncement of the Vice-President of the Constituent Assembly, it could have been quoted here.

SHRI A. K. SEN: I shall deal with the arguments on their merits. Sir, it is not consonant with the dignity of a joint meeting of Parliament of both the Houses that its sittings should be regulated, controlled and, mind you, supervised under article 324 by the Chief Election Commissioner and not by either the Speaker or the Vice-Chairman which must be so under article 324. If Dr. Kunzru thinks that that is a desirable state of affairs, I beg to differ from him, and many would beg to differ from him because I do not think it was ever intended by the Constituent Assembly, when they put the provision in article 324, that the Presidential or Vice-Presidential election shall be supervised, controlled and regulated in a joint meeting of both the Houses of Parliament under the supervision and control of the Chief Election Commissioner, and it has to be so if it is to be a joint meeting and article 324 has to be given

effect to. That is why instead of making it a joint meeting we have made it into an electoral college exactly as it is in article 54 at the time of electing the President. The substance of the power and the right is there. The power of having a joint meeting, only casting votes, is taken away. If Dr. Kunzru, Mr. Sinha and Mr. Bhupesh Gupta think that that is interfering with the substantial right of the Members of the two Houses, I again beg to differ from them.

SHRI BHUPESH GUPTA: My amendment is different.

SHRI A. K. SEN: Now, Sir, the next charge brought was to the effect that this is taking away the rights of a large number of people from the snow-bound areas. Sir, the snow-bound areas were cited only as an illustration in the Statement of Objects and Reasons. It might very well be that in the very beginning, at the time of the Vice-Presidential election, the two Houses may not be completely elected as a result of several troubles, several commotions, which would make the election impossible. Does it mean, therefore, that the whole country—because under the Constitution the President and the Vice-President have to be elected every five years—will go without a Vice-President or a President simply because one particular constituency or two constituencies or three constituencies have failed to elect Members? I think it is much better to provide a safeguard against such a contingency than to have to go without a President or a Vice-President for which there is no remedy in the Constitution. There is no question. I submit. Sir, that these loopholes in the working of the Constitution appear when they are worked out. No Constitution in the world ever proved to be infallible. This one is not either.

I have often heard it said that this Constitution has been amended eleven times. I personally think that it shows the vigour of a nation and its Constitution that it suffers amendment

from time to time. What are the amendments? All for the purpose of enabling a social and progressive legislation against being condemned by courts of law.

SHRI BHUPESH GUPTA: Not all.

SHRI A. K. SEN: All of them.

SHRI BHUPESH GUPTA: Not all of them.

SHRI A. K. Sen: All of them, Mr. Gupta. I know all the amendments. One amendment to incorporate the Portuguese enclaves . . . That has never amended the Constitution, I am sorry, Mr. Gupta. The Constitutions are made for the people and not *vice versa*. I was told once by Muslim Divine with whom I had an argument about prohibiting bigamy for Muslims in India as well, as they have done in Pakistan. I was told by this gentleman—he believed it honestly when he said—that the law of the Quran cannot be touched by human agency. I hope such arguments will not prevent us from touching the Constitution when the need of the society and our needs so warrant. It is the people who matter and not the Constitution. The Constitution has all the sacredness we have given it.

The next is about the point raised by Dr. Kunzru that we have surreptitiously tried to contravene article 54 of the Constitution. I think the proximity of Mr. Gupta is having an effect on Dr. Kunzru these days. I am sorry to find this. This is the first occasion, if I may say so with respect, with the greatest of respect in which I hold Dr. Kunzru, that I have heard him err and err on the side of indiscretion. He has seen this Government work for many many years longer than I have and I hope the Government headed by the Prime Minister will never be charged by him with *mala fides*. We may be charged with errors, we may be charged with other defects but certainly not *mala fides*, contravening the Constitution and so

on. The provision in clause 3 is a rule of evidence. It is quite well known that when a ground of attack is taken away, it is a procedural bar. It is a rule of evidence similar to an estoppel which is raised as a bar in a court of law against attack by interested parties. Article 71 deals with the subject of attack on elections of the President and Vice-President. The question of disputes as regards the election of the President and the Vice-President and the forum in which such disputes are to be decided are prescribed in article 71, as was pointed out by hon. Diwan Chaman Lall. It is there, therefore, that it is appropriate to insert this rule of evidence as a bar which will make it not available any longer for a litigant trying to dispute the President's and the Vice-President's election to cite the non-filling of a particular constituency as a ground of attack. I do not know how article 54 is at all attracted. Article 54 says that the President shall be elected by the two Houses of Parliament and the elected Assemblies. When the question of attacking that election comes, the court is prescribed and other things are prescribed. That is done in article 71 and there, appropriately we are saying that no one shall be entitled to attack an election only on the ground that a particular vacancy remains to be filled. Dr. Kunzru says that we should have only provided for casual vacancies. Casual vacancies occur after an election, when something occurs taking away a place and making it a vacuum, like death or resignation and so on but an *ab initio* vacancy remains where the constituency has not elected a representative at all. For instance, during the progress of the election, something occurs which mars the election. The Representation of the People Act says that the Election Commissioner may order a re-election. Supposing that re-election takes place after the term of the President or the Vice-President has expired, what will happen? Will the country go without a President or a Vice-President? Seeking to provide for it is charged

as a *mala fide* act. I submit that these are too strong words to be used for such an occasion.

SHRI A. D. MANI: Does not the Supreme Court judgement cover it?

SHRI A. K. SEN: Mr. Mani's grounds have been hardly intelligible to me, with due respect to him. If, according to him, the Supreme Court has stated what we are stating here, then he has no objection. Where is the objection in making it clear if the Supreme Court has said exactly what we have said that the vacancies will not spoil, will not vitiate a Presidential or Vice-Presidential election? If that is quite clear from the Supreme Court's judgment, then what is the objection in making it clear by borrowing the words of the Supreme Court judgment? But, in my submission, it is not as clear as Mr. Mani thinks. In fact the Attorney General does not think so.

MR. DEPUTY CHAIRMAN: I will put the motion to the House. Under article 368 the motion will have to be adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members of the House present and voting.

The question is:

"That the Bill further to amend the Constitution of India, as passed by the Lok Sabha, be taken into consideration."

The House divided.

MR. DEPUTY CHAIRMAN: Ayes—145; Noes—2.

AYES—145

Abdul Rahim, Shri.
Abha Maity, Shrimati.
Abid Ali, Shri.
Agarwala, Shri R. G.
Agrawal, Shri J. P.
Akhtar Husain, Shri.
Ali, Shri Hakim.

Ali, Shri Mohammad.	Karayalar, Shri S. C.
Amrit Kaur, Rajkumari.	Kaushal Shri, J. N.
Anis Kidwai, Shrimati.	Keshvanand, Swami.
Annapurna Devi Thimmareddy, Shrimati.	Khan, Shri Akbar Ali.
Anwar, Shri N. M.	Khan, Shri Pir Mohammed.
Arora, Shri Arjun.	Khanna, Shri Mehr Chand.
Banerjee, Shri Tara Shankar.	Kishori Ram, Shri.
Bansi Lal, Shri.	Kishna Kumari, Shrimati.
Barooah, Shri Lila Dhar.	Kulkarni, Shri G. R.
Basu, Shri Santosh Kumar.	Kurre, Shri Dayaldas.
Bedavati Buragohain, Shrimati.	Latif, Shri Abdul.
Bharathi, Shrimati K.	Lohani, Shri I. T.
Bhargava, Shri M. P.	Mahapatra, Shri Bhagirathi.
Bisht, Shri J. S.	Mahesh Saran, Shri.
Chakradhar, Shri A.	Malkani, Shri N. R.
Chaman Lall, Diwan.	Malviya, Shri Ratanlal Kishorilal.
Chatterji, Shri J. C.	Mathen, Shri Joseph.
Chaturvedi, Shri B. D.	Maya Devi Chettry, Shrimati.
Chauhan, Shri Nawab Singh.	Mazhar Imam, Syed.
Chavda, Shri K. S.	Menon, Shri K. Madhava.
Chettiar, Shri Avinashilingam.	Misra, Shri S. D.
Chinai, Shri Babubhai.	Mitra, Shri P. C.
Das, Shri N. K.	Modi, Shri J. K.
Deb, Shri S. C.	Mohammad Ibrahim, Hafiz.
Deogirikar, Shri T. R.	Nafisul Hasan, Shri.
Deokinandan Narayan, Shri.	Nagpure, Shri. V. T.
Desai, Shri Janardhan Rao.	Naik, Shri Maheswar.
Desai, Shri Khandubhai K.	Nair, Shri K. P. Madhavan.
Deshmukh, Shri R. M.	Nallamuthu Ramamurti, Shrimati T.
Dharam Prakash, Dr.	Neki Ram, Shri.
Dikshit, Shri Umashankar.	Paliwal, Shri Tikaram.
Doogar, Shri R. S.	Pande, Shri T.
Dutt, Shri Krishan.	Panjhazari, Sardar Raghbir Singh.
Ghose, Shri Surendra Mohan.	Parmanand, Dr. Shrimati Seeta.
Gilbert, Shri A. C.	Pathak, Shri G. S.
Gurudev, Shri.	Patil, Shri Sonusing Dhansing.
Hagjer, Shri J. B.	Pawar, Shri D. Y.
Hardiker, Dr. N. S.	Punnaiah, Shri Kota.
Joshi, Shri J. H.	Pushpalata Das, Shrimati.
Jugal Kishore Shri.	Raghubir Sinh, Dr.
Kabir, Shri Humayun.	Rajabhoj, Shri P. N.
Kapoor, Shri Jaspat Roy.	Rajagopalan, Shri G.
	Rao, Shri D. Ramanuja.

Roa, Shri V. C. Kesava.
 Ray, Dr. Nihar Ranjan.
 Ray, Shri Satyendra Prosad.
 Reddi, Dr. B. Gopala.
 Reddi, Shri J. C. Nagi.
 Reddy, Shri A. Balarami.
 Reddy, Shri N. Sri Rama.
 Reddy, Shri S. Channa.
 Reddy, Shri M. Govinda.
 Sadiq Ali, Shri.
 Sahai, Shri Ram.
 Sait, Shri Ebrahim Sulaiman.
 Saksena, Shri H. P.
 Saksena, Shri Mohan Lal.
 Samuel, Shri M. H.
 Santhanam, Shri K.
 Sarwate, Shri V. V.
 Satyacharan, Shri.
 Savitry Devi Nigam, Shrimati.
 Seeta Yudhvir, Shrimati.
 Sethi, Shri P. C.
 Shah, Shri K. K.
 Shakoor, Moulana Abdul.
 Shanta Vasisht, Kumari.
 Shanti Devi, Shrimati.
 Sharda Bhargava, Shrimati.
 Sharma, Shri L. Lalit Madhob.
 Sharma Shri Madho Ram.
 Shervani, Shri M. R.
 Shetty, Shri B. P. Basappa.
 Shrimali, Dr. K. L.
 Singh, Thakur Bhanu Pratap.
 Singh, Sardar Budh.
 Singh, Shri Mohan.
 Singh, Giani Zail.
 Sinha, Shri Awadeshwar Prasad.
 Sinha, Shri B. K. P.
 Sinha, Shri R. B.
 Sinha, Shri R. P. N.
 Tajamul Husain, Shri.
 Tankha, Pandit S. S. N.
 Tara Chand, Dr.
 Tayyebulla, Maulana M.

Tripathi, Shri H. V.
 Tumpalliwar, Shri M. D.
 Umair, Shah Mohamad.
 Venkataraman, Shri S.
 Vijaivargiya, Shri Gopikrishna.
 Violet Alva, Shrimati.
 Vyas, Shri Jai Narain
 Wadia, Prof. A. R.
 Yajee, Shri Sheel Bhadra.
 Yashoda Reddy, Shrimati.

NOES—2.

Gupta, Shri Ramgopal.
 Kunzru, Pandit Hriday Nath.

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

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

Clause 2—Amendment of article 66

SHRI BHUPESH GUPTA: Sir, I move:

1. That at page 1, for lines 5 to 8, the following be substituted, namely:—

"2. In article 66 of the Constitution,—

(i) in clause (1), for the words 'members of both Houses of Parliament assembled at a joint meeting', the words 'members of an electoral college consisting of the members of both Houses of Parliament' shall be substituted;

(ii) after clause (1), the following proviso shall be inserted, namely:—

'Provided that a meeting of the electoral college so constituted has considered on a

motion or motions by one or more members, the nomination or nominations of candidate or candidates for election as Vice-President.' ”.

Sir, as we have seen, in the course of his speech, the hon. Law Minister did not meet the point that I made about the electoral college and what should be its scope. I knew that there would be a lot of Constitutional wrangling over this matter and demolition squads on both sides would be functioning, and we had an excellent exhibition of it next to me, when Dr. Kunzru and Diwan Chaman Lall clashed. I don't know who won and who lost. When my hon. friend, Shri R. P. Sinha, started in his very eloquent way, raising all kinds of Constitutional points, I felt that he had better concentrate, being of a small party, on the political and other principal aspects of the matter rather than do this kind of thing.

SHRI RAJENDRA PRATAP SINHA: That is what we are doing.

SHRI BHUPESH GUPTA: You did it a little, but I wish you had applied all your talent on some of those aspects, because we are certain that being a small party here, we cannot get anything passed here. But certainly we can make the country know what we stand for, when the time comes. That is why my amendment relates to the electoral college. I am very glad that many in this House joined in the compliments paid to the Vice-President. We want to continue this tradition. But there is no Constitutional guarantee that we shall have the continuance of this tradition. If there is this electoral college, then probably the majority party would be making its nomination for the Vice-Presidency and it would be subject to discussion in the House. That will have a good influence and a stimulating influence on the party which is in a position to make the nomination and get its nominee elect-

ed. Now, Mr. Kapoor was saying that we could discuss things in the lobby, not in the House. He likes discussions, you see. This is the typical Uttar Pradesh mind, if I may say so, discussing it in the lobby. Yes, as regards elections, we discuss in the lobby. Issue of tickets we discuss in the lobby. But the election of the Vice-President, I say . . .

SHRI SATYACHARAN (Uttar Pradesh): That is a reflection on U.P.

SHRI BHUPESH GUPTA: Then I shall say, the U.P. Congress mind. Anyway, this question of election of the Vice-President, we are going to discuss on the floor of the House and before the gaze of the entire country.

SHRI NAFISUL HASAN: You want to discuss personalities.

SHRI BHUPESH GUPTA: I will meet your point also, yes. What is wrong there? Don't you see Jawaharlal Nehru being discussed in the elections? If the country can discuss Jawaharlal Nehru than whom there is no one greater in the Congress Party, then why not the Vice-President? What is wrong there? If you can allow the Swatantra Party to discuss Jawaharlal Nehru, let us discuss the Vice-President here.

SHRI JASPAT ROY KAPOOR: You don't discuss the merits of candidates at the election booth. Here it will be the election booth.

SHRI BHUPESH GUPTA: Another instance of what I said just now. That is to say, you will fill the box with votes and then call it democracy. Here we must discuss, because we want to convince even Mr. Kapoor and we should be given an opportunity. That is all I ask for. Mr. Deputy Chairman, that is what I want. Naturally hon. Members will say, "Is it right to discuss the President or the Vice-President?" One will get elected and many things would have been said against him. But, Sir, my logic is this. First of all, the discus-

[Shri Bhupesh Gupta] sion will be very responsible here and the parties will do so to the best of their wisdom. They would have initially exercised their minds in a particular way. They will not come with frivolous recommendations. The discussion will take place on a responsible basis.

MR. DEPUTY CHAIRMAN: Yes, that will do.

SHRI BHUPESH GUPTA: That will not do for me, Sir. It is not a question of time. Otherwise I will not allow the Constitution (Amendment) Bill to pass.

MR. DEPUTY CHAIRMAN: Please be brief.

SHRI BHUPESH GUPTA: I will be brief; but it is not good that the Bill to amend the Constitution should be hurried through by looking at the clock. It cannot be and we shall protest against this measure strongly. To pass the Bill, if necessary, we shall sit here till midnight.

MR. DEPUTY CHAIRMAN: Don't repeat your arguments.

SHRI BHUPESH GUPTA: That is different. I am not repeating.

MR. DEPUTY CHAIRMAN: You have said all this before.

SHRI BHUPESH GUPTA: But don't you see, I cannot convince anybody here? That is my trouble.

MR. DEPUTY CHAIRMAN: No amount of repetition will convince.

SHRI BHUPESH GUPTA: I will try my lungs out and if you can, please help me to convince the hon. Members, because they have raised certain points. I understand that many things need not be said, but something should be said. Suppose a nomination comes. I should say in a

very responsible way whether it is right or wrong, and whether somebody should be in or not. I will at least get an opportunity to speak of my candidate to the majority party. But here nothing is given and the electoral college is just made a vote-recording machine.

Therefore, Mr. Deputy Chairman,—I know you are looking at the clock rather frequently—this electoral college should be there. It may be that today it is not necessary, but a time may come when it would become necessary, and we are making an amendment to the Constitution for that time when it will be necessary. If the parties are evenly divided in the other House or in the country with certain States belonging to some parties and the majority here with another party, then the correlation of forces would be entirely different from what it is today.

The country will like to know how we settle the appointments or elections, in such a situation, of the President and the Vice-President. That should be done, not secretly in the lobby, but before the eyes and within the hearing of the entire country. That is why I left it. Sir, the Law Minister was very unfair; I did not put myself in the same category as Dr. Kunzru in this matter. I always would like to be his companion, but not in this matter, because I did not bring in the Constitution point nor did I question the *bona fides* of the Government on that ground. All I said was that the manner in which they set about this particular amendment to the clause in the Constitution was not right. This is what my position was and we cannot leave things to the Government, even if the Election Commissioner has power. As you know, Sir, when I made an interruption and said that the Constitution has been changed for reasons other than to facilitate progressive legislation, he said: "No". Now here is the first amendment to the Constitution relating to sub-clause (2) of article 19 of the Constitution, which

made it possible for the State Governments to pass certain repressive measures, and we have the Law Minister of the country who does not know even that, or ignored it. Therefore I wanted to protect myself from the "Treasury Benches" which sometimes is so ignorant that it does not know even the Constitution Amendment and behaves in a particular way. I submit again to the hon. House that since we are making a permanent amendment to the Constitution, we should make the electoral college where we can discuss things in a proper way, naturally, where we can bring the collective wisdom of the entire House, and the other House, Members of Parliament and the other electors in the State Legislatures when it comes to the question of the election of the Vice-President. Sir, as you know, whether it is the Vice-President or the Deputy Chairman, we would always like to have very independent and courageous men in such places.

Thank you.

The question was proposed.

SHRI A. K. SEN: Sir, nothing new has been said by Mr. Gupta. All that I need say in refutation of his rather eloquent speech on a matter which did not call for any eloquence or passion or heat is this, Sir, that all his rhetorics about the right to talk about a particular candidate in a meeting seem to rouse a suspicion that the completest of immunity enjoyed by Members of the House in a meeting within the precincts of the House might be utilised by some in hurling abuses against the rival candidates. That is a likelihood which has to be guarded against. I am not suggesting for one moment that Mr. Gupta will avail himself of that immunity, but there may be others who may.

(Interruptions)

This rather large measure of immunity might induce them to indulge

in acrimonious and abusive epithets against candidates—which would not be consistent with the dignity with which elections of the Vice-President and the President have been conducted in the past and we hope to conduct in the future, and there is no particular sanctity about discussing within the walls of this House—I do not see anything. If he wants to say anything against a particular candidate or a party, he can do so, as he is doing now, in the General Elections.

SHRI BHUPESH GUPTA: How?

SHRI A. K. SEN: As I said, the right claimed to say so, within the four walls of this House, rouses the suspicion that the immunity of this House might be abused by some.

(Interruptions)

MR. DEPUTY CHAIRMAN: The question is:

1. That at page 1, for lines 5 to 8, the following be substituted, namely:—

"2. In article 66 of the Constitution,—

(i) in clause (1), for the words 'members of both Houses of Parliament assembled at a joint meeting', the words 'members of an electoral college consisting of the members of both Houses of Parliament' shall be substituted;

(ii) after clause (1), the following proviso shall be inserted, namely:—

'Provided that a meeting of the electoral college, so constituted has considered on a motion or motions by one or more members, the nomination or nominations of candidate or candidates for election as Vice-President.'"

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 2 stand part of the Bill."

The House divided:

MR. DEPUTY CHAIRMAN: Ayes—148; Noes—9.

• AYES—148.

Abdul Rahim, Shri.
Abha Maity, Shrimati.
Abid Ali, Shri.
Agarwala, Shri R. G.
Agrawal, Shri J. P.
Akhtar Husain, Shri.
Ali, Shri Hakim.
Ali, Shri Mohammad.
Amrit Kaur, Rajkumari.
Anis Kidwai, Shrimati.
Annapurna Devi Thimmareddy, Shrimati.
Anwar, Shri N. M.
Arora, Shri Arjun.
Banerjee, Shri Tara Shankar.
Bansi Lal, Shri.
Barooah, Shri Lila Dhar.
Basu, Shri Santosh Kumar.
Bedavati Buragohain, Shrimati.
Bharathi, Shrimati K.
Bhargava, Shri M. P.
Bisht, Shri J. S.
Chakradhar, Shri A.
Chaman Lall, Diwan.
Chatterji, Shri J. C.
Chaturvedi, Shri B. D.
Chauhan, Shri Nawab Singh.
Chavda, Shri K. S.
Chettiar, Shri T. S. Avinashilingam.
Chinai, Shri Babubhai.
Das, Shri N. K.
Deb, Shri S. C.
Deogirikar, Shri T. R.
Deokinandan Narayan, Shri.
Desai, Shri Janardhan Rao.

Desai, Shri Khandubhai K.
Deshmukh, Shri R. M.
Dharam Prakash, Dr.
Dikshit, Shri Umashankar
Doogar, Shri R. S.
Dutt, Shri Krishan.
Ghose, Shri Surendra Mohan.
Gilbert, Shri A. C.
Gurudev, Shri.
Hagjer, Shri J. B.
Hardiker, Dr. N. S.
Joshi, Shri J. H.
Jugal Kishore, Shri.
Kabir, Shri Humayun.
Kapoor, Shri Jaspat Roy.
Karayalar, Shri S. C.
Kaushal, Shri J. N.
Keshvanand, Swami.
Khan, Shri Akbar Ali.
Khan, Shri Pir Mohammed.
Khanna, Shri Mehr Chand.
Kishori Ram, Shri.
Krishna Kumari, Shrimati.
Kulkarni, Shri G. R.
Kunzru, Pandit Hriday Nath.
Kurre, Shri Dayaldas.
Latif, Shri Abdul
Lohani, Shri I. T.
Mahapatra, Shri Bhagirathi.
Mahesh Saran, Shri.
Malkani, Shri N. R.
Malviya, Shri Ratanlal Kishorilal.
Mathen, Shri Joseph.
Maya Devi Chetty, Shrimati.
Mazhar Imam, Syed.
Menon, Shri K. Madhava.
Misra, Shri S. D.
Mitra, Shri P. C.
Modi, Shri J. E.
Mohammad Ibrahim, Hafiz.
Mohanty, Shri Dhananjoy.
Nafisul Hasan, Shri.
Nagpure, Shri V. T.

Naik, Shri Maheswar.
 Nair, Shri K. P. Madhavan.
 Nallamuthu Rammamurti, Shrimati T.
 Narasimha Rao, Dr. K. L.
 Neki Ram, Shri.
 Paliwal, Shri Tikaram.
 Pande, Shri T.
 Panjhzari, Sardar Raghbir Singh.
 Parmanand, Dr. Shrimati Seeta.
 Pathak, Shri G. S.
 Patil, Shri Sonusing Dhansing.
 Pawar, Shri D. Y.
 Punnaiah, Shri Kota.
 Pushpalata Das, Shrimati.
 Raghubir Singh, Dr.
 Rajabhoj, Shri P. N.
 Rajagopalan, Shri G.
 Rao, Shri D. Ramanuja.
 Rao, Shri V. C. Kesava.
 Ray, Dr. Nihar Ranjan.
 Ray, Shri Satyendra Prosad.
 Reddi, Dr. B. Gopala.
 Reddi, Shri J. C. Nagi.
 Reddy, Shri A. Balarami.
 Reddy, Shri N. Sri Rama.
 Reddy, Shri S. Chauna.
 Reddy, Shri M. Govinda.
 Sadiq Ali, Shri.
 Sahai, Shri Ram.
 Sait, Shri Ebrahim Sulaiman.
 Saksena, Shri H. P.
 Saksena, Shri Mohan Lal.
 Samuel, Shri M. H.
 Santhanam, Shri K.
 Sarwate, Shri V. V.
 Satyacharan, Shri.
 Savitry Devi Nigam, Shrimati.
 Seeta Yudhvir, Shrimati.
 Sethi, Shri P. C.
 Shah, Shri K. K.
 Shakoor, Moulana Abdul.
 Shanta Vasisht, Kumari.
 Shanti Devi, Shrimati.
 Sharda Bhargava, Shrimati.

Sharma, Shri L. Lalit Madhob.
 Sharma, Shri Madho Ram.
 Shervani, Shri M. R.
 Shetty, Shri B. P. Basappa.
 Shrimali, Dr. K. L.
 Singh, Thakur Bhanu Pratap.
 Singh, Sardar Budh.
 Singh, Shri Mohan.
 Singh, Giani Zail.
 Sinha, Shri Awadeshwar Prasad.
 Sinha, Shri B. K. P.
 Sinha, Shri R. B.
 Sinha, Shri R. P. N.
 Tajamul Husain, Shri.
 Tankha, Pandit S. S. N.
 Tara Chand, Dr.
 Tayyebulla, Maulana M.
 Tripathi, Shri H. V.
 Tumpalliwar, Shri M. D.
 Umair, Shah Mohamad.
 Venkataraman, Shri S.
 Vijaivargiya, Shri Gopikrishna.
 Violet Alva, Shrimati.
 Vyas, Shri Jai Narain.
 Wadia, Prof. A. R.
 Yajee, Shri Sheel Bhadra.
 Yashoda Reddy, Shrimati.

NOES—9

Dave, Shri Rohit M.
 Desai, Shri Suresh J.
 Gupta, Shri Bhupesh.
 Gupta, Shri Ramgopal.
 Gurupada Swamy, Shri M. S.
 Lal, Prof. M. B.
 Mani, Shri A. D.
 Reddy, Shri Mulka Govinda.
 Sinha, Shri Rajendra Pratap.

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 2 was added to the Bill.

Clause 3—Amendment of article 71

SHRI RAJENDRA PRATAP SINHA:
Sir, I know the mood of the House at this hour and I would like to finish as early as possible, and I seek the indulgence of the House for a minute or two. I shall move my amendment and, if the House permits, I would also like to move a further amendment to my amendment—of course with the permission of the House, Sir.

SOME HON. MEMBERS: No, no.

MR. DEPUTY CHAIRMAN: They object to it.

SHRI RAJENDRA PRATAP SINHA:
Then I shall move the amendment which has already been circulated. I move:

2. "That at page 1, after line 14, the following proviso be inserted, namely:—

'Provided that such vacant seats in the electoral college are not more than five per cent. of the total strength of the electoral college electing him.'"

I would just add one or two words, Sir.

Sir, I have listened with great attention to the speeches made by hon. Members and I could only say that my hon. friend, Diwan Chaman Lall, for whom I have got very great respect and esteem, has merely ridiculed my arguments without meeting the points which I raised. Sir, I would only submit that the House, the country, the Press and the posterity will note that this measure has been carried not by whipping the minds but by whipping the hands of the Members of the Congress Party. I have got great satisfaction that the reason of the Congress Party has voted with me; they may not vote physically with me but their minds have voted with me. Sir, I am very happy that the purpose with which

we moved this amendment has been largely achieved and I only hope and pray that the Government will take note not only of the sentiments expressed by Members of the Opposition but also of the sentiments expressed by the Congress Party itself when implementing such measures.

The question was proposed.

PANDIT HRIDAY NATH KUNZRU:
Sir, I would like to speak on this. The hon. Law Minister will of course have the last word on the subject. I do not want to repeat anything which has already been said. I listened to the Law Minister very attentively but he had nothing of a convincing nature to say. He merely repeated what he had said earlier. I would however like to bring one more point to his notice.

The electoral college for the election of the Vice-President will consist of members of both Houses of Parliament and the electoral college for the election of the President will consist of members of both Houses of Parliament and the members of the Legislative Assemblies of States. Now, I should like to draw the attention of the Law Minister to the provisions of article 80(4) with regard to the election of members of the Council of States. That clause says that the representatives of each State in the Council of States shall be elected by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote. If the doubts expressed by the Law Minister with regard to the validity of an election that is held when there is a vacancy in a legislature are sound, well, then he should realise that if there is a single vacancy in the Legislative Assembly of a State it cannot elect the members of the Council of States. This means that if in the Legislative Assemblies there is a vacancy—even only one vacancy—for any of the reasons so eloquently mentioned by

the Law Minister, those Assemblies will not be able to elect their quota of members of the Council of States. What does he propose to do in this case? In the Legislative Assemblies, as everybody knows, there are no constituencies. It is not that one or two members will not be elected; the entire body of representatives of a State to the Council of States cannot be elected. Now, is that not, Sir, a serious matter? I think it is very objectionable from the point of view of membership of this Council that such a position should be allowed to exist. If Government thought that an amendment of the Constitution was necessary in order to place the election of the President and the Vice-President beyond question, then they should have amended article 80 of the Constitution also. This shows that adequate attention has not been paid to the drafting of the Bill. And the Bill that has been placed before us is not the result of mature thought in spite of what the Law Minister has said. They simply thought that difficulties might arise and they thought that therefore article 71 might be amended.

SHRI RAJENDRA PRATAP SINHA: Most lighthearted performance.

PANDIT HRIDAY NATH KUNZRU: I should like to know from the Law Minister what he has to say on this point. Is he prepared to say, 'Well, if in some States there are vacancies in the Legislative Assemblies and the Members or the Council of States cannot be elected, it does not matter.'? I hope he will not say it at least in this House. This shows that this Bill ought not to be passed just now. If the Government want to have such a Bill, they ought to devote more attention to the matter and a better-drafted Bill should be placed before us.

SHRI A. K. SEN: Sir, I do not think it really arose out of this amendment but still I would not shirk the answer required by Dr. Kunzru. The difficulty is if points are raised suddenly it might seem insuperable. So

far as the point raised by Dr. Kunzru is concerned, that is cleared by section 27(j) of the Representation of the People Act. If he comes and discusses the matter with me, I shall show it to him. That does not require an amendment of the Constitution and that contingency has been looked after under section 27(j) of the Representation of the People Act. The difference between the Rajya Sabha election and the Vice-Presidential election is quite significant. Here the vacancies occur only of a particular proportion and the Chief Election Commissioner calls for an election to the Rajya Sabha after the vacancies occur under the Representation of the People Act. All these matters are provided for in that Act. Here if the Vice-President is not elected within a particular period, the office will remain vacant and there is nothing in the Constitution to make provision for that. There they have to be elected before the five years are over and if there is any vacancy which remains unfilled before the elections, that has to be looked after. How that is an analogy I fail to understand. And from that Dr. Kunzru goes further and says that because we have not thought about Rajya Sabha therefore it proves that this Bill has been brought forward without mature thought. This is a line of reasoning which in older days we read as *petitio principii*.

MR. DEPUTY CHAIRMAN: I will put the amendment to vote.

SHRI RAJENDRA PRATAP SINHA: Sir, I want a division.

MR. DEPUTY CHAIRMAN: There cannot be a division.

SHRI BHUPESH GUPTA: Under what rule do you say that we cannot have a division?

MR. DEPUTY CHAIRMAN: Voting can be done by Members standing up.

SHRI BHUPESH GUPTA: Rules provide for a division.

MR. DEPUTY CHAIRMAN: It is in my discretion.

SHRI BHUPESH GUPTA: Then I will ask you to exercise your discretion with regard to the other provisions also as you are exercising now.

MR. DEPUTY CHAIRMAN: That is for me to decide.

The question is:

2. "That at page 1, after line 14, the following proviso be inserted, namely:—

'Provided that such vacant seats in the electoral college are not more than five per cent. of the total strength of the electoral college electing him.'

Those in favour will please stand up.

SHRI RAJENDRA PRATAP SINHA: Sir, our names should be recorded.

5 P.M.

MR. DEPUTY CHAIRMAN: Names will not be recorded.

(Interruptions.)

SHRI BHUPESH GUPTA: Now, on a point of order . . .

SHRI RAJENDRA PRATAP SINHA: Let it be recorded that these gentlemen voted against this amendment.

(Interruptions.)

MR. DEPUTY CHAIRMAN: Order, order. The relevant rule reads:

"If the opinion of the Chairman as to the decision of a question is challenged, he may, if he thinks fit, ask the members who are for "Aye" and those for "No" respectively to rise in their places and, on a count being taken, he may declare the determination of the Council. In such a case, the names of the voters shall not be recorded."

SHRI RAJENDRA PRATAP SINHA: We want that a count be taken.

SHRI BHUPESH GUPTA: We want a division. Under the rules you have got the last word. (Interruptions.)

(Several hon. Members stood up)

MR. DEPUTY CHAIRMAN: All right. We will have a division.

SHRI BHUPESH GUPTA: I wish you had taken that line earlier.

The House divided.

(The result of the division was recorded on the board)

SOME HON. MEMBERS: There has been confusion. The votes have not been recorded properly. We have not voted at all.

SOME HON. MEMBERS: We have voted for the amendment by mistake.

MR. DEPUTY CHAIRMAN: Order, order. As long as there is a mistake, it should be rectified.

SHRI RAJENDRA PRATAP SINHA: No, Sir. Under what rules is this done? No, we will not allow it.

(Several hon. Members stood up)

MR. DEPUTY CHAIRMAN: Order, order. Please sit down, all of you. (Interruptions.) Silence please. I said that the division would be taken.

(Interruptions.)

SHRI BHUPESH GUPTA: No, Sir. It is not a mistake.

MR. DEPUTY CHAIRMAN: We will take a fresh division.

SHRI BHUPESH GUPTA: On a point of order . . .

MR. DEPUTY CHAIRMAN: Are you satisfied with this division?

SHRI BHUPESH GUPTA: I am satisfied. The voting took place.

(Interruptions.)

MR. DEPUTY CHAIRMAN: A correction is always made. Silence please. Those whose votes have not been recorded will be recorded.

SHRI RAJENDRA PRATAP SINHA: The total number should not increase.

SHRI BHUPESH GUPTA: They have recorded their votes. They should not vote again.

MR. DEPUTY CHAIRMAN: Those whose votes have not been recorded here may please give their names.

SHRI RAJENDRA PRATAP SINHA: Regarding those persons who have not voted, under the rules there is no provision for having a re-vote.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI RAJENDRA PRATAP SINHA: I take it that only the votes of those persons whose votes have not been recorded will be recorded.

(Interruptions.)

MR. DEPUTY CHAIRMAN: Order, order. Those persons who have not recorded their votes will give their names.

SHRI BHUPESH GUPTA: Only those persons who have not recorded their votes due to mechanical failure. We are helping you, Sir.

SHRI RAJENDRA PRATAP SINHA: Under what rules you can have another vote?

(Interruptions.)

MR. DEPUTY CHAIRMAN: Those Members who have not voted will please give their names.

SOME HON. MEMBERS: Sir, we should also be allowed to correct our votes.

(Thirty-six Members stood up and wanted their votes to be recorded for the 'Noes' and two for the 'Ayes', and after their names were recorded,)

MR. DEPUTY CHAIRMAN: The result is:—

Ayes .. 25*

Noes .. 135*

AYES—15

Dave, Shri Rohit M.
Desai, Shri Janardhan Rao.
Dutt, Shri Krishan.
Gupta, Shri Bhupesh.
Gupta, Shri Ramgopal.
Gurupada Swamy, Shri M. S.
Kunzru, Pandit Hriday Nath.
Lal, Prof. M. B.
Mani, Shri A. D.
Mitra, Shri P. C.
Reddy, Shri N. Sri Rama.
Reddy, Shri Mulka Govinda.
Shetty, Shri B. P. Bassappa.
Sinha, Shri Rajendra Pratap.
Wadia, Prof. A. R.

NOES—134

Abdul Rahim, Shri.
Abha Maity, Shrimati.
Abid Ali, Shri.
Agarwala, Shri R. G.
Agrawal Shri J. P.
Akhtar Husain, Shri.
Ali, Shri Hakim.
Ali, Shri Mohammad.
Amrit Kaur, Rajkumari.
Anis Kidwai, Shrimati.
Annappurna Devi Thimmareddy, Shrimati.
Anwar, Shri N. M.
Arora, Shri Arjun.
Banerjee, Shri Tara Shankar.
Bansi Lal, Shri.

*These figures were subsequently corrected as follows:—

Ayes 15 and Noes 134 (vide Debates dated 15-12-61, columns 2501—2503). The Division List printed here shows the correct position.

Barooah, Shri Lila Dhar.
 Basu, Shri Santosh Kumar.
 Bedavati Buragohain, Shrimati.
 Bharathi, Shrimati K.
 Bhargava, Shri M. P.
 Bisht, Shri J. S.
 Chakradhar, Shri A.
 Chaman Lall, Diwan.
 Chatterji, Shri J. C.
 Chaturvedi, Shri B. D.
 Chauhan, Shri Nawab Singh.
 Chavda, Shri K. S.
 Chettiar, Shri T. S. Avinashilingam.
 Chinai, Shri Babubhai.
 Deb, Shri S. C.
 Deogirikar, Shri T. R.
 Deokinandan Narayan, Shri.
 Desai, Shri Khandubhai K.
 Deshmukh, Shri R. M.
 Dharam Prakash, Dr.
 Dikshit, Shri Umashankar.
 Doogar, Shri R. S.
 Ghose, Shri Surendra Mohan.
 Gilbert, Shri A. C.
 Gurudev, Shri.
 Hagjer, Shri J. B.
 Hardiker, Dr. N. S.
 Joshi, Shri J. H.
 Jugal Kishore, Shri.
 Kabir, Shri Humayun.
 Kapoor Shri Jaspat Roy.
 Karayalar, Shri S. C.
 Kaushal, Shri J. N.
 Keshvanand, Swami.
 Khan, Shri Akbar Ali.
 Khan, Shri Pir Mohammed.
 Khanna, Shri Mehr Chand.
 Kishori Ram, Shri.
 Krishna Kumari, Shrimati.
 Kulkarni, Shri G. R.
 Kurre, Shri Dayaldas.
 Latif, Shri Abdul.
 Lohani, Shri I. T.
 Mahapatra, Shri Bhagirathi.

Mahesh Saran, Shri.
 Malviya, Shri Ratanlal Kishorilal.
 Mathen, Shri Joseph.
 Maya Devi Chetty, Shrimati.
 Mazhar Imam, Syed.
 Menon, Shri K. Madhava.
 Misra, Shri S. D.
 Modi, Shri J. K.
 Mohammed Ibrahim, Hafiz.
 Nafisul Hasan, Shri.
 Nagpure, Shri V. T.
 Naik, Shri Maheswar.
 Nair, Shri K. P. Madhavan.
 Nallamuthu Ramamurti, Shrimati T.
 Narasimha Rao, Dr. K. L.
 Paliwal, Shri Tikaram.
 Pande, Shri T.
 Panj hazari, Sardar Raghbir Singh.
 Parmanand, Dr. Shrimati Seeta.
 Pathak, Shri G. S.
 Patil, Shri Sonusing Dhansing.
 Pattanayak, Shri B. C.
 Pawar, Shri D. Y.
 Punnaiah, Shri Kota.
 Pushpalata Das, Shrimati.
 Raghubir Sinh, Dr.
 Rajabhoj, Shri P. N.
 Rajagopalan, Shri G.
 Rao, Shri D. Ramanuja.
 Rao, Shri V. C. Kesava.
 Ray, Dr. Nihar Ranjan.
 Ray, Shri Satyendra Prosad.
 Reddi, Dr. B. Gopala.
 Reddi, Shri J. C. Nagi.
 Reddy, Shri A. Balarami.
 Reddy, Shri S. Channa.
 Reddy, Shri M. Govinda.
 Sadiq Ali, Shri.
 Sahai, Shri Ram.
 Sait, Shri Ibrahim Sulaiman.
 Saksena, Shri Mohan Lal.
 Santhanam, Shri K.
 Sarwate, Shri V. V.
 Satyacharan, Shri.

Savitry Devi Nigam, Shrimati.

Seeta Yudhviri, Shrimati.

Sethi, Shri P. C.

Shah, Shri K. K.

Shakoor, Moulana Abdul.

Shanta Vasisht, Kumari.

Shanti Devi, Shrimati.

Sharda Bhargava, Shrimati.

Sharma, Shri L. Lalit Madhob.

Shervani, Shri M. R.

Shrimali, Dr. K. L.

Singh, Thakur Bhanu Pratap.

Singh, Sardar Budh.

Singh, Shri Mohan.

Singh, Giani Zail.

Sinha, Shri Awadeshwar Prasad.

Sinha, Shri B. K. P.

Sinha, Shri R. B.

Tajamul Husain, Shri.

Tankha, Pandit S. S. N.

Tara Chand, Dr.

Tayyebulla, Maulana M.

Tripathi, Shri H. V.

Tumpalliwar, Shri M. D.

Umair, Shah Mohamad.

Venkataraman, Shri S.

Vijaivargiya, Shri Gopikrishna.

Violet Alva, Shrimati.

Vyas, Shri Jai Narain.

Yajee, Shri Sheel Bhadra.

Yashoda Reddy, Shrimati.

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 3 stand part of the Bill."

The House divided.

MR. DEPUTY CHAIRMAN: Ayes—144; Noes—10.

AYES—144

Abdul Rahim, Shri.

Abha Maity, Shrimati.

Abid Ali, Shri.

Agarwala, Shri R. G.

Agrawal, Shri J. P.

Akhtar Husain, Shri

Ali, Shri Hakim.

Ali, Shri Mohammad.

Amrit Kaur, Rajkumari.

Anis Kidwai, Shrimati.

Annapurna Devi Thimmareddy, Shrimati.

Anwar, Shri N. M.

Arora, Shri Arjun.

Banerjee, Shri Tara Shankar.

Bansi Lal, Shri.

Barooah, Shri Lila Dhar.

Basu, Shri Santosh Kumar.

Bedavati Buragohain, Shrimati.

Bharathi, Shrimati K.

Bhargava, Shri M. P.

Bisht, Shri J. S.

Chakradhar, Shri A.

Chaman Lall, Diwan.

Chatterji, Shri J. C.

Chaturvedi, Shri B. D.

Chauhan, Shri Nawab Singh.

Chavda, Shri K. S.

Chettiar, Shri T. S. Avinashilingam.

Chinai, Shri Babubhai.

Das, Shri N. K.

Deb, Shri S. C.

Deogirikar, Shri T. R.

Deokinandan Narayan, Shri.

Desai, Shri Janardhan Rao.

Desai, Shri Khandubhai K.

Deshmukh, Shri R. M.

Dharam Prakash, Dr.

Dikshit, Shri Umashankar.
 Doogar, Shri R. S.
 Dutt, Shri Krishan.
 Ghose, Shri Surendra Mohan.
 Gilbert, Shri A. C.
 Gurudev, Shri.
 Hagjer, Shri J. B.
 Hardiker, Dr. N. S.
 Jugal Kishore, Shri.
 Kabir, Shri Humayun.
 Kapoor, Shri Jaspal Roy.
 Karayalar, Shri S. C.
 Kaushal, Shri J. N.
 Keshvanand, Swami.
 Khan, Shri Akbar Ali
 Khan, Shri Pir Mohammed.
 Khanna, Shri Mehr Chand.
 Kishori Ram, Shri.
 Krishna Kumari, Shrimati.
 Kulkarni, Shri G. R.
 Kurre, Shri Dayaldas.
 Latif, Shri Abdul.
 Lohani, Shri I. T.
 Mahapatra, Shri Bhagirathi.
 Mahesh Saran, Shri.
 Malviya, Shri Ratanlal Kishorilal.
 Mathen, Shri Joseph.
 Maya Devi Chetty, Shrimati.
 Mazhar Imam, Syed.
 Menon, Shri K. Madhava.
 Misra, Shri S. D.
 Mitra, Shri P. C.
 Modi, Shri J. K.
 Mohammad Ibrahim, Hafiz.
 Mohanty, Shri Dhananjoy.
 Nafisul Hasan, Shri.
 Nagpure, Shri V. T.
 Naik Shri Maheswar.
 Nair, Shri K. P. Madhavan.
 Nallamuthu Ramamurti, Shrimati T.
 Narasimha Rao, Dr. K. L.
 Neki Ram, Shri.
 Paliwal, Shri Tikaram.

Pande, Shri T.
 Panj hazari, Sardar Raghubir Singh.
 Parmanand, Dr. Shrimati Seeta.
 Pathak, Shri G. S.
 Patil, Shri Sonusing Dhansing.
 Punnaiah, Shri Kota.
 Pushpalata Das, Shrimati.
 Raghubir Singh, Dr.
 Rajabhoj, Shri P. N.
 Rajagopalan, Shri G.
 Rao, Shri D. Ramanuja.
 Rao, Shri V. C. Kesava.
 Ray, Dr. Nihar Ranjan.
 Ray, Shri Satyendra Prosad.
 Reddy, Dr. B. Gopala.
 Reddi, Shri J. C. Nagi.
 Reddy, Shri A. Balarami.
 Reddy, Shri N. Sri Rama.
 Reddy, Shri S. Channa.
 Reddy, Shri M. Govinda.
 Sadiq Ali, Shri.
 Sahai, Shri Ram.
 Sait, Shri Ibrahim Sulaiman.
 Saksena, Shri H. P.
 Saksena, Shri Mohan Lal.
 Santhanam, Shri K.
 Sarwate, Shri V. V.
 Satyacharan, Shri.
 Satyanarayana, Shri M.
 Savitry Devi Nigam, Shrimati.
 Seeta Yudhvir, Shrimati.
 Sethi, Shri P. C.
 Shah, Shri K. K.
 Shakoor, Moulana Abdul.
 Shanta Vasisht, Kumari.
 Shanti Devi, Shrimati.
 Sharda Bhargava, Shrimati.
 Sharma, Shri L. Lalit Madhob.
 Sharma, Shri Madho Ram.
 Shervani, Shri M. R.
 Shetty, Shri B. P. Basappa.
 Shrimali, Dr. K. L.
 Singh, Thakur Bhanu Pratap.
 Singh, Sardar Budh.

Singh, Shri Mohan.
Singh, Giani Zail.
Sinha, Shri Awadeshwar Prasad.
Sinha, Shri B. K. P.
Sinha, Shri R. B.
Sinha, Shri R. P. N.
Tajamul Husain, Shri.
Tankha, Pandit S. S. N.
Tara Chand, Dr.
Tayyebulla, Maulana M.
Tripathi, Shri H. V.
Tumpalliwar, Shri M. D.
Umair, Shah Mohamad.
Venkataraman, Shri S.
Vijavargiya, Shri Gopikrishna.
Violet Alva, Shrimati.
Vyas, Shri Jai Narain.
Wadia, Prof. A. R.
Yajee, Shri Sheel Bhadra.
Yashoda Reddy, Shrimati.

NOES—10

Dave, Shri Rohit M.
Desai, Shri Suresh J.
Gupta, Shri Bhupesh.
Gupta, Shri Ramgopal.
Gurupada Swamy, Shri M. S.
Kunzru, Pandit Hriday Nath.
Lal, Prof. M. B.
Mani, Shri A. D.
Reddy, Shri Mulka Govinda.
Sinha, Shri Rajendra Pratap.

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 3 was added to the Bill.

MR. DEPUTY CHAIRMAN: The question is:

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

The House divided.

MR. DEPUTY CHAIRMAN: Ayes—146; Noes—10.

AYES—146

Abdul Rahim, Shri.
Abha Maity, Shrimati.
Abid Ali, Shri.
Agarwala, Shri R. G.
Agrawal, Shri J. P.
Akhtar Husain, Shri.
Ali, Shri Hakim.
Ali, Shri Mohammad.
Amrit Kaur, Rajkumari.
Anis Kidwai, Shrimati.
Annapurna Devi Thimmareddy, Shrimati.
Anwar, Shri N. M.
Arora, Shri Arjun.
Banerjee, Shri Tara Shankar.
Bansi Lal, Shri.
Barooah, Shri Lila Dhar.
Basu, Shri Santosh Kumar.
Bedavati Buragohain, Shrimati.
Bharathi, Shrimati K.
Bhargava, Shri M. P.
Bisht, Shri J. S.
Chakradhar, Shri A.
Chaman Lall, Diwan.
Chatterji, Shri J. C.
Chaturvedi, Shri B. D.
Chauhan, Shri Nawab Singh.
Chavda, Shri K. S.
Chettiar, Shri T. S. Avinashilingam.
Chinai, Shri Babubhai.
Das, Shri N. K.
Deb, Shri S. C.
Deogirikar, Shri T. R.
Deokinandan Narayan, Shri.
Desai, Shri Janardhan Rao.
Desai, Shri Khandubhai K.
Deshmukh, Shri R. M.
Dharam Prakash, Dr.
Dikshit, Shri Umashankar.

Doogar, Shri R. S.
 Dutt, Shri Krishan.
 Ghose, Shri Surendra Mohan.
 Gilbert, Shri A. C.
 Gurudev, Shri.
 Hagjer, Shri J. B.
 Hardiker, Dr. N. S.
 Joshi, Shri J. H.
 Jugal Kishore, Shri.
 Kabir, Shri Humayun.
 Kapoor, Shri Jaspat Roy.
 Karayalar, Shri S. C.
 Kaushal, Shri J. N.
 Keshvanand, Swami.
 Khan, Shri Akbar Ali.
 Khan, Shri Pir Mohammed.
 Khanna, Shri Mehr Chand.
 Kishori Ram, Shri.
 Krishna Kumari, Shrimati.
 Kulkarni, Shri G. R.
 Kurre, Shri Dayaldas.
 Latif, Shri Abdul.
 Lohani, Shri I. T.
 Mahapatra, Shri Bhagirathi.
 Mahesh Saran, Shri.
 Malkani, Shri N. R.
 Malviya, Shri Ratanlal Kishorilal.
 Mathen, Shri Joseph.
 Maya Devi Chettry, Shrimati.
 Mazhar Imam, Syed.
 Menon, Shri K. Madhava.
 Misra, Shri S. D.
 Mitra, Shri P. C.
 Modi, Shri J. K.
 Mohammad Ibrahim, Hafiz.
 Mohanty, Shri Dhananjoy.
 Nafisul Hasan, Shri.
 Nagpure, Shri V. T.
 Naik, Shri Maheswar.
 Nair, Shri K. P. Madhavan.
 Nallamuthu Ramamurti, Shrimati T.
 Narasimha Rao, Dr. K. L.
 Neki Ram, Shri.
 Paliwal, Shri Tikaram,

Pande, Shri T.
 Panj hazari, Sardar Raghbir Singh.
 Parmanand, Dr. Shrimati Seeta.
 Pathak, Shri G. S.
 Patil, Shri Sonusing Dhansing.
 Pawar, Shri D. Y.
 Punnaiah, Shri Kota.
 Pushpalata Das, Shrimati.
 Raghbir Singh, Dr.
 Rajabhoj, Shri P. N.
 Rajagopalan, Shri G.
 Rao, Shri D. Ramanuja
 Rao, Shri V. C. Kesava.
 Ray, Dr. Nihar Ranjan
 Ray, Shri Satyendra Prosad
 Reddi, Dr. B. Gopala
 Reddi, Shri J. C. Nagi
 Reddy, Shri A. Balarami
 Reddy, Shri N. Sri Rama
 Reddy, Shri S. Channa
 Reddy, Shri M. Govinda
 Sadiq Ali, Shri
 Sahai, Shri Ram
 Sait, Shri Ebrahim Sulaiman
 Saksena, Shri H. P.
 Saksena, Shri Mohan Lal
 Santhanam, Shri K.
 Sarwate, Shri V. V.
 Satyacharan, Shri
 Savitry Devi Nigam, Shrimati
 Seeta Yudhvair, Shrimati.
 Sethi, Shri P. C.
 Shah, Shri K. K.
 Shakoor, Moulana Abdul
 Shanta Vasisht, Kumari
 Shanti Devi, Shrimati
 Sharda Bhargava, Shrimati
 Sharma, Shri L. Lalit Madhob
 Sharma, Shri Madho Ram
 Shervani, Shri M. R.
 Shetty, Shri B. P. Basappa
 Shrimali, Dr. K. L.
 Singh, Thakur Bhanu Pratap
 Singh, Sardar Budh

Singh, Shri Mohan
Singh, Giani Zail
Sinha, Shri Awadeshwar Prasad.
Sinha, Shri B. K. P.
Sinha, Shri R. B.
Sinha, Shri R. P. N.
Tajamul Husain, Shri
Tankha, Pandit S. S. N.
Tara Chand, Dr.
Tayyebulla, Maulana M.
Tripathi, Shri H. V.
Tumpalliwar, Shri M. D.
Umair, Shah Mohamad
Venkataraman, Shri S.
Vijaivargiya, Shri Gopikrishna
Violet Alva, Shrimati
Vyas, Shri Jai Narain
Wadia, Prof. A. R.
Yajee, Shri Sheel Bhadra
Yashoda Reddy, Shrimati.

NOES—10

Dave, Shri Rohit M.
Desai, Shri Suresh J.
Gupta, Shri Bhupesh
Gupta, Shri Ramgopal
Gurupada Swamy, Shri M. S.
Kunzru, Pandit Hriday Nath
Lal, Prof. M. B.
Mani, Shri A. D.
Reddy, Shri Mulka Govinda
Sinha, Shri Rajendra Pratap.

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

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."

The question was proposed.

SHRI BHUPESH GUPTA: Sir, I want to say a few words.

MR. DEPUTY CHAIRMAN: Please be brief.

SHRI BHUPESH GUPTA: I shall be very brief. The last word that I want to say is this. It has been clearly demonstrated how the Congress Party is in a confusion over this matter.

SOME HON. MEMBERS: No, no.

SHRI BHUPESH GUPTA: Is this not a sign of confusion?

By those things they think they are not in confusion. Therefore, it is only another demonstration. As far as the Opposition is concerned, it has been demonstrated how we are opposed to the approach of the Government, although we are not opposed to some kind of amendment. (*Interruption.*) The only thing I can say is that they have not overcome their confusion yet.

Another point is this. I will make this point and sit. Now the President or the Vice-President will be elected. All I can say to the majority party—and I think the Congress may be the majority party or whoever may be the majority party—and to the Prime Minister of the country whoever he is, is that when it comes to the question of nomination by the majority party, putting up their candidate, before that is done, two things should be kept in view. Firstly, the traditions which have been created by the House over the last ten or twelve years. Secondly, I would ask the majority party and its leader, the Prime Minister whoever he may be to consult the leading representatives of the opposition parties and the influential or other responsible independents who may be represented in this House or the other House before the choice is made. I say this thing, before the choice by the Congress Party is made, because a great responsibility will devolve upon them as a result of the present procedure. The electoral

[Shri Bhupesh Gupta.]

college will not be there (*Interruption*). All that I want to say is it is very very simple, because at least one post we can create more or less by common agreement. This post does not come in conflict with the executive authority, and it has a function here, and outside only certain formal functions, and this post can be easily filled through mutual consultation between the political parties in the country concerned, so that the nominee or whoever comes to occupy that post becomes by and large acceptable to all.

The last point is, generally we have a party approach in such matters. I say when we select one for this post, we should find out some acceptable good independent with stature, integrity, independence of mind, statesmanship, wisdom and above all courage. That is very very important, courage.

SHRI M. R. SHERVANI: On a point of order, Sir. Is he speaking on the Bill or canvassing for himself?

SHRI BHUPESH GUPTA: I have realised at least one thing that this kind of mentality should not enter into the selection of candidates. This is the kind of mentality that prevails. Therefore, Sir, all that I say is, only when you choose an independent is it possible for you to make it acceptable to the parties which represent the people and the country. Therefore, I hope that the Prime Minister, whoever he may be, and the majority party, whichever it may be, will bear this in mind. We shall also bear this in mind, because if a nomination of this sort is made, you will well understand that there will not be a contest. If a nomination is made disregarding the opposition parties, then I tell you there may be contest for the Vice-Presidentship.

(*Interruptions*)

SHRI RAJENDRA PRATAP SINHA: Sir, I beg to differ from my hon. friend, Mr. Bhupesh Gupta. I do not

think that the Members of the Congress Party are in a confused mind. They have a very very clear mind and they have voted with all clarity. I am very grateful to the fourteen Members of the Congress Party who have voted for my amendment. (*Interruption*) Those fourteen Members have voted with a clear conscience, with a clear mind, on my amendment. Therefore, I would like to convey my very grateful thanks to the fourteen Members who have shown courage of conviction and voted for the amendment.

One point more, Sir. I would like to associate myself with the tributes that have been paid from all sections of the House to the Vice-President who is also the Chairman of this House. And we all consider him to be a very great person, and he has shed lustre not only on this Chair but has enhanced the status of this House.

SHRI BHUPESH GUPTA: We have to elect a person like him.

SHRI RAJENDRA PRATAP SINHA: And I am glad that all the Members have associated themselves with this tribute that we are paying to our Vice-President and our Chairman.

Sir, I would also like to agree with my friend, Shri Bhupesh Gupta and I am sure that the Congress Party and the Prime Minister will see that we have a Vice-President and Chairman of this House who is worthy of the position of the office, and they can nominate a person after due consultation with the Opposition parties so that we may have a unanimous election for the Vice-Presidentship and the Chairmanship of this House.

Thank you.

PANDIT HRIDAY NATH KUNZRU: Sir, I drew the attention of the Law Minister to the fact that if his doubts were valid, then the existence of even a single vacancy in the Assemblies of the States might prevent those Assemblies from electing members, their representatives to the Council of States. He then said that

it had been provided for in the Representation of the People Act, and he referred to section 27(j) of the Act. Now, if he will refer to the Act, he will find that section 27(j) of the Representation of the People Act is in Part 4A of the Act and under this caption Part 4A are the following words:—

“manner of filling seats in the Council of States, to be filled by representatives of Union territories.”

This does not, therefore, apply to the members of the Legislative Assemblies of States as mentioned. He knows the difference between Union territories and States, and a provision made with regard to Union territories which are under the control of the President does not apply to the Legislative Assemblies of the States which are exempt from Presidential control, which act only in accordance with certain provisions of the Constitution. The reply given by him is, therefore, totally invalid.

SHRI M. P. BHARGAVA (Uttar Pradesh): Sir, Dr. Kunzru has not read the amended Act. It has been amended later. He has read out from the 1951 Act.

SHRI BHUPESH GUPTA: No, Sir, does he want a . . .

SHRI A. K. SEN: There were two grounds that I have mentioned. First of all they are snow-bound areas, that is covered by section 27(j). And about the others, I said, after the vacancies occur with the one-third retiring, according to the Constitution, the Chief Election Commissioner calls for an election after the elections to the remaining seats are complete. There is no question that the election must take place within five years, as I said. I mentioned both these facts—Dr. Kunzru will remember. And he takes good precaution to see that the elections to the Rajya Sabha are called after the elections to the other areas are completed and section 27(j)

takes care of the Himachal Pradesh and the other snow-bound areas where elections may not be held. But in regard to other areas, there is no question in the case of the President or the Vice-President. Therefore, the Chief Election Commissioner calls for the election after the elections to the legislatures are completed.

MR. DEPUTY CHAIRMAN: The question is:

“That the Bill be passed.”

The House divided.

MR. DEPUTY CHAIRMAN:—
Ayes—143; Noes—10.

AYES—143

Abdul Rahim, Shri
Abha Maity, Shrimati
Abid Ali, Shri
Agarwala, Shri R. G.
Agrawal, Shri J. P.
Akhtar Husain, Shri
Ali, Shri Hakim
Ali, Shri Mohammad
Amrit Kaur, Rajkumari
Anis Kidwai, Shrimati
Annapurna Devi Thimmareddy,
Shrimati.
Anwar, Shri N. M.
Arora, Shri Arjun
Banerjee, Shri Tara Shankar
Bansi Lal, Shri
Barooah, Shri Lila Dhar
Basu, Shri Santosh Kumar
Bedavati Buragohain, Shrimati
Bharathi, Shrimati K.
Bhargava, Shri M. P.
Bisht, Shri J. S.
Chakradhar, Shri A.
Chaman Lall, Diwan
Chatterji, Shri J. C.
Chaturvedi, Shri B. D.
Chauhan, Shri Nawab Singh

Chavda, Shri K. S.
 Chettiar, Shri T. S. Avinashilingam
 Chinai, Shri Babubhai
 Das, Shri N. K.
 Deb, Shri S. C.
 Deogirikar, Shri T. R.
 Deokinandan Narayan, Shri
 Desai, Shri Janardhan Rao
 Desai, Shri Khandubhai K.
 Deshmukh, Shri R. M.
 Dharam Prakash, Dr.
 Dikshit, Shri Umashankar
 Doogar, Shri R. S.
 Dutt, Shri Krishan
 Ghose, Shri Surendra Mohan
 Gilbert, Shri A. C.
 Gurudev, Shri
 Hagjer, Shri J. B.
 Hardiker, Dr. N. S.
 Joshi, Shri J. H.
 Jugal Kishore, Shri
 Kabir, Shri Humayun
 Kapoor, Shri Jaspat Roy
 Karayalar, Shri S. C.
 Kaushal, Shri J. N.
 Keshvanand, Swami
 Khan, Shri Akbar Ali
 Khan, Shri Pir Mohammed
 Khanna, Shri Mehr Chand
 Kishori Ram, Shri
 Krishna Kumari, Shrimati
 Kulkarni, Shri G. R.
 Kurre, Shri Dayaldas
 Latif, Shri Abdul
 Lohani, Shri I. T.
 Mahapatra, Shri Bhagirathi
 Malkani, Shri N. R.
 Malviya, Shri Ratanlal Kishorilal
 Mathen, Shri Joseph
 Maya Devi Chetty, Shrimati
 Mazhar Imam, Syed
 Menon, Shri K. Madhava
 Misra, Shri S. D.
 Mitra, Shri P. C.

Modi, Shri J. K.
 Mohammad Ibrahim, Hafiz
 Mohanty, Shri Dhananjoy
 Nafisul Hasan, Shri
 Nagpure, Shri V. T.
 Naik, Shri Maheswar
 Nair, Shri K. P. Madhavan
 Nallamuthu Ramainurti, Shrimati T.
 Narasimha Rao, Dr. K. L.
 Neki Ram, Shri
 Paliwal, Shri Tikaram
 Pande, Shri T.
 Panj hazari, Sardar Raghbir Singh
 Parmanand, Dr. Shrimati Seeta
 Pathak, Shri G. S.
 Patil, Shri Sonusing Dhansing
 Punnaiah, Shri Kota
 Pushpalata Das, Shrimati
 Raghubir Sinh, Dr.
 Rajabhoj, Shri P. N.
 Rajagopalan, Shri G.
 Rao, Shri D. Ramanuja
 Rao, Shri V. C. Kesava
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 Reddi, Dr. B. Gopala.
 Reddi, Shri J. C. Nagi
 Reddy, Shri A. Balarami
 Reddy, Shri N. Sri Rama
 Reddy, Shri S. Channa
 Reddy, Shri M. Govinda
 Sadiq Ali, Shri
 Sahai, Shri Ram
 Sait, Shri Ebrahim Sulaiman.
 Saksena, Shri H. P.
 Saksena, Shri Mohan Lal
 Santhanam, Shri K.
 Sarwate, Shri V. V.
 Satyacharan, Shri
 Savitry Devi Nigam, Shrimati
 Seeta Yudhvair, Shrimati
 Sethi Shri P. C.
 Shah Shri, K. K.
 Shakoar, Moulana Abdul

Shanta Vasisht, Kumari
 Shanti Devi, Shrimati
 Sharda Bhargava, Shrimati
 Sharma, Shri L. Lalit Madhob
 Sharma, Shri Madho Ram
 Shervani, Shri M. R.
 Shetty, Shri B. P. Basappa
 Singh, Thakur Bhanu Pratap
 Singh, Sardar Budh
 Singh, Shri Mohan
 Singh, Giani Zail
 Sinha, Shri Awadeshwar Prasad
 Sinha, Shri B. K. P.
 Sinha, Shri R. B.
 Sinha, Shri R. P. N.
 Tajamul Husain, Shri
 Tankha, Pandit S. S. N.
 Tara Chand, Dr.
 Tayyebulla, Maulana M.
 Tripathi, Shri H. V.
 Tumpalliwar, Shri M. D.
 Umair, Shah Mohamad
 Venkataraman, Shri S.
 Vijaivargiya, Shri Gopikrishna
 Violet Alva, Shrimati
 Vyas, Shri Jai Narain
 Wadia, Prof. A. R.

Yajee, Shri Sheel Bhadra
 Yashoda Reddy, Shrimati

NOES—10

Dave, Shri Rohit M.
 Desai, Shri Suresh J.
 Gupta, Shri Bhupesh
 Gupta, Shri Ramgopal
 Gurupada Swamy, Shri M. S.
 Kunzru, Pandit Hriday Nath
 Lal, Prof. M. B.
 Mani, Shri A. D.
 Reddy, Shri Mulka Govinda
 Sinha, Shri Rajendra Pratap

The motion was adopted by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting.

MR. DEPUTY CHAIRMAN: The House stands adjourned till 11.00 A.M. tomorrow.

The House then adjourned at nineteen minutes past five of