

[Shri C. C. Biswas.]
appointed with the Chief Minister as the President to supervise the implementation of the measures considered necessary to counteract inducements to migration.

The Government has appointed a Hindu Civil Service (Pakistan) Officer as a special officer for minority affairs, to look after the interests of the minority. He has been given powers to take up any grievances of the members of the minority with the district authorities of the Government departments.

A circular has been issued to all officers of the Government, reiterating once again their duty towards minorities.

Age-limit and academic qualifications for minority candidates have been ordered to be relaxed in suitable cases for the purpose of recruitment.

The special officer for minorities has been directed to examine all cases of new recruitment to ensure that minorities get adequate representation.

Under Government instructions the Revenue department has employed members of the minority community to the extent of 23 per cent. of the vacancies in the Estates Acquisition Department.

The Government of India will take early steps to tighten up the measures for the issue of migration certificates so as to prevent the chances of their abuse or their exploitation by anti-social elements. While making it clear that migration certificates shall be issued only in deserving cases, the Government of India has agreed that proper and detailed scrutiny of each application for a migration certificate will be done and all suggestions of the Government of Pakistan in this behalf would be given full consideration.

Both the Governments hope that steps which the Government of Pakistan proposes to take to restore confidence in the minds of members of the minority community, so as to

lessen their urge for migration, would together with the steps taken by India for proper scrutiny of migration certificates, progressively result in considerable reduction of minority migration which is the basis of the Nehru-Liaquat Agreement.

THE REPRESENTATION OF THE PEOPLE (SECOND AMENDMENT) BILL, 1956—continued.

SHRI P. D. HIMATSINGKA: Mr. Deputy Chairman, a number of hon. Members have spoken on the pros and cons of the amendments that have been suggested to the Representation of the People Act and, on the whole the consensus of opinion seems to be that there have been certain improvements, that the procedure has been made simple and that certain difficulties have been removed. Sir, in a matter like this, which involves the taking of votes of about 10 to 12 crores of people or even more, there must be a number of difficulties. So far as expense is concerned, when you have to get the votes of about 3,50,000 voters, you can easily imagine what a difficult task it would be for any candidate. Therefore, I do not know how the grievance that is being made as regards the expense can be removed unless some other procedure like indirect election or some kind of an election where only a few persons need vote for a candidate to be returned is thought of and introduced.

Sir, one or two important points strike me., In section 7(e) it is said that a person shall be disqualified for being chosen as, and for being, a member of either House of Parliament, or of the Legislature, "if he is a director or managing agent of, or holds any office of profit under, any corporation in which the appropriate Government has any share or financial interest." As you know, the Government has now nationalised a number of concerns, and is getting more and more interested in business. Yesterday, from certain replies to answers, it appeared that in some concerns, in

which the Government did not hold one single share at the time of their incorporation, the Government now holds about 18 per cent. of the shares. Similarly, on account of nationalisation of insurance companies, we can very easily imagine and realise that at least the Government holds a very large number of shares in a number of these insurance companies; and, also, indirectly, because they have become owners of insurance companies, they have also become holders of shares of the companies in which the insurance companies have invested their funds. And the effect thereof will be that the Government of India—which is the appropriate Government so far as Members of Parliament are concerned—becomes a shareholder of the concerns.

It may be that a very large number of Members of Parliament have some connection or other with insurance companies or companies of which the Government has become a shareholder. The Members may not even be aware that the Government has come to have an interest in certain concerns in which they are interested, either as occupying a place of profit, or as director, or otherwise. The effect thereof will be that even if he is a sitting Member, he will be dislodged from his position by indirect action of the Government, of which he may not be aware at all. And, therefore, it is necessary that this provision should be carefully examined and sufficient safeguards should be provided. There is some protection so far as a director is concerned. That is in section 8, subsection (e). But so far as any other person holding an office of profit is concerned, may be a clerk, may be a canvassing officer, may be a person who has been giving business to an insurance company, he will be affected merely because, subsequent to his having been returned as a Member of Parliament, the Government takes an interest and comes to have some interest in that concern. Therefore, this is a point which needs very careful attention of the hon. Minister, and some suitable remedy should be pro-

vided for, so that a person who has not himself done anything to deserve being disqualified is amply protected.

So far as certain other suggestions are concerned, I feel that this one-man tribunal, having a person of the position of a district judge, is to be welcomed. It means that at least he has practised for ten years or has been in appointment for a number of years in the judicial service. I do not see how that can be said to be not a sufficient or justifiable provision. After all, if it is suggested that a person who has been a district judge is not qualified, or is not supposed to be qualified, to come to a decision as regards the propriety or impropriety of certain acts during an election then, that indirectly means that all our judiciary is condemned. I think, the change that has been introduced is certainly a welcome change. A tribunal of three persons cannot be as efficient as one-man tribunals. One of the members or the presiding officer of the tribunal may fall ill. You have to make provision for that contingency, in the case of three-member tribunals. If it is one-member tribunal, such a contingency is not there. You can have more tribunals with the same number of persons and speedier trial will be possible, if it is a one-man tribunal. So far as provision for appeal is concerned, I think, directly as this appeal has been provided. The operation of article 226 of the Constitution, so far as it gives power to the High Court, will be eliminated. Similarly, when this appeal has been specifically provided for, the Supreme Court will be very reluctant to give any special permission, special leave under article 136. Article 136 does not entitle any person, or give any right as such to go on appeal. It merely gives the court power to grant special leave, if they—the judges feel that there are certain justifiable grounds for doing so. Therefore, the provision that has been introduced and the time limit that has been suggested in the amending Bill should go a great way in removing complaints of delay in the disposal of election petitions.

[Shri P. D. Himatsingka.]

Some of my friends here have suggested that the Government officials show favour to the ruling party and that sometimes they are instrumental in helping candidates of the Congress party and so on. I do not know why such sweeping allegations should be made and I feel that they are being made light heartedly. If what they say were correct, then, none of the Congress candidates should have lost, certainly not the Ministers whom you find have been defeated in a large number of States. In Bengal, I think, more than seven or eight Ministers themselves lost. If the officials had been helping the Congress candidates, surely, they would be helping the Ministers much more and, therefore, if they were able to influence elections in that manner, none of these people should have lost.

Therefore, if we really honestly look at these things as a whole, we must admit that the elections have been in most cases conducted in a very fair and impartial manner. It may be in some places that the officials have given indirect support to one candidate or the other. But it is not correct to say that they have favoured the Congress party. I can speak from my own personal experience of Bengal where a large number of officials behave just the other way, but you cannot help it. After all, they are human. That is why powers have been given to the Election Commission. They are to supervise, they are to make all adequate arrangements, and they have got nothing to do with the Government. If they fail to put things right in particular places that is due to the defect in human nature. After all, you have got to take the help of the officials in different places and you certainly have the result depending on the character of the particular officer concerned. So, what I feel is that on the whole, there has been a definite improvement in the Bill and I support the Bill and the amendments made therein.

SHRI P. N. SAPRU (Uttar Pradesh):

Mr. Deputy Chairman, I should like to give my very general support to this measure. I say very general because, frankly speaking, there are parts of the Bill with which I cannot honestly and conscientiously say that I am in agreement. I shall elaborate my point of view shortly. In the first place, let me say that the Bill certainly simplifies election procedure and I am glad that the three-man tribunal has been done away with, that the election tribunals will consist of a district judge, who in our State of Uttar Pradesh includes a civil and sessions judge. I do not know why the words 'civil and sessions judge' have not been used in this Bill. Civil and sessions judge is defined in the Constitution as a district judge. I find that there is going to be an appeal to the High Court. That, I think, will be a very much more satisfactory and expeditious way of dealing with election disputes. The writ procedure to which parties had to have resort was cumbersome and I think, this Bill does simplify the procedure in this respect. Let me also say that for original trials, single judges are more suitable than tribunals. It is in appeals that you want a board, not in an original trial. Therefore, the single judge tribunal suggested by the Bill has my support.

Having said that, let me point out the directions in which I find that this Bill is not satisfactory. I do not wish to use the harsh language which was used by Dr. Kunzru in giving a tragic picture of what would happen under the provisions of this Bill. But, nevertheless, there is an element of truth in some of the observations that were made. Take the question of corrupt practices. In order that a person might be disqualified for corrupt practices, under this Bill, it is necessary to establish that the corrupt practices were indulged in by the candidate himself, or his agent, or by some other person, with his consent. Years ago, the House of Lords in the famous case of *Deek versus Perry* said that a fraudulent statement or

fraud was a statement made by a person recklessly caring not whether it is true or false. It would be true to say that jurists have always looked upon connivance as almost synonymous with consent.

I had to deal with a case in which two members of a Municipal Board who had been disqualified for corrupt practices were involved. Both those members had stood on a joint ticket. One of them was found to be corrupt. The other was not found to be consciously corrupt. He just relied upon his comrade and the view that we took was that he must suffer because corruption may be direct or indirect and is something which destroys the foundations of society. It is necessary to be firm about it in a democracy which believes in fair and free elections.

I do not share the view of my friend, Shri Rajah, that we should have the President's rule, when we hold our elections. Well, President's rule would mean the rule of the government of the day. It would make the elections much less independent than under the Constitution because, under article 324, the Election Commission is an independent tribunal and the Election Commissioner is an authority independent of the government of the day. Therefore without going as far as that I would say that the strongest view should be taken in regard to corruption.

The second matter in regard to which I find myself at variance with a provision of this Bill is this. A candidate will be expected to file his election return. He will show the expenses incurred by him. But, so far as the party, to which he belongs, or which has been supporting him, is concerned it will be under no obligation to file returns of expenses incurred in connection with the candidate's election. I think, this might place the smaller groups at a disadvantage, as compared with larger and wealthier groups. In a democracy, moving towards socialism, premium should not be put upon wealth; premium should be put upon merit. Everyone should be given a

fair deal, a fair chance, and therefore, I think, the solution suggested in the Bill is not a right one. I may point out that in England, you start your candidature from the day that you announce that you are a candidate and you start seeking election. I think that should have been the position here also. The Bill is further unsatisfactory in that respect that it disqualifies persons who have been convicted of an offence to a rigorous imprisonment of over two years from standing for election until the disqualification is removed by the election tribunal. I do not think that we should look to the election tribunals for removal of disqualifications. It is a heavy burden to cast upon them.

The theory of punishment is that punishment purges the offence. You cannot punish a man twice. I do not think that this will come within the mischief of the double jeopardy clause. It is, nevertheless, as I visualise it, contrary to the spirit of this clause.

Lastly I would say that I should like broadcasting facilities to be given to all parties at the time of elections. The electorate has to be educated. We are a democracy, and there must be parties with alternative programmes, not of a communal character, but of a progressive character, for the purpose of seeking the votes of the electorate, wooing the electorate. It is only then that we can build up the edifice of democracy on sound foundations.

Mr. Deputy Chairman, I should like to say a word or two about participation of officials in the elections. I cannot speak in this matter with any personal knowledge and I do not wish to import heat in regard to this matter. It is wrong in my opinion that permanent civil servants should, at election times, align themselves with any political party, be it the party in power or be it any other party. And this general rule should apply to all government servants because, in this country unfortunately,

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there is a tendency to confuse government with State. It may be a man's public duty to be opposed to the government of the day. The opposition's duty is to oppose the government of the day. But it is the duty of everyone to be loyal to the State. That distinction is not very clear to our average voter and it is for that reason that I think that government servants should, as far as possible, keep aloof from active participation in elections. Similarly, I would take a strong view of an employer who coerces his workers and uses undue methods of influencing them to vote for a particular candidate. On the eve of election, it is imaginable that he announces some concessions in order that a particular candidate may get votes, that should not be permitted.

Mr. Deputy Chairman, my time is limited, and therefore, I would say that I am in complete agreement with one part of the Bill, and I welcome it very much. That is the clause regarding systematic propaganda of a communal or caste nature. While all points of view are permissible and they can be preached in a democracy, the encouragement of communal fanaticism is a crime against society. Mr. Deputy Chairman, I would therefore say that that is a satisfactory part of the Bill. That is a feature of the Bill which I personally am in favour of.

Then, Sir, it has been stated that this procedure of appeals would entail delays. I do not think that is so. We have indicated tentatively the time-limit within which courts must dispose of election petitions. What is happening now is that enormous evidence, direct and indirect, and in many cases direct, is laid before election tribunals. I think, much of that evidence can be eliminated. A judge who knows how to control arguments and how to control the production of evidence, can easily expedite hearings. And in order that there might be uniformity

of interpretation with regard to the election laws, it is necessary to allow appeals to the high courts. We need not have miniature high courts in every district. There is, of course, article 136 of the Constitution which gives a right of special appeal to the Supreme Court against every judgment, decree or order of a tribunal or a high court. We can ensure a uniformity of interpretation by suitably amending the law. Under article 226 of the Constitution, a court could issue writs or directions or orders, only where the question of jurisdiction was involved, or, as some would say, where there was an error in law. We cannot make a single judge a final authority, so far as facts are concerned. In every system of jurisprudence, one good appeal is allowed. And I think, that this Bill is on right lines so far as that particular thing is concerned.

(Time bell rings.)

Sir, my experience was that some of the sections in the old Act were loosely worded, and certain questions were raised whether some particulars could be supplied at a later date or not. But all that has been settled by this Bill. So, this Bill is good in parts, and it is unsatisfactory, as I said, in other respects. But I do not take a tragic view of this Bill, and I, therefore, give to it my very general support. Thank you.

SHRI S. MAHANTY: Mr. Deputy Chairman, there is a Latin proverb "Be careful about the Greek when he comes to you, especially with a present." Sir, when the present Bill, with the declared objective of simplifying the election rules or the election procedure, came up before us, I was reminded of this circumspection. Sir, after hearing all the speeches which have been delivered here, both from this side and that side of the House, you may not have any doubt in your mind that this circumspection was not unwarranted.

Sir, the time at my disposal is very short. Yesterday, our esteemed colleague, Dr. Kunzru, drew the pointed attention of the House to many such dangerous implications which have been incorporated in the present Bill. I have neither the competence nor the time to go into all those things once again. But nonetheless, Sir, I would like to point out some very important features which have been omitted from the scope of this Bill.

In this context, I would first like to submit to the hon. Minister about the recommendation of the Election Commission to extend broadcasting facilities to all the recognised parties, both at the all-India and the State levels. Sir, in this connection, I would invite his attention to page 194 of the First Report of the Election Commission, Volume I. The recommendation runs as follows:

"Now that the number of 'recognised' parties has considerably decreased, and their comparative strength in the country accurately ascertained, it may be possible to reopen the question and evolve a reasonably satisfactory scheme for extending this facility to the parties for the next general elections."

Now, Sir, when we will be discussing our amendments, I will further dilate on that point. But at this stage, I would like to submit that in all other countries like the U.S.A. or the U.K., this kind of facility has been extended to all the political parties, irrespective of their affiliations. I am quite aware of the fact that our broadcasting system, our broadcasting organisation, is completely different from the broadcasting organisation of the U.S.A., or the U.K. It is a Government-controlled body. But nonetheless, Sir, if this wholesome recommendation is implemented, it will mitigate to a great extent all the criticisms which have been levelled against this organisation, that it is controlled by one party and is being utilised for the benefit of that party alone.

Now, Sir, I quite anticipate the argument which may be advanced against this innocuous suggestion, and that is that the subject of broadcasting does not fall within the jurisdiction of the Law Ministry, and therefore, it should not find a place in this Bill. Sir, if the hon. Minister expresses his sympathy at least for this suggestion, it would go a long way towards the fulfilment of that objective.

There is another aspect....

SHRI S. N. MAZUMDAR (West Bengal): He can ask his colleague, the Minister for Information and Broadcasting, even now.

SHRI S. MAHANTY: There is another important aspect to which I would like to invite the pointed attention of the House and of the hon. Minister. Yesterday, our esteemed colleague, Dr. Kunzru, spoke on it at length. He wanted that section 129 which relates to officers, etc. at elections, acting for candidates or influencing voting, should be applied to all the Government officers, notwithstanding the fact whether they are charged with any election duty or not. If you look at page 197 of this Election Commission's Report, you will find that there is a very important recommendation and I will read it out:

"The Commission would point out that while sections 129 and 134 of the Representation of the People Act, 1951, impose penalties for improper conduct on the part of those officers who are charged with some duty or other in connection with elections, there is no such provision in respect of the other employees of the Government. The Commission feels that this omission should be made good and the law should be amended so as to make the provisions of section 129 applicable to all Government servants without any exception whether they are charged with any election duty

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or not. The reason is obvious, for a Government officer, though not charged with any election duty, may be in a position to use his influence improperly and thereby render an election unfair. The law should provide for penalties to cover such cases as well."

I would like to know why this very vital recommendation of the Election Commission has not been implemented. I will of course speak on it at length during the second reading stage, if you so permit.

SHRI H. N. KUNZRU: Third reading.

SHRI S. MAHANTY: While the amendments are being discussed.

I do not wish to cite instances now, lest they should be invidious, but from my own personal experience in elections, I have seen—it might have been my misfortune—how Government officers in the constituencies in which I worked, in order to seek their own petty interests have boosted up one party against the other. If you are pledged to free elections, if you are pledged to parliamentary democracy, then you must see that this most vital recommendation is implemented without delay. Section 129 extends its jurisdiction only up to the police officer. But what about magistrates? They are considered "Ma-Baps" in our countryside. They are equated with not only the State, but God, the omnipotent God. We have just now listened to the speech of our esteemed colleague, Mr. Sapru, and he has also said in no less emphatic terms, that this recommendation of the election Commission ought to have found a place in this Bill.

There is another important aspect in respect of section 123, sub-section (4), of the principal Act. It says:

"The removal of a ballot paper from the polling station, during

polling hours, by a candidate or his agent, or by any other person with the connivance of a candidate or his agent"

shall be a corrupt practice. Now, this provision has been removed completely from the Bill under discussion. I do not wish to suggest that the Congress Party is so much nervous about its success that it will tamper with ballot boxes for removing ballot papers, but I will invite your attention again to the famous case of Bulsar-Chikhli constituency because it has been reported by the Commission in this Report. In that constituency, three candidates were contesting for a seat to the Bombay Legislative Assembly. One was Mr. Morarji R. Desai. The second was Mr. Janardan B. Desai, and the third was Dr. Amul Desai. This case has been reported with the usual restraint of the Commissions at pp. 139 to 141 of their report. I have no time at my disposal to go into the case at length, but the Election Commission has thrown a doubt, a net of doubt, that the ballot papers had been removed from the ballot boxes of the candidate who defeated Mr. Morarji Desai. While the second counting was in progress, 14 or 15 ballot papers were found torn and thrown into the urinal. It was noted in time; otherwise the winning candidate was going to lose at the time of the second counting. Therefore, I would like to know from the hon. Minister specifically, what reasons and arguments have commended to him to delete sub-section (4) of section 123 of the principal Act, which said:

"The removal of a ballot paper from the polling station during polling hours by a candidate or his agent, or by any other person with the connivance of a candidate or his agent"

will amount to a corrupt practice. One hon. friend here, yesterday, cited instances how ballot boxes could be opened without the slightest difficulty, and how this has been demons-

trated. I am told that similar instances have happened in U.P. We also know that these ballot boxes are kept for a considerable length of time, or deposited with the various Government offices. We do not wish to attribute motives to the Congress Party or to the persons in whose custody these ballot boxes are kept, but it is better always to be on the side of safety, rather than take risks with the integrity of individuals, however honest they may be.

Then, there was another provision regarding impersonation. That has also been removed. Dr. Kunzru has spoken at length on it, and therefore, I do not wish to repeat it.

I would like to touch on some other point and that relates to the part played by hon. Ministers in election campaigns. We do not grudge hon. Ministers participating in elections. We are quite sure of their worth and of their merits and we are prepared to face them at their own levels, but when an hon. Minister uses State transport or an aircraft of the Defence Forces of India, when special trains are run for this purpose, how are we going to face them? Yesterday, Dr. Kunzru put it very succinctly. He asked, 'Is it the intention to place wealth over merit?' That question looms very large on the political horizon in our country, and as the days advance, that question mark assumes far greater proportions. I was much assured to hear from our esteemed colleague, Mr. Kapoor, that the Congress Party has been paying all these bills. The Congress is a registered body, and if I am not mistaken, registered bodies have to publish their audited accounts every year.

SHRI DEOKINANDAN NARAYAN (Bombay): It is not a registered body.

SHRI H. D. RAJAH: Much worse.

SHRI S. MAHANTY: Much worse as he says. *(Time bell rings.)* I will

conclude. Anyway I don't want to go into it. Time has come to the rescue of my friends.

MR. DEPUTY CHAIRMAN: You have got your amendment.

SHRI S. MAHANTY: I will speak at that time. My only appeal to the Congress Party will be, and I hope and pray that this appeal should be carried to the quarters for which it is meant, that the Congress Party should publish its election account, at least the accounts relating to the election years and then and then only, the country will be in a position to judge how much money has been received from the sugar magnates of U.P., how much money has been paid to the Defence Dakota which was deployed to carry the Prime Minister during the election campaign, how much money was paid by the Congress Party for running a special train from Jaipur to Kishengarh in a bye-election which was occupied by Dr. Katju. Then alone, the country will be in a position to know and then alone, we will have an absolute guarantee that our elections are going to be free and fair. Thank you.

SHRI P. S. RAJAGOPAL NAIDU: Mr. Deputy Chairman, I must join the other hon. Members in laying an emphatic protest of our House at not being taken into confidence in the matter of the constitution of the joint Select Committee. It is an important measure and I don't know why our House has been excluded in this matter. Secondly, I must thank the hon. Minister for Law for accepting the amendment which I had suggested in my non-official Bill No. 19 of 1954. One of the important amendments which I suggested in the non-official Bill was with regard to removal of the disqualification by the Election Commission from standing at an election. The Election Commission has now the power to remove the disqualification from voting. I wanted, by way of an amendment of

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the Representation of People's Act, the Election Commission to be vested with the power of removal of disqualifications with regard to members standing at an election. I am glad that that has been accepted *in toto*. The second amendment which I had suggested was regarding the persons who can be employed for payment by a candidate in connection with an election, and that has also been accepted. That is, section 77 has been recast now so as to provide the amendment which I had suggested.

Before I come to one or two suggestions, which I would like to make with regard to the Bill, I will have to observe three or four general points. The first is, I don't agree with the previous speaker, Mr. Sapru, or as a matter of fact, with several other speakers, that there should be only a single-member tribunal and an appeal should be provided to the high court. This is done obviously, according to the hon. mover of the Bill, for the purpose of avoiding delay. If we try to analyse as to the reasons for the delays caused in the matter of disposal of election petitions during the last general elections, the first and foremost important reason is the delay caused by the Election Commission in constituting the tribunal in the various places. I know that there was a delay of 3 or 4 months for constitution of such tribunals after an election petition had been filed. They had taken such a long time in constituting the election tribunals. Secondly, there was delay caused in the matter of disposal of election petitions by the tribunal—the three-man election tribunals. Out of the three members, two were judges and one was a practising lawyer. The two judges were taken from among the district judges who were doing the regular duty of work of district judges in the district. As a result, they gave only a secondary importance to the disposal of election petitions, because it never counted for them in the disposal of their work.

They were concentrating mainly upon the disposal of their regular work, that had been entrusted to them, and they treated this election petition work only as their secondary job. They were not paid for this except the lawyer member who was there. Further they would fix a date which was convenient to not only both the judges and also to the lawyer member. That is why there was such a long delay in the disposal of the petitions. What I suggest is, whether we constitute a single-member tribunal of a district judge, or a three-member election tribunal, a district judge should be specifically posted only for disposing this work. He should be taken out from his regular work and should be specially posted for this, till the election petition is completely disposed of.

Again, it was held under the parent Act that the decision arrived at by the three-member tribunal was final. Even then it took nearly 3 or 4 years for this three-member tribunal, for the disposal of election petitions in some cases. If an appeal has been provided for, as it has been done now under the present Bill, it will take even a longer time for the disposal of election petitions. That is why the old system, in my opinion, is certainly a better system.

Then the other general point which I would like to observe is that there should be a finality in the validity of nomination papers, even before the actual elections are conducted. If it is an improper rejection of nomination papers, the whole election is void. Even if it is improper acceptance, of course, the election will be null and void. Several instances we have known of a dummy man being put in, just to see at the right time to file an election petition to have the entire election declared void. That is why, I would suggest that the question of whether a nomination paper has been properly accepted, or whether it has been properly rejected, should be gone into even before the

election is held. It does not matter if a period of 15 or 20 days or even a month is given before the final decision has been arrived at.

The other suggestion which I would make is with regard to deposit. It has now been stated that, so far as the Council of States and the Legislative Councils are concerned, there need be no deposit. I say that it will only be encouraging blackmailers to simply thrust in nominations, and we know why they come forward and file the nominations. We can certainly obviate that difficulty of all and sundry putting in the nomination papers if deposits are insisted upon. I am not for Rs. 500 being made as deposit, as is provided at present. We can even suggest Rs. 200 or Rs. 250.

Then, I should like to make an important suggestion with regard to the provision of this Bill which refers to section 85 of the principal Act. Under section 85, which deals with the petitions meant to be dismissed, the provision as it stands under the parent Act is thus:

"If the provisions of section 81, section 83 or section 117 are not complied with, the Election Commission shall dismiss the petition;".

Section 81 deals with the time within which the election petition has to be filed. If the election petition is filed beyond the time, I certainly agree that it has to be dismissed or rejected. Then, section 83 deals with certain particulars being given in the election petition namely, statement of material facts on which the petitioner bases his petition and also he must give a list of the corrupt practices adopted by the respondent. I certainly agree that the provision should be there and also with regard to the deposit of money. If no deposit of money is made, the petition will have to be rejected. But now, what the present Bill contemplates is, under clause 48, section 83 has been deleted

but in its place section 82 is introduced. I shall read clause 48:

"For section 85 of the principal Act, the following section shall be substituted, namely:

'85. If the provisions of section 81 or section 82 or section 117 have not been complied with, the Election Commission shall dismiss the petition:'."

Section 82 deals with, as amended now, parties who are to be added by the petitioner as respondents, in an election petition.

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Sir, if by chance the petitioner fails to add the necessary parties to the petition, under the now amended provision, the petition will have to be rejected. But if the party fails to give material facts on which he bases the election petition, if the party fails to give the number of corrupt practices on which he depends to prove his case, the petition is not rejected. I do not know why this distinction should be made. The general rule is that if the party fails to give the list of corrupt practices, the petition will have to be rejected. I can understand, if we have section 83 there and section 82 also is added to it. But to omit section 83, and to add section 82, would only lead us to an anomalous position, and it will lead to hardship in the matter of the conduct of election cases.

The other suggestion which I would like to make is with regard to the proviso to clause 48. This proviso deals with the provision that the petition shall not be dismissed without giving the petitioner an opportunity of being heard. In the parent Act there is a proviso which gave discretion to the Election Commission to see if sufficient cause existed for failure to present the petition. But now that discretion has been taken away from the Election Commission. Formerly, the Election Commission had the discretion to excuse the delay, if sufficient cause was shown for not filing the election petition within time.

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That discretion has been taken away, as the proviso now reads:

"Provided that the petition shall not be dismissed without giving the petitioner an opportunity of being heard."

I do not know why this distinction should be made, and why this discretion that was there had been taken away.

Next, I would like to deal with item (3) of sub-clause (d) of clause 51, which reads as follows:

"The Tribunal shall dismiss an election petition which does not comply with the provisions of section 81, section 82 or section 117, notwithstanding that it has not been dismissed by the Election Commission under section 85."

This provision is newly introduced in this Bill. It was not there in the parent Act. We find that under clause 48, the Election Commission is given the power to reject an election petition, if provisions of section 81, 82 or 117 have not been complied with. Now, a similar power is given to the election tribunal. For instance, if the Election Commission goes into the matter of whether the deposit has been properly made, or whether it has been made at all, or whether the petition has been filed in time, and comes to the conclusion that it has been filed within time, and that there has been sufficient deposit, the election tribunal is given the discretion to go into the same matter over again. That seems to me, a bit anomalous and I feel that the tribunal should not be given the power to go over the same matter once again. It should not be made to sit in judgment over the Election Commission, as is contemplated under this amending Bill.

(Time bell rings.)

Sir, I wanted to urge one or two more points, but as time is now against me, I shall sit down and take some other opportunity to speak on them.

SHRI H. C. DASAPPA (Mysore):
Mr. Deputy Chairman, I rise to support this measure that is now before the House. But before I go into the merits of the clauses of this Bill, I would like to join other hon. Members in lodging my humble protest, with all the seriousness at my command, at the way in which this House has been treated by the Government. Sir, this is not a financial measure by any means. This is a measure which affects the entire nation and which has everything to do with the Lower Houses as well as with the Upper Houses, and I want the hon. Minister to give an explanation as to why, when constituting the Select Committee on this measure, he chose to ignore this House. It may be that I put it rather strongly. But this, unfortunately, has not been the only occasion when such a treatment has been meted out to us.

[THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU) in the Chair.]

Sir, you are aware that on the other Bill, namely, the Bill relating to the publication of Parliament's proceedings—which means the proceedings of both the Houses—even there, this House was conveniently ignored. Whether this is done with any deliberateness, or whether it is a case of mere oversight, I really do not know. But I think the hon. Minister does owe an explanation to this House as to why this has been done in the matter of consideration of this important measure.

The second general point that I want to raise here is that important Bills and measures which require a great deal of thought, study and consideration are brought forward towards the tail-end of the session, especially during a severe summer like this, and sought to be rushed through. This does really affect the whole working of this democracy, this infant democracy in this land. I cannot understand why such important measures like the one now before us, should come at the tail-end of our session.

Sir, I do not want to deal with more general things. This is a representative democracy that we have and I entirely agree with my hon. friends who have demanded a fair and free election in the land. There is no doubt about that and I do not think, there is a single person, whether on the Government side or on the other side, who does not subscribe to this idea that there must be fair and free elections in the land.

I am also aware of the fact that the best measure that human ingenuity can devise, to secure such an election can be neutralised by people who may not be strict in the observance of the principles underlying such a measure. It is just possible and no amount of any legislation can prevent such an abuse. All the same, Sir, as long as this lends itself to such a kind of an abuse, there must be every precaution taken to prevent the possibility of such an abuse. Let me say in brief that some of the hon. Members who spoke against this measure drew a very lurid picture of the conduct of the ruling party in the land. I do not know whether all that exaggeration—because I do consider that there was a great deal of exaggeration in those allegations—was at all necessary to support the stand that they took. There were rather sweeping generalisations of the conduct of the Ministers in the course of the elections. Some of us have participated in these elections in that capacity. From my knowledge, I might say that there was not the slightest whisper of an abuse of the privileges by Ministers in the last elections, in the parts of the country that I know of. I felt greatly grieved that there should have been such a wide generalisation over the question of the conduct of the Ministers. It might be that here and there, there might have been a few instances; I do not know, but if such isolated instances were pointed out, I am sure those hon. friends would have found enthusiastic supporters on this side also.

Then, Sir, the question of the Government servants was raised. I do

not think there could be any room for any kind of a difference of view between the different sections in the House. It is common ground that no Government servant should do anything by way of electioneering in favour of any candidate. There is no doubt about that, but it was pointed out that the present Bill did not provide for such a contingency as that. I only wish to point out that it does provide for such a contingency. Clause 66 is the one relating to that. Sub-section (7) of proposed section 123 specifically details the number of categories of officers who should not take any part in the elections in the sense of canvassing for any of the candidates. In this proposed sub-section, there is an item, item (g) under which Government can prescribe the other classes of people who should similarly be subject to this kind of a restriction or prohibition. This item says that Government can name such other classes of persons in the service of Government as may be prescribed.

Now, what is the great difference between this and the old provision in section 123? I have made a fairly good study of this, and there is substantially no difference except the fact that the old provision was a little cumbersome. This is what it says:

“The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent, any assistance for the furtherance of the prospects of the candidate's election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person”.

Then the Explanation says:

“Explanation.—For the purposes of this clause—

(a) a person serving under the Government of India shall not include any person who has been declared by the Central Govern-

[Shri H. C. Dasappa.]

ment to be a person to whom the provisions of this clause shall not apply;

(b) a person serving under the Government of any State shall include a patwari, chaukidar, etc."

This has been simplified, and I can see no difference between this and the new provisions, because while that one has included this disqualification in the Explanation, here it comes under item (g) of sub-section (7) of proposed section 123 in clause 66 of the Bill. I may also say, Sir, that there are the general rules of conduct on the part of Government servants and I am aware of the strict circulars that are issued by the Governments, both at the State and at the Centre, with regard to these officers. I do not think, there has been any such general or widespread participation in the elections by the officers. On the other hand, Sir, here is the dispassionate finding of the Election Commission which has given an encomium with regard to the conduct of the Government servants.

SHRI H. N. KUNZRU: Has this very Commission recommended a change in section 129 or not?

SHRI H. C. DASAPPA: I am saying that that can very well be brought in under item (g) of sub-section (7) of proposed section 123.

SHRI H. N. KUNZRU: Section 129 provides for a penalty for a contravention of the provisions of that section.

SHRI H. C. DASAPPA: Yes.

SHRI H. N. KUNZRU: But section 123, that is proposed, does not provide for any punishment. It would be regarded as a corrupt practice and it may affect the election of a person in whose interests this practice has been resorted to, but it entails no penalty on the person guilty of that practice.

SHRI H. C. DASAPPA: I do not want to dispute that statement of the hon

Dr. Kunzru; there is certainly force in what Dr. Kunzru says, but what I say is that this Bill has not in the least interfered with that particular section 129. If he has a grouse that section 129 should not be confined only to the particular officers stated therein, the returning officer, the presiding officer, etc., etc., then I agree with him, but what I say is that this Bill has not interfered with section 129, as it stands today, and if Dr. Kunzru would suggest that the scope of section 129 should be enlarged, I agree with him. There is no doubt about that, but I do not think, there is anything very much in his criticism of sub-section (7) of proposed section 123 in clause 66 of the Bill. Only the wording has been changed and the substance continues to remain the same so far as the conduct of Government servants is concerned, with regard to any kind of election.

SHRI H. N. KUNZRU: As a matter of fact, I did not criticise the provisions of sub-section (7) of proposed section 123.

SHRI H. C. DASAPPA: It looked to me, Sir, that the severest attack was on this. I do not know about Dr. Kunzru—I am not mentioning any names—but taking the whole Opposition, that appeared to me to be the position.

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): The hon. Member has only very little time left.

SHRI H. C. DASAPPA: The question of radio was raised. I think, both Mr. Mahanty and Mr. Sapru will agree with me that this is not a Bill in which the question of parties being permitted to make use of the broadcasting organisation can be brought in. That is altogether a different matter. In any case, such criticism as they offered, namely, that the ruling party is trying to take advantage of this, has, I think, no substance because neither the ruling party, nor any other party, is given the advantage of

making use of the present broadcasting arrangements. If it is merely an idea that all the parties must be given the benefit equally of making use of the broadcasting organisation, I certainly have no objection and I would rather welcome it. The only question is that Government should make up its mind on the executive side.

The next question that was raised was regarding the President's Rule. I think Mr. Sapru has very well answered it. Even if there should be President's rule, the Government of the day must be carried on. The only virtue of the suggestion of Mr. Rajah would be that Parliament cannot function during that period. I would like to ask those friends, who pleaded for President's rule, whether they would like the Parliament to become *functus officio* during this period, so that the Ministers who have got to carry on the King's Government, the President's Government, have all the free time for themselves, without the wholesome corrective which a Parliament would bring to bear on their administration. So I think, Sir, that there is not much substance with regard to that particular point.

SHRI H. N. KUNZRU: The Provisional Parliament was dissolved before elections were held in 1952.

SHRI H. C. DASAPPA: Whatever it is, what advantage there is going to be by the President's rule, I fail to understand. You cannot carry on the administration, even if it is President's rule, without a Government, without Ministers, either at the Centre or in the States.

Then, Sir, with regard to the tribunal, I find that the change has been most wholesome. In addition to the reasons which you on this side, when you were discussing it, gave for the delay in the disposal of the cases, I might add one more only. One of them used to be generally a sitting district judge; the other would be a retired judge and the third one would be a member of the bar, or some non-

official. Now, what was happening? No doubt the judge who was a Government servant at the time would be getting his monthly salary; the others would be given their sitting fees, and there was no inducement for them to dispose of the cases as early as possible, because the sooner they disposed of the cases, the sooner their term would end. I am not casting any reflection by any means, but I am only bringing out the psychology of the people.

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): You see, Mr. Dasappa, a sum of Rs. 1,800 a month had been paid to a lawyer member, or a sum of Rs. 60 per day of sitting, if he was not willing to take monthly salary, and as such, it did not attract eminent lawyers for this work, to act on the tribunals.

SHRI H. C. DASAPPA: May I quote an instance to the point? There was a case where a person drew nearly Rs. 1,800 per month for four years to dispose of a case, and yet he wanted leave and so on.

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): This is because the tribunals were not dispensed with, as appeals were pending in the High Court, or in the Supreme Court.

SHRI H. C. DASAPPA: Whatever the reason, there is the case to the point. So this single judge tribunal would be a very very good thing, and I entirely agree with you Sir, when you said that it would be better to have them wholetime, if not in the beginning, at any rate when the trial begins, when evidence is to be recorded, till the disposal of the case. It is better that he is a whole-time officer.

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): Please mind that your time is up.

SHRI H. C. DASAPPA: Just one minute.

Then, Sir, with regard to the question of withdrawal, I strongly support the suggestion made, I think, by my friend Mr. Jaspat Roy Kapoor, that it need not be ten, even two days ought to be enough. For instance, if for one seat, there are two candidates and one of them chooses to withdraw even two days before the date fixed for the poll, why have all this nuisance and the bother and the trouble and the expense of having to go through all the electioneering, I cannot understand.

Obviously, there are very many more points, but there is no time. I feel that, by and large, this measure is a great improvement over what obtains now, and my authority is not the supporters of the ruling party. Take the Lok Sabha. I have got their proceedings here. Almost every Member of Lok Sabha in the Opposition has welcomed this change, because it is much simpler and is more conducive to securing free and fair elections. I am only quoting the very words and I will end my speech with this quotation of a leading Member of the Opposition in Lok Sabha. He said, "It is a distinct improvement over the Bill which was originally sponsored".....

SHRI GOPIKRISHNA VIJAIVAR-GIYA (Madhya Bharat): Who was it?

SHRI H. C. DASAPPA: It is Mr. Chatterji. Then he says, "It will do something to make it possible for us to have fair and free elections." And almost every other Member of the Opposition, who spoke, has spoken in a similar strain and therefore, Sir, I feel that it is a measure which has got to be unanimously and heartily welcomed.

SHAH MOHAMAD UMAIR (Bihar): Mr. Vice-Chairman, without flattering the Law Minister or the Law Ministry, let me admit that the present amending Bill has been a distinct improve-

ment upon the Act, the necessary sections whereof this Bill seeks to amend.

I do not want to enter into those discussions for which the door has been opened by my hon. friends on this or that side. I am sorry I was not present at the time when Dr. Kunzru was delivering his speech. Of course I could know something about the gist of his speech from the speeches of my other friends in this House and from the papers. Even if I would have been present, I would have simply regretted that. Now I only demand of Dr. Kunzru, having in view his own responsibility of public duties, that some concrete instances of such corruptions, which I can call corruptions on the part of Ministers, in the States or in the Centre, be produced in justification of the charges by him against Congress Ministries, Congress Governments, and the Congress organisation. It has become a fashion to attack and to assail in the name of the power that be. But one thing must be noted about the Congress organisation, and Congress Government, as well as about the question of money and the question of funds and capital which has been raised by so many friends on this side or that side. I ask: When the Congress Governments came into power in 1936 and where were those sources of objections which are being placed before the House by my friend, Dr. Kunzru, and my friend, Mr. Mahanty to day. The Congress came into power in 1936, and 1946. It must be admitted and we should not feel shy in admitting that the Congress organisation came into power from 1936 right up to this moment by virtue of its own popularity among the masses, and by the distinction which it has got in the political field, by virtue of its services and sacrifices in comparison to other political parties. Money may have value, but money is not the only thing which can bring success in an election, particularly in such sort of elections which we have to face these days under adult franchise. Mass support, mass co-opera-

tion, mass popularity and the ^{new} confidence are more essential, more valuable and more weighty than money, capital and funds for the success of any political party which some friends grudged. It is being questioned wherefrom the Congress got this amount except by some unfair means. I do not want to enter into any great detail on this point, Sir, because it will open the flood gate for various other criticisms, which I want to avoid.

This much I can say that at least the Congress does not grudge the income of other political parties; they have got no jealousy for any other party who get unlimited treasure and fund from outside India, from outside borders of this country. Then why should the Congress people be grudged for the money and fund they get from legitimate sources to meet their requirements in the country? It is a matter of fact. I think it is not an allegation that some parties are richer in fund than the Congress. Sir, none of those critics and friends who have criticised the Congress Government or the Congress organisation have produced a single concrete instance upon which even a man like myself and many other friends like myself might have cooperated with them.

Is it a proof of corruption and corrupt practice of the Ministers in the Congress Government that so many Congress stalwarts, so many Congress pillars, have gone down in the last elections as well as in the bye-elections in almost all the States?

SHRI BHUPESH GUPTA: (West Bengal): Notwithstanding.

SHAH MOHAMAD UMAIR: In spite of all this, I will only seek the protection of the Law Minister to give the figures of election petitions. It has got some force behind it when I say that, among the parties to election cases, there are more aggrieved Congress candidates who went to the tribunal than the candidates of other parties. In spite of all these facts, allegations are being

made against the Congress Government. I say that no Government in power, howsoever liberal it may be, can afford to abdicate power to those parties who are out to capture power and who are out to dislodge it against the will of the people. It is the duty of the party in power, it is the duty of the organisation which has the confidence of the people, that it should try to retain its authority and maintain itself in a dignified way in the name of the people. And I say, here is the proof of that dignity which has been shown. From 1936 right up to this moment so many elections, even in the State of Dr. Kunzru himself, have been lost by the Congressmen. The result would have been otherwise if the Congress Ministers had misused their powers. Are they going to substantiate their argument and their grievances against the Congress and the Congress Government with some instances? Dr. Kunzru's own State, so many Congressmen have lost in the general election and in the by-elections. Therefore, I think, now when this Bill has been brought forward, it should satisfy all those persons who had some grievances about some provisions of the Representation of the People Act. I myself had many grievances about the various provisions of that Act, and I must admit that, by the inclusion, substitution and omission of certain sections, those defects have been, if not completely, if not wholly, at least to a great extent removed.

For instance, take section 82. This section has played havoc throughout the country. The section said that all the duly nominated candidates would be parties. The term 'duly nominated' played havoc and there were many election cases based on this particular point and the tribunal also was put to much trouble because of the many-sided interpretation or misinterpretation of the term 'duly nominated'. Sometimes, the tribunal had to make up its mind according to the wording of the section, and sometimes the tribunal was persuaded otherwise, by the

[Shah Mohamad Umair.]

strong advocacy of lawyers, with the result that so many cases were decided upon differently with pitiable results. (*Time bell rings.*) Sir, I will finish. I am glad that this has now been suitably amended and clarified. But at the same time my grievance is that when you have made a clarification, by the omission of the term 'duly nominated' in section 82, you have again added this section in section 85 under which the tribunal has got the power to dismiss the petition. The relief which you have justly given has been taken away by the other hand. The grace of this modification of section 82 has been lost by the addition of section 82 to section 85.

Then, in section 100, Sir, everything is O.K., but for the word 'materially' which you have used. This word 'materially' has been interpreted in so many ways by so many advocates that the tribunal itself felt confused. I regret that word 'materially' finds a place still in the proposed amendment to section 100 of the principal Act. I think, the word 'adversely' in that place will have the same force, otherwise the word 'materially' if retained, will prove a pitfall for parties.

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): Your time is up.

SHAH MOHAMAD UMAIR: Half a second, Sir. As regards section 169, I would only draw the attention of the House and of the Member in charge at the moment, that this is the most important provision under which rules can be framed. When you decide to frame rules, for God's sake and in the name of the sanctity of Parliament, I urge, please do not ignore this House in such a deplorable way as has been done in the past, at the time of making those rules. A Joint Committee of both the Houses should be formed so that whatever defects there are left may be rectified.

SHRI PERATH NARAYANAN NAIR (Madras): Mr. Vice-Chairman, we are

all agreed on the principle which has been forcefully enunciated by the Election Commission in their Report that the conduct of elections must be on non-partisan lines and that the party in power, because it is in power should not enjoy special privileges and advantages over other parties. It is a wholesome principle and we all accept it. But what has been the experience? Dr. Kunzru has given some specific instances, some concrete instances of what he has actually seen in his State. My friend from Rajasthan and my friend Mr. Mahanty and other Members have spoken about their experience in their own areas. I come from Malabar, and I have some experience of Travancore-Cochin too. I do not want to paint a lurid picture, or even an exaggerated picture, of what is happening during elections. Of course I need not justify or go to the defence of Dr. Kunzru because he can defend himself, but I will take my stand on what has been the experience in my part of the country. There, during the period of elections, the Ministers have made use of the State transport. The Ministers have got mixed official business with election business, and on that pretence, they have drawn allowances. These things have actually take place there.

Now, I want to get this clear. Yesterday, the Law Minister had occasion to say something on this. After all, the Ministers continue to be Ministers and naturally, they have also to discharge their official business. Now, during the period of elections, the party in power goes to the people and seeks their suffrage, but who could say whether they get a further term of office or not? In that context, they just carry on. They have to do just routine business. And if they do it, there is no necessity for all this paraphernalia, for all these high officers, district officers to accompany them, and discuss official business during election tour. After the election meeting, they just go to the travellers' bungalow, or some other place, and have some official consultations and some other things. They just carry on. I mean, during the election period—

within the period of notification of the general elections and the date of polling—they can afford to do their official business, just of a routine nature, in their offices. They need not go to the constituencies on election business, and use that occasion for these things. There have been such instances on the other side. Hon. Members and Ministers may deny them on the floor of this House, but millions of people outside know it to be a fact. And I have to suggest that this sort of mixing up official business and election business, if the members of the ruling party so feel, can be avoided.

Now, much has been said about police officers and policemen accompanying our Ministers, including the Prime Minister. I want to make it quite clear that we are not against proper and adequate security measures being taken, when our Prime Minister and other Ministers go to various places. To me it appears to be rather cheap criticism to tell us that we, Members of the Opposition, are not concerned with the physical safety or the security of our Prime Minister. We, in the Opposition, are as much concerned with the safety and security of our Ministers, and especially of our Prime Minister. We do not object to those plain clothesmen, or policemen, going there, but why should all these district magistrates and D.S.Ps. go there, with all their paraphernalia, and meeting separately in travellers' bungalows, and all that sort of thing? That thing can be stopped, and our objection is only to this. And there have been instances. Some Members wanted specific instances. Special trains have been run; Defence aircraft have been employed. You cannot deny those things. And maybe in a certain number of cases, especially in the case of the Prime Minister, some money has been paid by the Congress. But what is the impression which you seek to create amongst the people? As the saying goes, Caesar must be above suspicion, and so must be his wife too. So, it is the psychological.....

SHRI H. C. DASAPPA: Caesar's wife please. A slight amendment.

SHRI PERATH NARAYANAN NAIR: Yes, Caesar must be and so his wife too. I have added, not only Caesar, his wife too must be above suspicion. I stand corrected.

DR. W. S. BURLINGAY (Madhya Pradesh): It is not Caesar, only Caesar's wife.

SHRI PERATH NARAYANAN NAIR: And I think, Caesar also could afford to be above suspicion and that is my amendment to that old saying. Well, Sir, all these things are not sweeping generalisations. And what is the remedy I suggest? Is it just Presidential rule, or is it just a caretaker, all-party Government? These are big issues outside the purview of this Bill, to come within the purview of this Bill. But there are certain very simple suggestions which have been brought before this House in the form of amendments. Shri Mahanty has suggested certain amendments. Some of us have suggested certain amendments, for example, using the national flag in the cars used by Ministers during election periods, distributing their discretionary grants during election periods, and drawing allowances. These things must be stopped.

Now, Sir, I refer to section 7(b) regarding disqualification. That is, two years imprisonment will disqualify. Now, the Law Minister has said that in the changed circumstances, after all, very few people will be involved in this. And that the power has been given to the Election Commission to remove disqualifications whenever they find it necessary and also that if we seek to add any qualification of the nature, for instance, involving moral turpitude, it will be very difficult to define. I want to say on behalf of the other political parties in this country that it is a very serious question so far as we are concerned. We know that, under foreign rule, many of us on the other

[Shri Perath Narayanan Nair.] side and many of us here, including me, had been sentenced to imprisonment for more than two years, not once but many times. And nobody would say that they were offences involving moral turpitude. And even at the time of the general elections, in 1951, there were about 3200 petitions before the Election Commission seeking removal of these disqualifications. It is a good number and I know, from my part of the country, including the Secretary of the Malabar Committee of the Communist party, many could not stand for election. There were others, and Members in the Lok Sabha have given a long list of names, who, because of political work, political reasons, suffered imprisonment for more than two years. They could not stand for election.

The point has been raised by Members of the Select Committee that after all, once you undergo the imprisonment, and then you again impose another disqualification. It will be double punishment. That argument has got force in it. But I ask, what is the difficulty in including at least this offence, offences involving moral turpitude? It is not so difficult of definition. We have been able to define loyalty to the State and all that sort of thing and this offence involving moral turpitude has been included in certain legal enactments—in the Bar Councils Act, for example. We are no longer under foreign rule. Of course, for political reasons one may not have to undergo imprisonment. That argument may be put forward.

But then, in the present conditions in India, in the present socio-economic and political conditions, there are occasions, there are instances, where public workers, if they stand up for their rights, will have to go, will be hauled up inside jails. For example, some land legislation is anticipated. There are wholesale evictions. Public workers have to mobilise public opinion. It may be organising some

demonstration, peaceful in their own way. But because of some overzealous official, or because of not properly tackling the situation, some incident may happen. The public worker, whom you can never accuse of any moral turpitude or anything of that kind, may be proceeded against and landed in prison for more than two years. Not only that. Even in the matter of organising co-operatives for our workers, when the workers collectively press their demand, naturally those, who are in charge of the administration, look at it from a different point of view. They say, it is subversive activity and the whole tendency is to curb it. We have examples. In my part of the State, in Munnar, for example, when they wanted rice at a reasonable price, when they just demonstrated very peacefully, there was trouble and so many cases have arisen. Such things do happen. So, what I suggest is that those are offences not involving moral turpitude, and we want no disqualification to lie on persons who have suffered imprisonment of two years for political reasons, for political causes. We do not want that disqualification.

And then one change has been made in this Bill that relates to the shortening of the time.....

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): You have only two minutes more.

SHRI PERATH NARAYANAN NAIR:.....for the period of election; between the final date of nomination and polling, just thirty days are left. From forty days, it has been brought down to thirty days. When there are such a large number of voters involved and with such extensive areas to be covered, I think that the change that has been brought out is not quite a happy one.

I want to deal with one other point in regard to sections 123, 124 and all that. Yesterday, Mr. Rajah gave some instances of corrupt practices. In

our place, there are any number of such practices. There are certain people who have made it a trade, during the course of elections to secure voting papers in the name of fictitious persons. So, that provision which was originally there is taken out. It is no improvement. An amendment has been brought out to that effect and we want that to be included.

I want to say something on another point. Much has been said about the facilities being given to candidates just like sending one post card or some book-post to all the voters. Yesterday, there was some calculation made. Now, 18 crores of voters are involved and at the rate of one anna or two, and at the rate of three candidates for each constituency, it may work out to three or four crores of rupees. But it is worth it. I put it before the House. If only these 18 crores of voters are approached with at least one manifesto each of different political parties including the Congress, Communists and others, it will be a great step in the political education of our people, which will better the foundation of democracy. That amount is worth it and I commend that particular suggestion to the acceptance of the House.

SHRI GOPIKRISHNA VIJAIVAR-GIYA: Sir, I am amazed at the speeches of many Members that the behaviour of the ruling party—the Congress Party—in the last elections was not fair. I think, the last elections have proved that the Congress has been very fair throughout the elections and this has been borne out by many foreign visitors also who came to India. Everybody has said that the behaviour of the Congress was very fair, exemplary and impartial. And the proof of it can be seen in the fact that even many of the ministers of the Congress Government lost their seats in the elections. There have been examples of this in Madras State, my own State of Madhya Bharat, in the Bombay State itself and many other States.

Therefore, it cannot be said that the ministers used any undue methods during the elections. Even the behaviour of government servants was very good and that has also been borne out by many foreign observers, as well as observers of other parties.

SHRI S. MAHANTY: Will you kindly quote one of those observations?

SHRI GOPIKRISHNA VIJAIVAR-GIYA: Well, they may be quoted when there is a necessity. But I do admit that there might have been some lapses in exceptional cases. But on the whole, the behaviour of Government servants, as well as of Congressmen, was quite good. The lapses are very microscopic in number.

Instances were quoted by some Members. The Election Commission's Report is here. It has also given a paragraph on this and it says that their conduct was praiseworthy.

Now, Sir, the instances which were quoted here in the speeches were not very specific and, therefore, a reply cannot be given to them. Even admitting that the old Act was quite good and had proved very well during the last elections, by experience, it was found that there were discrepancies and some difficulties in the operation of that law. Therefore, this amending Bill has come.

In my State, I was in charge of elections on behalf of my party and I have some experience of these laws. During the last election, as well as during many other elections, one of the difficulties which was experienced was about this nomination. It is said that out of 338 petitions, 116 contained allegations regarding improper rejection of nominations. The simplification made in this Bill, I think, is very welcome and rejection should not be made on flimsy grounds. I am of the view that the finality of the nomination must be made before the election actually takes place. That will save much litigation and much petitioning later on. Generally, in

[Shri Gopikrishna Vijaivargiya.]
regard to petitions and trials, the changes made are reasonable and I think, the provision for one-man tribunal will also speed up decision in the cases.

In regard to return of election expenses, the procedure now suggested is simpler. I think, it will be useful both to the wealthy parties and the not-so-wealthy parties. I do not consider that the Congress is a very wealthy party. Sir, as has been pointed out by one Member before the Congress gets its subscription and support because of its popularity and its programme. I know, in respect of one election that was quoted by a Member from Rajasthan—he said that the Congress spent a lot on it—that the candidate who was opposing the Congress had spent much more than the Congress candidate. I know that many rajahs, zamindars and wealthy persons were using their wealth much more in proportion to the Congress, when they stood in the opposition. During the Andhra general elections I was there and I saw that the Maharajah of Vizianagram and other people stood on behalf of the Socialist Party. In my own State of Madhya Bharat, and even in Rajasthan, many rajahs, maharajahs and their relatives and other jagirdars stood. There were very many wealthy people also standing as independent candidates. They were spending much more than the Congress could afford to do. So, Congress is not a wealthy party and saying that these amendments or rules will help the Congress is in no way right.

In regard to clauses 65 and 66, regarding corrupt and illegal practices and electoral offences, I think, what Dr. Kunzru said should be taken into account and we should draft them afresh and see that all those offences or illegal practices according to the old section, should not be lightly treated. Therefore, I suggest that consideration must be given to this aspect and if possible, a redrafting of the whole of Part VII must be done.

Similarly, in regard to government servants, Mr. Dasappa has explained that they came under that last category in another sub-clause, and the Government could prescribe what government servants could do. Therefore, in respect of government servants and illegal practices etc., fresh consideration must be given to that criticism.

I think that many of the difficulties that have cropped up, and have been known by experience during the last elections, will be removed by this amending Bill.

I support this amending Bill.

3 P.M.

PROF. A. R. WADIA (Nominated): Mr. Vice-Chairman, sometime ago, there was an open insinuation that this House had no work enough. But when there is work, unfortunately, we are forced to hustle. I think, it is rather unfair to the privileges of this House, and I do hope that the Chairman, who is the custodian of the rights of this House, will look into this matter, so that on an important Bill like this more time is given.....

SHRI H. P. SAKSENA (Uttar Pradesh): Right from now.

SHRI KISHEN CHAND: Some hon. Members get more time than what the others get.

PROF. A. R. WADIA: That is exactly so, and that is unfair too, although I dare say that they, who have spoken, have spoken well, and to our advantage.

Well, Sir, I listened to my friend, Mr. Rajah's speech yesterday, and I find that his remedies are worse than the disease itself. He would rather do away with democracy during the election period, and he would also abolish any limit on the expenditure to be incurred by candidates, while all the time he was pleading that the wealthy people should not be given an undue advantage in elections. On the other hand, Sir, I listened with very great interests to my friend, Pandit Kunzru's address. It was a very forceful

plea, and I am perfectly sure that if hon. Minister would give due attention to all his remarks, this Bill would be considerably improved.

Sir, I have not been a politician myself, and I have never taken part in elections. I am, therefore, not in a position to judge whether the old Act worked satisfactorily or not. But I am prepared to agree with my friend, Mr. Dasappa, that this is a considerable improvement on the old Act. Nevertheless, it is clear that there are a few flaws, and those flaws have got to be attended to.

I do consider, Sir, that a limit on expenditure is very necessary. It would be very unfair if the amounts spent by the parties are not to be accounted for. It may work in favour of some wealthy parties, and it will work definitely against some poorer parties. Sir, democracy means a certain amount of equality; it ought to be fair in its treatment of all the parties. And I do feel, Sir, that if you omit all limits on expenditure, as was suggested by my friend, Mr. Rajah, and also supported by Mr. Kapoor, the consequences will be that the wealthy people will be given a *carte-blanche* to do whatever they like. I think that would be most unfair.

SHRI JASPAT ROY KAPOOR: Have they not got it even now?

PROF. A. R. WADIA: Well, Sir, I take it that if a law exists, it can be enforced.

SHRI JASPAT ROY KAPOOR: We are concerned with facts, not with law.

PROF. A. R. WADIA: The same applies to the remedy which you are proposing about the communal feelings. (Interruption.)

THE VICE-CHAIRMAN (SHRI P. S. RAJAGOPAL NAIDU): Let there be no interruptions. There is no time.

PROF. A. R. WADIA: Then, Sir, I think, Pandit Kunzru did great service by drawing our attention to some

of the fine conventions which have been built up in Britain. And I think, one of those fine conventions is that the Ministers, in spite of all the facilities extended to them, should not make use of the advantages that they have as Ministers, for election purposes. Sir, charges and counter charges have been made on the floor of this House, and it is not for me to sit in judgment over them. But I am afraid that if some Ministers have been of a very very high calibre, some of the other Ministers may have sunk to the level of using the Government advantages that they possessed, for party purposes. And in this connection, Sir, it is very necessary that healthy conventions should be built up. It is equally necessary that the neutrality of Government servants should be maintained. I say that it is extremely unfair to Government servants, if they are expected to help their Ministers, or the candidates belonging to the party in power, at the time of elections. Here again, Sir, charges and counter charges have been made, but I think, the fact remains, that it is grossly unfair to the neutrality of Government servants, if they are put to this use.

Sir, democracy is the best type of Government, I admit. But democracy is also a very costly type of Government. And if it is to work satisfactorily, certain healthy conventions have to be built up. No law will ever suffice to overcome all the possible defects in our character, but if certain conventions are established, conventions which have the force of law, I am perfectly certain that the electoral machinery will run all the more smoothly.

Then, Sir, there is one thing at least which is very necessary, and it is the duty of the Government to make it available to all the parties, and that is the facility in the matter of broadcasting. In our country, All-India Radio is a Government monopoly. And it would be extremely unfair, if the Government uses that machinery only for its own purposes.

THE MINISTER FOR LEGAL AFFAIRS (SHRI H. V. PATASKAR): Nobody has even alleged that the Government has used it for that purpose.

PROF. A. R. WADIA: Well, Sir, if the Government has not used that machinery, I am only sorry for it, because it is the duty of the Government to use that machinery.

SHRI H. V. PATASKAR: For election purposes?

PROF. A. R. WADIA: Yes, for election purposes, provided the same facilities are given to all the parties. I say that, that is very necessary, because under modern conditions, broadcasting has come to play a very important part. Sir, there was one suggestion made by Mr. Kapoor, and seconded by my friend there, that every one of these eighteen crores of voters should be sent a post card by each party. Sir, it is very amazing to listen to these remarks when we know that 85 per cent. of the people are not able to read. I do not know how those letters are going to be useful, but so far as broadcasting is concerned, they can listen to the manifestos of the various parties. That would be a perfectly legitimate use, and I think under modern conditions it should be encouraged.

SHRI JASPAT ROY KAPOOR: As if there is perhaps a radio set in every village.

PROF. A. R. WADIA: There ought to be.

SHRI JASPAT ROY KAPOOR: Ought to be, that is a different thing. In that case, everybody ought to be literate also.

PROF. A. R. WADIA: Why not? There is no difficulty in that. It is only a matter of time. In fact, I know from my experience that the Ministry for Information and Broadcasting is now trying to have rural programmes, and it is trying to intro-

duce radio sets in as many villages as possible. It is only a matter of time. It is a perfectly right movement, and I think that, that should be done.

The last remark that I should like to make is about the need for speedy disposal of all the election cases. As you know, Sir, at present, these cases go on sometimes for two years or three years, and it becomes a mockery. Some machinery should, therefore, be devised whereby all such disputes can be settled very quickly, say, within a week, or within a month, even if it means the appointment of special judges or special magistrates for this purpose. Sir, we are all interested in having pure elections. It makes no difference at all whether it is this party or whether it is that party, and it is very necessary that our electoral machinery should be so geared as to meet the needs of all sections of the people.

SHRI H. V. PATASKAR: Sir, before I begin to reply to only some of the major points that have been made during the course of the discussion over this motion, I would like to clear up some of the other points.

For instance, Sir, it was suggested that a Joint Select Committee ought to have been appointed for an important measure like this. As a matter of fact, there was a complaint made to this effect by some hon. Members. I have never said that this was not an important measure. I have already stated that free and fair elections form the very basis of parliamentary democracy which we have started, and from that point of view, elections do play a very important part.

As hon. Members will however realise, a Bill can be introduced either here, or in the other House, and this Bill which dealt with the question of elections was naturally introduced—it should normally have been introduced—in the other House, but I do not think it will be right to say—at least I can say that so far as I am concerned—that we have been anxious that

there should not be a Joint Select Committee. On the contrary, it would have been conducive to the interests of the Government, and particularly from the point of view of my own duty and work, if it had been referred to a Joint Select Committee. However, whenever a Bill is introduced in the other House, that House chooses to appoint a Select Committee of its own. I would only suggest to hon. Members that they need not bring in the likes or the dislikes of the Government into this. That is the only thing I can say. Of course, as I said, I personally think, that in all important measures, it tends to convenience and to the saving of time and money, if there is a Joint Select Committee. Beyond that, naturally, as hon. Members will realise, Government have no deciding voice in this connection.

SHRI JASPAT ROY KAPOOR: The motion is naturally introduced by a Government member.

SHRI H. V. PATASKAR: I need not go into further details in the matter. I believe that, with the functioning of this particular type of democracy with these two Houses, it is much better for at least a man in the position of a Minister not to enter into a discussion on a matter of this nature. I hope and trust that in course of time, just as we have been able to establish some healthy conventions, the whole atmosphere will change, and probably, whatever be the justification for some grievance in one place or the other, it will disappear. We need not accentuate them by attaching too much importance to these things. I think that, in course of time, things are bound to take a proper shape.

So far as this Bill is concerned, there has been a good deal of criticism based on the fact that the Bill emanates from a Government, which no doubt is the Government of a party. But I would humbly bring to the notice of all hon. Members that this is one of those measures in which Government had never taken a partisan interest, from the point of view

of this party or the other. I would not say it merely in words, because probably, there may be a tendency in certain quarters not to believe in words. But I would point out one thing and that is this: When this Bill was framed, it was framed after the report of the Election Commission which, as everybody admits, is an independent authority created by the Constitution, for the maintenance of the purity and freedom of elections. Naturally, Government have to take some decisions and they took them after that report and after whatever experience they have had. But what did they do subsequently? When I came to the other House with the Government proposals, naturally, those Members thought that in this important matter, there were bound to be differences of opinion between one side and another. In order to see that there was no charge later on of partisanship, I agreed in the other House that the Select Committee could consider not only the provisions which the Government had brought forward, so far as this particular Bill was concerned, but the whole of the Act, viz. the Act of 1951. Does that show a partisan attitude on the part of the Government? We may have our differences; that is a different thing. There are bound to be, and in a matter like this, they are inevitable. And much can be said on both sides. But at any rate, I think, that all hon. Members, taking a dispassionate view of the history and the course through which this legislation has passed, will have no hesitation in realising that the Government attitude, so far as this Bill is concerned, has not at all been partisan, and therefore, it is **not** a right criticism, so far as this Bill is concerned.

I would now refer to some of the criticisms that have been made against this Bill. I do realise that one of the main charges is that—and it has been made by no less a person than Dr. Kunzru, who has a fund of experience of parliamentary life—this Bill will lead to powerful parties having advantages over weaker ones. That is

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what I took down yesterday. Apart from the merits of it, I would request him to just look at this question from a different angle. What is it? After all, a parliamentary democracy of the type that we have started means government by a party. What else is it, whether it is in the United Kingdom or in other countries? It is the very essence of parliamentary democracy that, except under abnormal conditions, it must be a Government by a party. Take for instance the case of Britain. Today, it may be the Conservative Party or the Liberal Party—it was once there; probably it is no more now—or the Labour Party. After all, the essence of parliamentary democracy is that the Government is by a party, and naturally, party organisations play an important role. Today it may be the Congress Party; tomorrow it may be somebody else. We are looking at this law not from the angle of which party is in power.

I do realise that parties have to play an important role. Even in England, there are party organisations, and naturally party organisations have their functions in these elections. If we realise this, we will be in a much better position to understand the whole thing. At least, I would appeal to hon. Members to look at the provisions which we have made from this angle. If we look at England, it will be seen that each party, whether it is the Conservative Party or the Labour Party, has its own programme, has got its own ideology. We may not have developed it to the extent it has developed over centuries in other countries, but the fact remains that we have chosen this method of Government, and therefore, parties have to play an important role, not a bad a role, and parties spend money not on any individual candidates. They spend for their ideology, for the programme for which they stand, and naturally, it becomes inevitable that individuals or small groups are going to be handicapped. Small groups and parties may have to suffer. It is inevitable. I do not mean to say by

this that there should be no individual initiative, or that eminent men should not come in. That is a different thing. Not that a small party or group should be wiped out because of this steam-roller; that is not what I am pleading for, I am just requesting hon. Members, particularly my hon. friend, Dr. Kunzru, to look at this question a little more from that angle.

Therefore, if, as a matter of fact, there are parties, I am sure that whichever party may be in power, all the more the parties are bound to play a more and more important role, if this parliamentary democracy is to succeed. Otherwise, individuals, however eminent, without any party, without a programme, are not likely to advance the national cause. This is a thing which is of fundamental importance and we cannot help them with all our sympathies. I have myself sympathy that there may be some difficulties for some individuals, who may be much better than many others who are there and who have the advantage of belonging to a party, but we must all take this into account that, after all, by our decision to have a parliamentary democracy, we have to develop more and more good, well-organised parties, on certain principles which are conducive to the general strengthening of the cause of our nation. Its development, its welfare and all those things are there.

I don't blame anybody but there is a general misunderstanding all over, because in this country, this was the first experiment on the largest scale. The Congress Party which had a dominant role to play in achieving independence, naturally was the party which got a majority. We cannot always ascribe it to something bad having been done. It is natural. Look at the question dispassionately. What else could have happened? But I would say to my Congressmen also, that this will not last for ever. That is true. Now hereafter, more and more the parties will be justified by their policies, by their ideology, by the way in which they implement.

their policies and ideologies. That is true. But I would wish that if this democracy is to function, instead of there being 10 or 12 parties, and so many other individuals, more will have to be there. There must be a good opposition, there is no doubt; but you cannot lump together all the different elements. That is not democracy. Even from that point of view, I say this, because I myself had once belonged to an Opposition. Of course, it was not recently, it was before we got independence.

Therefore, we have to develop something and I would appeal to all hon. Members to look at this question from the intention with which we had started, the goal which we have to reach, and the way in which we are proceeding. Then I think, that will give us a proper perspective with respect to what we are trying to do. Because of the election being near, naturally, I myself feel that it would have been much better if I had brought this Bill before this House a year or two before. Then probably, there would have been a greater appreciation—not only on one side. I don't refer to any particular side, but probably, I would have been able to get more dispassionate consideration of a measure like this, than at a time when there is an impending election. After all, we know that election is a fever which cannot be avoided, and the nearness of it may have some effect, just as a man, before he gets fever, gets shivering. But at least so far as we are concerned, I think, we should all get out of that and try to look at this problem. Because this is going to be a measure which is applicable only now, or to the ensuing elections in March 1957. What we are, here, today, trying to do is to try to amend the election law which, as was pointed out by the lady Member who spoke some time ago, has succeeded wonderfully—there is no doubt about it. It is not as if the whole thing has to be thrown out, but we have to make some changes which are necessitated on account of the experiences

we got out of those elections, and it is from that point of view, that this Bill was considered, not only by one party in the Select Committee but by that Select Committee which was a fairly large one. As I have made it clear, I would have been glad if Members of this House also were there, as that would have helped me considerably. But the fact remains that it was discussed, and considered by a very large Select Committee, by persons belonging to all parties, and everything was ripped open and considered, and that is how the present form has emanated.

Well, Sir, with this apology for inconvenience to small parties and to individuals, I will now turn to some of the matters regarding which there has been discussion in this House.

SHRI H. C. DASAPPA: May we know why there was not a Joint Select Committee?

SHRI H. V. PATASKAR: I have said whatever it was possible for me to say, and I don't think my powers, limited as they are, would allow me to add anything more, nor is it desirable to add.

Then, there was a general complaint in this House, and a good deal of it, about the Ministers. The use of cars by these Ministers was the subject matter of another very severe comment against this law. Well, so far as it is possible for me, I made enquiries from the Election Commissioner—the final and independent authority in this matter, and I have been able to ascertain from him that the complaints of either general wrong behaviour on the part of Ministers and Government servants, according to the information, which he had every chance to get, because if there were complaints, they would be sent to him, as tribunals were to be appointed by him and in some other form, it was he who came in contact—his opinion is, that is what I could get authentically—that all these are

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not justified. I cannot say that no Minister out of probably several—I don't know how many there are....

SHRI S. N. MAZUMDAR: Hundreds.

SHRI H. V. PATASKAR: I cannot vouch for the behaviour of every single person, but I can say this much—that is the only method by which I could ascertain what I did—that generally—because that is the only thing with which we are concerned, while we are considering a legislation of this nature, and whatever a man has done, right or wrong, that is another matter which could be dealt with differently, but I am convinced from the report I have got, that—there has been nothing like mis-demeanour on the part of Government officials or Ministers.

SHRI S. MAHANTY: Are you confusing Ministers with officials?

Shri H. V. PATASKAR: I know that. I do class them together. The complaints related to both. So I tried to get information. I may say that I have clubbed them together because of the comments,....

SHRI H. N. KUNZRU: My hon. friend is slightly mistaken. There is no criticism of the conduct of Government servants. All that was said was that, in spite of what the Election Commission had stated in its report, it was of the view that Section 129 ought to be amended so as to relate to all Government servants, and not merely to the persons engaged in connection with the election, or members of the police forces. That was all the complaint.

SHRI H. V. PATASKAR: I may say that I am not referring to that at all. That will come later. I know that. There was a criticism that when a Minister was going, policemen were attending, or the district magistrate was going, and all that. What does it imply? That the Minister or the Government officials, who are capable of being influenced by him, did some-

thing which was wrong. That is the charge to which I am replying. I shall come to the other points later. What I, therefore, wish to say is, so far as I could find from the means at my disposal, that it does not seem to be correct. Now, what the individual experiences of any particular Member with respect to a particular officer or Minister are concerned, that is entirely a different matter, but there is the other side to it. As was pointed out by my friend Mr. Kapoor, so far as the Central Ministers are concerned, the cars are their own. They are not Government cars. They use their own cars. Of course, certainly, for private purposes, I am not expected to use Government cars which are meant for different kinds of work. But of course, if a Minister is there, he owns his own car and he has to spend for it, but then, when he goes, it may be very difficult for different people to really find out. The flag will be there; so long as a Minister is there, it will be there, and people might think that he is using Government car and Government petrol. Nobody wants to do anything deliberately.

SHRI GOPIKRISHNA VIJAIVAR-GIYA: In my State, Ministers used, not Government cars, but their friends' cars.

SHRI H. V. PATASKAR: Of course, we need not go into the details of either one or the other, because all that have little bearing when considering a Bill of this nature, which is not concerned with the conduct of a Government official, or Minister but deals with election law. Therefore, there was a little over-emphasis on these, and there need not have been so much of emphasis.

Then, there was a suggestion that during the election time, probably there should be President's rule. I think that this has already been replied to, and I don't know whether there is any other democratic country where this democracy is functioning, where such a thing is followed, that they suspend the Ministry, and the actual working of the Government. On the contrary, I believe that the

Government of a country and its administration, apart from who the Ministers are, must be in the hands of a smooth running Ministry, and it ought not to be allowed to be interrupted on account of the suspicions and apprehensions in the minds of people. That would, from the point of view of the larger interest of the country, be a wrong thing. If we are unfit for democracy, I can understand it. Having started with parliamentary democracy, we may not be fit for it. That may happen after fifty years. But why do things just because you feel that the Ministers will not behave properly, that they will resort to unfair things and therefore, say, let us have President's rule?

The President's rule is an exceptional thing for special emergencies and we cannot utilise it for having these routine elections which come round. If in spite of all this, the Ministers really misbehave, then, this is not the way to deal with that problem. You have to find some other solution. The solution will be for public opinion to throw them out, if they try to keep power in their own hands by resorting to such means as they should not use. I myself cannot understand what will be the good result that they expect from the President taking over the administration? Some people will be in office, and who else but those who have been ministers, or at least some of them? The only result will be that probably the Legislative Assembly, or the Parliament, will cease to function and as a result of that, whatever little chance there might be of creating some noise, because of some real trouble or something really wrong being done, that chance would disappear. That is my reply to that suggestion. Nothing happened at the last elections. I have never heard this cry and the next elections are yet to come.

SHRI H. D. RAJAH: So many things happened last time.

SHRI H. V. PATASKAR: Let us gain experience, and then, we will

see how to improve matters, if necessary. I believe, the election law of a country is not always identical, in every respect, to that of another. Barring that, there are certain fundamental things which also we have to take into account.

There is some sort of a misunderstanding as to the scope of these offences and corrupt practices, and all that. I shall deal with the details, when we deal with the amendments. Now, what is the basis of a corrupt practice? What is the basis for having illegal practices? There are the election offences. There are the offences under the Penal Code. How are they all to be brought into a legislation of this type? There is some difficulty. Every offence is not a corrupt practice and every corrupt practice is not an offence. Take an electoral offence, or a general offence. If it is a general offence, what is the point from which we look at it? We look at it from the point of society and say that a certain thing, which ought not to have been done, is done, and we penalise it. That is the general offence. There is no question of election or candidate coming up at that stage. That offence is an offence under the Indian Penal Code.

Now, all electoral offences are not the same as corrupt practices. Electoral offences are offences committed by persons in connection with an election, but not necessarily connected with the candidate. It does not affect the candidate. Take the case of the ballot papers, where they are disturbed or taken away. The offence is that there has been an attempt to tamper with the ballot boxes and the ballot papers are sought to be removed. That is an electoral offence. It has nothing to do with the candidate. It is in a different category altogether, and the considerations are different. So we want to see that, that sort of thing does not happen. Of course, if ultimately, it be proved that it was done at the instance of the candidate, in that case, it is a different matter. The criterion to categorise the offence

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is different. If my hon. friend will look into the matter, he will see that all electoral offences are not corrupt practices.

What is a corrupt practice? Corrupt practices also come under a specialised category. The election law has to deal with the question whether, on account of a corrupt practice, the election should be primarily set aside or not. As to the wording of it, I shall deal with later. But there is a distinction between the two. Corrupt practices are designed to play a different role. They, more or less, relate to the candidate and the object of mentioning it is to say that this particular candidate has probably done something on account of which he must be disqualified. Electoral offences have nothing to do with the candidate. Similarly, offences are still broader. All these considerations must be kept in view. Otherwise there is confusion in respect of why this thing is a corrupt practice and why the other is an electoral offence, and the third is a legal offence.

Under the old Act, there were the corrupt practices, which again were divided into two groups major corrupt practices and minor corrupt practices. And then, there were the illegal practices and the electoral offences and of course, the general offences are already there. When the matter went to the Select Committee, as hon. Members are aware, and as lawyer friends will say, the whole scheme was put in such a form that even young and junior lawyers could not say why this one was a major corrupt practice, and the other one a minor corrupt practice. Therefore, as I said, when this matter came to the Select Committee, they thought, it would be better to simplify the whole thing. And what have they done? Broadly, there is to be no such distinction as major and minor corrupt practices, because there was no substance in it. So have only corrupt practices. Thus, there is one simplification. Then, the electoral offences and the general offences are there. Whatever changes

are there, I will deal with later. The Select Committee proceeded to consider this matter from the point of view of simplifying the law as it stands.

Now, I will take up a specific case to which reference was made—impersonation. Impersonation was a corrupt practice under the old Act. And I believe my hon. friend, Dr. Kunzru, agrees that it is an offence.

SHRI H. N. KUNZRU: I could not hear what the hon. Minister said.

SHRI H. V. PATASKAR: I said that impersonation was a corrupt practice under the existing Act. Impersonation, no doubt, is an offence under the Indian Penal Code. These two things are also admitted by the hon. Member. Then the question arises as to why impersonation was omitted? That is the only point we are concerned with. It is no good feeling that, because it is omitted, so something wrong is done. Let us look at this impersonation. There may be other offences, there may be rioting, there may be, what we call, *mara-mari*. All such things are offences. But there are different ways for dealing with these different things. Similarly, when in a country 18 crores are expected to go to the polls, there might have been some case of impersonation somewhere. But by and large, is it not good enough to say that impersonation is an offence? Is that not sufficient deterrent for the purpose of preventing it? I don't think there has been impersonation, though I was told that there was a case of some male person going in a *burqa*.

That might have happened, though I have no knowledge of it.

AN HON. MEMBER: Hypothetical.

SHRI H. V. PATASKAR: It may be hypothetical, I do not know. But what is the nature of the offence?

SHRI S. MAHANTY: Sir, if I may interrupt the hon. Minister, we may concede that the offence of impersonation

nation is covered by the I.P.C. If a person impersonates, he will be penalised under the provisions of the Indian Penal Code, but I would like to know the remedy that the hon. Minister is going to suggest if such impersonation materially affects the election.

SHRI H. V. PATASKAR: If the hon. Member has a little patience, he will know. I was trying to explain the whole thing, not that I wanted to point out this only. So, the question is this. Impersonation is an offence and a serious one, for which a man can be penalised. Normally, I can understand the heat and difference between the candidates, amongst themselves and the canvassers and agents and so on, but it is in very rare cases that a man will ordinarily resort to an offence of this nature for benefiting a particular candidate. Granting for a moment that this is the case, what could be the object? We do not know what it can, but it can be said that a person impersonated X but X will say that this was done by the other candidate in order to put him in the wrong. When this matter goes before the tribunal, what will happen? Is it really impersonation? This is not such a thing as bribery or corruption; this is a different matter. Even granting that it is done, there will be no evidence to show that impersonation was practised on a very large scale. Of course, parties who probably are defeated in the election are likely to make much of it, but if we look at the problem as I said, not from an individual angle, or from a party angle, a party which was defeated, but from the general angle, I do not think, there is any justification here or anywhere else to suggest this kind of a thing. I do not know if I am right or not, but I think, that there are few, if at all, countries where impersonation is taken as a corrupt practice. As I said earlier, this is a different category altogether for which there is a punishment provided. What is there to justify the allegation that so many persons went wearing a *burqa* and impersonated such and such per-

sons? That is not enough. It is from that point of view that I would like hon. Members to look at this problem, and it is from that point of view that the Select Committee thought it much better to confine corrupt practices to matters which could really and substantially affect the election of a candidate. It was on that question that this was omitted; otherwise, there are so many other offences.

SHRI JASPAT ROY KAPOOR: Can it not be that large number of impersonation cases were not there, because of the deterrent effect of the existence of this provision?

SHRI H. V. PATASKAR: I think, the deterrent effect is more the candidate himself. A man who does commit an offence of this nature will be heavily punished. After all, you must also think that candidates may be willing to do this, but the voter always thinks of his own safety first, and then only for whatever he can do for helping the candidate of his choice. There are very few people really who would risk their own prospects and take the chance of being held up before criminal courts, simply because they would want to further the cause of a candidate of their choice. Let us take a realistic view, not an imaginary or possible view. I do not think, the Select Committee has done something by which we can say "Here is the Select Committee which wants that elections hereafter should not be fair and free but should be corrupt". That charge is not justified at least for such a count.

SHRI H. N. KUNZRU: May I ask the hon. Minister.....

SHRI H. V. PATASKAR: If any point remains at the end. I would reply, but this is the only thing I can say with respect to impersonation.

With respect to tampering with ballot papers and removal of ballot papers, it is true that it is a very serious matter. It is a serious matter that the ballot papers could be removed, tampered with, or be issued to the wrong people. If such things happen, then,

[Shri H. V. Pataskar.]

they strike at the very root and foundation of free and fair elections; but then what? As a matter of fact, it is an electoral offence even now. Not only this; in the Lok Sabha, the provision was amended to include the man who receives such a ballot paper. Formerly, it was not so. I will refer to it specifically when I come to deal with that particular clause, but the Lok Sabha said that if a man received such a ballot paper, knowing that it is a counterfeit thing, he will be liable for punishment. What I mean to point out is that there is no desire to shield people. As I said, in the case of impersonation, it can be practised for the sake of votes which ought not to be had; it can also be done equally for the purpose of condemning the other candidate in order that the election may be defeated by certain other persons. Therefore, the best way to deal with it is not to connect it with the other category of corrupt practices but to make it as severely punishable as you can possibly do. I am not saying this from the point of view of this candidate or that—that is a temporary matter—but let us look at the problem from the view point of election law as a whole, and the principles which we have sought to follow so far as determining the different categories of offences. I would, therefore, appeal to hon. Members to look at this problem from this angle. There are some amendments and, of course, I will have something more to say when we come to deal with those amendments.

The general rule is that those things should be included in the corrupt practices which somehow or other can be said to be those connected with the conduct of the candidate. That is the general principle, not of this election law, but of all the others. The other offences you put in different categories.

There are one or two minor things which I will probably deal with, when we come to the amendments. There

are, however, one or two suggestions. One is regarding the scrutiny which, it is said, should be finalised before commencement of the poll. I can only say this much that this matter was one which needed some change in the existing law. Let us see the method which was followed in the Select Committee and in the other House. The Select Committee thought that the best course would be to see that nominations are made as simple as possible; not only this, but they made a further provision that no nomination paper should be rejected merely on some technical ground, for example, an error in the number. There were many such cases in the last elections. So, they said that those things should be corrected by the returning officer. The method that was followed was such as would, as far as possible, avoid any chance of a nomination paper being rejected on technical grounds so that everybody who wants to stand should ordinarily be able to stand and contest in the elections.

Now, that was one approach to the question. What about the disqualification? Here they came across a stumbling block. I will not go into the other details, because I have dealt with them, but the main question was, what about the clause regarding disqualification? It may be that I file my nomination papers, but who is the best person to find out and take the risk? Disqualification is on account of so many things. As we know, by and by, so many institutions and arrangements are there in which Government have got interest; there are so many boards, social welfare bodies, etc., and the matter becomes a little complicated. It is really not easy to say whether a person does or does not come under the disqualification category. I think, at any rate, a man who proposes to stand as a candidate is the best person to know whether he should take this risk or not. Therefore, it was thought that many people would naturally take care to see that they considered the matter well before they filed their nomination papers. Supposing there are party

interests in this; there may be some other parties, or people belonging to other parties, who might raise some grounds and say that a particular candidate was disqualified under them but, by and large, the returning officer will decide the issue on the merits, as appearing before him one way or the other. Of course, these are some of the matters which are very complicated and which cannot be decided simply by the returning officer at that stage, so that there will be a sort of a general ceiling even on this matter of disqualification at that stage. But there is a chance that a party or somebody else may come and file an election petition.

SHRI H. D. RAJAH: But why after the election?

SHRI H. V. PATASKAR: Yes, after the election. Before that, the trouble was, as I said yesterday, when there were a large number of some nominations accepted or rejected, particularly, I think in PEPSU, or in that part, at one time, it was thought that it was much better to make some provision, and a Bill was introduced in the other House. A Select Committee was appointed and they did make a proposal that there should be some machinery, or say some sort of a judicial authority, who might be given some period. After all, when once you give that, you must lead evidence. If it is a matter of disqualification there must be a period of time to file the documents. If documents are filed by one party, the other side will insist that they should be given some time to file their documents. It may not be so much of oral evidence, but the documents will be there. If a question of qualification and disqualification arises, some time may be asked just to get hold of those papers and to produce them. All this has happened as a matter of fact. What I am saying is not from my imagination, but that is what has happened.

"Therefore, at that stage, if you want some judicial authority, whoever he

may be, to decide that matter, there will be considerable time lag. The only result will be that when this objection is raised on the actual date of polling, polling cannot take place. But that cannot be done. Naturally, we will be faced with the prospect of this decision itself taking some time, the decision of this judicial authority. We know it from our experience of the powers which are given to the high courts and the Supreme Court, under articles 136 and 226 of the Constitution, and naturally everybody has got a right to make use of them. It was thought that if once this door was opened at this time there; the inconvenience would be that it would be almost impossible to hold simultaneous elections, which may again have to be held in several places for the Assembly seats, etc., and which may lead to several other complications.

Therefore, considering the balance of convenience—I don't mean to suggest that there is no force, nothing to say in favour of the other side, but having considered the balance of convenience and inconvenience on both sides, the other House and the Select Committee thought that, for the sake of a few cases, where the man faces a chance of being disqualified after he has been in the House for sometime—because we are bound to have sometime before it is decided—we should not disturb the election dates, and the best thing would be that, at this stage, we do not interpose any judicial authority or any other authority. It was said that we may give it not to the returning officer but to some higher election officer. But the same objection might be raised that they are executive officers and they cannot be expected to apply all the standards which are necessary to adjudge a matter of this complication and ultimately, therefore, after a good deal of discussion, they thought that the best way was to make it as simple as they could and to see that, at any rate, the larger question of dealing with the speedy disposal of election petitions tried.

[Shri H. V. Pataskar.]

That is the counterpart of this proposal. Therefore, when we are considering this, I would at this stage, Sir, try to explain to the House as to how they have come to this conclusion, so far as this matter was concerned. We had the experience under the law, as it stood, and they thought that whatever you may say and do with respect to the finality of the decision of any tribunal you set up, it is not desirable that we in any way interfere with the powers which we have given under the Constitution to the high courts and the Supreme Court. That would be fundamentally wrong, because people would say that you are doing so for the sake of your own elections, in order that they may be final, and then, all those other charges which are now counted against us will be recounted with greater vehemence, that we are trying to interfere even with the powers which are given under the Constitution to the supreme judicial bodies.

So that course was ruled out—nothing doing. Otherwise that was a shorter method. But it was thought that that is not the right thing to do. So the question arose as to what else is to be done within that framework and that whatever is possible should be done. Then we thought what was the reason, why the Supreme Court also in many cases granted special leave to appeal. Generally, they are very reluctant to grant it. I myself have appeared in some of these cases in the Supreme Court and I can say that the Supreme Court judges were very rightly anxious in many of these matters, because they thought that where an election tribunal, whether it was composed of one or three members, had done something which on the face of it is not justifiable, if they are not to exercise their powers in a case where there is no appeal, then what are those powers intended for. Therefore, there was a natural desire on the part of the judges of the Supreme Court, while dealing with this matter, and one fact always weighed with them. It was, that there

was no remedy against some election tribunal either wrongly, by misconception, or deliberately trying to do something, which ought not to have been done under the law.

We find that there have been a number of appeals, which are admitted. In some cases, they have succeeded. By and large, they have not, even after incurring all this expenditure. If they had admitted those appeals, it was probably out of a desire to do justice which, in their proper functioning, they were bound to do. Therefore, it was thought, what was the other way round. The other way was, that if we provided a remedy by way of an appeal to the high court directly, then much of these things could be avoided. There may not be any writ petitions to the high court after the passing of this measure, because the power to appeal to the high court is there, because there you can go and appeal. We, lawyers, know that we can appear before a high court and present a petition in the hope of the previous judgment being reversed. I have more confidence in the judiciary of our country. Let the right of appeal be there and let them decide. The high court will examine the whole thing and will decide on the reference. The writs will disappear. If they go up to the Supreme Court, they will say, "Well, you have got the right to go on appeal to the high court. Why do you come here?" This is the only way in which you can avoid the delay which is now taking place.

Yesterday, for instance, I was asked how many cases were pending. There are still four cases pending in the Supreme Court for no fault of their own. They all relate to 1953 elections but, whatever it is, it is not desirable that matters should drag on for such a length of time; it is not in the interests of anybody and therefore, they thought, that the best way to meet the situation was to give the right of appeal to the high court. Now, having given this right of appeal to the high court, what will be the nature of this tribunal? I can say that

a tribunal of three persons was thought of at that time, because we started with a different idea. We wanted to make that a finality not anticipating all those subsequent appeals and writ petitions, which would delay matters. I do not blame anybody, but they thought with a different approach. They said: Well, if that is to be final let it be done by three people, let the tribunal consist of three people one a judge, one a retired judge and the third an advocate.

Therefore, you will find, Sir, it is not as if we wanted to do something wrong, but in view of the fact that, in this appeal to the high court, there is a chance for the aggrieved party, we thought there was no necessity of having again that old procedure of having three people to sit and again try to prolong matters. It is common experience and it is the experience of my friend, Mr. Sinha, who really started the appeal. He had appeared with me in one or two petitions before the Supreme Court, and he knows that, as a matter of fact, this tribunal of three judges usually meant more delay, because it is a different matter. You leave it to the district judge. He is a man who is in service. It reduces the cost also, which otherwise will be unnecessarily increased, and in view of the fact that there is otherwise delay, there is nothing wrong in leaving this matter to be decided by a district judge. Then it was asked, by which district judge, and some people thought that in some of the States the district judges had not that experience that they wanted—may or may not be—but the provision here is that this will not be any district judge. The high court will prepare a list of suitable district judges who could be found for the purpose, and out of them, the Election Commission will appoint somebody as the tribunal, who will decide this matter, and then, we have also taken the safeguard that the tribunal shall decide the matter within six months. Well, I know that in all judicial matters it is very difficult to lay down any hard rule, because the interests of justice might be jeo-

pardised if the proceedings were to be concluded in all cases within that period. Normally, there is a tendency in all judicial courts, whenever you pray that a particular petition be taken earlier than other pending ones, they will at least give them priority over other proceedings which may be pending before them. At any rate, he will be a district judge, and he would be conscious of the fact that normally, 4 P.M. he has to decide this matter

within six months. And if it is to protract beyond six months, probably the Election Commission might ask the reason for the delay. And no judge wants to do anything for which an explanation will be needed. He may try to dispose it of as early as possible. Similarly, in the case of writ petitions, ultimately, though they were dismissed, they were pending in the high court for over one year, and in some cases, even beyond that. Therefore, we say, they shall dispose it of in three months' time. Most probably, in almost all cases, they will try to dispose it of as quickly as possible and they will give them the top-most priority. That is the basis on which we have tried to deal with this question relating to simplification of many of these matters.

SHRI P. N. SAPRU: Why is it that sessions and civil judges are not included?

SHRI H. V. PATASKAR: We have, I think, introduced civil judges also.

SHRI B. B. SHARMA (Uttar Pradesh): We have civil and sessions judges in our State, and in the Constitution, they are defined as district judges.

SHRI H. V. PATASKAR: We shall examine the wording, when we come to that clause. As far as possible we have collected information from the different States, because these people are designated by different names. We

[Shri H. V. Pataskar.]

have tried to see that ^{an} judges of considerable experience will be there and if there is any lacuna, we shall certainly consider it. I do not claim that I know every detail in respect of every State, but the underlying idea is to have persons of considerable experience.

Then, there was a general proposition with respect to the parties and candidates being allowed to broadcast. I can only say that this is hardly a matter which concerns the law of elections. In the U.K., and in the U.S.A., probably, broadcasting is a private system, where entirely different considerations prevail. In our country, broadcasting is Government-owned. Therefore, things are entirely different. I won't however say whether this should or should not be done, because it is beyond the scope of my Bill to say anything which would either disappoint some people or create difficulties for some others. But I am certainly entitled to and justified in saying that this is not a matter which should form the subject-matter of an election law. There are several methods of reaching the public—broadcasting, advertisements, printing of leaflets, sending things by post. All these may be dealt with by rules or by different arrangements but they cannot form a part of the basic election law. After all, the election law is something different, and from that point of view, I won't say anything. But I can say one thing that, if at all broadcasting were to be allowed to any party, it must be allowed to all. And I do not believe that the Government is likely to give any such discriminatory treatment.

There were certain other matters also, and one of them to which my esteemed friend Dr. Kunzru referred was about the word 'consent' which has been used. We had previously the word 'connivance'. I have thought over the matter and it was considered seriously by the Select Committee also, as to what is connivance and what is consent. If I may say so,

connivance is nothing but implied consent. A consent may be implied or explicit. Supposing I consent to a thing, that is consent no doubt, but if I connive at something that you are doing, then I implicitly consent to what you are doing. I must say that I am not fighting for the sake of some word. But to import into it a charge that something has been done deliberately, in order that the election may not be free and fair, is something which I certainly resist.

SHRI H. N. KUNZRU: In the hon. Minister's opinion, is there a difference between 'consent' and 'connivance' or not?

SHRI H. V. PATASKAR: I have already expressed my opinion and it is for the hon. Member to understand it in whichever way he likes.

As I said, I am not fighting for a word. The only point is about the charge that it was deliberately done with some ulterior motive. It is not at all anything like that. I have gone through all the Acts to find out whether there was any uniformity of expression in this matter. In the United Kingdom Representation of the People Act of 1949, the words used are 'knowledge and consent'. It is of course more or less on the same lines, but it is something different.

SHRI H. N. KUNZRU: But knowledge is connivance.

SHRI H. V. PATASKAR: Then in the Dominion Act of Canada, the wording is 'actual knowledge and consent'. It is not mere knowledge. Then there is another Act of another Commonwealth country where the wording is 'knowledge or authority'. What I mean to point out is, that we need not attach unnecessary importance to this, but we should look at the scheme of things as a whole. The Select Committee have also deliberated on this matter for a long time, and in the scheme of things which they have propounded, they thought that 'consent' was enough for all such purposes.

SHRI H. D. RAJAH: Why cannot the hon. Minister accept 'with the consent, connivance and knowledge'? What loss will he incur by accepting these words?

SHRI H. V. PATASKAR: I have no justification to be here as Law Minister if, on the spur of the moment, I go on accepting any such thing. I will have to examine it carefully because every little word is important. I can only tell you that this was given serious thought and consideration in the Select Committee, which consisted of eminent lawyers, and ultimately, they have recommended this. I can consider any suggestion, but that is different from my being asked to accept something here and now. I am not here to accept a combination of all the expressions in the different Acts and then land myself in some trouble. I refuse to be drawn in in that manner.

SHRI S. MAHANTY: Sir, I want to know.....

SHRI H. V. PATASKAR: I am not yielding; let me finish. Sir, there were several other matters of a simpler nature and I think, we can deal with them when we take up the relevant clauses.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill further to amend the Representation of the People Act, 1951 and to make certain consequential amendments in the Government of Part C States Act, 1951, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up clause by clause consideration of the Bill. There are 50 minutes left.

SHRI H. D. RAJAH: What about our amendments?

MR. DEPUTY CHAIRMAN: We will take them up.

Clauses 2 to 6 were added to the Bill.

Clause 7—Substitution of new Part for Part III

SHRI H. D. RAJAH: Sir, I move:

7. "That at page 4, for lines 11 to 13, the following be substituted, namely:—

'14. (1) On the dissolution of the House of the People a general election shall be held for the purpose of constituting a new House of the People.'"

8. "That at page 4, lines 20 to 24 be deleted."

9. "That at page 4, for lines 25 to 27, the following be substituted, namely:—

'15. (1) On the dissolution of the Legislative Assembly of a State a general election shall be held for the purpose of constituting a new Legislative Assembly.' "

10. "That at page 4, lines 35 to 41 be deleted."

MR. DEPUTY CHAIRMAN: No speech, I believe?

SHRI H. D. RAJAH: There must be some elucidation, Sir.

MR. DEPUTY CHAIRMAN: The clause and the amendments are open for discussion.

SHRI H. D. RAJAH: Sir, this is on the basis of the statement that I made yesterday that, during the election period, there must be President's rule. I was not impressed by the argument advanced by my hon. friend, the Minister for Legal Affairs, that during the President's rule, the same people will continue to be in office, and that they will go about canvassing for their parties. For example, we have got now President's rule in Travancore-Cochin State. They have not appointed the same people there to

[Shri H. D. Rajah.]
administer that State. Therefore,
what I visualised.....

MR. DEPUTY CHAIRMAN: The
President's rule there is not for elec-
tion purposes.

SHRI H. D. RAJAH: That may be
for any reason, but I am only quoting
that as an analogy to bring to the
notice of this House that, during the
President's rule, it is not necessary that
the same people should be appointed
as advisers. Sir, the Govern-
ment must have an impartial outlook.
And the Congress Party can go about
freely, without being subjected to this
kind of criticism that, with the minis-
terial influence, they are bringing
pressure upon the public to vote for
their party and for their candidates.
Thus they will stand on par with other
parties and individuals, and it will
certainly redound to the credit of the
Congress Party if they accepted this
amendment of mine. That is all that
I have to say.

SHRI H. V. PATASKAR: Even
under the Constitution, I do not think
that President's rule can be introduced
and the Constitution suspended for the
purpose of elections. So I cannot
accept the amendments.

SHRI H. P. SAKSENA: On a point
of information, Sir. You said just
now that no speeches are to be deli-
vered on the amendments. Is it your
ruling, Sir, or is it according to some
rule?

MR. DEPUTY CHAIRMAN: I did
not say that. I never said that
speeches should not be delivered at
all. They should be short and sweet.
What about your amendments, Mr.
Rajah?

SHRI H. D. RAJAH: If he is not
accepting them, I know what their
fate will be I beg leave to withdraw
them.

*Amendments Nos. 7, 8, 9 and
10 were, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The
question is:

"That clause 7 stand part of the
Bill."

The motion was adopted.

Clause 7 was added to the Bill.

Clauses 8 to 15 were added to the
Bill.

Clause 16—Substitution of new sec-
tion for section 33.

SHRI PERATH NARAYANAN
NAIR: Sir, I move:

11. "That at page 7, line 9, after
the word 'candidate' the words 'or
if the candidate is in jail, by an
authorised agent who will also file
an affidavit to the fact of the candi-
date being in jail in such manner as
may be prescribed' be inserted."

SHRI JASPAT ROY KAPOOR: Sir.
I move:

12. "That at page 7, after line 10,
the following be inserted, namely:—

"(1A) Every nomination paper
delivered under sub-section (1)
shall be accompanied by a decla-
ration in writing subscribed by
the candidate that the candidate is
not a member of any political
organisation participating in the
election which bears a caste or
communal name or restricts its
membership to persons belonging
to some caste, community or reli-
gion, and no candidate shall be
deemed to be duly nominated
unless such declaration is deliver-
ed along with the nomination
paper:

Provided that such declaration
shall not be necessary in the case
of a candidate who is a member
of any of the Scheduled Castes or
the Scheduled Tribes."

*[For texts of amendments, vide
col. 3124 supra.]

MR. DEPUTY CHAIRMAN: The clause and the amendments are open for discussion.

SHRI PERATH NARAYANAN NAIR: Sir, there is no need to make any long speech. My amendment is only to enable persons in jail to submit their papers, and I commend it for the acceptance of the House.

SHRI JASPAT ROY KAPOOR: Sir, as I said on a previous occasion, I consider my amendment to be of considerable importance and of a fundamental nature, and I would beg of you, Sir, to let the House have a reasonable opportunity to give serious consideration to my amendment. I would like to point out clearly the implications. I will read it out and while reading I will explain its implications. Every nomination paper delivered under sub-section (1) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate—himself of course—is not a member of any political organisation participating in the election which bears a caste or communal name, or if it does not bear a caste or communal name, it restricts its membership to persons belonging to some caste, community or religion. And the second part of it is—and that is the operative part—that no candidate shall be deemed to be duly nominated unless such declaration is delivered along with the nomination paper. Then, there is the proviso which says, "Provided that such declaration shall not be necessary in the case of a candidate who is a member of any of the Scheduled Castes or the Scheduled Tribes."

Now, Sir, what does this amendment mean? While it should be open to any organisation bearing a caste, communal or religious name to carry on its social and religious activities unfettered by any limitation, it should not be open to that body to function in the political field, and participate in the election under the caste or communal name. Or if it has no caste or communal name, then, it should

not be permitted to function in the political field, if its membership is restricted on the ground of caste or community or religion. This amendment of mine only enlarges and extends the principle which has already been incorporated and accepted in section 124 of the original Act, which says under the heading of minor corrupt practices—"in sub-section (5):

"The systematic appeal to vote or refrain from voting on grounds of caste, race, community or religion, or the use of, or appeal to, religious and national symbols,.....etc."

This has been declared under the original Act a corrupt practice. I am glad to find that, though section 124 is proposed to be deleted altogether, yet, this particular part of section 124 has been bodily incorporated in the amending Bill. On page 27, in sub-clause (3) it says:

"The systematic appeal by a candidate or his agent....and so on".

This has been bodily taken over from the old section 124 and incorporated herein. That is an added dignity given to it, because while in the original Act, this was considered to be a minor corrupt practice, hereafter, it will be considered to be a full-fledged corrupt practice. That is all for the good. I only want that rather than let the candidate be nominated and have the opportunity of making an appeal on grounds of caste, race, community or religion, and then declare his election invalid, why not prevent such a candidate initially from being nominated?

Sir, I had a talk with some hon. Members here and, in view of that, I want to make it clear that the implication of this amendment is not that any bar is going to be placed in the way of any person or number of persons forming an organisation in the name of a caste, community or religion to carry on social, religious, economic or any other activities. They can do it. There is no impediment in their way, no bar, no restriction what-

[Shri Jaspat Roy Kapoor.]
soever. Only the candidate, when he comes before the electors to seek election, must give, as it were, an undertaking that he will not resort to the corrupt practices which I have just read over. Initially, he has to give an undertaking to this effect as it were. This is indirectly the implication of my amendment. It is very necessary. I have, of course, very clearly stated in the proviso that this will not apply to Scheduled Castes and Scheduled Tribes, for the simple reason that in the Constitution, we have provided a period of ten years, for reservation of seats for them. So, they will not be affected by my amendment. But so far as the rest of the community is concerned, in the interests of the unity of the country, in the interests of secularism of the State by which we swear, it is necessary that this amendment should be accepted. It will not, of course, entirely root out this evil from the country, but if it is accepted, it will go a long way to create a better atmosphere. As I said previously, the Hindu Mahasabha, the Muslim League and other communal organisations are raising their ugly heads again.

SHRI H. D. RAJAH: Sir, this is one lonely green spot in the otherwise barren desert. If the Congress Party accepts this amendment, this country will get rid of many evils which are the root causes of the present maladies. I wholeheartedly support it.

SHRI KISHEN CHAND: Sir, may I ask one point from the Member who is moving this amendment? I wholeheartedly support it. Will it be that any person whose name signifies his caste will also be disqualified?

MR. DEPUTY CHAIRMAN: He wants a declaration.

SHRI KISHEN CHAND: He may advertise that he belongs to that caste, though he does not want his caste.

SHRI P. N. SAPRU: I oppose it on fundamental grounds of democracy. You cannot have a democracy with-

out a competition of ideas. So far as I am concerned, I am free to confess that I have no caste; I have no community; and I can hardly think of religion.

AN HON. MEMBER: So you can help it.

SHRI P. N. SAPRU: But I think, it should be possible in a secular State for a political party to function in any manner it likes, provided it does so according to the law of the land, because a competition of ideas is fundamental to democracy. That is the difference between democracy and a totalitarian State.

SHRI JASPAT ROY KAPOOR: Not a political party, a communal party.

SHRI P. N. SAPRU: In European countries, in Germany, France and Italy, there are Christian Democratic Parties. They have got a religious foundation and they contest the elections, and they are democratic countries.

I am very strongly opposed to the amendment and apart from it, the whole thing is ridiculous because, all that a man has got to do is to make a declaration, and it may be false.

SHRI FAKHRUDDIN ALI AHMED (Assam): Mr. Deputy Chairman, I support the amendment put before the House by Mr. Jaspat Roy Kapoor. He has, in a very able manner, outlined the reasons why this amendment is called for and is necessary. An objection has been raised that ~~certain~~ religious parties function in Europe and they are allowed to contest elections, it is not proper that any impediment, as this amendment will, should be put forward in the way of contesting elections. But my submission is that, as the very basis, on which our Constitution has been framed is secularism, we have no other alternative. When we say that we are secular, we must make an attempt in every direction, in every possible way, to see that that secularism is not only accepted in principle, but is also followed in practice. And on that basis, the only

thing which this amendment seeks to do is that such organizations or persons who want to utilise the political field for a particular sect or caste or community, should be debarred from taking part in the elections. Let us think of a time when the Congress Party may not be in power. Suppose an organization, which is pledged to some communal activity, and which shuts its doors to communities, and castes, other than its own, comes to power, the result will be that the government if the country will be carried on in the name of that political-cum-commercial organization. Will that be consistent with the fundamental principles enunciated in our Constitution? Therefore, this amendment is a very salutary one and I think, it deserve the support of every right thinking person who is pledged to bring about secularism in our country.

I wholeheartedly support this amendment and I hope that it will be acceptable to the Minister in charge.

SHRI H. V. PATASKAR: Sir, so far as the idea underlying the amendment moved by my friend, Shri Jaspat Roy Kapoor, is concerned, I believe it is this. The Parliament, in a democracy with which we are starting, cannot and should not contemplate the division of the country on the basis of political power being obtained on communal and religious basis. I think, that is the basis. But then, this is our past heritage. We know what communal parties have cost us in the name of either religion, or whatever it may be. But now, we have turned a new leaf and we have also made it clear in the provision which the hon. friend read out that any appeal to the voters in the name of any community or religion etc. is prohibited. The whole question, therefore, is not of disagreeing with him, with the objection with which we are to proceed and we must proceed, but of what is the method and how to do it? I think, the

best way is this. We have provided it to be a corrupt act for a man to appeal in the name of his caste or religion, because we all realise what harm was caused to our nation when such ideas flourished at one stage. But what is the remedy? The remedy is the way in which we have tried to put it in the Act by saying that there shall be no appeal in that case, and I believe that this is a very salutary thing.

When I was speaking, I did not refer to it in detail. The very basis of parliamentary democracy implies organization of parties; but they can never be organized on communal and religious lines. But the question is how to deal with this? I think, the best way lies in the provision made already and that will end the corrupt practice of appealing in the name of caste. (*Interruptions.*) Please do not be impatient. My friends are so impatient that I can even think that there may be a justification..... (*Interruptions.*) Impatience serves no purpose. So far as this question is concerned, when I look at the amendment, I want to know what it is that my hon. friend wants? We have provided for something which is stronger and better. He says, "..... accompanied by a declaration in writing, subscribed by the candidate, that the candidate is not a member of any political organisation participating in the election which bears a caste or communal name....."

Well, as I said, under the scheme of this Act, we do not want to introduce complications so as to prevent a man from standing for election. We can deal with him as a democratic people. Why prevent him and create complications? Therefore, while agreeing with the idea underlying his amendment, I think, it is wrong that he tries to interpose it at the time of filing a nomination paper. There, our objection is simply this. Why introduce this complication? It does not make any difference in policy so far as this

[Shri H. V. Pataskar.]

Act is concerned. I would appeal to my friend not to press it.

MR. DEPUTY CHAIRMAN: What about the other amendment?

SHRI H. V. PATASKAR: Then, Sir, as regards the other amendment, I think, it is not necessary at all. If the candidate is in jail, what is the difficulty about him? The hon. Member wants to add the words "or if the candidate is in jail, by an authorised agent who will also file an affidavit to the fact of the candidate being in jail in such manner as may be prescribed." Supposing a candidate is in jail, he can give his signature, and I do not think, there will be any objection raised by the jailor. Therefore, Sir, I am not in a position to accept the amendment.

DR. P. SUBBARAYAN: Sir, I want some clarification from the hon. Minister. If a candidate declares himself as belonging to the Hindu Mahasabha or to the Muslim League, I think, they are all based on communal lines. In that case, Sir, what is the remedy that he proposes?

SHRI H. V. PATASKAR: Sir, I would not like to dilate on this point, but I would only say that there is some provision whereby....

SHRI FAKHRUDDIN ALI AHMED: Is the hon. Minister aware that during the last election, not only the nominations were held valid, but the election was also fought by the Muslim League in some of the constituencies of South India, and those persons were not disqualified for standing as candidates?

MR. DEPUTY CHAIRMAN: That is why it is now a corrupt practice. I will now put the amendments to vote.

The question is:

11. "That at page 7, line 9, after the word 'candidate' the words 'or if the candidate is in jail, by an authorised agent who will also file an affidavit to the fact of the candidate being in jail in such manner as may be prescribed' be inserted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

12. "That at page 7, after line 10, the following be inserted, namely:—

'(1A) Every nomination paper delivered under sub-section (1) shall be accompanied by a declaration in writing subscribed by the candidate that the candidate is not a member of any political organisation participating in the election which bears a caste or communal name or restricts its membership to persons belonging to some caste, community or religion, and no candidate shall be deemed to be duly nominated unless such declaration is delivered along with the nomination paper:

Provided that such declaration shall not be necessary in the case of a candidate who is a member of any of the Scheduled Castes or the Scheduled Tribes.'

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 16 stand part of the Bill."

The motion was adopted.

Clause 16 was added to the Bill.

Clause 17—Amendment of section 34.

SHRI PERATH NARAYANAN NAIR: Sir, I move:

13. "That at page 8, line 10, for the words 'five hundred rupees' the words 'two hundred rupees' be substituted."

14. "That at page 8, line 12, for the words 'two hundred and fifty rupees' the words 'one hundred rupees' be substituted."

15. "That at page 8, line 14, for the words 'two hundred and fifty rupees' the words 'one hundred rupees' be substituted."

16. "That at page 8, lines 16-17, for the words 'one hundred and twenty-five rupees' the words 'fifty rupees' be substituted."

17. "That at page 8, line 19, for the words 'fifty rupees' the words 'twenty-five rupees' be substituted."

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

SHRI PERATH NARAYANAN NAIR: Sir, I want that the amounts should be reduced. Speeches have already been made in this connection, and I do not think, there is anything more to be said. By reducing these amounts, we will be helping those who are comparatively poor.

SHRI H. V. PATASKAR: Sir, I think the present amounts of deposit have not caused any hardship. So, I am not accepting any of the amendments.

MR. DEPUTY CHAIRMAN: The question is:

13. "That at page 8, line 10, for the words 'five hundred rupees' the words 'two hundred rupees' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

14. "That at page 8, line 12, for the words 'two hundred and fifty rupees' the words 'one hundred rupees' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

15. "That at page 8, line 14 for the words 'two hundred and fifty rupees' the words 'one hundred rupees' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

16. "That at page 8, lines 16-17, for the words 'one hundred and twenty-five rupees' the words 'fifty rupees' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

17. "That at page 8, line 19, for the words 'fifty rupees' the words 'twenty-five rupees' be substituted."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 17 stand part of the Bill."

The motion was adopted.

Clause 17 was added to the Bill.

Clause 18 was added to the Bill.

Clause 19—Amendment of section 36:

SHRI PERATH NARAYANAN NAIR: Sir, I move:

18. "That at page 9, (i) in line 2, the word 'or' be deleted; and (ii) after line 2, the following proviso be inserted, namely:—

'Provided that a conviction and sentence exceeding two years of imprisonment for an offence of either a political nature or not involving moral turpitude will not entail a disqualification to be chosen as a member of either House of Legislature or Parliament; or'."

19. "That at page 9, after line 6, the following proviso be inserted, namely:—

'Provided that when the candidate is in jail, the genuineness or absence of candidate's signature shall not be challenged;'

20. "That at page 9, after line 29, the following proviso be inserted, namely:—

'Provided that any person, whose nomination paper is reject—

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ed by the Returning Officer, shall have a right to appeal to the High Court within three days of the date of the order, and the High Court shall decide the appeal within seven days of the receipt of the appeal, and in case the High Court reverses the order of the Returning Officer, the candidate's name shall be added to the list of valid nomination."

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

SHRI PERATH NARAYANAN NAIR: Sir, we have already made this point very clear in our speeches. In the present context of things happening in this country, any public worker will be obliged to go to jail, and it will not be proper to penalise them in this way. We want the addition of the term 'moral turpitude'. It has already been included in certain other legal enactments. So, I am sure there will be no difficulty about it.

SHRI H. V. PATASKAR: Sir, I have already explained that the term 'moral turpitude' is a very vague term. I have also stated that the Election Commission have been given the power to remove the disqualification, and I think it is much better to leave it to an independent authority like the Election Commission, and not to any executive officer of the Government. I am not accepting the amendments.

MR. DEPUTY CHAIRMAN: The question is:

18. "That at page 9, (i) in line 2, the word 'or' be deleted; and (ii) after line 2, the following proviso be inserted, namely:—

'Provided that a conviction and sentence exceeding two years of imprisonment for an offence of either a political nature or not involving moral turpitude will not entail a disqualification to be

chosen as a member of either House of Legislature or Parliament; or'."

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

19. "That at page 9, after line 6, the following proviso be inserted, namely:—

'Provided that when the candidate is in jail, the genuineness or absence of candidate's signature shall not be challenged;'"

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

20. "That at page 9, after line 29, the following proviso be inserted, namely:—

'Provided that any person, whose nomination paper is rejected by the Returning Officer, shall have a right to appeal to the High Court within three days of the date of the order, and the High Court shall decide the appeal within seven days of the receipt of the appeal, and in case the High Court reverses the order of the Returning Officer, the candidate's name shall be added to the list of valid nomination.'"

The motion was negatived.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 19 stand part of the Bill."

The motion was adopted.

Clause 19 was added to the Bill.

Clauses 20 to 40 were added to the Bill.

Clause 41—Substitution of new section for sections 71 to 75

SHRI H. N. KUNZRU: Sir, I move:

21. "That at page 16, in lines 26-27, for the word 'section' the word 'sections' be substituted."

22. "That at page 16, after line 27, the following be inserted, namely:—

"71. *Publication of results of elections to the Council of States and of names of persons nominated by the President.*—After the elections held in any year in pursuance of the notifications issued under section 12, there shall be notified by the appropriate authority in the Official Gazette the names of members elected by the elected members of the Legislative Assemblies of the States and by the members of the electoral colleges for the various Part C States at the said elections together with the names of any persons nominated by the President to the Council of States under sub-clause (a) of clause (1) of article 80 or under any other provisions.

72. *Publication of results of elections for the reconstitution of electoral colleges for certain Part C States.*—After the elections held in pursuance of the notification issued under section 13 for the reconstitution of the electoral college for a Scheduled Part C State, there shall be notified by the appropriate authority in the Official Gazette as soon as may be after the date or the last of the dates fixed for the completion of the said elections, the names of the persons elected for the various electoral college constituencies at the said elections."

23. "That at page 16, line 26, for the figures '71' the figures '73' be substituted."

24. "That at page 17, after line 9, the following be inserted, namely:—

"74. *Publication of results of elections to the State Legislative Councils and of names of persons nominated to such Councils.*—After the elections held in any year in pursuance of the notifications issued under section 16, there shall be notified by the appropriate authority in the Official Gazette the names of the

members elected for the various Council constituencies and by the members of the Legislative Assembly of the State at the said elections together with the names of any persons nominated by the Governor or Rajpramukh, as the case may be, under sub-clause (e) of clause (3) of article 171."

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

SHRI H. N. KUNZRU: Sir, I explained the purpose of these amendments yesterday. Their object is to stick to the procedure hitherto observed with regard to the notification of the names of the elected members of the Council of States and Legislative Councils, and the persons nominated either by the President or by the Governor, or by the Rajpramukh, as the case may be. The inconvenience by changing the procedure will be that the people who are declared elected at different times will vacate their seats also at different times. There cannot be an election, for instance, to fill vacancies in the Council of States, and at the same time in all the States. Now, this is obviously undesirable. I think, therefore, that the procedure already in force ought to be observed. I need not read out the amendments. I have made some changes in the language of the existing sections, sections 71 to 75 of the principal Act. They have been rendered necessary only by the march of events. The purpose of my amendments is to maintain the existing procedure with regard to the names of the persons elected and nominated to the Council of States and to the Legislative Councils.

SHRI H. V. PATASKAR: Sir, the main case for the deletion of this section 71 was this. You will find that section 71 of the Act deals with the publication of the results of elections to the Council of States and of names of persons nominated by the President.

"After the election held in pursuance of the notifications issued

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under sub-section (1) of section 12, there shall be notified by the appropriate authority in the Official Gazette....." etc.

You will find that there is reference to section 12 which deals with notification for election to the Council of States. "...the President shall, after the names of the elected members of the Legislative Assemblies, etc." That is sub-section (a). The first general election was a general election, so far as this House is concerned. After that, as you know, this House does not dissolve itself, and there is no question of any further general elections, but every second year, one-third of the Members are re-elected by rotation. That is article 83(1). After the general elections, there will be elections only every two years. Of course, I realise that this House is not subject to dissolution. So, there is no question of general elections to the whole House and the publication of the results of the general elections, so far as this House is concerned.

SHRI H. N. KUNZRU: Biennial elections.

SHRI H. V. PATASKAR: The hon. Member may please be a little patient. I know that every second year, one-third of the House retires by rotation and is then re-elected. But I realise that the only difficulty will be that these elections may not be at one and the same date, and, therefore, it may be that the names are published in the Gazette on different occasions. Apart from the question as to whether there would be or would not be general elections, so far as this House is concerned, it will be much better to have somewhere a correct idea of those who may be elected during that particular period, and a complete list of the Members elected may be published in the Gazette. Something can be done even under the Rules, and it is no longer necessary for us to keep the machinery which was necessary then, because it was the first general election to this House.

SHRI H. D. RAJAH: On what date are they deemed to be retiring and on what date are they deemed to be elected to this House? That is the point on which I want clarification from the hon. Minister.

SHRI H. V. PATASKAR: Otherwise, every time a person is re-elected, or another person is elected in his place, that is no doubt published in the Gazette under section 71. The only convenience or inconvenience will be that one man may be elected today, and his name may be published in the Gazette, and somebody else may be elected after ten days, and so on. The only question will, therefore, be not the publication of the results of a general election but that there should be available, every two years, a consolidated list somewhere of the Members who are elected. I think, that can be achieved without amending the Bill.

DR. P. SUBBARAYAN (Madras): The hon. Minister, I am sure, realises as much as I do, that elections to this House are by the single transferable vote. This gives a chance to a minority to put up a candidate if they have sufficient voting strength. Suppose the names of the different people elected are published on different dates, the very object of the single transferable vote would be defeated, because, there would not be enough candidates to run on that particular occasion. If twenty members are to be elected and if a minority has 15 members in a Legislative Assembly, it will be able to return a Member. So, if you are going to have elections on different dates, and only one candidate is to be elected on every occasion, it will work against the very principle of the single transferable vote.

SHRI H. P. SAKSENA: We have never done like that.

MR. DEPUTY CHAIRMAN: One-third of the Members are elected at biennial elections. They are supposed to be elected on the same date and to retire on the same date. Now, that will be defeated by this amendment.

SHRI H. V. PATASKAR: There was a general election to this House so far as this House was concerned, just like there was a general election to the other House, but hereafter, it is a constitutional reality that the whole House continues.

MR. DEPUTY CHAIRMAN: Nobody disputes that.

SHRI H. V. PATASKAR: I have consulted the Election Commission. There will be no difficulty in publishing the names of those people who are elected.

MR. DEPUTY CHAIRMAN: There are two provisions. One is the notification. Supposing there is an uncontested election, and the returning officer declares the candidate to be elected, and his name is notified in the Gazette by the appropriate authority. His membership is deemed to commence from that date. There is another provision which says that the Election Commission shall publish the names of the elected candidates, together with the nominations that the President may make.

SHRI KISHEN CHAND: By the Constitution, 2nd April is a fixed date.

MR. DEPUTY CHAIRMAN: I am referring to section 155.

SHRI H. V. PATASKAR: May I make a suggestion? We may hold it over till tomorrow. There is no question of principle or difference of opinion here. If there is any difficulty we will look into it.

MR. DEPUTY CHAIRMAN: "The term of office of a member of the Council of States whose name is required to be notified in the Official Gazette under section 71 shall begin on the date of such notification."

The term of office of a member of the Council of States whose name is not required to be notified under section 71 shall begin on the date of publication in the Official Gazette

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of the declaration containing the name of such person as elected under section 67."

This is for a casual vacancy. You may examine this question.

SHRI H. V. PATASKAR: It may be held over till tomorrow.

MR. DEPUTY CHAIRMAN: We will hold it over.

Clause 42—Substitution of new sections for sections 76, 77 and 78

SHRI JASPAT ROY KAPOOR: Sir, I move:

25. "That at page 17, line 14, for the word 'candidate' the words 'contesting candidate' be substituted."

28. "That at page 17, lines 22 and 23 be deleted."

30. "That at page 17, lines 24 to 30 be deleted."

SHRI H. D. RAJAH: Sir, I move:

26. "That at page 17, for lines 14 to 19, the following be substituted, namely:—

"77. (1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and regular account of all expenditure incurred or authorised by him or by his election agent, or in his interest by any other person with the consent of the candidate or his election agent, in connection with the election."

SHRI H. N. KUNZRU: Sir, I move:

27. "That at page 17, lines 16 to 19, the words 'incurred or authorised by him or by his election agent between the date of publication of the notification calling the election and the date of declaration of the result thereof, both dates inclusive' be deleted."

SHRI PERATH NARAYANAN
NAIR: Sir, I move:

29. "That at page 17, after line 23, the following proviso be inserted, namely:—

'Provided that the expenditure incurred by a political party for election purposes shall be divided between all the candidates of the party and be added to the expenditure incurred by the candidate for the purpose of computing the total expenditure.'

SHRI S. MAHANTY: Sir, I move:

2. "That at page 17, after line 23, the following proviso be inserted, namely:—

'Provided that the expenditure incurred by a party on account of polling or counting agents and extra workers or volunteers and posters and leaflets other than those of a general nature shall be allocated between the candidates of a party in such manner as may be prescribed and be added to the expenditure incurred by the candidate or by his election agent for the purpose of computing the total expenditure.'

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

SHRI S. MAHANTY: There has been a debate at length on this subject. I have heard the hon. Minister with all the attention that he deserved, but the hon. Minister will kindly pardon me if I say that the present clause 42 which is substituting sections 76, 77 and 78, smacks of dishonesty. What was the purpose of providing a ceiling on election expenses? Here is the Election Commission's report, by which you are swearing. The Election Commission has said on page 174 of their report:

"The Commission is of the opinion that the scales of expenditure prescribed are too low and should be raised appreciably."

Therefore, if it was considered by any party or any individual that the ceiling of Rs. 5,000 for a single-member constituency or Rs. 12,000 for a double-member constituency was too low, or if the ceiling of Rs. 25,000 for Parliamentary Constituency was too inadequate, then it was open to the Government to bring in an amendment in the rules, which have been made under the Representation of the People Act in this respect. In fact, there was a specific recommendation to that effect, but that was not done and, here, section 77 has been so worded as to exempt the party expenditure from the ceiling of the expenditure which will be incurred by a candidate. We all know—it pains me to say so—how the Congress Party is raising its funds. Hon. Members have said that the Congress Party gets funds because it is popular, because the people contribute to the funds. They have not said how the Congress Party is exercising pressure. I am not going into that aspect of the question, but if we are going to exempt party expenditure from the ceiling, it will result in an oligarchy of the moneyed, and not in a democracy of the people that we are thinking of.

With these words, I very strongly commend that if these amendments are not acceptable, then at least the original provision in the parent Act should be restored.

SHRI H. N. KUNZRU: Mr. Deputy Chairman, the amendment made by the Lok Sabha at the instance of the Select Committee has made two changes in the existing law. One is, that the period to which the return of election expenses is to relate, has been defined and the other is, that the expenditure incurred by a party in promoting the interests of a particular candidate will not be shown in the return of election expenses that the candidate and his election agent will have to submit. My hon. friend, Mr. Pataskar spoke at length today about the necessity for the formation of parties in a democratic State. Why he said this I do not know. In view of the amendment made in clause

42 by the Lok Sabha, it seemed to me that what he said about the importance of organised parties was not germane to the discussion of the Bill but however, as he has referred to the example of England and other democratic countries, may I also refer to the law in England with regard to these two matters? Take first the question of the period to which the return of election expenses should relate. The present position with regard to election expenses has been stated as follows by Parker in his "Election Agent and Returning Officer", page 240. He first refers to the expenditure incurred by a candidate on nursing his constituency and then says:

"But if a candidate does not merely 'nurse' the constituency, but promotes his candidature in such a way as to be ready for an election at any time, he may in this way incur expenses which will be held to be part of the conduct and management of an election which does not in fact occur until some considerable time afterwards. Thus, where, owing to uncertainty in the political situation and the possibility of a bye-election in the constituency, the person who had been selected as candidate, though not formally adopted, made special preparations with a view to being ready for an election at any moment, expenses so incurred and attributed to his candidature, were held to be election expenses even though the dissolution in fact did not take place till nearly two years later."

It is clear from this that in England, election expenses are not merely expenses incurred after the dissolution, say of Parliament, but all the expenses incurred by the candidate in anticipation of a dissolution. There can, therefore, be no fixed period to which the election expenses can relate. They will have to relate to the time when he makes it fairly clear by his conduct that he intends to be a candidate in the next elections.

To limit the period in the way that the Bill attempts to do is really to

conceal a great deal of expenditure which is really election expenditure, but which has been incurred before the date of the issue of a notification by the President, say in the case of a Parliamentary election. Is this desirable? Would it not be better to follow the recommendation of the Election Commission and increase the maximum expenditure that a candidate may incur in a Parliamentary election? That is far better than trying to dodge the existing maximum in the way in which clause 42 attempts to do. The maximum has to be prescribed. It is for the Election Commission, with the consent of the President, to fix a higher maximum. Now, when a provision to this effect is contained already in the Bill, why should the election expenses be supposed to relate only from the date of issue of the President's notification? Why should they not cover the period between the practical announcement of his candidature by a candidate and the commencement of the notification to which I have already referred? I think the example of England, to which my hon. friend, Mr. Pa'askar, seems to attach some importance ought to convince him that the change made in the other House at the instance of the Select Committee is not a change that ought to be accepted.

The second change, as I have already said, relates to the expenditure incurred by a party in connection with the promotion of the interests of a particular candidate. Now, the English Law on the subject is absolutely clear. Section 63 of the British Representation of the People Act, 1914, says in sub-section (i):

"No expenses shall, with a view to promoting or procuring the election of a candidate at an election, be incurred by any other person than the candidate, his election agent the persons authorised in writing by the election agent etc."

and sub-section (ii) makes the position clear with regard to expenditure incurred in connection with the candidature of any person, either by a per-

[Shri H. N. Kunzru.]

son or persons or an organisation
Now this sub-section (ii) runs as
follows:

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"Where a person incurs any expenses required by the section to be authorised by the election agent, that person shall within fourteen days after the date of publication of the result of the election send to the appropriate officer a return of the account of those expenses, stating the election at which and the candidate in whose support they were incurred and the return shall be accompanied by a declaration made by the said person or in the case of an association".

And these, Sir, are the words which should be specially marked,

"or in the case of an association or body of persons, by a director, general manager, secretary or other similar officer thereof verifying the return and giving particulars of the matters for which the expenses were incurred."

So, it is quite clear that in England the expenditure incurred on the promotion of the interest of a particular candidate by his party, forms part of the election expenses of that candidate. In India too the law is quite clear on the subject. If a party sends some person on its behalf to the constituency, as a candidate, or hires vehicles there to approach the voters or appoints canvassers, the expenditure so incurred by the party shall be put down in the return of election expenses by the candidate. Why is that now being changed? Shri Pataskar told us that the Select Committee had very carefully considered every point, that no change had been made in any section without the full consideration of the need for it. He referred to section 123 of the principal Act. He referred to section 100 of the principal Act, but he never said a word about this point.

SHRI H. V. PATASKAR: I will say tomorrow.

SHRI H. N. KUNZRU: What was the need, Sir, for changing the existing law? Why should not the expenditure incurred by a party, not in generally commending its candidates to the electorate, but in the interest of an individual candidate, be shown in the return of the election expenses of that candidate? I should like to know, Sir, what are the reasons that prompted the Lok Sabha to make a change in the existing law and the Government to approve of this change? I know, this change could not have been made unless Government had approved of it and had asked its party to vote in favour of it. The responsibility for it, therefore, is directly that of the Government. I think, therefore, Sir, that my amendment should be accepted. Its effect will be only to keep the law as it is, that is to say, to maintain the provisions of sub-section (2) of section 76 practically intact. I see no reason whatsoever why changes should be made which, as I said yesterday, will place increased obstacles in the way of poor but meritorious candidates.

SHRI H. D. RAJAH: Sir, I want section 77 (1) to be replaced by what I have put in my amendment, namely:—

"Every candidate at an election shall, either by himself or by his election agent, keep a separate and regular account of all expenditure incurred or authorised by him or by his election agent, or in his interests by any other person with the consent of the candidate or his election agent, in connection with the election."

As you will observe, the original provision was perfectly all right. When you have given the right to spend certain amounts of money all those amounts that are expended should be shown in the form of a return. Now they want to side step that, make people spend for other's sake and then not bring all these amounts into the account of the election expenses. This is what will serve them. But, Sir, as I said yesterday, this is not fair according to any

known canons of justice. In this country, you make a provision by which these election expenses need not be incurred at all. A man declares himself as a candidate and seeks votes without having to spend any money. But now here you put a premium on plutocracy. Not only that, you allow another man to spend on your behalf and to put you back in this place. If a multi-millionaire is there, worth about eight crores, he can spend one crore out of it on behalf of these people and all of them will get back. It does not make any provision here or anywhere to say that that man can be hauled up. It does not matter to him if in these socialist conditions, he spends a crore out of his eight crores to bring all these people back here. There will not be any question put to anybody. Out of his eight crores, if he dies he has to give back four crores to the State. He prefers to give one crore to the party and put these people back. How can you prevent such a colossal misuse of amounts, even for the purpose of political power? This is a position that I strongly object to. As I said, the common man's democracy is not functioning in this country, and it can never function so long as you put a premium on expenditure on this basis.

If you left the matter to me I would say, not more than Rs. 500 should be spent for the purpose of an election. But here you have Rs. 25,000 for a Parliamentary seat, Rs. 8,000 for a double-constituency seat, and Rs. 4,000 for a single-constituency seat. And you have got an Election Commission to go round and say that these amounts are not enough to conduct the elections. If you go deep down to the root of the malady, what would you do? Either disenfranchise and decentralise your over-centralised power here, and have local elections and smaller constituencies for representation in Parliament. Have smaller constituencies for representation in the legislatures. But that you will not do. You want 500 Members of Parliament for a population of 36 crores and somebody said yesterday

that this 36 crores will come up to 40 crores by the time the next elections take place, within such a short time. You want to spend Rs. 50,000. Do you really represent the people? Can you say that the people who come here can say with a clear conscience that they represent the people and not the plutocrats? Therefore, I would earnestly request the hon. Minister for Legal Affairs to accept my amendment and to see that the clause is deleted from the Bill.

SHRI PERATH NARAYANAN NAIR: Sir, the point has been made clear already and so I have very little to add. I will say a few words and then end. Now, we require a candidate to keep separate and independent accounts and we put a limit on the expenditure that he can incur, but then we leave out of account the fabulous sums spent by political parties. The amount spent by the political parties are spent in the interests of all the candidates whom they support. We have suggested a practical method which is that the total expenditure should be divided among all the candidates together and, for purposes of computation of the expenditure incurred by each candidate, this also will be added. That will be fair and it is called for under the circumstances.

SHRI JASPAT ROY KAPOOR: This clause 42 as worded at present to quote the admirable expression of Mr. Rajah legalises corruption and dishonesty. The only way to do away with this state of affairs is either to accept the three amendments that I have tabled, or to accept Dr. Kunzru's amendment. If you really want to know what the correct expenditure in any election is then you must accept Dr. Kunzru's amendment. My personal view is that from the experience that we have gained of elections in the last so many years, it is clear to us that, firstly, it is almost impossible to maintain a correct account, secondly, very often than not the amount spent in an election is very much over and above what the limit allows and, thirdly, hardly ever—there may be some occasions only—a correct return

[Shri Jaspat Roy Kapoor.]
of expenses is filed. Therefore, my submission is, as somebody suggested, that it should not be necessary for every candidate nominated, or even for the candidate who has withdrawn his candidature, or retired from the election to maintain any account whatsoever. This is what my first amendment suggests. Where you say that every candidate at an election shall keep an account and so on, I submit that it is only a contesting candidate at an election who should be asked to keep an account; the other candidates who have either withdrawn or retired need not be asked to maintain accounts, because they will hardly serve any useful purpose.

Secondly, Sir, I would like that no ceilings be fixed at all, because that has hardly ever been adhered to. We must be true to ourselves and be honest to the existing state of affairs. No ceiling should be fixed. Thirdly, Sir, I submit that it should not be necessary for every candidate, be he a candidate at an election only, or a contesting candidate only to file a return. Let all the contesting candidates maintain accounts and if, at any time, an election petition is filed and it is necessary for such accounts to be looked into, they could, of course be summoned by the Election Commission. I submit, Sir, that not to accept these amendments and to allow this clause to remain as it is, would be doing something conscientiously improper and would be lending support to untruth. I would not use any stronger term.

SHRI BHUPESH GUPTA: I would like to speak on amendment number 29. I do not see any reason why the Congress Government should not accept this amendment and why it should still retain the clause which provides for political parties bringing in funds for election campaigns and getting away after violating the provisions with regard to the expenditure by each candidate. I do not see exactly, why it should not be accepted. Now you have imposed certain ceilings, shall we say, on the expendi-

ture that can be incurred by the candidates in Parliamentary as well as in State elections. Obviously, you have in mind certain things, one of which should be that the power of money should be restricted, that democracy should not be allowed to be vitiated by rash and reckless expenditure which is indulged in in certain elections. You have, I hope, in mind also the fact that if there were to be democratic elections, whether for a Parliamentary constituency, or for an Assembly constituency, it will be possible for the candidates to find money from the people themselves, if the candidates are not persons of substantial wealth. We should also see that the elections are such in which the common man can participate, not merely as a voter but also as a candidate.

Now as you know, in the U.S.A., Jefferson got himself elected by spending practically nothing and today, there, we find huge amounts being spent and money rolling for getting a candidate elected. Of course, we are living in different times, but in the western democracy, of which we hear so much, this is exactly what is happening. Here in this country millions of our people are poverty-stricken and the candidates should come from the ranks of the poor and common men. This is what we feel should be the approach in this matter. We are not having State Assemblies or Parliamentary institutions in any other form in order to make it a sort of a play-ground for some rich people, or their nominees. We want the people to come from the ranks of the common man, carrying with them the aspirations the urges and views of the common man. We want them to fight the elections in a very clean manner and come to Parliament with clean hands. I have no doubt in my mind that if the power of money is curbed and curtailed, it will be possible to see our Parliament and the State Assemblies filled with men of integrity, loyal to the people, obedient to the people and responsive to their wishes. Today, it is not so to some extent, and I regret to say, that it is because power of money plays.

Who organises that power? Is it the individual alone that organises this power? Is it the individual candidate that taps the reserves of Dalmas and Birlas, or is it the political party in the country—all political parties, if you like that—which go out to tap money from the rich classes by giving out, by holding out all manner of prospects, by giving them all manner of promises, thus corrupting public life? I would like to ask the political parties and the parties which have the backing of the rich people as to who are responsible for this. I do not want therefore, that the political parties should have such an opportunity as would enable them, in the first instance, to collect money from the rich, from the multi-millionaries and princes, and those classes which know how to corrupt democracy but not to

promote it, and then back up candidates in this way and ultimately getting away because the funds that they spend will not be taken into account.

MR. DEPUTY CHAIRMAN: It is time, Mr. Gupta.

SHRI BHUPESH GUPTA: If you want to adjourn, you can postpone this. I can continue tomorrow.

MR. DEPUTY CHAIRMAN: We will continue on Friday.

The House stands adjourned till 11 A.M. on Friday, the 25th.

The House then adjourned at twenty minutes past five of the clock till eleven of the clock on Friday, the 25th May 1956.