

LOK SABHA

JOINT COMMITTEE

ON

**THE PRESIDENTIAL AND
VICE-PRESIDENTIAL ELECTIONS
(AMENDMENT) BILL, 1972**

EVIDENCE



**LOK SABHA SECRETARIAT
NEW DELHI**

November, 1973/Kartika, 1895 (Saka)

Price : Rs. 4.50

Corrigenda
to

the Record of evidence tendered before
the Joint Committee on the Presidential
and Vice-Presidential Elections (Amendment)
Bill, 1972.

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- Page 3, col.2, line 11, for "field" read "filed"
Page 5, col.1, line 22, for "win" read "will"
Page 30, col.2, (i) line 4, for "to" read "too"
(ii) line 5 from bottom,
for "more" read "mere"
Page 31, col.2, line 10 from bottom, for "for"
read "got"
Page 33, col.1, line 26, for "sad" read "said"
Page 40, col.1, line 13, for "refain" read "refrain"
Page 43, col.1, line 12 from bottom, for "Justince"
read "Justice"
Page 75, col.1, line 25, for "undingtified"
read "undignified"
Page 79, (i) col.1, line 17, for "MOOY" read "MODY"
(ii) col.1, line 37, for "BODY" read "MODY"
(iii) col.2, line 15, for "BODY" read "MODY"
Page 83, col.2, line 17 from bottom,
for "adoptinning" read "adopting"
Page 84, col.2, (i) line 30, for "in so to seak"
read "so to speak"
(ii) line 10 from bottom, for "wiuld"
read "would"
Page 90, col.2, line 18, for "the nature"
read "then later"
Page 100, col.1, lines 27-28, for "candate"
read "candidate"
Page 101, col.2, line 27, for "body" read "day"
Page 103, col.2, line 28, for "export" read "elapse"
....(ii)

(ii)

Page 107, col.2, line 12, for "beter" read "better"
Page 109, col.2, line 5, after "The" insert "idea"
Page 113, col.2, line 30, for "had" read "bad"
Page 114, col.1, for lines 1-7, from bottom,
substitute

"after the President was sworn in.

Shri D.N.Singh: You are supporting
deletion of the clause 'because of the
protracted trial', because the trial
will be held in public. If it can be
disposed of quickly, if it can be held
in camera, you have"

Page 116, col.1, line 6, for "MLS" read "MLAs"
Page 118, col.1, line 3, for "4ow" read "Now"
Page 124, col.1, line 3, for "cation"
read "notification"
Page 188, col.1, line 6, for "been" read "seen"
Page 190, col.2, after line 29, insert
"SHRI PALKHIVALA : We have to"
Page 191, col.1, for line 14, substitute
"vent such a thing?"
Page 201, col.1, line 13, after "facts" insert "of"
Page 203, col.1, line 26, delete "to"
Page 209, col.2, line 10, for "ridoulous"
read "ridiculous"
Page 210, col.2, last line, for "their" read "then"

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**JOINT COMMITTEE ON THE PRESIDENTIAL AND VICE-PRESIDENTIAL
ELECTIONS (AMENDMENT) BILL, 1972**

COMPOSITION OF THE COMMITTEE

Shri S. A. Kader—Chairman

MEMBERS

Lok Sabha

2. Shri P. Gangadeb
3. Shri P. K. Ghosh
4. Sardar Mohinder Singh Gill
5. Shri S. B. Giri
6. Shri H. R. Gokhale
7. Shri Jagannathrao Joshi
8. Shri J. G. Kadam
9. Shri Robin Kakoti
- 10 Shri A. Kevichusa
11. Shri Piloo Mody
12. Shri Samar Mukherjee
13. Shri Pratap Singh Negi
14. Shri Tarkeshwar Pandey
15. Shri Rasiklal Parikh
16. Shri Jharkhande Rai
17. Shri Rajdeo Singh
18. Shri J. Rameshwar Rao
19. Shri M. S. Sanjeevi Rao
20. Shri S. C. Samanta
21. Shri C. K. Jaffer Sharief
22. Shri Digvijaya Narain Singh
23. Shri Nawal Kishore Sinha
24. Shri Sunder Lal
25. Shri Sidrameshwar Swamy
26. Shri M. G. Uikey

(ii)

27. Shri K. P. Unnikrishnan
28. Shri Virbhadra Singh
29. Shri G. Viswanathan
30. Shri Niti Raj Singh Chaudhary

Rajya Sabha

31. Shrimati Maragatham Chandrasekhar
32. Shri Krishna Bahadur Chettri
33. Shri K. A. Krishnaswamy
34. Shri Lalbuai
35. Shri Ganeshlal Mali
36. Shri Balachandra Menon
37. Shri Lokanath Misra
38. Shri Kota Punnaiah
39. Shri Emonsingh M. Sangma
40. Shri T. N. Singh
41. Shri Triloki Singh
42. Shri Gunanand Thakur
43. Shri Gurcharan Singh Tohra
44. Shri H. M. Trivedi
45. Shri Jagdambi Prasad Yadav

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(LEGISLATIVE DEPARTMENT)

1. Shri K. K. Sundaram—*Secretary.*
2. Shri A. K. Srinivasamurthy—*Additional Legislative Counsel.*
3. Shri H. C. Vermani—*Under Secretary.*

SECRETARIAT

1. Shri P. K. Patnaik—*Joint Secretary.*
2. Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

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**JOINT COMMITTEE ON THE PRESIDENTIAL AND VICE-PRESIDENTIAL
ELECTIONS (AMENDMENT) BILL, 1972**

**RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE PRESIDENTIAL
AND VICE PRESIDENTIAL ELECTIONS (AMENDMENT) BILL, 1972**

**Wednesday, 17th January, 1973 from 11.00 to 13.00 hours and again from 15.00
to 16.30 hours.**

PRESENT

Shri S. A. Kader—Chairman

MEMBERS

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2. Shri P. Gangadeb
3. Shri P. K. Ghosh
4. Sardar Mohinder Singh Gill
5. Shri S. B. Giri
6. Shri Jagannathrao Joshi
7. Shri J. G. Kadam
8. Shri Samar Mukherjee
9. Shri Pratap Singh Negi
10. Shri Tarkeshwar Pandey
11. Shri Rasiklal Parikh
12. Shri Jharkhande Rai
13. Shri Rajdeo Singh
14. Shri S. C. Samanta
15. Shri Digvijaya Narain Singh
16. Shri Nawal Kishore Sinha
17. Shri Sunder Lal
18. Shri M. G. Ukey
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20. Shri Virbhadra Singh
21. Shri Niti Raj Singh Chaudhary

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22. Shrimati Maragatham Chandrasekhar
23. Shri Krishna Bahadur Chettri
24. Shri Lalbusia
25. Shri Ganeshlal Mall
26. Shri Balachandra Menon
27. Shri Lokanath Misra

28. Shri Kota Punnaiah
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SECRETARIAT

- Shri P. K. Patnaik—*Joint Secretary.*
Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

- I. Shri S. P. Sen Varma—*Former Chief Election Commissioner.*
- II. Shri K.N. Wanchoo—*Former Chief Justice of India.*

I. Shri S. P. Sen Verma. Former Chief Election Commissioner

(The witness was called in and he took his seat)

MR. CHAIRMAN: I would like to draw your attention to Direction 58 of the Directions issued by the Speaker, which reads as follows:

"Where witnesses appear before a Committee to give evidence, the Chairman shall make it clear to the witnesses that their evidence shall be treated as public and is liable to be published, unless they specifically desire that all or any part of the evidence tendered by them is to be treated as confidential. It shall, however, be explained to the witnesses that even though they might desire their evidence to be treated as confidential such evidence is liable to be made available to the members of Parliament."

I am sure you must have gone through the Bill. We would like to have your experienced opinion on it. You may enlighten up on your views, and then if hon. Members desire, they might put questions to you for clarification.

SHRI S. P. SEN VARMA: I have gone through the provisions of the Presidential and Vice-Presidential Elections (Amendment) Bill, 1972. As a matter of fact, most of the provisions of the Bill are based on the recommendations made by me to the Government. But after giving my most careful consideration to the various provisions of the Bill as introduced in the Lok Sabha, I was not feeling very happy, especially about one provision, and that relates to the complete deletion of the provisions relating to corrupt practices from section 18 of the Act.

I feel that these provisions relating to the corrupt practices of bribery and undue influence have been there as grounds for challenging the election of the President or the Vice-President, since the very beginning, that is to say, since the time the Act was passed by Parliament in 1952.

Thereafter, five Presidential and Vice-Presidential elections have been held. Election petitions were filed before the Supreme Court on as many as three occasions, first by Dr. N. B. Khare in 1957, and then in 1967 when Dr. Zakir Hussain was elected President and Mr. Subba Rao also stood as a candidate, a serious contesting candidate. Then, there was the last case which arose out of the election of the present President, Mr. V. V. Giri.

I know that in the first Presidential election case which was started by Dr. N. B. Khare before the election was held and also in the last case, the question of curtailment of jurisdiction by Parliament was raised before the Supreme Court. It was argued before the Supreme Court that Parliament, by detailing only a few provisions as grounds for setting aside an election of a President or a Vice-President had to that extent curtailed the jurisdiction, and had violated the provisions of article 71 of the Constitution. For, articles 70 and 71 say that all doubts and disputes—I would request hon. Members to bear these words in mind, namely 'all doubts and disputes'—shall be inquired into and decided by the Supreme Court. It was argued in Dr. N. B. Khare's case under article 70 that all doubts and disputes relating to Presidential elections shall be decided by the Supreme Court, since all doubts and disputes might cover any possible ground or might be based upon any possible grounds and not on the few

grounds which had been specified only in section 18 of the Presidential and Vice-Presidential Elections Act. On this ground, this Act was challenged.

But the Supreme Court considered it in Dr. Khare's case and said 'No, under art. 71, Parliament has been given the power to make law with respect to any matter and in exercise of that power, Parliament could even specify the grounds on which the election could be challenged, and on no other ground'. When this point was again raised in Shri Giri's election case, the Supreme Court with approval quoted a fairly long passage from the previous judgement in Dr. Khare's case and said that Parliament had power to specify the grounds for setting aside an election to the office of the President or the Vice-President and, therefore, the Act does not suffer from any defect on that account.

If from the very beginning there had been no ground for setting aside a Presidential or Vice-Presidential election on the ground of the commission of the offence of bribery or undue influence, then perhaps there might not have been any objection. But since the provisions relating to the offences of bribery and undue influence have been in the statute book since the very beginning, now at this time of the day from the strictly legal standpoint it may not be objectionable or exceptionable, but I doubt whether it will be in consonance with propriety and expediency as well which, no doubt, should play an important part in important elections to the highest offices in the State. This is only my personal view. Therefore, I feel that there should be some provisions in sec. 18 relating to the offences of bribery and undue influence which should be grounds for setting aside an election. But at the same time, if hon. members would look to the present provisions of sec. 18, they will find that those provisions also are not very happy. I would like to draw

attention to sec. 18 (1) (a), and 1 (b) (i). I am reading it.

"If the Supreme Court is of opinion that the offence of bribery or undue influence at the election has been committed by the returned candidate or by any person with the connivance of the returned candidate... the Supreme Court shall declare the election of the returned candidate to be void".

This is one provision. The second is:

"If the Supreme Court is of opinion that the result of the election has been materially affected by reason that the offence of bribery or undue influence at the election has been committed by any person who is neither the returned candidate nor a person acting with his connivance... the Supreme Court shall declare the election of the returned candidate to be void".

I have objection to such a wide provision because if you look at it, you will at once find that under it, even if there is a third person between whom and the returned candidate there is no nexus whatsoever, if it can be proved that the offence of bribery or undue influence has been committed by that third person—with whom the returned candidate has no relationship, neither as an agent, nor has acted with the consent or connivance of the returned candidate nothing at all, he is an outsider, he may even be an enemy of the returned candidate—then the election will be liable to be set aside. This goes to one extreme and the present complete omission goes to another extreme.

Therefore, I feel a *via media* should be thought out. It is not difficult to suggest it at all. It should more or less be on the lines of the provisions to be found in s. 100 of the Representation of the People Act, 1951, which deals with the grounds on which the election of a candidate returned to the Houses of Parliament or to the Houses of a State Legislature may be challenged. There it is clearly stated that if

the High Court is of opinion that the election of a returned candidate has been vitiated by the commission of a corrupt practice—in the Representation of the People Act, undue influence and bribery are regarded as corrupt practices, but in the Presidential and Vice-Presidential Elections, undue influence and bribery are regarded not as corrupt practices but as offences—his election is liable to be set aside. If you look at sub-section 2 of section 18, you will find:

“For the purposes of this section the offences of bribery and undue influence at an election have the same meaning as in Chapter IX-A of the Indian Penal Code”.

Therefore, if we more or less follow the provisions of s. 100 of the Representation of the People Act, I think that will be the best thing. First of all it says that if a corrupt practice has been committed by a returned candidate or by his election agent—because an election agent stands more or less in the same place as the candidate at an election—the High Court shall declare the election of that candidate to be void. Whether in such a case the High Court is not to consider whether the result of the election has been materially affected or not, irrespective of that, the moment the election petitioner is able to prove that a corrupt practice has been committed either by the returned candidate or by his election agent, the High Court is at once to declare the election to be void. But then there is the other provision, ‘if the High Court is of opinion that the result of the election has been materially affected by reason of a corrupt practice committed in the interest of the returned candidate by an agent other than the election agent’. Therefore, there also it must be by an agent who is not the election agent. Some sort of a nexus must be there between the returned candidate and the person who has committed a corrupt practice. The hon. Committee may consider whether, on the same lines as in the People’s Representation Act, a provision might be also inserted in clause 8 of the Bill.

As regards other provisions, as said earlier, they are more or less based on the views expressed by me. I support the other provisions of the Bill.

MR. CHAIRMAN: You agree with all the other provisions of the Bill.

SHRI S. P. SEN VARMA: Yes. They more or less relate to matters of procedure and detail except one where it has been required that a nomination paper shall be signed by 40 persons.

MR. CHAIRMAN: Do you agree with that also.

SHRI S. P. SEN VARMA: Yes; I agree.

MR. CHAIRMAN: To summarise, you want some *via media* to be found out that no frivolous person should be able to go to court to challenge the election of the President. That is what you mean. At the same time, if there is some basic ground for a corrupt practice or undue influence, you want that it must be justiceable.

SHRI S. P. SEN VARMA: Provided that it has been committed by a person who must have some nexus as an agent. In the whole of the Presidential and Vice-Presidential Election Act, you will notice that there is no provision for an election agent. In some of the rules framed under the Act, there is an expression “authorised representative”. But the word “election agent” is nowhere used. If that is necessary, that can be used. There is nothing wrong in that.

Another point which is of a very general nature is that in the Constitutions of some countries in the world there is no provision after an election to the office of the President has been held for setting aside or challenging that election. For example, there is no such provision in the United States Constitution. Then, there is no such provision in the Constitution of the Federal Republic of Germany and so on. But in some of the new demo-

cracies of Africa—not in all—There are some provisions for challenging the election. There, it says that it must be finished within 10 or 15 days or, in any case, within a month everything is over. After all, it is an election to the highest office, that is, the head of the State. The office of the President cannot be kept in a state of suspense for a long period.

MR. CHAIRMAN: We see your point. One should try to understand why it has been taken out from the purview of judicial inquiry because it is the feeling that the President being the first citizen of India, and if he is called upon by a court....

SHRI S. P. SEN VARMA: If you say that, then the fault lies with the framers of the Constitution. Why did they at all put articles 70 and 71 in the Constitution itself? I would request you to please look at articles 70 and 71. In that case, as in the case of United States, there should have been no provision at all for challenging the election to the office of the President. But they have put that provision in the Constitution itself.

MR. CHAIRMAN: We see what you are driving at. To other amendments you agree in toto. But only thing is about justiceability of the corrupt practice of influence or bribery. To that extent, you have also been good enough to give us some insight into some Constitutions of the other countries.

SHRI S. P. SEN VARMA: As a matter of fact, there are three or four volumes of the "Constitutions of the World". The officers of the Law Ministry if they like can surely find some such provisions and place them before this august Committee.

MR. CHAIRMAN: There are challenging and non-challenging provisions in different Constitutions. The election methods are also different. Ours is a different electoral college. All these things will have to be taken into consideration.

I would like to put it to you one thing. The President is the first citizen of India. The moment he is elected, he is no longer a candidate and he is the President of India. If the President of India is called upon by a court on any ground, does it reflect to the prestige and glory of the office of the President and of the nation? That is the crux of the whole matter.

SHRI S. P. SEN VARMA: It is perhaps for this reason that the framers of the Constitution vested jurisdiction in the highest tribunal of the land, that is, the Supreme Court of India—not in any High Court but the Supreme Court of India. There is no super Supreme Court in this country. In such matters which have been made justiceable by the Constitution itself, the Supreme Court is supreme. Of course, I have got the highest respect for the President of India. I have got all respect for a Member of Parliament. When I was the Chief Election Commissioner, when the hon. Members used to come to me, I used to tell them, I look upon a Member of Parliament not as one single individual but as an embodiment of 8,72,000 people of this country. Now, it is much more. I have told a number of MPs that I look upon the President as an embodiment of 547 million people. I have said it in public in my talks. I have all respect and veneration for the office of the President. But at the same time, there is a provision in the Constitution itself. The Parliament has power under article 71 as well as under article 246 read with Entry 72 of the Union List in the Seventh Schedule to the Constitution and these provisions are in the Constitution itself.

Therefore, when the supreme document of the land authorises or enables a person to file an election petition, in that case the objection should have been taken to the very filing of the election petition. After all, he is no more a candidate, he is the President of India the moment the Returning Officer declares the result of the election of the President.

That very moment he becomes the President of India. Of course, he takes his office a few days later after the Election Commission issues the notification.

MR. CHAIRMAN: But he is the President-designate.

SHRI S. P. SEN VARMA: Yes. Therefore, my point is this. This is the provision which has been made in the Constitution. I have the highest respect to the framers of the Constitution among whom there were great legal luminaries like Shri Alladi Krishna Swamy Iyer, Shri K. M. Munshi and Dr. Ambedkar. They should have thought at that time whether any provision relating to the election of the President is at all to be placed in the Constitution. But since it has been placed and since they had, in their collective wisdom, thought that it should be there, how can we now say that it is not desirable that the President should be called upon to explain before the court. After all, it is the Supreme Court, the highest judiciary in the land. On that account, I think, we cannot take much exception because it is there in the Constitution itself.

MR. CHAIRMAN: If the Supreme Court is the highest judiciary, the Parliament is higher than that because it represents the people...

SHRI T. N. SINGH: Sovereignty rests with the people.

SHRI S. P. SEN VARMA: Let us not enter into controversial matters. I cannot express any opinion on that.

MR. CHAIRMAN: As I told you, the whole thing is: we look upon the President as the first citizen of India and, therefore, whether the President can be called upon, maybe by the highest judicial body, but should he be called upon as after he was declared President of India, by a court to answer charges, frivolous or otherwise as it was done last time?

About the Constitution, of course, we have framed the Constitution but we have amended it so many times, a thing which has been done in good faith, no doubt about it, but experience does teach us to what extent we can adjust according to the requirements of the time and according to the requirements of the office.

SHRI NAWAL KISHORE SINHA: Mr. Verma has given us the benefit of his empirical studies made over a number of years with regard to the holding of elections. He has in this connection mentioned a few countries United States, French republic and some African countries. Will he be kind enough to tell us as to with whom he is willing to equate us. In which of the three categories he would like to place India.

SHRI S. P. SEN VARMA: I cannot exactly...

SHRI NAWAL KISHORE SINHA: You have mentioned United States. You mentioned the French Republic. You mentioned some African countries, where almost every six months or a year, the Government changes. With whom would you like to equate us? Where would you place India?

SHRI S. P. SEN VARMA: In many of those countries there is no provision, because it is a Republic, for challenging the election to the office of the President. Otherwise, there is no question of equating India. India's constitution is a unique one.

SHRI NAWAL KISHORE SINHA: How do the political conditions in India compare with the political conditions in those countries because whatever we have said will be based on our own political system and the extent to which we have reached our political objectives, I ask you as to in which category would you place India. That is a very simple question.

MR. CHAIRMAN: What he means is that you have cited so many Constitutions. Now, where does India

come nearer to any of these Constitutions? Election Rules or the Constitution—where do they come nearer to?

SHRI S. P. SEN VARMA: So far as the provisions relating to the challenging of elections to the office of the President and Vice-President, there is no provision in the American law nor in the French law. There are provisions in some of the African Constitutions but they also do not stand at par, if I may say so, with the provisions in our election law.

SHRI NAWAL KISHORE SINHA: You referred to Art. 71 which empowers the Parliament to enact certain laws to regulate elections. Can it be said that even this amending Bill is also under the same Article? If you read the Article the meaning of Art. 71 is too far in this respect that you think that under Art. 70, clause 18 is a necessity. But this amending Bill is also under the same Article. So, it cannot be said that an inquiry into the irregularity of presidential elections has been totally done away with. This cannot be said.

SHRI S. P. SEN VARMA: I have not said that Parliament has its power, but since then, provisions relating to the offences of bribery and influence have been there from the very beginning, that is, since 1952. Now, at this time, there is nothing illegal on the part of the present Parliament or the present Joint Committee to make a recommendation. Therefore, I cited the two Supreme Court judgments, one Dr. N. B. Khare's case and the other the latest case of Mr. Giri. In both the cases, it has been specifically laid down by the Supreme Court that Parliament has the power to specify the grounds on which an election can be challenged because the point which was raised on behalf of the petitioners before the Supreme Court was that the Parliament in mentioning only a few grounds for challenging an election to the office of the President or the Vice-President has violated the

provisions of the Constitution. That was the point, that the Parliament has violated the provisions of Art. 70 and 71. Then the Supreme Court said 'No'.

The language of Art. 71 is such as that Parliament has the power to lay down only certain grounds—1, 2, 3, 4. Therefore, I say that so far as the law is concerned, Parliament is certainly competent to omit from Sec. 18 all provisions relating to the commission of the offences of bribery and influence as grounds for challenging the election. But apart from that, my point is this: that since this provision has been made by the Parliament in Sec. 18, now people may not like the omission of provisions relating to bribery and undue influence. There may be serious criticism also.

SHRI NAWAL KISHORE SINHA: What can you say as to how this right to challenge the election of a President has been exercised by the petitioners and their witnesses in this country so far?

SHRI S. P. SEN VARMA: They filed election petitions before the supreme court. I could not express an opinion.

MR. CHAIRMAN: Whatever is filed, do you think that is in keeping with the dignity, and general traditions, dignity of the office etc. or are they far below? Have such petitions that have been filed any justifications looking to the high office? You may say, I think, it should be a personal opinion.

SHRI S. P. SEN VARMA: These are filed before the Supreme Court. One can say there is not very good ground for such election petition. Whether the grounds are sufficient or not sufficient, the Supreme Court can say. This is the highest judiciary of the land.

SHRI P. GANGADEB: Do you think that Section 100 of the RP Act should be kept as it is by amending sec. 18 of the Bill or do you think that some suitable amendment could be made in respect of sec. 18(b) and if so, could

you give some suitable sentence for suitable amendments?

SHRI S. P. SEN VARMA: In my experience as Law Secretary etc. I drafted hundreds of Bills of the Govt. of India, hundreds of such bills before Joint/Select Committees of Parliament. The draftsman are sitting there. They will see it.

SHRI TRILOKI SINGH: Are you in favour of retaining 18(1)(a) and deletion of 18(1)(b)(1)?

SHRI S. P. SEN VARMA: If the supreme court is of opinion that the offence of bribery or undue influence has been committed by the returned candidate (it should stop there), the Supreme Court shall declare election to be void. That is the first suggestion. Here in section 18(1)(a) it is stated, "by the returned candidate or by any person with connivance of the returned candidate." This latter part may go from here. If the offence of bribery or undue influence has been committed by returned candidate, then what will be the result? Supreme Court shall declare election of returning candidate to be void. That is there. In section 18(1)(b)(i) it would be like this: If Supreme Court is of opinion that the result of election has been materially affected by reason that the offence of bribery or undue influence has been committed by any agent or authorised representative of the candidate, in the interest of the returning candidate, (that is the language in the RP Act) then, the Supreme Court shall do such and such a thing and the rest of the thing follows, that is, the Supreme Court shall declare the election to be void.

SHRI TRILOKI SINGH: That is, if the agent does it, it should be proved that it has materially affected the election.

SHRI S. P. SEN VARMA: Yes.

SHRI TRILOKI SINGH: You say, candidate should be bound by action of his own agent.

MR. CHAIRMAN: Unless in his own interest, he says.

SHRI S. P. SEN VARMA: In the interest of the candidate.

SHRI TRILOKI SINGH: Candidate should not be bound by it unless it has materially affected the election.

SHRI S. P. SEN VARMA: Two conditions are to be proved. It should have been done by the agent and there should be some sort of relation between the agent and the returning candidate and it must be done by such agent in the interest of the candidate also. The court must be satisfied that result of election has been materially affected. That is the expression in RP Act also.

SHRI TRILOKI SINGH: Corrupt practice, undue influence, bribery, all these expressions are there. When offence is there, it leads to prosecution and arrest of persons etc. What do you think would be better? It is natural corollary that the man should be prosecuted and punished.

SHRI S. P. SEN VARMA: That is a good point. In 1952 it was said by Dr. Ambedkar himself. Framers of the Act, instead of putting 'corrupt practice' put the word 'offence'. The very idea of corrupt practice in election is an obnoxious thing, that is, if the person returned is found to be a corrupt person, that he has committed a corrupt practice. In the case of the offence of undue influence and bribery some sort of moral turpitude does not attach to the offence at least formally, as it attaches to the corrupt practice.

SHRI TRILOKI SINGH: What would you like to be done now?

SHRI S. P. SEN VARMA: I think 'offence' should remain.

SHRI TRILOKI SINGH: If the court holds that such and such person has been found guilty will it not be prosecution under IPC also?

SHRI S. P. SEN VARMA: Even in the case of corrupt practice, there can be prosecution.

SHRI TRILOKI SINGH: But here it will be something like mandatory.

SHRI S. P. SEN VARMA: If somebody after the disposal of an election petition by the Supreme Court likes to make a complaint before the competent court the court should take a decision.

SHRI TRILOKI SINGH: Which competent court will differ from the Supreme Court?

SHRI S. P. SEN VARMA: That cannot be helped.

SHRI TRILOKI SINGH: I would like to draw your attention to the provisions of Section VI of the Bill which relates to the filing of election petition. The provision now proposed is that it should be more stringent—that instead of 10 or more it should be at least 40 electors. Am I to take it that the witness is in favour of making the provision of filing election petition more stringent than what it is at the moment?

SHRI S. P. SEN VARMA: It should be made more stringent.

SHRI D. N. SINGH: You submitted two reports regarding the election of President and Vice-President. You submitted one in 1967 and the other at the time of mid-term poll. In 1967 report you made certain recommendations which you reiterated in the report on the mid-term presidential election. There you also said since the election petitions are pending you would not like to comment but after the election petitions are disposed of you will submit another report to the Government for amendment. Did you submit any report?

SHRI S. P. SEN VARMA: It is not exactly a formal report. It was in

the form of a letter to Mr. Gokhale, Law Minister. I said as the presidential/vice-presidential election was to be amended, therefore, these were more or less, my ideas.

SHRI D. N. SINGH: That has not been circulated to us. That should be circulated to us. That letter which he wrote to Mr. Gokhale should have been circulated to us. Will he give us the benefit of knowing about the contents of the letter which he wrote to Mr. Gokhale?

SHRI S. P. SEN VARMA: These are all the provisions.

SHRI T. N. SINGH: Should I understand from the answer to the question just put to you that you were influenced in your recommendations communicated in the shape of a letter to the Government by the judgement of the Supreme Court.

SHRI S. P. SEN VARMA: In making any report whether in relation to amendment of this Act or that Act the judgement of the Supreme Court or High Court is always taken into consideration.

SHRI T. N. SINGH: There had been previous judgements also but till then you could not think of the various changes which you suggested. So, all your suggestions are derived from the later judgement of the Supreme Court.

SHRI S. P. SEN VARMA: That I cannot say that all my recommendations are derived from the judgement of the Supreme Court.

SHRI T. N. SINGH: Why did not you make earlier? It was an afterthought.

SHRI S. P. SEN VARMA: I was extremely busy.

SHRI D. N. SINGH: The Election Commissions can frame certain rules

for maintaining the secrecy of voting in the Presidential/Vice-Presidential elections. Would you like a provision to be made in the Act that if any of the recommendations or if any of the directions of the Election Commission are not adhered to then that election should be set-aside? For example, you make certain recommendations. If you make certain rules regarding posters and papers and if they are not complied with, then the election should be set aside.

SHRI S. P. SEN VARMA: That will depend upon the provision in the Act itself.

SHRI D. N. SINGH: Would you like to make a provision in the Act?

SHRI S. P. SEN VARMA: Suppose, we make a recommendation and the Parliament does not accept it.

SHRI D. N. SINGH: What is your personal view?

SHRI S. P. SEN VARMA: As there are provisions in the Representation of the Act, I think in the President and Vice-President election rules themselves, they specifically lay down that any non-compliance, any defect, which is not of a substantial nature will not enable or empower the Returning Officer to reject the nomination paper and so on.

SHRI D. N. SINGH: If certain recommendations of the Election Commission or rules framed by them are not adhered to, should there be any provision or not?

SHRI S. P. SEN VARMA: If you kindly look at section 18(b), it is already there.

SHRI D. N. SINGH: I would like to draw your attention again to your recommendation. "An innovation was introduced.....was not received in time." Have you brought it to the notice of the court and have they declared void or not?

SHRI S. P. SEN VARMA: How can I say?

SHRI D. N. SINGH: You have suggested that there should be some deposit for presidential and vice-presidential candidates—Rs. 1000|-. Mr. Bhupesh Gupta had objected to that provision in the memorandum submitted by him. Have you read his memorandum?

SHRI S. P. SEN VARMA: I have not read it.

SHRI D. N. SINGH: In his letter he has mentioned "Rs. 2500|- as proposed in the Bill.....sponsoring other persons." The provision should remain unchanged even after this observation of Shri Bhupesh Gupta. You still adhere to your recommendation. You have mentioned Rs. 1000|-. Now, Shri Bhupesh Gupta says it has been raised to Rs. 2500|-. He further says "I agree with him.....moneyed man can find Rs. 2500|- and can file a petition. Don't you think that that provision should be there?"

MR. CHAIRMAN: The question is it going to help in any way or whether it should be maintained or it should be absolutely done away with?

SHRI S. P. SEN VARMA: A provision has been made in this Bill. You kindly see section 5(c).

MR. CHAIRMAN: Would you like that it should be there or it is not necessary? That is what he wants to know?

SHRI S. P. SEN VARMA: I think it may remain. For example, in the United Kingdom, there is a provision for deposit by Members of the House of Commons. But, at the same time, the nomination paper is to be proposed and seconded and assented to by at least 10 electors. But, still, there is a provision for deposit.

SHRI P. K. GHOSH: He says provision has been raised from Rs. 1000|- to Rs. 2500|-.

MR. CHAIRMAN: No, no.

SHRI S. P. SEN VARMA: There is no provision today.

SHRI BALACHANDRA MENON: I would like to know whether you will be satisfied if the election is challenged by a tribunal presided over by the Chief Justice of the Supreme Court instead of Supreme Court itself?

SHRI S. P. SEN VARMA: No.

SHRI RASIKLAL PARIKH: This provision regarding the requirement of a minimum number is also based upon something. Then the number of proposers and seconders has been raised because we do not know about the nomination about these two very dignified posts. Similarly, the security deposit is also there. Would you think that their dignity is 1/4th of the dignity of the President? In the number of proposers and seconders, this is different. This is one point. The number of proposers and seconders in the case of Presidential candidature is 20 and 20 and in the case of Vice-Presidential election, it is 5 and 5. These probably may be arbitrary figures. But, a certain equation has got established about the dignity. What would be your view? Would you not make it—the dignity—at least half of the President in the case of Vice-President?

SHRI S. P. SEN VARMA: I think it cannot be. We should see which is the electorate in the case of the Presidential election and which is the electorate in the case of the Vice-Presidential election. The electorate in the Presidential election, that is to say, the electoral college mentioned in Article 54 of the Constitution for the election of the President of India, consists of elected Members of both Houses of Parliament and all the elected Members of the Legislative Assemblies of all the States.

SHRI RASIKLAL PARIKH: That accounts for this difference?

SHRI S. P. SEN VARMA: With the result that the total electorate in the Presidential election will be about 700 who are Members of Parliament plus roughly 3500 elected Members of the 21 Legislative Assemblies of the States. Therefore, it will be more than 4000. Whereas, the electorate in the case of the Vice-Presidential election consists only of the Members, not simply elected, but, even nominated members of both Houses of Parliament. They are confined only to the Membership of both Houses of Parliament. This is about 700.

SHRI RASIKLAL PARIKH: That probably accounts for this mathematical difference. Then, the second point is this. This is about the dignity of the President and Vice-President. A view has been that the proposers, the seconders and the electors, as such persons, they have also dignity and when you make an allegation of corruption or bribery, against the President or the Vice-President, you are also making a similar allegation against them, who are Members of Parliament and State Legislatures. Therefore, would you think that for these two reasons, consistent with the dignity of the Office of the President and Vice-President, the allegations should not be allowed to be made? What would be your view? Do you think that the allegation should, at all, allowed to be made?

SHRI S. P. SEN VARMA: This is a very delicate question. As I said, I have got the highest respect and regard for the Office of a Member of Parliament and all the elected Members, because they are the representatives of the people. So also, the Office of the President and Vice-President, are the two highest Offices of the State. At the same time, my experience has been that—it was not a very happy experience—in election times, specially in indirect elections, say, for example, to the Upper Houses of the State Legislatures, I have received so many complaints requesting me to send senior Officers as obser-

vers—senior Officers of the Election Commission as observers—so that no bribe may be given to the electors that is, the elected Members of the Legislative Assemblies and I had to send senior Officers, who had to supervise the elections at the various Legislative Councils, elections and elected Members of the Legislative Assemblies. It has happened. Sometimes, we succumb. We should not forget that. After all, we are human beings. Man is a compromise between God and the beast. We should not forget that we are a compromise.

SHRI RASIKLAL PARIKH: That you would say of all men, whether he is a Member of the Assembly or he is a Member of Parliament or he is the President.

SHRI S. B. GIRI: Mr. Sen Varma, I am glad that you agree with some of the Members that opportunity should be given for going to the Court, even for the highest Office also. For instance, if a person commits an offence before the election or before the filing of nomination, an offence including bribery or murder or any such thing, after election, that person should be brought before the Court, and he should not be left, because he is the President or he is holding the highest position in the country. I would like to know your opinion.

SHRI S. P. SEN VARMA: As a matter of fact, in the last Presidential Election case, Mr. Giri volunteered to appear before the Supreme Court. Thereby, he raised the stature of the Office of the President. Of course, I saw in the papers. If the Newspaper reports are correct, I think it was observed by one of the learned Judges of the Supreme Court constituting the Bench trying the Presidential Election case, that it would have been better if we could have observed the demeanour of the witness, namely, Mr. Giri. I think this has been said in open Court. Otherwise, there was a talk that he should be examined on commission in the Rashtrapathi
1799 LS.—2.

Bhavan. The moment this was conveyed to him, Mr. Giri said: 'I shall appear before the Court. In a full Court, I shall submit myself to the searching cross-examination and the charges'. One of the Judges, if I remember aright, expressly mentioned that he never, in his life, came across such a witness, so straight-forward, as the President.

SHRI S. B. GIRI: My second question is this. Do you think that the number of proposers and seconders should be increased from ten to forty. Is it going to have any material change?

SHRI S. P. SEN VARMA: I think if there is a large number of electors, acting as proposers and seconders....

SHRI S. B. GIRI: You would have seen the result of the last election. You would have seen what happened in the last election.

SHRI S. P. SEN VARMA: After all, it is secret ballot. Therefore, who can say who has voted for whom?

SHRI S. B. GIRI: In what way it is going to help?

SHRI S. P. SEN VARMA: It would help.

SHRI S. B. GIRI: In what way?

SHRI S. P. SEN VARMA: Let me explain in my own way. Let us say that the total number is 40. That will show, in the first place, that the candidate has got some kind of popularity in the country. That means, he has some stature. What has been our experience in the last elections? In the last Presidential election, there were as many as 26 contesting for the Office of the President.

MR. CHAIRMAN About 20.

SHRI S. P. SEN VARMA: This was 26, if I remember right. Even in the earlier elections, this was something

like 16, 18 and 20. But, nine or ten, they did not get even a single vote.

SHRI S. B. GIRI: I am coming to your point. Even after getting these ten proposers during the election time, they did not get even a single vote. Therefore, why should we increase the number at all? It is not going to have any material effect. Why should we increase the number unnecessarily?

SHRI S. P. SEN VARMA: It will definitely put a curb on the number of contesting candidates.

SHRI S. B. GIRI: Ours is a democratic, and at the same time, a poor country. Suppose a poor man wants to contest the election, how can you expect him to get Rs. 2,500? In democracy, as a poor man, I must have the right to contest. Why should there be this deposit at all?

SHRI S. P. SEN VARMA: In the election to the offices of President and Vice-President, a poor man should certainly have the right to contest. For that purpose, we should try to liquidate poverty as quickly as possible.

SHRI S. B. GIRI: Let us take the position as it today.

SHRI S. P. SEN VARMA: I say, therefore, with due respect that it will act as a curb. I have seen, as has now been mentioned by the Hon. Minister, that out of 26 candidates on one occasion, 9 or 10 candidates could not poll even a single vote.

SHRI S. B. GIRI: That is apart from the question. My point is, "how can a poor man get an opportunity?" Do you think he should collect the money and file the nomination?

SHRI S. P. SEN VARMA: If you proceed purely on that ground, then I should say that there should be no such provision in the election law, even for Members of Parliament.

SHRI S. B. GIRI: I am confining myself to this Bill alone.

SHRI S. P. SEN VARMA: There may be persons, not only in hundreds, but in hundreds of thousands, who will find it difficult even to deposit Rs. 1,000/-. But we are not always guided by the fact that 225 million people in this country live below the poverty line. Our object is that it is an election to the highest office, viz. President; and we should try to avoid or exclude all sorts of frivolity therefrom. Otherwise, what is the point in this position, that as many as 26 persons contest the election? People will laugh at us. Many foreigners have told me about this. There is no public opinion involved here; and we cannot control them by public opinion. The best method is, therefore, to have this money curb as well as increase in the number of proposers. That is what I thought and have recommended.

SHRI S. B. GIRI: The check has already been made, that forty persons should propose I agree with you that we should not allow so many people to contest.

SHRI S. P. SEN VARMA: With due respect, I submit that this will be an additional curb.

SHRI JAGANNATHRAO JOSHI: In the case of clause relating to undue influence, you want to restrict it to the returned candidate alone.

SHRI S. P. SEN VARMA: In the case of the returned candidate, without any further proof, if it is once proved that either of these two offences has been committed by the returned candidate, the Supreme Court will declare it void; but in the other case, it will have to be proved that the offence has been committed by an agent who has some relations with the returned candidate.

SHRI JAGANNATHRAO JOSHI: In reply to Shri Triloki Singh, you said that it should be restricted to the

offences when these are committed by the returned candidate, or by any person with the connivance of the returned candidate. What I say is that the gentleman who contests, will be clever enough not to do anything himself. If it is proved that it is done with the connivance of the returned candidate, I think that should be enough.

SHRI S. P. SEN VARMA: This point was discussed threadbare while the Joint Committee of the Houses of Parliament met in the year 1956; and I was the Draftsman of the bill then. There were a number of provisions in the Representation of the People Act, 1951. Pandit Bhargava was there in that Committee. As a matter of fact, in regard to the word 'connivance', Mr. Kunzru fought in the Rajya Sabha as to why the word 'consent' was being substituted for the word 'connivance'. If you kindly look at Section 100 as it stood before the amendment of 1956, you will find that the expression was 'connivance'; but the Members of Parliament in the Joint Committee felt otherwise. There were probably 10 or 15 sittings on this issue alone. Then, they wanted the word 'consent'. It is for the Hon. Members' consideration, whether they would like to follow that provision. In my view, they should follow that.

SHRI P. K. GHOSH: You had stated that there could be a provision that on the plea of corrupt practices, somebody may file election petitions; but now, you say that under Section 18(b)(i), the provisions are very extreme; and therefore, there is no reason for keeping them. Those provisions are there by reason of the offences, or undue influence being committed at any election by any person who is neither the returned candidate nor one acting with his consent; but then, do you think that such action by a third party is not going to affect the elections materially?

SHRI S. P. SEN VARMA: If it materially affects, why this vicarious liability on me? Why should I be

punished for an act which I am not in the least concerned?

SHRI P. K. GHOSH: It is not a question of punishment.

SHRI S. P. SEN VARMA: It is more than punishment; the whole election is being set aside.

SHRI P. K. GHOSH: The desire of Parliament is to see that the person who enjoys the confidence of the majority of voters should get elected. Suppose there are three candidates A, B and C. A loses to B by 1000 votes. C by way of false and baseless propaganda against A snatches away 2000 votes from A. If C could not make this false propaganda, A would have won and B would have lost. That is the safeguard which the original Act provided.

SHRI S. P. SEN VARMA: That is not my point. My point is, I have not appointed you as my agent. I do not know you at all. You bear some grudge against me and you start giving some bribes to the electorate or publish some pamphlet which will show that I have tried to exercise undue influence on the voters. For that reason I should not be punished. It is in the nature of a criminal case. There is no place for vicarious liability in an election case unless some nexus or relationship is proved.

SHRI SAMAR MUKHERJEE: Is it not a fact that by increasing the number of proposers and seconders to 40, you are helping the candidate to influence the voters from the start? By this method you are also denying the opposition the chance to set up a candidate because you know the strength of the opposition in the Lok Sabha today. The purpose of this Bill is political, to deny the opposition the chance to set up candidates. Thirdly, if 40 elected members support a candidate, that means those 40 people are already committed. The principle of secret ballot is also violated in this case indirectly. Then, by raising the deposit amount, are you not depriving the poorer people the chance to stand as candidates? Gandhi ex-

pressed the desire that a Harijan should be the President of India. Is this not a violation of that very idea?

SHRI S. P. SEN VARMA: These provisions are based with a view to putting a curb upon the very large number of persons contesting the Presidential election. Sometimes the votes are wasted in the sense that if out of 25 candidates, 5 or 10 candidates get a few votes each, still the sum total of those few votes would be sizeable. From that standpoint also, the law should be made stringent. Regarding violation of the secrecy of the ballot, whether we provide for one proposer and one seconder or 40 proposers and seconders, on principle it does not make any difference. No exception could be taken on the ground of secrecy simply because the number of proposers and seconders is increased to 40. Suppose there is only one candidate, if the number of proposers and seconders is 40, at least he can say, "I was elected not on the vote of one person but at least 40 persons supported my candidature." That also is not a very bad thing. As regards the ground of poverty so far as the deposit amount is concerned, poverty is a known fact in our country. We are more or less poor people. More than 44 per cent of the population even today are living below poverty line. But for that reason we cannot forget the provision of the law. In spite of our article 14 that everybody shall be equal before law, the poor person always finds himself handicapped in the court of law because he cannot get a good counsel. In this condition anyone will always work against the poor people. That is what I feel in that fashion. Therefore, I have expressed these views. I would, therefore, request the hon. Members to consider them.

श्री तारकेश्वर दांडे : चालीस आदमी जो प्रपोजर और सेकेन्डर हैं, क्या आप समझते हैं यह उचित होगा कि भारत में जितने राज्य हैं उनमें आठ से अधिक के होने चाहिए ?

SHRI S. P. SEN VARMA: That will be a further curb.

SHRI T. N. SINGH: Clause regarding bribery and corruption should not find a place in the law. Amendment 4, clause 3, the last day shall be 7th day instead of 14th day. Why? I fail to understand what is the logic behind it?

SHRI S. P. SEN VARMA: These provisions are based upon my recommendations. I may tell you the logic is that in the case of our Lok Sabha..

SHRI T. N. SINGH: When the post is vacant why cannot the publication of election notification be made on the next day? In the case of the regular vacant post it is very well known in advance. In the case of occasional elections arising out of accident or anything, even there you are in a position to announce within two or three days of the vacancy.

SHRI S. P. SEN VARMA: Dr. Zakir Hussain in went to bathroom on 3rd May, 1969 and he did not return as a living person. And only then the question of holding any election could arise. We shall have to bring the electoral roll i.e. the list of members of the electoral college uptodate and for that the Election Commission, has to write to the Secretaries of all the State Legislative Assemblies 'please make the list of elected members of the Legislative Assemblies uptodate'. There might be the list prepared two years back at the time of the election of 1967 but there were many changes in that list and when you have to deal with a number of States—at that time the total number of States was 17—you have to write to 17 Secretaries of the State Legislative Assemblies. In this fashion it always takes time. It was the last election, for example, to which you are referring, it came all too suddenly by the premature death of the President in office. Therefore, these preliminary steps took time. After they prepare the list they send it to the Election Commission and then the Election Commission will prepare a combined list so that the contesting candidates, the parties and so on and so forth, all could get the

list. In this fashion this is a time consuming process. I elaborated it in two minutes but actually the work takes much longer time. Even then you say why did you not notify the election. Therefore, whether it is 7 days or 14 days it must be from the date of the notification issued by the Election Commission under section 4 of the Presidential and Vice-Presidential Elections Act. It is an election where the electorate is a very sophisticated type of electorate and, therefore, it is not very difficult for the parties to select one candidate. As a matter of fact, I think 20 or 23 of the contesting candidates were not set up by any party. Only party candidates were Dr. Deshmukh, Mr. Giri and Mr. Sanjiva Reddy. All the others were independent candidates.

SHRI T. N. SINGH: May I point out that in many areas in India the postal communication does not reach within a week and in a tribal area if a citizen wants to contest election, he cannot. Why this little bit of insignificant amendment from 14 to 7 at all be insisted upon?

SHRI S. P. SEN VARMA: The Constitution lays down that the election in the case of a casual vacancy must have to be completed within six months from the date of occurrence of the casualty. Therefore, even a person living in a far-flung rural area or in a tribal area in Bihar or in Assam or in the remote areas of UP would certainly know that the election will be held within six months, even if he may take two months to know that a vacancy has arisen.

SHRI T. N. SINGH: You are talking of six months' time. But it may be held earlier also.

SHRI S. P. SEN VARMA: In fact, it was held within 3½ months. 6 months was the maximum.

I may add that on this question of 7 days or 14 days, I do not entertain any strong views. If the Joint Committee feels that the period should

be 14 days, they can certainly provide like that, and there would be no harm in that.

SHRI T. N. SINGH: The entire approach of this amending Bill is that there should be curbs on the filing of nomination papers by a large number of candidates. The propriety or impropriety of filing such large number of nominations grows with the political life of the country. It is mostly conventions that bring about such changes. My own view is that in most countries including America they have allowed conventions to grow. Conventions are always better than too many laws. Why should we think of these curbs just after 20 or 25 years of Independence? Let us have a little patience and let us not think in terms of legal curbs. So, I put it to you whether we should allow conventions to grow or we should think of putting in curbs every three or four years and amend the law for that purpose.

SHRI S. P. SEN VARMA: I know. It is a question of constitutional principle.

MR. CHAIRMAN: May I put it to you whether it is curb if frivolous nominations should not be allowed?

SHRI T. N. SINGH: If I were the witness, I would call it curb.

SHRI S. P. SEN VARMA: The point is that even in countries with written constitutions, these constitutional conventions grow....

SHRI T. N. SINGH: They should be allowed to grow.

SHRI S. P. SEN VARMA: As a great jurist Prof. G. Keeton Professor Emeritus of London, Head of the Department of Law and Jurisprudence has said in his book on jurisprudence, even in countries like America with written Constitutions, these constitutional conventions have grown in the course of time. He has cited a number of cases. For example, there

is no written provision in the American Constitution that the vice-President shall automatically become the President in the case of a casual vacancy. It is purely by virtue of a constitutional convention that this is happening. The language of the American Constitution, that small booklet consisting only of 8 articles and 50 sections does not contain this specific provision. It is a constitutional convention. Perhaps, in our country also, if research is made or one looks into it carefully, one will find that even in the space of the last 22 years, some conventions, not of a very major type, have already grown up or are growing or are germinating. That is my view. But there are some points which you cannot leave to be determined by conventions, because conventions also change from time to time. For instance, in Great Britain, where there is no written Constitution, the conventions that were there at the time of Walpole no longer hold good. At the time of Gladstone also, it was very much the Cabinet form of Government, but now a new kind of convention is growing, and a number of books have come out on the Prime Ministerial form of Government, saying that power in Great Britain is today more than in the Cabinet; it is in the hands of one persons, namely the Prime Minister of Great Britain. A number of books have come out and a number of articles have already appeared on this subject. Anyhow, it is this type of convention which is growing up there. But there may be difference of opinion on how far we should depend upon conventions in matters like this.

SHRI T. N. SINGH: It is a question of subjective judgment whether conventions should be allowed to have their way or we should deal drastically with the existing laws from time to time. My limited point was only that.

My second question is this. There is a tendency in all young democracies to tend towards autocracy. In today's circumstances of the world, there is

more and more cry for dictatorship, autocracy and autocratic rule as against democratic trends. Anything which smacks of curbing popular will is not a desirable process.....

SHRI S. P. SEN VARMA: In a democracy, the will of the people prevails.

SHRI T. N. SINGH: The basic principle underlying this amending Bill is to put curbs on the rights of the Members of the legislatures. Till the other day, I and one more person were entitled to put up a candidate for Presidentship. He may be a non-partyman or an independent. But he may be a candidate like Mr. Subba Rao or like Shri V. V. Giri. Even Shri V. V. Giri was a non-party candidate. He may be an entirely independent candidate. If this law is passed, then we cannot have the possibility of exploring the chances of such persons. Why should you restrict the Members' rights by putting in these curbs?

SHRI S. P. SEN VARMA: Curbs on Members' rights?

SHRI T. N. SINGH: Yes. Today, I and my hon. friend sitting by my side have the right to put up a candidate, but if this Bill is passed, we shall not have that right.

MR. CHAIRMAN: It is not curbing of the right as such but curbing of the right to circumvent the provision...

SHRI NAWAL KISHORE SINHA: You may call it reasonable curb.

SHRI S. P. SEN VARMA: I shall not use that word, I say that it is not curbing the right of an elector, that is, a member of the electoral college, to put up any candidate. A member of the electoral college may request other members to join with him and then they can put up any candidate. That will be a very good thing in the sense that that will at once show that the candidate has the backing of at least 40 elected MPs and MLAs. So, I do not regard it as a curb.

SHRI T. N. SINGH: Now the other consideration is the dignity of this great office which has impelled the movers of this Bill to put certain restrictions. They think that by enlarging the number of proposers and seconders or having a deposit or taking away certain malpractices as basis for nullifying the election, the the dignity of this office will be enhanced. May I put it to you that the dignity of that great office depends on the manner, the decency and the goodwill by which the elections are conducted more than anything else? That is again a matter of convention.

SHRI S. P. SEN VARMA: That depends.

SHRI T. N. SINGH: I am glad you agree.

MR. CHAIRMAN: He has not expressed his agreement.

SHRI S. P. SEN VARMA: What I say is that everything in public life depends in the ultimate analysis on our national character.

SHRI T. N. SINGH: That is the correct thing.

SHRI S. P. SEN VARMA: If we cannot build our national character and pin it to a high pedestal, for which, I think, supreme efforts are needed from every citizen of the country, then we have no hope. Carlyle said: 'You may have constitutions as plentiful as black berries and a parliament in every village; of what avail they will be unless you have great leaders and you have national character. That is the basis. Not only in a democracy but in every human society, national character is the basis. Therefore, to that extent, how can I have the boldness or audacity to differ from this view that it will depend upon the decency or high dignity with which we do a particular thing? That is always there.

SHRI T. N. SINGH: What I said was axiomatic. Your agreement with me need not trouble you.

SHRI S. P. SEN VARMA: I am not at all troubled.

SHRI T. N. SINGH: You have rightly laid stress on national character. If any provisions of this Bill are in contradiction to or work against building the right national character, that will not be desirable. I take it that is also axiomatic. This Bill presupposes, our election laws presuppose, that a man who proposes and gets seconded a particular candidate can yet vote against that candidate. Why not bring an amendment of the law to deal with that first? Because I say in writing that I propose so and so. Then the next day I say I do not want this man. So I will vote against him. Is that not against national character? Let me put it to you boldly.

SHRI K. P. UNNIKRISHNAN: What is the idea?

MR. CHAIRMAN: I would like to understand your question. I think your question is that if a proposer proposes a man, then he is duty-bound to vote for him.

SHRI T. N. SINGH: Having laid the foundation that development of character is more important for maintaining the dignity of the election, I said all things which provide for a deviation from that development of character are undesirable, and if we have to amend our laws, amend them in that direction.

MR. CHAIRMAN: In what way?

SHRI T. N. SINGH: I can suggest it, provided the principle is accepted. I am speaking as a layman; I am not a lawyer like Shri Sen Varma and many others here.

MR. CHAIRMAN: What is the question?

SHRI T. N. SINGH: Suppose a person proposes a particular person. The next day he goes openly and says 'I will not vote for this man. You also do not vote for him'. That man should be debarred from voting. That

is one thing. That has to be done because it goes against building of the right national character.

SHRI S. P. SEN VARMA: How do you know in every case? (Interruptions).

SHRI T. N. SINGH: I am sorry. We need not get into partisanship on this issue. Let us take it objectively. No offence is meant to anybody. It is entirely meant very objectively. I have also had the privilege of working for nearly 50 years.....

MR. CHAIRMAN: What exactly do you want to ask witness? We can discuss this matter amongst ourselves.

SHRI T. N. SINGH: My question is whether a provision to that effect in the Bill should be there.

SHRI S. P. SEN VARMA: My reply is 'no'. Why? I shall give the reasons. How do we know that a person who is a proposer has not voted for that candidate whom he proposed? It may be that he has proposed one candidate and has actually voted for that candidate.

SHRI T. N. SINGH: Openly.

SHRI S. P. SEN VARMA: If he proposes a candidate and then makes an open declaration that he will not vote for that candidate, he may again change that declaration. Who knows? Therefore, we cannot depend upon these things. Then there will be so many difficulties. The law will be full of so many faults and defects that it will be simply impossible to provide for all the contingencies.

MR. CHAIRMAN: One man may do that, but not 40 people.

SHRI T. N. SINGH: I do not want to argue on such matters for any length of time. But I do feel that in the interest of the building up of the right national character and right conventions, we have to do something more than what has been done

in this Bill more or less, as the case may be.

The next question is: In what way will the dignity of the Presidential election be raised if we increase the number of proposer and seconder from 2 as at present to 40 as contemplated?

SHRI S. P. SEN VARMA: No question of dignity. These are all rules of practical expediency.

SHRI T. N. SINGH: I quite agree. I am glad you have said that. So it is meant as a sort of curb and not for the sake of raising the dignity of election.

SHRI S. P. SEN VARMA: I have never said that it will raise the dignity of the election. Frivolous candidates should not be in the field.

SHRI T. N. SINGH: There are cases in States. The number of voters there may not be 40. Here is a provision which stipulates that a candidate should be proposed and seconded by at least 12 members of the House of the People and 24 members of the State Assembly. It may be that a State may not have 12 Members of the House of the People. Take Delhi for example. Tripura is another.

SHRI S. P. SEN VARMA: Delhi is not a State at all.

As for the number, they may be spread over the whole of the country.

SHRI T. N. SINGH: Clause 6 lays down that at least 12 members of the Lok Sabha and 24 members of the State legislatures shall nominate a candidate. It may so happen that even though a particular State may unanimously be in favour of a particular candidate, it cannot propose the name simply because the total number of candidates elected to Lok Sabha from that State may be less than 12.

SHRI NITIRAJ SINGH CHAUDHARY: They will have to take support from other States also.

SHRI S. P. SEN VARMA: Taking Tripura for instance, it sends only 2 members elected to Lok Sabha and one to the Rajya Sabha. It is true there are not 12 members elected from Tripura to Parliament. But why should this fissiparous tendency be allowed to grow in the case of Presidential election which is an all India affair? If they like to set up a candidate, let them approach the neighbouring States like Manipur, Bengal or Assam. In the interest of national integration, why should we allow the legislators of Tripura alone to set up one candidate? That is a dangerous tendency.

SHRI T. N. SINGH: The integrity of India depends on the happiness of each individual unit of the State. The moment they have grounds for dissatisfaction, the integrity is threatened. So, it is necessary to make every State, big or small, feel that it is on par with every other State. Therefore, to the extent that Tripura is not on a par with bigger States in this matter, they will have a grievance.

SHRI S. P. SEN VARMA: I do not agree. In Parliament, we have two Houses. The House of the People, as the name implies, represents the popular principle; the States are forgotten as individual units. When a member is elected to the Lok Sabha, he represents the entire people of India. But the other House, the Council of States, as the name itself implies, is the Rajya Sabha; it represents the federal principle of Government. Every State is represented by its members in the Council of States as a body politic, as a separate entity. So, to that extent, I do not agree that there may be fissiparous tendencies if they do not get equal treatment in this respect. That is my view.

SHRI T. N. SINGH: Now, my next question is that we have fixed a deposit of Rs. 2500—a petty amount in these days of inflation. Are we going really put any restraint on nominations by this process? It is not

such a large sum that will prevent anybody or will reduce the number of nominations. Why put this curb at all?

MR. CHAIRMAN: This question was asked before also.

SHRI S. P. SEN VARMA: His ground is different. He says, in these days of inflation, it is easy to pay Rs. 2500. Personally, I feel that there should be some monetary curb also. Whether it is effective or not in these days of inflation is for the Committee to consider.

MR. CHAIRMAN: It will depend on the index of inflation.

SHRI T. N. SINGH: Section 18 has been materially altered. There is one further addition in Section 18 for which I fail to understand the reason. It says:

“(iii) by reason of the fact that the nomination of any candidate (other than the successful candidate) who has not withdrawn his candidature has been wrongly accepted;”

Why this?

SHRI S. P. SEN VARMA: It is based on a very sound principle. If the nomination paper of a candidate has been “wrongly rejected”, then that by itself without any further proof is sufficient to vitiate the election. Because who knows the person whose nomination has been rejected might have got the largest number of votes. But in the case of the wrong acceptance of the nomination paper, there is a difference. In every country, the law is that wrong acceptance of a nomination paper will vitiate the election only if the result of the election has been materially affected by such wrong acceptance.

SHRI JHARKHANDE RAI: If the filing of an election petition before the Supreme Court on the ground specified by Parliament is not allowed

or the right is taken away, will it not lead to a dictatorial tendency in politics?

SHRI S. P. SEN VARMA : It is not completely barred. Even under the provisions of this amending Bill, the filing of an election petition has not been totally barred or banned. What has been done is that the number of grounds has been reduced on which an election petition can be filed. The Supreme Court has said in their earlier judgments—there have been three Presidential elections cases that the Parliament has the right to specify the number of grounds. Therefore, I say, there is nothing wrong in that. But the point is this. This has been in the Act since its very inception, 1952. Perhaps, we should not at this time delete it.

SHRI K. P. UNNIKRISHNAN : I shall pose a rather general question. Apart from various other abstractions that Mr. T. N. Singh referred to earlier, we in the Parliament and in the political movement are also concerned with healthy evolution of political life on specific lines as underlined in the framework of the Constitution, that is, the party system of Government. Will you not agree with me if I say that the proposed amendments seek to place the whole focus of President's election on the healthy evolution of party system? We are for organised political group. This only justifies that there should be a healthy evolution of our political life on party lines.

SHRI S. P. SEN VARMA : The question raises the many general issues. There is neither time nor I would be permitted by the Chairman to enter into those issues.

MR. CHAIRMAN : You answer it in a general way.

Shri K. N. Wanchoo, Former Chief Justice of India.
(The witness was called in and he took his seat)

MR. CHAIRMAN : I would like to remind you about one thing before we proceed. You may kindly note that the evidence that is given will

SHRI S. P. SEN VARMA : If you look at the provisions of the Constitution and the People's Representation Act, the word "political parties" has not at all been recognised anywhere. It is, more or less, a matter of convention. Only in some rules framed under the People's Representation Act, we have referred to political parties for the purpose of allotment of symbols. In any case, the parties have come to stay. As a matter of fact, some of the politicians in our country and leaders of public opinion, like, Mr. Jaya Prakash Narayan have advocated "party (less) democracy". Bryce has been described as Ulysses of English politics by another savant of Great Britain, Ernest Barker who has described Bryce as Ulysses of English politics. Barker was very much perturbed by this and that but Bryce said that parties could not be avoided. The House of Commons, Bagehot said, is in a state of potential perpetual choice because of Party Government. Therefore, at the time when this provision was made in the Bill, namely, that a minimum 24 members should sign the nomination paper and all that, and when I made a recommendation on this line, it did not occur to me. But as you have said, it may lead in that direction too, to help the evolution of political parties in this country on healthy lines. That much I can say.

MR. CHAIRMAN : Thank you very much for your enlightened and patient evidence.

(The meeting then adjourned to meet again at 15.00 hours.)

(The Committee reassembled at 15.00 hours.)

be treated as confidential and is liable to be published unless it is specifically desired that all or any part of the evidence is to be treated otherwise. Even so, even if he desires that something is to be treated as confidential, it is liable to be

published and made available to the Members of Parliament.

SHRI K. N. WANCHOO: I have no desire to hide anything. I have signed that declaration.

MR. CHAIRMAN: I think you have gone through the amendment of the Bill referred to the Select Committee.

SHRI K. N. WANCHOO: I did not submit any memorandum. I would like to say something. I will say something on the various sections about which I have something to say and then if you want you may put questions.

MR. CHAIRMAN: That will be better.

SHRI K. N. WANCHOO: There are some sections in regard to which I have to say something. If I say nothing about a section, it means, there is nothing to be said so far as I am concerned. I go section by section in the amending Act...

MR. CHAIRMAN: You may refer to them as Clause.

SHRI K. N. WANCHOO: Clause 5B(1) is the first one. (a) refers to the Presidential and (b) to Vice-Presidential election. The amendment is that a larger number of persons or electors should nominate the candidate and second also than used to be the case uptill now. I had occasion to come across one election petition against the then President Dr. Zakir Hussain. I was presiding over the Bench which dealt with that. I could see some of the candidates who stood were mere jokers. In one case there was one nominator and one seconder. But the candidate got no vote. That means even the persons nominating and seconding him did not vote. So, I personally think that the provision here is salutary. It would eliminate jokers standing for this august office. In the case of Vice-Presidential election, this thing does not happen, so far as I know, but even so there is no harm if the num-

ber of electors is increased. I would support that also. I consider that this amendment would put an end to such types of jokers standing in for this august office.

Regarding 5B(2) it is stated that each nomination paper shall be accompanied by a certified copy. You have more experience about the time it takes. . . .

MR. CHAIRMAN: It does not take much time.

SHRI K. N. WANCHOO: I thought whether an attested copy by a magistrate or a gazetted officer would be enough, because everybody cannot go to the office to get the certified copy. But if it does not take much time, as you say, it does not matter. But in collectors' offices and district judges' offices etc. it takes time.

MR. CHAIRMAN: It does not take much time, I think.

SHRI K. N. WANCHOO: Then it does not matter. Then I come to 5C(1). Here it refers to both President and Vice President. It is for you to consider whether this should apply only to Presidential election or this should apply to Vice Presidential election also. There have not been any jokers for Vice-Presidential election. It takes place in Parliament and I don't think this can be done here. The provision for security is also good. It will deter people who have no sound backing to come forward and stand for election. And that is what we want because we do not want candidates for these high offices who are just there for the fun. So, I support this also.

The next clause I would like to refer to is clause 6(2). There also it is the proviso that makes it necessary to refer to this clause. This, I believe, is in line with what we have provided for in the earlier clause. I think it is right. One elector should not be able to impeach the election of President. So, I support this also.

Now, I refer to clause 7. This clause to a certain extent re-writes Section 18 of the main Act. There was provision in Section 18 of the main Act which provided for undue influence and bribery. Here, bribery and undue influence are missing. The statement of objects and reasons does not say why these have been dropped because I remember in the election petition against the election of Dr. Zakir Husain there was plea of undue influence which, of course, I turned down. I do not know the grounds on which bribery and undue influence have been left out of the new Act. Is it the view that there can be no bribery and undue influence in the election of President and Vice-President? Will it be safe to leave out these altogether? Your removing bribery altogether, will it not give an impression to the public that there will not be any such thing as bribery and bribery is now open. So, whether it is possible to keep those provisions in the existing Section 18?

The next clause I would like to refer to is clause 8(4) that provides for forfeiture of the deposit. The provision is if the person does not poll one-sixth of the votes he forfeits his deposit. It is a good provision and good deterrent. You remember in the old days the people would say I am middle-class fail just to suggest that he has read upto middle-class. Like, that this would be something like I am presidential election fail. It is better to have this provision.

The last clause to which I would like to refer is about the rule-making power. In the old sub-section when I read it I found there was no provision for laying the rules before Parliament. This old sub-section 3, section 31, gave a general power of making rules, but no provision for laying before Parliament. A new provision has now been made. I think that is a very good provision. This is a good safeguard because the rules which are made, will be laid on the Table of the House for whatever

period mentioned here and will be open to approval or disapproval by the House. This is what I have to say about the various clauses. In short: I am in favour of all the provisions except bribery and undue influence which have been left out.

SHRI JAGANNATHRAO JOSHI: Is there any necessity for making it more stringent? There is a proposal that 40 legislators should be there. But then something should be there even to go to the court.

SHRI K. N. WANCHOO: You mean about the election petition?

SHRI JAGANNATHRAO JOSHI: Yes. Even a candidate himself can go to the court.

SHRI K. N. WANCHOO: The total number of electors including all members of Parliament and all the Legislators together, I believe, is over 4000. So, I thought 40 out of 4000 is not too large. I am thinking of those people who are really interested in the election and 40 is not a very large number out of 4000 people. There may be more now because some more States have come.

MR. CHAIRMAN: The candidate of his own...

SHRI K. N. WANCHOO: The candidate is himself entitled to challenge the petition. But after the candidate, electors, if you want one or two men, —jokers can file. In the case of Mr. Suba Rao, some jokers filed the petition.

SHRI S. B. GIRI: I can understand what you said about the candidate. Then some jokers filed. I think they are not jokers. They are responsible people.

SHRI K. N. WANCHOO: You want to reduce the number.

SHRI S. B. GIRI: They are not jokers; they are responsible people. When I am supporting a candidate, I have got the right to find out the defects also. The provision is there.

SHRI K. N. WANCHOO: In those elections, it has to be 10 voters.

SHRI S. B. GIRI: No.

SHRI K. N. WANCHOO: I was under the impression that there were 10 voters.

HON. Members: No.

SHRI K. N. WANCHOO: That is the only trouble if you do not have some number. You must have some number, say, 10 voters at least. Some people must come together and say that the election was bad. If the candidate comes, it is all right. But many a time, I have found that the other party can say you are ignoring this thing and that thing and who are you to accuse me. The candidate cannot file the petition; it can be filed by somebody else.

SHRI S. B. GIRI: Any Member of Parliament who is elected to the Lok Sabha, is supposed to represent. At least, 50-60 thousand voters, they cannot become jokers.

SHRI K. N. WANCHOO: I understand that the person who files the election petition is a responsible person.

SHRI S. B. GIRI: Supposing at the time of election, unfortunately he was not there. That is a different matter.

SHRI K. N. WANCHOO: For some reason or other, he was not there, I do not know. But the fact remains that neither the proposer nor the seconder voted for the candidate and therefore he got zero vote. I have no objection to that. I have no fundamental objection. But, of course, you must remember that once you have that, you can make no distinction between a Member of Parliament and a Member of the Legislature. If you do, they will feel hurt. Then, only one elector, whether he is a Member of Parliament or he is a Member of the Legislature, can file an election petition. I have no objection. I can quite see that Members of Parliament are responsible persons.

SHRI S. B. GIRI: It has been provided that a deposit amount of Rs. 2500 should be there. In our country, we are having democracy. Those people who have attained 21 years, are entitled to vote. Why there should be a restriction, that a sum of Rs. 2500 should be deposited? How can we expect a poor man to contest an election. After all, that is what we say. In a democracy, everybody has got a right. I can understand about 40 electors and I am convinced about it. How can we expect a poor person to deposit Rs. 2500? I may like to become the President of India tomorrow. As a voter, why I should not have the right? Why there should be a limit of Rs. 2500? I can understand about 40 electors. Why this deposit amount should be there?

SHRI K. N. WANCHOO: Theoretically you are right that a poor man may not be able to deposit Rs. 2500. But, if for the Office of the President, the persons who are standing, who are expected to stand, are responsible persons, they are bound to be supported by various parties. Otherwise, they have no chance.

SHRI S. B. GIRI: They will support. But, they may not have the money. My submission is that a poor person may not be able to deposit Rs. 2500. If he has to, then, he will have to go to rich people only.

SHRI K. N. WANCHOO: If I choose to stand for Presidentship, nobody would give a vote. I won't hope to get even one vote.

SHRI S. B. GIRI: This Rs. 2500, is it justified in a poor country like India? ..

SHRI KOTA PUNNAIAH: Do you think that proposer and seconders should vote?

SHRI K. N. WANCHOO: You cannot do that. You will never know which way he has voted. There is

secrecy of voting. You cannot insist on that. Otherwise, you will do away with secrecy of voting. I do say that the proposers and seconders must vote for the person, whom they have proposed. Even, if that is so, how anybody is going to check it and you will be infringing the secrecy of voting. That you cannot help. In that particular case I mentioned, if two votes had been cast for that man, that is all right. I can only say that they did not vote. This is because zero votes were cast for him. I know this not because I have seen the electoral roll or the ballot paper, but because, zero votes have been cast for him and nobody voted for him.

SHRI KOTA PUNNAIAH: What is the legal sanctity about having proposers and seconders?

MR. CHAIRMAN: I will put to you like this. Why we should have proposers and seconders?

SHRI K. N. WANCHOO: If you do not want to have proposers and seconders, I can no longer say that you must have. It has always been done and it has always been followed. There is no law. If we do not have proposers and seconders, then, the position will be even worse than what it was at that time, namely, that anybody would say 'I can go and stand up for myself, even though I may not get one or two Members of Parliament or Legislatures to support me. I will also say that I have stood for Presidential election.'

SHRI KOTA PUNNAIAH: There is no guarantee of proposers and seconders voting for the same candidate. Will you accept that proposition?

MR. CHAIRMAN: There should be no proposers and seconders.

SHRI K. N. WANCHOO: There is nothing against it in law.

SHRI GANESHLAL MALI: I would like to ask one question. You have stressed much about the words bribery and undue influence. You have also said that no reasons in the Statement of Objects and Reasons have been given about them. I would like to know as to what is your personal opinion and whether these words should be kept in the amending Bill.

SHRI K. N. WANCHOO: I personally feel that it should be. That is why, I have referred to it. They should be kept. I sometimes have a fear that things may go wrong, if they are not there.

SHRI BALACHANDRA MENON: Considering the position of the president and Vice-President, if some unfair practice or undue influence or bribery is involved, in that case, would it not be better that Parliament itself appoints a Tribunal, with the Chief Justice as the Chairman, to go into these cases of such people, elected as President and Vice-President?

MR. CHAIRMAN: I will explain to you. What he wants to know is that instead of going to the Supreme Court, whether, election petition can be handled by Parliament by appointing a Committee in which the Chief Justice of the Supreme Court may be the Chairman and then they can dispose off that case. He wants to know whether they would be advisable or going to the Supreme Court is necessary.

SHRI K. N. WANCHOO: This is not in the amendment. I would personally think that we should keep the present position of law as it is and I think the hon. Member probably has an idea of the House of Commons where there is no such provision or there was. I am not sure. But, in our country, I think it would be better to have a Tribunal consisting only of judges to decide an election petition, specially of this type, so that there will be no kind of aspersion as to this pulling and that pulling. I do not say that judges are never open to this. But, generally, I can say that our public have confidence in judges up to now

and let us keep it. Very much more; and it is better to keep it as if it

SHRI D. N. SINGH: In view of your remark regarding jokers contesting the elections, would you like to have some scrutiny of the personality of the candidate, just as there is a scrutiny for the nomination papers?

SHRI K. N. WANCHOO: I am not saying that of Vice-President's election.

MR. CHAIRMAN: When a nomination is filed, a scrutiny is made, in which process, objections are invited.

SHRI K. N. WANCHOO: Scrutiny will not be all right, if the nomination papers are valid, according to the law. You cannot turn out a man, because you feel he will get zero votes.

SHRI TRILOKI SINGH: I would like to draw the attention of Mr. Wanchoo to the provision at page 5, fifth line from above on that page, regarding scrutiny of nominations under Clause 5E, sub-clause (d), where it speaks of, the signatures not being genuine or obtained by fraud. Don't you think that this provision of, "or has been obtained by fraud", will lead to unnecessary controversy? You will not find anything like that in the existing Act. The other candidate may say that it was somehow obtained for some consideration.

SHRI K. N. WANCHOO: Are you objecting only to the words "or has been obtained by fraud"?

SHRI NITI RAJ SINGH CHAUDHARY: That might create more complications, according to him.

SHRI K. N. WANCHOO: Why should there be any complication? After all, the person who has signed it is the best person to say whether his signature is genuine or that he was asked to sign for a consideration for a motor car, etc. At that stage, the returning officer only looks at it very broadly; and he will not allow parties to give evidence, viz. "I say that this gentleman's signature was

obtained by fraud," unless that gentleman himself comes and says so.

SHRI TRILOKI SINGH: Supposing that the objection comes from one of the opposing parties....

SHRI K. N. WANCHOO: Then you should object to the other thing also, if I may say so without meaning any disrespect, regarding any of the proposers not being genuine. Rather, you delete the whole of it. That sort of thing can be said, if a man is won over, that he was bribed.

SHRI NITIRAJ SINGH CHAUDHARY: Anything done fraudulently is void; and can be challenged at any time.

SHRI K. N. WANCHOO: There will be no objection if the matter is taken in an election petition, but this is the stage of the returning officer. I think it is your objection.

SHRI TRILOKI SINGH: At the stage of the returning officer, it might lead to unnecessary complication. Why to have it? Don't you think it is unnecessary?

SHRI K. N. WANCHOO: Again, I have no personal knowledge; but I think, theoretically, what you say may happen; but has it ever happened?

SHRI JAGANNATH RAO JOSHI: Even the candidate can be bought over.

SHRI K. N. WANCHOO: Unless the man himself comes and says that it is not genuine, I would not allow this kind of evidence. This is a stage where a person is being nominated; and at that stage, I don't think it will create much complication. I have heard quite a large number of election petitions and I have never come across such an instance.

SHRI TRILOKI SINGH: Following clause (e), my difficulty is that 'A' nominates me and 'A' is won over by my opponent, my nomination paper will be rejected. How that should not be.

SHRI K. N. WANCHOO: I am sorry, if you look 5 (b) 5 it is there. 5 (e) and 3(e) is the consequence of that. I had made a note that there must be a note to give reason why a person should not nominate more than one person.

MR. CHAIRMAN: There is one post.

SHRI K. N. WANCHOO: Each election is separate.

MR. CHAIRMAN: He should be serious about election. If he goes on nominating five persons it means he is not a serious person.

SHRI TRILOKI SINGH: If 'A' nominates me and it brings forward another person 'B', then my paper is rejected. There is a provision in the draft.

MR. CHAIRMAN: It is our experience that we file not more than one person.

SHRI K. K. SUNDARAM: Page 5 (e) if you are first priority and there will be nobody earlier to this, so yours will not be rejected.

SHRI PRATAP SINGH NEGI: Both are rejected.

MR. CHAIRMAN: That our Legal Department says 'not both'.

SHRI T. N. SINGH: If this stands the other also stands.

SHRI TRILOKI SINGH: If you retain the first one, then what is the penalty.

SHRI K. N. WANCHOO: Both must remain or both must go. He has signed one paper and some people have forgetful memories and in that forgetfulness he may sign another paper. The man must go round the people and ask whether they have already signed the paper. That is the only thing I can say.

SHRI K. K. SUNDARAM: It is very clear. Only the second person will go.

SHRI NITIRAJ SINGH CHAUDHARY: The first will remain.

SHRI TRILOKI SINGH: Page 6, clause 6, the provision relates to the filing of the election petition. Now here it adds something. What is your opinion about it?

SHRI K. N. WANCHOO: The proviso generally does not add anything but this proviso adds. This is a very rare case and in very very rare cases the proviso can be held to add. This difficulty can be solved by putting it as another clause.

SHRI TRILOKI SINGH: As regards clause 7, in the existing Act, both the provisions exist, namely that in regard to a candidate committing an offence of bribery or undue influence and that done by any other person without the knowledge or connivance of the candidate. The amending Bill seeks to drop both. Would you like both 18(1)(a) and 18(1)(b) to be retained or 18(1)(b) to be deleted.

SHRI K. N. WANCHOO: I should like to keep both, because they are complementary. One is by the candidate himself or by somebody at his instance, and the other is the case of general bribery which has materially affected the result. The first is by the candidate himself and if the candidate himself or somebody acting with his connivance does it, then he is gone and nothing else is to be proved. But if something has been done without the knowledge of the candidate by some person other than a candidate; then the other provision would come in. The idea is the same thing, namely that you bribe somebody in order that somebody who is going to win may lose. There, the result has to be materially affected, so that the other provision in regard to somebody bribing can also become a ground for an election petition and that is not so easy to prove because you have to prove that not only has somebody bribed which has nothing to do with saying that the candidate has bribed, but you have also to prove that the result of the election has been materially affected. Supposing somebody is able to prove that in the case of

the Presidential candidate who has won, one person bribes somebody and he has given the vote to the winning candidate, that does not materially affect the result of the election. So, the other clause is only where bribery on a large scale has been practised. But the first part, namely (a) is quite essential to my mind. The second part is not very essential, because bribery on a large scale which will affect the result of an election materially, by persons other than the candidate or without his connivance is not likely. So, the old section 18(1) (b) may or may not be kept, but section 18(1)(a) seems to be essential.

SHRI TRILOKI SINGH: May I take it that in your opinion, if section 18(1) (b)(i) is deleted, it will be all right?

SHRI K. N. WANCHOO: It may be deleted . . .

SHRI TRILOKI SINGH: It is for Parliament to decide.

SHRI K. N. WANCHOO: Of course, it is for Parliament to decide everything. Even if it is deleted, it will not do much harm. But if section 18(1)(a) is deleted, it may in my opinion, do harm.

SHRI NAWAL KISHORE SINHA: You have told us that frivolous and joker type of candidates sometimes come up. If the present section 18 is allowed to stand, is there any likelihood of frivolous election petitions?

SHRI K. N. WANCHOO: I can only tell you from my experience. There was a candidate who had filed an election petition which was absolutely frivolous because it was based on the ground that Dr. Zakir Hussain was not over 35. That is the one case which I can mention. I have dealt with two or three election petitions in connection with President Dr. Zakir Hussain. That gentleman I consider to be a joker candidate and also a joker petitioner.

SHRI NAWAL KISHORE SINHA: In view of the fact that the President's office in this country is a very high
1799 L.S.—3.

office and it is held in very high esteem, will Parliament be wrong—I do not know what Parliament will decide—if it obviates, by an amendment to the existing Act, any chance of a frivolous allegation being made against the President of the Union, particularly because, although on judicial scrutiny, the charge may fail, yet once thrown, some mud is bound to stick, and that may in the eyes of the world and in the eyes of our people also undermine our democratic structure itself?

SHRI K. N. WANCHOO: It will be very difficult to say at the earliest stage whether the allegation is frivolous or not. When a person makes an allegation, whether it is frivolous or otherwise can only be found after a petition has been heard. As I said, it may be a very silly sort of thing as that man saying that Dr. Zakir Hussain was not 35 years old. That sort of thing apart, if the petition has got anything to say, one cannot say at that stage that it was frivolous. So, how can we say that no frivolous allegations can be made? All that you can say is that if an allegation is found to be frivolous, you will attach some penalty to it. That is a different thing but you cannot at the inception stage stop it, because at that stage, nobody can say that it is frivolous.

MR. CHAIRMAN: It has to be proved that it is frivolous.

SHRI K. N. WANCHOO: That has to be proved. Afterwards, you can attach any penalty to it, if you like. But I do not think that any penalty is ever attached in such cases.

MR. CHAIRMAN: Do you think that it is advisable to attach some penalty because of the high office of the President?

SHRI K. N. WANCHOO: I do not think so; it is not worth-while to attach any penalty.

SHRI T. N. SINGH: Under section 4 of the original Act, the last date for making nominations shall be not later than the fourteenth day, but now it is proposed to make it not later than the seventh day. Why should we now reduce that period? Fourteen days is a reasonable enough time.

SHRI K. N. WANCHOO: That is a matter which I leave entirely to you, whether you want 14 days or 7 days. I have nothing to say on that, because I have no experience on that point. If you want fourteen days, then keep fourteen days, and if you want seven days, then keep seven days, but I have no experience one way or the other. I cannot express an opinion. That is why I have said nothing about it.

SHRI T. N. SINGH: There are two stages. One is the stage of nomination and the other is the stage of petition. If we concede, as you did concede that at the time of the petition, it is not necessary that 40 Members . . .

SHRI K. N. WANCHOO: You can reduce the number if you like.

SHRI T. N. SINGH: Why should we insist on the same number in the case of nominations?

SHRI K. N. WANCHOO: If you want to reduce it in one case, then reduce it in the other case also *pari passu*. I do think that if you reduce it in the case of nomination, you must reduce it in the case of election petitions and *vice versa*. For, the two things should go together. Otherwise, it would look rather odd.

SHRI T. N. SINGH: The second and more fundamental point which I want to place before you for your views is this.

SHRI K. N. WANCHOO: I do not consider 40 as too large a number in an electorate of about 4000.

MR. CHAIRMAN: The hon. Member put the question whether 40 was a desirable number . . .

SHRI T. N. SINGH: In the case of petitions . . .

MR. CHAIRMAN: He has said that 40 is not too large a number . . .

SHRI T. N. SINGH: Rather, he has agreed with me, if I may say so.

MR. CHAIRMAN: He has said that if there is any change, it should be in both the places. If the number is less in the case of petitions, it should be less in the case of nominations also or *vice versa*. He does not give his opinion as to whether the number should be less.

SHRI T. N. SINGH: He says that if it is reduced in the case of nominations, it should be reduced in the case of petitions also. But he personally feels that 40 is not too large a number. I hope that I am standing the position correctly, and I am not misrepresenting Mr. Wanchoo.

SHRI K. N. WANCHOO: I do not say so at all. 40 is not too large a number.

SHRI T. N. SINGH: I find that the fundamental concept underlying this amending Bill is to create curbs on the nomination and election processes, because some time in the past, some persons have acted frivolously. Otherwise, when the Act was first passed in 1962, the concept are not to be very restrictive about it, that too because in all other countries there is no such thing. We did not degrade the position of the election of the President that of an ordinary member of a legislature. We are taking an unnecessarily pessimistic view. In course of a time with a maturer democracy, we will develop our own conventions and this will not happen. Therefore, let us not spoil our statute book for the more reason that some persons in the past have resorted to this. If we make law on that basis, we shall be deviating from the fundamental principles of law making.

SHRI K. N. WANCHOO: This amendment has come only after the experience of the last four elections.

SHRI T. N. SINGH: It is only after Shri Giri's election that this happened.

SHRI K. N. WANCHOO: No.

SHRI T. N. SINGH: This has come only after Shri Giri's election. Nothing before. Jawaharlal's Government did not think it necessary to bring it.

SHRI K. N. WANCHOO: My experience is only of President Zakir Hussain's election. I do not know of the subsequent happenings.

SHRI T. N. SINGH: There was one Mr. Hari Ram who was a candidate. These are exceptions.

MR. CHAIRMAN: We can discuss that amongst ourselves.

SHRI T. N. SINGH: Shall we be guided in amending our permanent laws merely because there have been stray incidents of a particular type in three or four cases?

SHRI K. N. WANCHOO: It has been there in every election. It was there during President Zakir Hussain's election. I do not know about what happened during President Giri's election. Was there any petition?

SHRI T. N. SINGH: Yes.

SHRI K. N. WANCHOO: There was no frivolous person standing.

SHRI T. N. SINGH: Yes, one or two.

SHRI K. N. WANCHOO: At any rate, before that I heard about it. I also read it in the law reports. Once or twice there was an election petition. But during President Zakir Hussain's election, it was the worst, not one or two jokers. One got zero, another got 2, a third got 4 votes.

SHRI NITIRAJ SINGH CHAUDHARY: 9 of them did not get any votes.

SHRI K. N. WANCHOO: Barring President Zakir Hussain and Subha Rao, the rest got very few votes.

SHRI NITIRAJ SINGH CHAUDHARY: Out of 17 candidates, 9 did not get any vote.

SHRI K. N. WANCHOO: I am sorry I did not look up my judgments. That would have been able to tell me.

SHRI T. N. SINGH: After all, there are certain norms of democratic behaviour. Can you tell me from your vast knowledge whether in any country there is any law which tries to circumscribe nomination for the President's election in this manner?

SHRI K. N. WANCHOO: I do not know of any.

SHRI T. N. SINGH: I also do not know.

SHRI K. N. WANCHOO: But the point is that if this has happened in four of our elections, something must be done to stop it. This is how I see it.

SHRI T. N. SINGH: I consider our democracy to be matured. . . .

MR. CHAIRMAN: We need not argue that now. We should only elicit his views.

SHRI K. N. WANCHOO: This is entirely a matter of opinion.

SHRI T. N. SINGH: The fourth question. There are States today, new States, very small States. But they have also their pride. They want to be treated on par with other States. Suppose a State is unanimous about a particular candidate. It has for probably more than 24 MLAs. but it may have only three or four MPs. The contemplated restriction of 12 MPs will deprive a State where the people are unanimous even both parties in favour of a particular candidate, from putting him up as a candidate.

SHRI K. N. WANCHOO: There is something in what you say. You may

make it 40 electors but not indicate whether they should be MPs or MLAs.

SHRI T. N. SINGH: Or the number may be less.

SHRI K. N. WANCHOO: Whatever be the number, 40 or 20 or 30, on these lines you can certainly have it. You fix a number, but do not specify so many MPs and MLAs.

SHRI T. N. SINGH: This question follows from what I asked. What should be the underlying principle of any restriction on nominations by which we should be guided? What is the sanctity in 40 or 30 or 20 or 10?

SHRI K. N. WANCHOO: I do not think there is any principle underlying it. I think it is more a question of what we have seen. Therefore, we think we should stop it. Our past experience seems to suggest that we must do something about it; otherwise, these jokers will continue this thing.

SHRI T. N. SINGH: The deposit of Rs. 2500 suggested may take away from the dignity of the election of the President and put it on par with the election of MLAs and MPs. Moreover in these days of inflation and high prices, it may only be equivalent to Rs. 200 of ten years ago. Therefore, why depart from the normal practice in all other countries and have this deposit? Rather it appears to me a demeaning proposition for the Presidential office. It will in no way restrict jokers.

SHRI K. N. WANCHOO: I quite see what you say. It may be that if you keep the number at 40, you need not have the deposit at all. Forty is a large number. No person who is not serious will get 40 people to support him. So if you have 40, then probably the deposit may not be necessary.

SHRI T. N. SINGH: Thank you very much.

SHRI K. P. UNNIKRISHNAN: May I be enlightened about some of the

constitutional provisions governing presidential election? There is art. 58 which prescribes the qualifications for election to the office of President. Among other things, it also says that no person shall be eligible for election as President unless he is qualified for election as a member of the House of the People. Then art. 59 says that he shall not hold any office of profit. As regards MPs, art. 84 prescribes a set of qualifications. Art. 102 also prescribes certain definite disqualifications. In the case of this highest office, there is no bar like undischarged insolvent or unsound mind for a candidate standing for election as President. Don't you feel there is a genuine constitutional lacunae which has not been filled by subsequent Acts including this one?

SHRI K. N. WANCHOO: If you are suggesting that the Constitution permits a person of unsound mind to stand for Presidential election, it is not so. Articles 84 and 102 must be read together. What is disqualified in article 102 cannot become qualified in article 84. Article 102 has been separated for various reasons. Article 84 prescribes qualifications for being chosen only. But article 102 is for remaining in that office. If, God forbid, the President becomes a person of unsound mind after he is elected, he will have to go under Article 102.

SHRI RASIKLAL PARIKH: From a moral stand point, I want to know, do you think the objective conditions and moral climate which prevailed at the time of framing the Constitution which provided for such grounds like undue influence and bribery for an election petition, have changed so that we can afford to delete this provision?

SHRI K. N. WANCHOO: I am not prepared to say that. If the reason for doing away with bribery and undue influence is that we are much better people now than at that time, I am not prepared to say that.

SHRI RASIKLAL PARIKH: How do you view the dignity of the candidates for the posts of President and Vice-President until they are elected and after they are elected. When they practise bribery and undue influence, they are only candidates. If they get elected as President and Vice-President by the force of these mal-practices, there is no law to stop it when this provision is deleted.

SHRI K. N. WANCHOO: That is why I say this provision should remain. Personally I am in favour of retaining the provisions regarding both bribery and undue influence, although undue influence is much more difficult to prove.

MR. CHAIRMAN: Would you like to define undue influence?

SHRI K. N. WANCHOO: Undue influence has never been defined anywhere. You have to see in each particular case whether there was undue influence or not. In President Zakir Hussain's case, they sad because the Chief Minister wrote to the legislators or the Prime Minister wrote to somebody, that is undue influence. I said, it is not; it is just canvassing.

SHRI RASIKLAL PARIKH: It is true that formerly some people filed nominations without any hope of being elected. But the question of substance is how many should be the proposers and seconders. May I know whether the present number suggested in the Bill would depart from the content and democratic quality to any extent?

SHRI K. N. WANCHOO: I do not think so.

SHRI T. N. SINGH: There is a difference between this election and ordinary elections. In view of the basic idea of restricting unnecessary candidates, will it not be desirable to

have a clause whereby canvassing for a candidate is prohibited?

SHRI K. N. WANCHOO: Canvassing must be there in any democratic elections.

MR. CHAIRMAN: President's election is an all-India election. There provincialism or regionalism should not be allowed to play any part. Under the proposed amendment, the number of proposers and seconders should be 40, out of which 12 will have to be Members of Parliament from anywhere and 24 will have to be legislators from anywhere. If we were to remove that restriction, would it not encourage parochialism or regionalism so far as the Presidential election is concerned?

SHRI K. N. WANCHOO: I doubt it. If 40 members of one legislature want to nominate a man, why should it, be parochialism?

MR. CHAIRMAN: As Mr. Singh suggested, suppose they have got only 3 Members of Parliament. Therefore, they will not be able to get 12 MPs. That would mean they have a right to collect 40 signatures of the legislators from that area. That would mean that that candidate who is proposed is cut off from the rest of India and confined to that part alone.

SHRI K. N. WANCHOO: If that was the idea behind keeping 12 MPs. and 24 legislators, I am in favour of it.

MR. CHAIRMAN: Thank you.

SHRI K. N. WANCHOO: Thank you.

(The Committee then adjourned.)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE PRESIDENTIAL
AND VICE PRESIDENTIAL ELECTIONS (AMENDMENT) BILL, 1972

Thursday, 18th January, 1973 from 11.00 to 18.15 hours and again from 15.00 to
17.00 hours.

PRESENT

Shri S. A. Kader—*Chairman*

MEMBERS

Lok Sabha

2. Shri P. Gangadeb
3. Shri P. K. Ghosh
4. Sardar Mohinder Singh Gill
5. Shri S. B. Giri
6. Shri Jagannathrao Joshi
7. Shri J. G. Kadam
8. Shri Piloo Mody
9. Shri Samar Mukherjee
10. Shri Pratap Singh Negi
11. Shri Tarkeshwar Pandey
12. Shri Rasiklal Parikh
13. Shri Jharkhande Rai
14. Shri Rajdeo Singh
15. Shri J. Rameshwar Rao
16. Shri M. S. Sanjeevi Rao
17. Shri S. C. Samanta
18. Shri Digvijaya Narain Singh
19. Shri Nawal Kishore Sinha
20. Shri M. G. Uikey
21. Shri K. P. Unnikrishnan
22. Shri Virbhadra Singh
23. Shri G. Viswanathan
24. Shri Niti Raj Singh Chaudhary

Rajya Sabha

25. Shrimati Maragatham Chandrasekhar
26. Shri Krishna Bahabr Chettri
27. Shri Lalbuai
28. Shri Ganeshlal Mali
29. Shri Balachandra Menon
30. Shri Kota Punnaiah

31. Shri Emonsingh M. Sangma
32. Shri T. N. Singh
33. Shri Triloki Singh
34. Shri Gunanand Thakur
35. Shri H.M. Trivedi
36. Shri Jagdambi Prasad Yadav

REPRESENTATIVES OF THE MINISTRY OF LAW & JUSTICE

1. Shri K. K. Sundaram—*Secretary*.
2. Shri A. K. Srinivasamurthy—*Additional Legislative Counsel*.
3. Shri H. C. Vermani—*Under Secretary*.

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*.

WITNESSES EXAMINED

- I. Shri K.V.K. Sundaram,
Former Chief Election Commissioner.
- II. Shri Bhuvaneshwar Prasad Sinha,
Former Chief Justice of India.
- III. Shri H. V. Kamath, *Ex-M.P.*
- IV. Shri N. S. Dass Bahl,
Advocate, Supreme Court, Delhi.

I. Shri K. V. K. Sundaram, former Chief Election Commissioner.

(The witness was called in and he took his seat)

MR. CHAIRMAN: I would like to draw your attention to Direction 58 issued by the Speaker, which provides that a witness appearing before a Committee may be told that the evidence that he gives would be treated as public and is liable to be published, unless he specifically desires that all or any part of the evidence tendered by him is to be treated as confidential; even if he may desire his evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

You are an experienced person in these things, and you have the Act as also the amending Bill before you.

The Committee would be pleased to hear your views first on this amending Bill, and then Members may like to put questions to you for clarification of any points.

SHRI K. V. K. SUNDARAM: I have gone through the Bill, and I think that there are only two points on which I find that I have any comments to make or suggestions to offer. One is in regard to the amendment which cuts out the provision about bribery and undue influence having affected the result of a Presidential or Vice-Presidential election, and the other is a provision from the purely procedural angle, namely how many members and what kind of election should join together in proposing a candidate for either of these two elections to the two high offices of the

country. One is a point of substance and the other is a point of procedure.

After running two Presidential elections, I did feel that people who really did not attach so much importance to the elections or had only the vaguest hope of getting elected were still standing for these high offices. Of course, that is the privilege of every citizen of a democratic country like ours. But, still, especially at the second election when there were as many as 17 candidates who were standing and more than half of them did not get even a single first vote, it did appear that it was an indirect attempt to bring down the seriousness of the election, and it seemed that their approach was of a frivolous character. I did mention this in my two reports and make the suggestion that in order to make them feel that they were fighting an election of a more responsible character, they should get their nomination signed by at least ten electors. I had also suggested that there might be the requirement that they must put in a security deposit, just as a candidate for a parliamentary election was required to do under the law.

While I find that the deposit provision has been accepted by Government in their Bill, I find that it is a bit too much to expect a single candidate to go and hunt for about 40 members of the electoral college, at least 12 Members of Parliament and at least 24 Members of the State Legislatures. The number of not less than 40 seems to be a little in excess of the requirement which I had in mind. It may even make things extremely difficult for a Presidential candidate to get together so many as 40 signatories.

Also, I was looking at it from another angle; namely, from the more technical angle of the nomination paper being scrutinised by the return-

ing officer which necessarily has to be done, and after that, various objections could be raised at every stage. Imagine a returning officer with 40 signatures in front of him, and some candidate or the other getting up and saying 'No, I object to that signature; I know full well that that signature is not that gentlemen's and it has been obtained by fraud or by misrepresentation or by deception' and so on and so forth. There is also the sheer practical difficulty of getting together 40 signatures. Besides, he would have to collect it from different parts of India. If it is only Members of Parliament, he may come here and find so many Members and collect their signatures. So, I am just suggesting, in regard to our main requirement, whether we could not consider saying that candidates at a Presidential election should be proposed by a certain small number of people. I would submit this for the consideration of the Committee, whether this provision is not going to make it extremely difficult for a person, besides giving rise to various other complications at the stage of scrutiny, as well as subsequently. The very object which we are having in mind will be defeated by this procedure. I think about 10 or 15 electors should do. There does not seem to be any point in saying that so many should be Members of Parliament and so many should be Members of the Legislative Assemblies. We may lighten the task of the candidate.

Similarly, I do not think that it is really necessary to have even 10 electors to propose a candidate for the

Vice-Presidential election. Of course, it is a much simpler affair. So far we have had hardly any difficulty in running these elections in practice.

Nor was there the same type of attempt at bringing down the importance of this election as was the case in regard to the Presidential election. Here again, therefore, I think that a fewer number of Members should be quite sufficient; say, for instance, five.

Following from this is the corresponding provision for filling an election petition. There, the new Bill says that it can be done by any candidate at these elections. I suppose that is absolutely necessary in order to see that, even if it is obvious that there has been no mistake in the election, he should not remain aggrieved. But we have this curious proviso that if any candidate does not choose to do so, then it must be done by about 40 electors joining together, here again, we have the same break-up of 12 Members of Parliament "at least", and 24 Members of the Legislative Assemblies "at least", in order to present a petition to the Supreme Court challenging a particular election. There again, I think the number seems to be large. At present, it is either the candidate or ten electors who could join together. It should not be very difficult for them to get together 40 electors, but even there, this number seems to be a bit excessive. But I do not attach great importance to that; it may well remain. For, one can always see to it that it is presented through a candidate, who has been unsuccessful.

Now, I came to the next point regarding bribery and undue influence. I may mention a bit of the history of this provision. In the Bill as drafted in 1952 when I was in the Law Ministry, and the Bill itself was drafted by our draftsman who had a great deal to do with the drafting of the Constitution, the late Mr. S. N. Mukherjee, in the original draft Bill, there were a number of provisions very similar to section 123 of the Re-

presentation of the People Act, that is to say, they had practically roped in all the corrupt practices, most of them, at least the major ones and the provisions were almost as elaborate as in that Act. There was also a section relating to electoral offences, namely sections 123 and 124 in the Representation of the People Act. So, those provisions were very elaborate. There was a feeling in the House, I remember, at that time that we should not or need not put in all these things in regard to Presidential elections. Thereafter, after a good deal of consideration in the Joint Committee which considered that Bill, finally it was reduced to two of the major offences or corrupt practices which might be involved in an election, namely bribery and undue influence. But, unfortunately in the Bill, there was also a provision that even if a third person, not the returned candidate or any of his supporters, is alleged even to have indulged in bribery or undue influence, still, if the result of the election had been materially affected by such conduct, it could be a ground for setting aside the Presidential election. This somehow found favour with the committee and this was included and you will find it in the existing provision.

I quite agree now that this is hardly necessary and that it should be cut out altogether, and I shall deal with it when I come to it. But on the other hand, it seems to me that we should have some provision of this type, at least in regard to the two major corrupt practices which are mentioned, partly because we had included this in the beginning, and now if we cut this out, there will always be a public feeling that we are trying to do something which might possibly take place and we are going to shield some prospective or future candidate from this sort of thing. As to whether it adds to the fairness of our election law or not is a point on which persons can hold different opinions.

I personally think that it is not desirable to cut out these two major

corrupt practices or offences which could possibly,—I do not say, will necessarily take place in an election. That is my feeling about it. I think that in the law we should keep something of this type. It is unfortunate that at the last elections, we had a great deal of mud-slinging and a very undesirable and long-draw, rail on this, where nobody's reputation appeared to have been raised a great deal. Generally there was a good deal of public talk, and naturally when you have a petition tried like this, it cannot be avoided. But even so, it seems to me that these are two major offences which the law should provide against.

After all, what we are saying is that if it is done by the returned candidate or with his connivance, then the election is liable to be set aside. In fact, there was a suggestion also that it might be made a little stiffer by putting in the word 'consent', so that if it could be shown that it was done with his consent, then the election was liable to be set aside. I think that it is quite a sound provision to have. I myself am not in favour of cutting out this provision altogether.

I should like to say something also about the question of undue influence. As hon. Members would recollect, that was the main question in the case. A certain anonymous pamphlet which grievously maligned one of the candidates in regard to his personal character was really the subject of attack by the petitioners. The argument was that by simply circulating this anonymous pamphlet in the Central Hall, and also by distributing it by post, some individual, some unknown individual had committed the offence of undue influence. Of course, I may mention again that under the law as it stands today, it is the offence of undue influence and not the corrupt practice of undue influence, although there is not very much difference between the two. There is only a very slight difference between them. This offence was committed by X, Y or Z,

an unknown individual. The further allegation was that it was done either by the returned candidate or with his consent or connivance or on his behalf by somebody else. Of course, this could not be proved to the satisfaction of the Supreme Court. Consequently, on that ground alone, the contention could have been set aside, and the court could have said that there was nothing wrong with the election. But the view which the Supreme Court took, not quite unanimously, in regard to the content of the offence of undue influence is a little puzzling. The majority of the Court held that the mere distribution of a pamphlet containing a virulent type of attack on the personal character of a candidate, which is, or may be assumed to be, false, does constitute the offence of unduly influencing the attitude of the electors to the particular candidate.

Mr. Justice Bhargava did not go to that extent, specially in view of the fact that there is another specific offence of character assassination included in the Indian Penal Code in the succeeding Section. So, he said, we have to see if there is a difference between the two and, however scurrilous or virulent may be the attack on the personal character of a candidate, it could not be said that it amounts to the offence of "undue influence". If it is not done with the intention to affect the result of an election, then even the other thing does not come at all. You may go on maligning the character of a person, any amount you like or very slightly. But it is one of the ingredients of offence that it must be done with the intention of affecting the result of an election. Without that, it does not become an offence. It may amount to libel. He committing an offence if it amounts to interference or an attempt to interfere. The whole circulation of any such pamphlet or an attack on person's character is done with the idea of bringing him down in the eyes of the electors. It is always an attempt to interfere according to the analysis given by the Chief Justice.

In this case, he analysed it in two respects. Firstly, you have the elector's freedom to make up his mind as to who is a suitable candidate and, secondly, you have to go through the mechanical process of voting. At both stages, it is said that undue influence could be brought to bear on him in various ways.

Subsequently, as Chairman of the Law Commission, while considering the Indian Penal Code, I had the opportunity of looking into this particular aspect and the Law Commission in its Report has made a recommendation that our definition of "undue influence" is extremely vague and rather wide, and, therefore, we might perhaps pin it down as in some other election laws of different countries, like, Australia, Canada, England and the United States, all democratically-run elections, and cut down the scope and ambit of this particular offence—the offence of undue influence.

If you will permit me, I would like to mention what the Law Commission thought on this point and made a recommendation. I am mentioning this because I find in the Bill to amend the Indian Penal Code, this provision has not been accepted by the Government and, therefore, this provision does not find a place in the I.P.C. (Amendment) Bill which is also before Parliament. "Therefore, it is the degree of gravity of the allegation which will be the determining factor in deciding whether it falls under section 171C or Section 171G. If the allegation, though false and relating to a candidate's personal character or conduct, made with the intent to affect the result of an election, does not amount to interference or attempt at such interference, the offence would be the lesser one. If, on the other hand, it amounts to interference or an attempt to interfere it would be the graver offence under section 171F."

In the actual case before the Court, it was an attempt to bring down the character of a candidate. Consequently, it affected the elector's mind. That

was regarded by the majority of the court as undue influence within the meaning of the Indian Penal Code.

They said: We ventured to suggest that the line of demarcation indicated in the last two sentences is very thin and does not appear necessarily or logically to follow from the wording of either Section 171C or 171G. We said:

"Whether the false statement is grossly vulgar and scurrilous or only moderately so cannot, it seems to us, make any difference to the question whether the person publishing the false statement has or has not attempted to interfere with the free exercise of the right to vote at the election. Bhargava J. took the view that mere false propaganda as to the personal character of a candidate cannot amount to the corrupt practice of undue influence; that false statement about the personal character or conduct of a candidate may, of course, be scurrilous and foul but even then the offence committed would fall under Section 171G."

That was the view taken by the Law Commission.

Then, we proceeded to make a comparative study of the laws of other countries. We found, particularly in English election law, from which we have freely borrowed so far as corrupt practices and election offences are concerned, the corrupt practice of undue influence is more strictly defined. It says:

"A person shall be guilty of undue influences—

- (a) if he directly or indirectly by himself or by any other person on his behalf makes use of or threatens to make use of any force, violence or restraint or inflicts or threatens to inflict by himself or by any other person any temporal or spiritual injury, damage, harm or loss upon or against any

person in order to induce or compel that person to vote or refrain from voting;

- (b) if, by abduction, duress or any fraudulent device or contrivance, he impedes or prevents the free exercise of the franchise of an elector or proxy for an elector or thereby compels, induces or prevails upon an elector or proxy for an elector either to vote or to refrain from voting."

So, you will see from this that English law makes it "undue influence" only if there is violence or a threat of violence including, of course, a threat to his spiritual welfare. Therefore, after a great deal of thought we suggested that we might perhaps cut down the offence, whatever happens in regard to this corrupt practice in election law, that we might reduce the offence specified in 171C of Indian Penal Code somewhat as follows:

"Whoever with intent to interfere with the free exercise of any electoral right at an election

- (a) makes use of, or threatens to make use of, any force, violence or wrongful restraint on any person, or
- (b) inflicts, or threatens to inflict, on any person injury of any kind (including social ostracism and expulsion or ex-communication from any caste or community), or
- (c) induces or attempts to induce any person to believe that he will become an object of divine displeasure or of spiritual censure, commits the offence of undue influence at an election."

We had a feeling that "undue influence" was really very widely defined in our election law and might usefully be restricted to the case of violence. In fact, we had suggested that, if it is found that either a candidate or, on behalf of a candidate, his

agent does something like that, as has been frequently complained to me in the capacity of former Chief Election Commissioner, then the punishment for such a conduct should be very severe. It should be at least three years imprisonment plus fine, and so on.

This is slightly going out of the way for present purposes. We have had this frequently-occurring complaint. At the stage of an election, there is usually nothing so indirect as maligning a candidate's character.

A person or a group of persons, particularly, among the under-privileged classes, Harijans for instance, are kept to their own basti and not allowed to go out and exercise their franchise. This is the type of undue influence which I very much resent, and I must say that quite a few instances of this type have occurred and it is these which the law ought to curb, and we have accordingly made this suggestion.

But to come back to the Bill, I think both bribery and undue influence, particularly, undue influence, defined in a more restricted way as suggested, should be there on the statute book for what it is worth. I do not say that any of us or any person would like to see a presidential election challenged with so much of mudslinging and all that, but, I think, on the whole, the law should make some provision for that.

Now, these are the three points: one is the number of electors seems to me to be excessive. Similarly, the number of persons who are required to join in an election petition is somewhat excessive although I do not attach much importance to that. Thirdly, I do feel that we should retain the reference to bribery and undue influence, with a rider that undue influence definition should be modified as suggested by the Law Commission in their report.

MR. CHAIRMAN: Before I ask Members to put questions, I would like to ask you one question. In view of

the large number of proposers and seconders having been proposed here, you think it is necessary to have a deposit from the candidates?

SHRI K. V. K. SUNDARAM: That is of course a point to consider. When we made the suggestion, we thought that the deposit—I do not quite remember, possibly I said, about Rs. 1000, may be sufficient. They have increased it to Rs. 2500. In a sense, it is something like a penalty for coming forward without any hope of success. But, on the whole, I think Rs. 2500 is perhaps too much; it might be reduced to Rs. 1000.

MR. CHAIRMAN: But do you think it is absolutely necessary?

SHRI K. V. K. SUNDARAM: I would not put it absolutely necessary.

SHRI T. N. SINGH: Mr. Sundaram's examination by us may take a longer time than we have got. We may have to call him again. We have another witness and it is already quarter to twelve. May I suggest that we may fix up a time when we may call him again?

SHRI K. V. K. SUNDARAM: I will be very happy to come here before the Committee once again.

MR. CHAIRMAN: Thank you very much. But we may utilise the time we have at our disposal and then we can postpone to some other date.

SHRI S. B. GIRI: You said—I am glad—that the deposit of Rs. 2500 is not necessary. Is it not necessary that a candidate who is going to contest must know that he has got the backing so that he is sure to get back the deposit. If the deposit is not there, anybody can contest the elections because there is no restriction and even with regard to proposers and seconders, it is very high—this number of 40 legislators—proposers and seconders. Will it not be, I mean, like free-wrestling? Anybody can go and file the nomination whether he gets through or not. Still he can go to the

people and say, 'I have contested the presidential election.'

SHRI K. V. K. SUNDARAM: It is really a question of weighing whether money means so much these days or whether it is the difficulty of getting a sizeable number of electors, Members of Parliament and Members of the Assembly to come forward and to put down in writing that they are proposing, that is to say, supporting the candidature of the person. Because we have been finding—I need not go into this at length—that the amount of security deposit of the order of Rs. 1000 or so does not deter candidates from contesting a parliamentary election or an assembly election. So much so, if a person has made up his mind and he is prepared to go round and get, the support of 5 20 or 30 or whatever we may finally decide to have, I do not think he will have any difficulty in putting up a thousand rupees or even Rs. 2500. He must be prepared to fight in all sorts of ways, including spending a lot of money. Still, I feel that you don't have to decide between the two. I did not say that. I only said that it may not be very necessary to have the deposit in addition to a sizeable number of proposers. I did not say that it would not be desirable to have both. I still feel that it would be desirable to have a small deposit. The question is; whether it is regarded as necessary or not. I said I do not think it is very necessary. That is to say, I attach greater importance to the number of persons proposing.

SHRI S. B. GIRI: When a person thinks that there was some kind of corruption or undue influence or some offence against the electoral law is committed, shall he not have the right to go to the Supreme Court to file an election petition? Is it necessary in a democracy that all the people must come and file the petition?

SHRI K. V. K. SUNDARAM: It is a large electorate and you can never be sure that if just out of fancy,

X, Y or Z, thinks—on whatever grounds he may think, you will know about it only after the trial has gone through—that some sort of an offence or corrupt practice has been committed. I do not think that it is desirable that everyone like that should have an opportunity of ventilating his idea. It is not a small tribunal like a Magistrate's court, but it goes before the Supreme Court of the land. It challenges the election of a person to the highest office in the land. I do not think we should make it so simple as all that. It must be put down as it has been put down there. Of course, if he feels that something disgraceful has taken place in running an election, naturally we cannot deny him the right to take up the case before the Supreme Court, the highest court in the land, and then challenge it. Now, we are thinking in terms of a particular elector or 15 or 20 or 30 electors joining. But if you are thinking in terms of only one single individual, not the returned candidate, it does not strike me as sufficient or necessary.

SHRI S. B. GIRI: Supposing there were mal-practices indulged by the candidates will it not amount to denial of right of freedom by not allowing a person to go to Supreme Court?

SHRI K. V. K. SUNDARAM: Apart from bribery and undue influence, there are half a dozen other corrupt practices and election offences which are liable to invalidate an election and which would enable any person to challenge the election after the election is over. But in Presidential/Vice-Presidential elections even originally, we have been content with putting down only two offences—bribery and undue influence. These offences and corrupt practices are there in our Parliamentary elections. If your suggestion is that we should throw open the whole field again I for one would not be in favour of that.

SHRI S. B. GIRI: Why? I do not think there should be any discrimina-

tion between Presidential and Parliamentary election. If a candidate indulges in corrupt practices why should it be denied to an electorate to prove those charges?

SHRI K. V. K. SUNDARAM: It is a different type of election. It is not based on adult suffrage; the electorate is not wide. It consists of responsible elected Members who are themselves representatives of the people and it should not be made very wide in that case. I cannot imagine how engaging a public servant is going to affect the election very much.

SHRI S. B. GIRI: If they are responsible people then why not one elector should be allowed to go and file an election petition before the Supreme Court? Why should ten people go?

SHRI K. V. K. SUNDARAM: I am afraid, without meaning any disrespect, there are very many whimsical individuals and supposing one such person takes the idea in his mind, nothing will stop him. So, we have to provide the safeguard and at the same time not make it too stringent.

SHRI S. B. GIRI: Suppose the offence is committed and it comes to the knowledge of one electorate, is it necessary that 39 members should know it? Is it not that one offence is enough for punishing after it is proved in the Supreme Court?

SHRI K. V. K. SUNDARAM: The idea is all the 40 persons should also join him in making this allegation. After all he himself would not be immediately and directly aware of it. It is desirable to have some sort of restriction.

SHRI H. M. TRIVEDI: You referred to one minor technical difficulty in relation to number saying at the time of scrutiny it would be difficult for the scrutiniser to come to any conclusion if challenged on one signature or two signatures. That difficulty could arise whether the number proposing

is 40 or number proposing is 20. If the contending candidate wishes to hold up the whole proceedings he could do so even in one or two cases

SHRI K. V. K. SUNDARAM: It is only that you multiply his difficulty. I was only putting it as a possibility.

SHRI H. M. TRIVEDI: You referred to the definition of undue influence which was proposed by the Law Commission in terms of the Bill before us. Would you suggest that be incorporated as part of this Bill or it should remain part of the IPC?

SHRI K. V. K. SUNDARAM: I think it will be better if you amend the IPC later. There is already a Bill before the Parliament. It could be taken up there. Either you relate it to the RP Act and refer to the corrupt practices of bribery and undue influence. There is no difference in substance between the two.

SHRI H. M. TRIVEDI: If it were not adopted in the IPC then would you suggest that that definition be included in this Bill as part of 'undue influence'.

SHRI K. V. K. SUNDARAM: Could be done, but devising a separate definition—a third definition of undue influence I would not recommend. We have one definition in the RP Act., another in the Indian Penal Code and a third in the Presidential Election Act. That is not very desirable. There was difference of opinion because in the Supreme Court Mr. Justice Mittal took a slightly different view from Mr. Justice Bhargava and the majority of the court. That was also a reason for the Law Commission to suggest revision of the definition in the Penal Code, which may be taken up in the R. P. Act later.

SHRI H. M. TRIVEDI: It does not exist in the R. P. Act.

SHRI K. V. K. SUNDARAM: It is almost the same.

SHRI H. M. TRIVEDI: Would you suggest R. P. Act to be amended?

SHRI K. V. K. SUNDARAM: Yes, I would suggest that.

SHRI RASIKLAL PARIKH: You have not given the specific number about the number of proposers and seconders. Should the number be 20 or 40?

SHRI K. V. K. SUNDARAM: I do not want this to be put in the Bill that so many Members must be of the Parliament and so many must be of the Legislative Assembly. After all to get the signatures of 40 is a considerably difficult thing. Why should we tie it down? Let all of them be the members of Parliament or of Legislative Assembly—why not leave it to the candidate. My feeling is a "signed by 'X' electors as joint proposers", leave it at that. In Clause (b) of the Bill, where it refers to Vice Presidential Election, there is no distinction between Members of the Lok Sabha and Rajya Sabha. All electors are put together. Similarly, all electors at a Presidential election.

SHRI RASIKLAL PARIKH: Would you make more categorical provision in regard to bribery?

SHRI K. V. K. SUNDARAM: There are two clauses in the existing Section, 18(1) says '(a) that the offence of bribery or undue influence at the election has been committed by the returned candidate or by any person with the connivance of the returned candidate; or

(b) that the result of the election has been materially affected—

(i) by reason that the offence of bribery or undue influence at the election has been committed by any person who is neither the returned candidate nor a person acting with his connivance;

I was referring to this clause, which should certainly go. Clause (a) should remain.

MR. CHAIRMAN: We have got another witness to examine. We would request you to come on some other day as some Members still want to ask certain questions.

SHRI K. V. K. SUNDARAM: Would it be during the course of this week or next session?

MR. CHAIRMAN: We shall have to decide.

(The witness then withdrew)

II. Shri B. P. Sinha, Former Chief Justice of India.

MR. CHAIRMAN: We have before you the Amending Bill. The Committee would be very glad to have your opinion on this. First you give us your opinion and then if Members want to put questions they will be allowed.

SHRI B. P. SINHA: I am in entire agreement with the policy behind the proposed amendments. But I think they do not go far enough. If the idea is to prevent frivolous nominations, then instead of 40 I think the minimum number should have been 100. Instead I suggest 100. Other clauses are more or less consequential or procedural. But if the main thing is to prevent the people from being nominated without even having a ghost of chance of being elected, if that is the main principle behind the proposed amendment, then as I have said, those amendments do not go far enough.

MR. CHAIRMAN: Now, Members would also like to hear from you about the election petition and the consequential changes that are being proposed in this amendment.

SHRI B. P. SINHA: Those proposals to amend the ground of attacking the election. I think, are quite in their place. In order to prevent frivolous applications through the Supreme Court, it should be for the Supreme Court to lay down rules to prevent unnecessary or frivolous applications, for example, by way of costs or by way of furnishing security and all that. This matter, I suggest,

Parliament will need the help of Supreme Court to provide for.

MR. CHAIRMAN: As it is provided in the Act, would you agree to it or not?

SHRI B. P. SINHA: Yes.

MR. CHAIRMAN: Any other thing you would like to say.

SHRI B. P. SINHA: No, Sir. I am on principle in agreement.

SHRI JHARKHANDE RAI: All these changes proposed by this amending Bill in the original Act tend to and have got inherent tendencies towards dictatorial powers leading to semi-fascism in Indian politics. What is your opinion?

SHRI B. P. SINHA: I do not think so.

SHRI JHARKHANDE RAI: As far as provision for security deposit is concerned, is it at all necessary?

SHRI B. P. SINHA: Yes, I think so.

SHRI JHARKHANDE RAI: There is a provision of many electors proposing and seconding the candidature of a person for the election of President or Vice President. Under this situation, is it necessary that there should be provision for security deposit also? Is it not unnecessary and superfluous? What is your opinion?

SHRI B. P. SINHA: That is one of the means to prevent frivolous nominations.

श्री जगन्‍मोयी यादव प्रसाद: मैं एक बात पर आप की ओरिपिनियन जानना चाहता हूँ। कानून की निगाह में विशेष परसनालटी और साधारण परसनालटी के गलती करने पर दोनों के लिए एक सा कानून रहना चाहिए या उनके लिए अलग अलग कानून रहना चाहिए। जैसे पहले यहाँ प्रिसेज थे, उन के लिए प्रिबी पर्स था और कानून में भी कुछ सुविधाएं थी, लेकिन

अब समाजवाद के जमाने में यह जरूरी समझा गया कि उनको एक लेबल पर लाया जाये, तो एक स्तर तर उन की लाया गया ऐसे ही कानून के बारे में कहा जाता है कि कानून सब को एक दृष्टि से देखता है। इसीलिए मैं आप से जानना चाहता हूँ कि कानून की नजर में अगर हम पार्लियामेंट के मेम्बर दोषी हों या असम्बल के मेम्बर दोषी हों या साधारण व्यक्ति दोषी हों तो उन के लिए कानून एक सा बर्ताव करेगा या अलग अलग ?

SHRI B. P. SINHA: The law recognises the validity of classification. Every citizen is not on the same footing. With reference to the subject matter, the law has allowed the right to classify.

श्री जगदम्बी प्रसाद यादव: मेरा सवाल सीधा सा है आप ने कहा कि ला में क्लासिफिकेशन होता है, मैं कहता हूँ कि एक गलती है, अगर चोरी पार्लियामेंट का मेम्बर करता है या असम्बली का मेम्बर करता है या साधारण व्यक्ति करता है तो कानून उस की सजा एक सा देगा या अलग अलग देगा ?

श्री बी० पी० सिन्हा: एक सा देगा।

श्री जगदम्बी प्रसाद यादव: दूसरी बात— पार्लियामेंट और असम्बली के मेम्बर का सिर्फ प्रोजेक्टर खोजा जाता है और यहां पर प्रोजेक्टर और सेक्रेटरी की संख्या सिर्फ इसलिए कि फ्रिविलस ने हो। आप बढ़ाना चाहते हैं तो फिर इसी आधार पर वह भी रेप्रेजेन्टेटिव है दिधान सभा और पार्लियामेंट के तो आप के हिसाब से वहां भी सौ नहीं तो 50 तो होने ही चाहिये ?

SHRI B. P. SINHA: The President of India being the first citizen of the State, deserves the highest consideration from all and sundry. Therefore, the person who is proposing should think that the person being proposed that the chance for being elected as President and not everybody and anybody.

1799 L.S.—4.

श्री जगदम्बी प्रसाद यादव: आप शायद एक बात भूलते हैं कि अभी जो लास्ट एलेक्शन हुआ प्रेसीडेंट को उसमें में कांग्रेस कैंडिडेट जिस को काफी समर्थन था पराजित हुआ और इंडिपेंडेंट कैंडिडेट जिस का कोई समर्थन था या वह विजित हुआ। अगर यह रेस्ट्रिक्शन लगा देते तो इस पर असर पड़ता या नहीं ?

SHRI B. P. SINHA: I think the gentleman who ultimately got elected, could certainly have more than 100 persons to propose and second. But whether he belongs to any party, that is not for me to say. Any person who is considered fit to be the first citizen of India should be able very easily to command the respect and confidence of more than 100 persons including Members of Parliament.

श्री जगदम्बी प्रसाद यादव: आप ने एक भ्रमकर बात कही है आप चाहते हैं कि सौ प्रोजेक्टर होने चाहिए। बाकी सारे ऐक्ट की आपने स्वीकृति दी है। तो हमारी जानकारी सभी चीजों पर होनी आवश्यक है। यह देण रामचन्द्र का देश है.....

MR. CHAIRMAN: Coming to the point, I think Mr. Sinha knows that this is Ramchandra's land.

श्री जगदम्बी प्रसाद यादव: मैं यह इसलिये कह रहा हूँ कि यहां पर किंग होते हुए भी एक दोष पर वह भी एक आदमी के कहने पर वह ऐडमिट किया गया इसलिए कि एक राजा के प्रति सब का विश्वास होता है। यहां आप ने कहा कि ब्राह्मरी और अनड्यू इन्फ्लूएस जिस को समाप्त करने की बात आई है उस का आप समर्थन करते हैं, जब कि वही अनड्यू इन्फ्लूएस अगर लेजिस्लेचर या पार्लियामेंट के मेम्बर के चुनाव में होता है तो उस को आप सेट एसाइड कर दें। लेकिन यह पावर आप प्रेसीडेंट और वाइस प्रेसीडेंट के एलेक्शन में नहीं देना चाहते, यह क्यों ?

SHRI B. P. SINHA: The simple reason is that the electoral college con-

sists of persons who are of the highest integrity of character in the eyes of the electors who have sent them to Parliament or the State Assemblies.

श्री जगदम्बी प्रसाद यादव : आप भारत के नागरिक पर इस तरह के एक लांछन लगाना चाहते कि आपकी रेप्रेजेंटेटिव चुनने को इटैगिटी नहीं है। क्या यह आप के कहने का मतलब है!

SHRI B. P. SINHA: No, it is not possible to have a direct election of the President. Nowhere in the world do we have that kind of machinery which ensures election by the people directly to this Presidential post.

MR. CHAIRMAN: What about the United States?

श्री जगदम्बी प्रसाद यादव : मेरा प्रश्न सीधा सा कि जो भारत का नागरिक है वह अपने प्रतिनिधि को चुनता है चाहे वह पार्लियामेंट के लिए हो चाहे असेम्बली के लिए हो, उस के लिए आप कहते कि वह अनड्यू इन्फ्लुएंस और करप्ट प्रैक्टिसेज में आ सकता है। लेकिन लेजिस्लेचर और पार्लियामेंट के मेम्बर अनड्यू इन्फ्लुएंस और करप्ट प्रैक्टिसेज नहीं आ सकते हैं। तो आप इस तरह से भारत के नागरिक पर लांछन लगाना चाहते हैं कि तुम करप्ट हो सकते हो और तुम्हारी इटैगिटी अलग है, विधान सभा और पार्लियामेंट के मेम्बर की अलग है ?

SHRI B. P. SINHA: The proposals which you are referring to proceed on the assumption that the Members of Parliament or the Members of the Legislative Assembly will be above these corrupt practices.

श्री जगदम्बी प्रसाद यादव : मेरा एक सवाल है। आपको जानकारी होगी पिछले प्रेसीडेंट के चुनाव के वक्त में एक लीफलेट बंटी थी जिस पर की काफ़ी सुप्रीम कोर्ट में गवाही दगैरह भी हुई तो वह लीफलेट अगर साबित हो कि प्रेसीडेंट के कैंडिडेट या कैंडिडेट के

किसी आदमी ने ही डिस्ट्रिब्यूट की है तो क्या यह नहीं माना जायेगा कि इसका असर एलेक्शन पर हुआ?

SHRI B. P. SINHA: I suppose that it is quite reasonable to assume that responsible persons like Members of Parliament and Members of the Legislative Assemblies will not be misguided by any misstatements, however, succrilous they may be.

श्री जगदम्बी प्रसाद यादव : मेरा सवाल सीधा सा है कि अगर यह लीफलेट बंटी है इस प्रकार के शब्दों के साथ और अगर यह साबित हो कि जो कैंडिडेट चुनाव लड़ रहा है उसी ने यह बंटवाई है तो उस का असर आप एलेक्शन पर मानेंगे या नहीं। मैं कहता हूँ कि निश्चय हो जाता कि इसी ने बांटा है और इसी ने बंटवाया है तो आप उस का असर एलेक्शन पर मानते या नहीं ?

SHRI B. P. SINHA: I have supported these proposals on the ground that I believe it to be true that no Member of Parliament or Member of the State Legislature will lend himself to such mean tactics.

श्री जगदम्बी प्रसाद यादव : मेरा दूसरा सवाल है मैंने तो सीधा सा पूछा है कि मान लीजिये एलेक्शन हमी लड़ रहे हैं और हम इस तरह का हथियार यूज करते हैं तो इस का असर पड़ता या नहीं ?

MR. CHAIRMAN: I would suggest to the hon. Member not to argue with the witness. He may put his question, and the witness would reply to it as he thinks fit.

श्री जगदम्बी प्रसाद यादव : मेरा एक सवाल और है। एलेक्शन पेटिशन के लिए जो यह कहा जा रहा है कि 40 मेम्बर अगर कंविस हों तो वह दी जा सकती है उस के बजाय अगर पांच ही किसी मैटीरियल को लेकर कंविसड हों जो उन की नालेज में आया हो, जिस से

वह समझते हो कि एलेक्शन बिलेंज करना चाहिए तो इस आधार पर यह जो इतनी संख्या दी गई है वह कम की जा सकती है या नहीं ?

SHRI B. P. SINHA: I have said in the very beginning that I am in favour of making these election petitions as strict as they could be made according to law. Therefore, I do not think that these restrictions are not well founded.

SHRI JAGANNATHRAO JOSHI: Normally, it could be taken for granted that an elected Member whether of the Legislative Assembly of a State or of Parliament would be above all doubts. I accept it fully. Never the less, human nature being what it is, man is prone to err, and when we can file a petition against a Member of the Parliament or the State Assembly on these corrupt grounds, the very same individual who is an elector here can stand also for election to the highest post in the country. When he is prone to commit a certain offence when he is contesting for an Assembly seat or a Parliamentary seat, can we not take it for granted that the very same thing can be committed when a person fights election for the highest post in the country? So, would you not like to retain that clause? If that clause becomes superfluous or redundant, then it would be so much the better. There are so many provisions even in the IPC which are not brought into action, nevertheless, they are there in the Act. As a precautionary measure, therefore, even if it is never resorted to, do you not think this provision relating to bribery and undue influence may be there in the Act, in view of what happened during the last elections?

SHRI B. P. SINHA: No, I do not think so.

SHRI G. VISWANATHAN: You said that the Supreme Court should provide for certain things regarding the offences relating to bribery and corruption which are sought to be

deleted by the present Bill. Could you throw some light on this?

SHRI B. P. SINHA: I did not say that.

SHRI G. VISWANATHAN: I think you said it. I have noted it down also.

SHRI B. P. SINHA: I said that the Supreme Court would lay down rules for regulating the procedure for filing election petitions, including a rule as to security for costs and other things. I did not say anything about the Supreme Court in relation to bribery or corruption. I did not say that.

SHRI G. VISWANATHAN: What is your view regarding the deposit amount of Rs. 2500?

SHRI B. P. SINHA: To my mind, it is not enough, because this is intended to compensate the party, for the loss incurred by him in defending himself and winning his point. Even in ordinary cases, in the old days, before the Privy Council, the security for costs was Rs. 4000. That figure of Rs. 4000 would now be much more than Rs. 10,000 in monetary terms. The Supreme Court in its wisdom has reduced that amount to Rs. 2500 for ordinary litigants, for ordinary cases involving litigation worth about Rs. 20,000. But where Presidential election is concerned, the matter is much more serious, and expensive.

SHRI G. VISWANATHAN: Will it not mean that this highest post of this country will be reserved only for the higher or affluent sections of society?

SHRI B. P. SINHA: Not necessarily.

SHRI G. VISWANATHAN: According to you, the number of electors should be 100. Would you like a fixed number of MPs and a fixed number of MLAs also to be prescribed, or should it be left to the candidate?

SHR B. P. SINHA: Well, there, other considerations can come which do not arise in the case of Presidential election.

SHRI G. VISWANATHAN: You supported the deletion of the grounds of bribery and undue influence from this present Act. Even if India were to be converted into a Utopia, will not offences be committed in the future even as they are committed now-a-days also? Will it not be so, even if it were to be a Presidential or Vice-Presidential election? Why don't you anticipate?

SHRI B. P. SINHA: As I said already, this provision proceeds from the assumption, and I think very well-founded assumption, that Members of Parliament, who are members of the electoral college will not lend themselves to such mean tactics, in the election of the first citizen of India.

SHRI G. VISWANATHAN: Will not the public think that the MPs and MLAs, want to shield themselves by deleting these two things from the Bill.

SHRI B. P. SINHA: I think the public will feel that the legislators think highly of themselves, which they are entitled to.

SHRI TRILOKI SINGH: This relates to the scrutiny of nomination papers. In the existing law, I think the learned witness knows that there is no provision for security of nomination, whereas in the amendment, a new Clause has been put in 5E—vide Page 4 of the Bill. Will it not be better in the opinion of the learned witness that this provision for scrutiny should be altogether done away with? This is my first question. My second question is this.

SHRI B. P. SINHA: What is the first question?

SHRI TRILOKI SINGH: In the existing law, the provision for scrutiny of nomination papers does not

exist, whereas, the—Bill makes the provision for it. Not only that. The proposed provision is that a nomination paper can be rejected if the Returning Officer thinks that the signatures of the proposers and seconders have been obtained by fraud. Also, Sir, in so far as the Returning Officer is concerned, he will only hold a summary enquiry. How can fraud be established in the summary enquiry? So, my two questions in the same connection are, whether it is necessary for the Returning Officer to scrutinise the nomination paper before—it does not exist in the present law—and the second question is, if it becomes necessary, will this new addition of the rejection of nomination paper on the ground that signatures have been obtained on fraud, should be there? Will it not lead to further complication and make it impossible for the Returning Officer to hold that fraud has been committed by summary enquiry? I find incongruity between the two.

SHRI NITIRAJ SINGH CHAUDHARY: I would like to mention that the provision for scrutiny of nomination does exist in the rules—the Presidential and Vice-Presidential Election Rules 1952 and this is Rule No. 6.

SHRI TRILOKI SINGH: This is not in the Act.

SHRI NITIRAJ SINGH CHAUDHARY: These rules are framed under the Act.

SHRI TRILOKI SINGH: If this is so, my second question is that, nomination papers may be rejected on the ground that signatures of the proposers and seconders have been obtained by fraud. It does not exist. I would like to remind you, Sir, and the learned witness that in the Representation of the People Act, there is no such provision like obtaining signatures by fraud. If they are not genuine, the papers will be rejected. Fraud leaves scope for so much confusion and exposes a candidate to unnecessary risk. Apart from that, it

would not be possible for any Returning Officer to give a finding on fraud by summary enquiry. I would like the learned witness, with his wide experience as an eminent jurist of this country, to enlighten this Committee as to how does he think about it.

SHRI B. P. SINHA: These proposals proceed on the necessity of being so strict about the nomination to the Presidential election, and therefore, that provision which you just referred to, is quite in keeping with that necessity to make the election as fair and as strict, as can be made under the law.

SHRI TRILOKI SINGH: My second question is this. In view of the fact, and rightly held by the learned witness, that the electorate consists of the elected representatives of the people, whether they come from the Assembly or the Parliament, is it necessary to have any provision for filing an election petition? I would like to remind the learned witness that there is no such provision in other democratic countries. In view of the fact that Members of Parliament and Members of the Legislative Assemblies are elected by—pure means and not corrupt means, and they are ordinarily thought not to be susceptible to any influence, corruption or bribery or any such thing, it is not necessary to have just a provision for an election petition in the case of President. No such provision obtains in USA or in other democratic countries.

SHRI B. P. SINHA: In USA, the procedure for election of President is quite different from what we have in our country. So, there cannot be any comparison between the President there and the President here. But, as we are following the Rules of Procedure, which entitle voters of the electoral college, to propose and second names for President and Vice-President, well, it should be open to those very persons constituting the electoral college to question it if and

when they are satisfied—at least a reasonable number of them are satisfied—that the election has been vitiated by certain things which should not have happened.

SHRI TRILOKI SINGH: If a section of the electorate think that the election has not been conducted in a proper manner, then, it follows that whether the provision for corrupt practices should be retained or not, or the election may be set aside only for non-compliance of rules or by the rejection of nomination papers etc. The question is whether the provision should be retained or not. If an election petition is necessary, and if the electorate think that the election has been obtained by means of corrupt practices or undue influence or something like that, is it necessary or not that this provision should also be retained?

SHRI B. P. SINHA: This provision for election petition has been there and it is continued in these proposals with a view to ensuring that the Rules of Procedure have been strictly followed. That is all.

SHRI TRILOKI SINGH: Corrupt practices may be committed. We should not forget that. We should not lose sight of the fact that in a recent case, on an election petition in the case of Presidential election, the Supreme Court has held that undue influence was committed, but it was not with the connivance of the candidate. That finding is there. I would like to know whether an election can be set aside for non-compliance of rules or corrupt practice considerations should also be there.

SHRI B. P. SINHA: I have already answered the question that I do not think that the proposals are not well-founded in the very nature of things, namely, that the electoral college consists of very respectable persons—Members of Parliament and Members of Legislatures.

SHRI TRILOKI SINGH: Therefore, they are not capable of committing any corrupt practice, or susceptible to undue influence.

SHRI B. P. SINHA: Naturally.

SHRI P. K. GHOSH: The hon. witness has said that the Members of Parliament and the State Legislatures, will not adopt corrupt practices or any undue influence, and therefore, he supports the deletion of the clause on bribery and undue influence. But, Sir, there has been instances where election petitions have been filed, in elections to the State Councils, where the electors are Members of State Legislatures, and in the Court of Law it has been established that those Members adopted corrupt practices. In view of those finds of the High Court and the Supreme Court, will the witness reconsider and change his views?

SHRI B. P. SINHA: No; I do not think I should.

SHRI P. K. GHOSH: Secondly, since this clause of bribery and corruption was there in the original bill, and filing of election petitions on these grounds was provided for, don't you think that the public would feel that we have legalized corruption and undue influence, if we delete this clause at this stage?

SHRI B. P. SINHA: I think not.

SHRI RASIKLAL PARIKH: You know that the existing law has this clause. Would it not amount to a certain connotation if we remove it; the position would be different if it had not been there. It may probably mean two things; one, that the framers of the original law had some doubts about the corruptibility of the MPs and MLAs; and the new law does not have that doubt. Would it not connote that a really corrupt man, with the knowledge of election techniques, can succeed in the election, practising corruption? Not that this is done; but would not the removal

of the existing provision amount to an open invitation to fight this election, practise corruption as much as possible and get elected?

SHRI B. P. SINHA: Certainly not.

SHRI PILOO MODY: It has been stated that this provision about corrupt practices originally existed; and as it has been deleted in the draft bill, it should be left out. I would ask the learned witness. "if this provision has existed all these years, has anything substantial happened to justify its election from the existing law?"

SHRI B. P. SINHA: I think it was a mistake to have included it then.

SHRI PILOO MODY: Secondly, we have been labouring under certain suppositions about the quality of the electorate. One of the Hon. Members has pointed out that these very people form the electoral college for the Presidential election. They have themselves been charged for corrupt practices in the courts. Cases against them have sometimes been upheld; and sometimes dismissed. Are we to accept the supposition, so that every thing looks very rosy outside, or are we to accept the reality as we have seen it?

SHRI B. P. SINHA: To my mind, the reality is that Members of Parliament and the members of legislatures are not, by and large, persons who stoop to that kind of practice.

SHRI PILOO MODY: How would you explain the numerous election petitions and the numerous judgments that have gone against the elected candidates?

SHRI B. P. SINHA: My impression is that most of those allegations of fraud, have failed.

SHRI PILOO MODY: On grounds of insufficient evidence. That is because we follow the practice of getting evidence on the lines of British jurisprudence. But there is something else involved. We have found that,

in the past, even for Presidential election, the courts have passed certain opinions, made certain strictures which go to prove that there was something more than fair-play involved in these elections. Would you consider that, as an indication of the fact that these elections are not as free as we would like them to be?

SHRI B. P. SINHA: In this world, you cannot expect everything ideal; but having the realities of the situation in view, it is wisdom to bar the door to allegations of fraud and corrupt practices. It is very easy to make them, but very difficult to make out.

SHRI PILOO MODY: May I, therefore, suggest that not only by virtue of the fact that the electorate is a small one; and the office for which the election is taking place, although the highest in the land, is really fought by people who are not directly concerned with the election as such? In other words, the office of the President is fought by an election in which the President or the President-to-be is the candidate. He is his own election agent. But the work is done by an entirely different set of people not responsible to the election at all. Therefore, I would suggest to the honourable witness that not only should this provision be retained, but it should be strengthened. In other words, there should be vicarious responsibility placed on the candidate for any acts committed by those who are ostensibly in support of that candidate.

SHRI B. P. SINHA: I would just point out that if somebody with a large purse is interested in questioning the election of the President, he can carry on the litigation for years; and all those years, the election of the President will be in the melting pot and that should not be the state of affairs in the election of the first citizen of the country

SHRI PILOO MODY: Then how would you react when a man with a

large purse is able to ensure that the candidate of his choice gets elected?

SHRI B. P. SINHA: As I said before, it is presumed that all those gentlemen who have get elected to the Parliament and the legislative assemblies have come by fair means and will not countenance any unfair means to be adopted in this election.

SHRI PILOO MODY: Thank you, Sir.

SHRI SAMAR MUKHERJEE: The learned witness expressed the opinion that the number of proposers and seconders should be raised to hundred and the relative proportion between the MPs and MLAs should also be retained. That proportion is one is to two. One MP is equal to 2 MLAs. For a candidate for presidential election to get the support of hundred voters and on the basis of the relative proportion, there are two possibilities. Only on the basis of the strength of the party a candidate gets the support of hundred proposers and seconders or on the basis of money, because only the strongest party can mobilise hundred seconders and proposers for a particular candidate. But if you look at the present strength of the opposition and the strength of the Ruling Party this proposal made by you amounts to wiping out of the opposition candidates. Only the Ruling Party is entitled to set up a candidate because only the Ruling Party can mobilise hundred seconders and proposers. That means if your suggestion for only one party rule is granted then it is ensured that the President will be the man of the Ruling Party because no other opposition party can mobilise hundred proposers and seconders. Or a multi-millionaire can become President who has enough money who can purchase hundred proposers and seconders, purchase MPs and MLAs. That means your proposal only means that only the Ruling Party will rule and select a candidate for President and all the oppositions are completely ruled out of the picture or a multi-millionaire who has enough money who can pur-

chase MPs and MLAs as seconders and proposers only he can have the chance of election. In the background of this proposal it leads to further dictatorship.

SHRI B. P. SINHA: I will just like to remind the hon. Member as he referred to more than once in this question that let us face the realities. What are the realities? The Electoral College for the presidential election will be of about 4000 voters. If in an Electoral College of 4000, a person is not able to command the support of hundred members, I do not suppose he has any chance at all to get elected. And the idea behind the Bill is to keep out persons who just for the sake of fun like to get nominated without any chance of being elected.

SHRI SAMAR MUKHERJEE: Your suggestion implies that at least 2 1/2 times MPs should be proposers because in the existing clause (b) it provides 40 as proposers and seconders. Now 12 MPs are necessary and if it is raised to 2 1/2 times that means 30 MPs will be necessary to support the candidate. If you know that no opposition has 30 MPs, so by your proposal you are depriving the opposition party from contesting the election.

MR. CHAIRMAN: Why you are pessimist.

SHRI B. P. SINHA: One who has a chance of getting elected he should be nominated.

SHRI SAMAR MUKHERJEE: That means if a candidate gets elected only he will stand, others not

SHRI B. P. SINHA: My proposal assumes that a person may be respectable enough to command the votes of not only one party but of several parties put together. They may be in the opposition, it may not be the Ruling Party.

SHRI SAMAR MUKHERJEE: The alternative is purchasing of the MPs and MLAs.

SHRI B. P. SINHA: It is far from my suggestion.

SHRI T. N. SINGH: You seem to assume that by and large MLAs and MPs are above corrupt practices. Am I right?

SHRI B. P. SINHA: Yes.

SHRI T. N. SINGH: In the Representation of People Act it is said that an MLA and MP can be unseated for corrupt practices. That the possibility of his being corrupt is assumed in the law as it stands today. In the whole scheme of things as the Constitution stands today nobody is supposed to be above law and therefore, there is provision in the law before and even now that even the President can be sued for his election.

SHRI B. P. SINHA: There is equality before the law. With equality I also assume that for certain purposes there may be special provisions and the presidential election is a very special matter.

SHRI T. N. SINGH: Now under the ordinary law of the land any person, even the highest office of the President, is liable to be impeached at least in the House and in other cases before the court for bribery and corrupt practices. Is that not so?

SHRI B. P. SINHA: Well that provision has been made, I suppose, for very very special circumstances and for very rare cases.

SHRI T. N. SINGH: So the assumption is that even the President can be impeached for offences of bribery and corruption and, therefore, why should an exception be made in this case?

SHRI B. P. SINHA: Well, the hon. Member may please remember that in the case of ordinary election to the Assembly and Parliament there are hundreds of thousands of electors in which all types of people are included but in the case of the presidential election the electoral college by and large consists of people who are very honourable gentlemen. Therefore as

I said before, the law proceeds on the assumption that, by and large, they will not be a party to that. If one or two persons indulge in any corrupt practice, that will not affect the elections either way.

SHRI T. N. SINGH: Even though the President is elected by such a select body of persons, he is to be amenable to law for offences of corrupt practices. Why such an exception be made in the process of an election?

SHRI B. P. SINHA: One or two persons may become so mean. Sometimes, even the highest person may become mean. But the possibility of one person becoming corrupt is not the same thing as the possibility of 4000 and odd persons becoming corrupt or a majority of them becoming corrupt.

SHRI T. N. SINGH: Under the law, the assumption that even an exception should be punished is always there. Why should we depart from that here?

SHRI B. P. SINHA: Talking of law in general, there is a presumption in favour of good faith and honesty.

SHRI T. N. SINGH: Now, there are two different stages, namely, one is the filing of the nomination and the other is the election petition. The law provides for two contingencies. In the case of election, there is the election petition and in the case of nomination, there is the scrutiny and all that. The earlier witness who has quite a bit of experience as the Chief Election Commissioner felt that to have a large number of nominations, proposers and seconders, may raise difficulties when issues regarding the identity of a particular proposer or seconder and their fraudulent signatures are raised. Therefore, he was of the view that there should be as few as possible proposers and seconders and nominations. Would you in the light of that practical experience like to give your views ?

SHRI B. P. SINHA: I do not suppose there is any difficulty about the

identity of Members of Parliament and Members of Legislative Assemblies.

SHRI T. N. SINGH: About their signatures.

SHRI B. P. SINHA: I suppose the Members of Parliament and Members of Legislative Assemblies do use signatures almost everyday. It should not be difficult to find out whether the signatures are genuine or not.

SHRI T. N. SINGH: Under the law as proposed it will not be possible to raise the issue of a fraudulent signature of a particular proposer and seconder....

SHRI B. P. SINHA: That stage is reached at the time of nomination itself.

SHRI T. N. SINGH: After all, to prove whether 100 signatures are genuine or not will take time.

SHRI B. P. SINHA: I suppose the idea is that the Presidential election should not be in doubt for any length of time. It should be determined as quickly as possible.

SHRI T. N. SINGH: It should be within the limits of observance of certain propriety of behaviour.

SHRI B. P. SINHA: Yes; that is presumed and the contrary has to be proved.

SHRI T. N. SINGH: If the objective is to make matters simple and expeditious, let there be not more than, say five nominations. Let us not say there shall be no election petition. We can limit that and make it simpler. If that is the objective, why not do it in a big way?

SHRI B. P. SINHA: I will not object to deleting election petition altogether. As it is, I suppose, the time may come that that also may get deleted.

SHRI T. N. SINGH: I think, your proposition that you might do away with election petition is most astound-

ding that I have come across upto now. Our entire conception of the Constitution is that even the President is not above law.

SHRI B. P. SINHA: I only suggest that the President's election should be not left in doubt for any length of time. After all, he holds his office as the first citizen of the State and we should eliminate all possibilities of delaying matters relating to his election.

SHRI T. N. SINGH: As a member of the Press Commission, I had occasion to come across numerous cases of scurrilous propaganda both by very responsible persons as well as by very leading newspapers. The Chairman of the Press Commission himself was very much concerned about this trend in the country. Ours is a young democracy. Our experience shows that even Presidential elections are not above this scurrilous propaganda. May be done by any person whatsoever, but it is there. Would you like some clause to be inserted here which will prevent or ban or make it an offence to indulge in scurrilous propanganda on the occasion of the Presidential election which may benefit a particular person whoever may be the beneficiary but if he is a beneficiary either directly or indirectly of such a scurrilous propanganda, he should be made punishable.

SHRI B. P. SINHA: I am entirely in favour of including a provision, if there is none, against scurrilous statements defaming the character of the person involved in the election.

SHRI T. N. SINGH: There is one more question. In a young democracy there are occasions when there is an apparent need for changing the constitution from time to time but the experience of older democracies shows that if time is allowed to

operate, many of the amendments which appeared to be necessary on account of the judgements of the Supreme Court, might be met by case law, practice, traditions, conventions, etc. Would not ourselves, being a young democracy, not have a little patience and allow healthy traditions to grow on their own rather than try to legislate for every little contingency that might arise. I would like to have your views as an experienced lawyer, an experienced jurist and Judge.

SHRI B. P. SINHA: Speaking for myself, I have always thought that our Constitution must not be too detailed. It makes provision for so many things which we should not have made provision for. But, as the Constitution is there, we have got to respect it and give effect to it as best as we can.

SHRI T. N. SINGH: I am asking the question about frequent amendments to the Constitution. Should we not allow time, suffer a little—in the life of a nation, a few years does not matter much—so that healthy conventions and traditions grow?

SHRI B. P. SINHA: If we have as brief a constitution as the USA has, the occasion for amendments would be few and far between but as we have made provisions and as they are very elaborate in every detail, even as to the age of retirement of Judges, naturally, with the change of times and as time passes and as we get more experience, we have got to amend the Constitution.

SHRI T. N. SINGH: Frequently?

SHRI B. P. SINHA: If need be, yes.

MR. CHAIRMAN: Thank you Mr. Sinha.

(The meeting then adjourned to meet again at 15.00 hours)

(The Committee re-assembled at
15.00 hours)

III. Shri H. V. Kamath, Ex-M.P.

(The witness was called in and he
took his seat)

MR. CHAIRMAN: You have seen, Mr. Kamath, direction 58. I need not repeat it again. You have got Amending Bill. I hope you have gone through it. The Committee will be glad to hear your point of view. You are an experienced public man as well as an ex-M.P.

SHRI HARI VISHNU KAMATH: At the outset I would like to thank the Committee for inviting me and thus affording me an opportunity for expressing my views on this important Bill. I am interested in this Bill from various points of view.

I was a Member of the Provisional Parliament which in March 1952 enacted the principal Act. I was also on the Select Committee which was constituted with regard to that Bill. The Committee presented the Report and the report was adopted by the Provisional Parliament in March, 1952. I would like to say in that connection that when the report on that Bill was presented to the provisional Parliament, the then Minister Incharge Dr. Katju—Minister for Home and Law welcomed the report. He was enthusiastic about the report. I would like to quote briefly what he said on that occasion. I am not reading his whole speech; but only a part thereof. Dr. Katju said, "It is a matter of great personal gratification to me that the Select Committee has been able to present an unanimous report; and as a result of its labours, the procedure has been very much simplified." Barring a couple of amendments, the report of the Select Committee was adopted; and the amendments that were made also tended to make the bill more stringent, which was all to the good. Since then we have had

four elections to the office of the President; and this principal Act has been in force since 1962, and it was not thought necessary to amend it till now. The impression has, therefore, gone round unfortunately that something must have happened at the last election held in 1969, which has provoked the introduction of this bill in the Parliament. You will kindly permit me to make a few observations on what happened during that election. According to my humble judgement, in all humility, but with all earnestness, I would say that that election was a very unpleasant experience. It was the only election of its kind so far, in more ways than one. Such thing did not happen in any one of the elections held in 1952, 1957, 1962 or in 1967. In 1967, there was a little activity, which was perhaps not quite desirable; but not to the extent, nor of the same magnitude as was witnessed in 1969. Some of the actions done in connection with that election were of such a low order, that even in elections to Parliament and State legislatures, I am not sure whether such actions were committed. I am not talking in the air; but I depend for support, on the observations made by the Supreme Court in their very elaborate judgement of 1970, in connection with the election which brought Mr. V. V. Giri to the Presidentship of the Indian Union. The Supreme Court, in which the power is vested under the Constitution to decide election disputes pertaining to the Presidential and Vice-Presidential election, entertained the election petitions filed by the requisite number of electors and, after a hearing which lasted several months, they delivered judgement, sometimes in 1970. But the strictures they passed—I will not say they made observations—are most relevant to the desirability of this bill. Because, apart from certain procedural matters which have been sought to be made quite clear in this bill, the crux of the bill and its most essential provisions are two-fold; number one is the provisions relating to nomination of the

candidate for Presidency and Vice-Presidency; and number two, is about the attempt that is being made via this bill to delete the provision in the principal Act relating to bribery and undue influence. I will come to that last, because that is the most obnoxious part of this black bill. I am sorry to use this term.

MR. CHAIRMAN: It would be better if you confine yourself to the bill, whether it is black or white.

SHRI HARI VISHNU KAMATH: I would say it is colourless, neither black nor white. It has not been passed by Parliament yet. I hope Parliament will not pass it as it is. With your permission, I would read out some relevant extracts from the judgement of the Supreme Court on the election petition filed in regard to the Presidential election of 1969. There were 3 separate judgements. A five-judge bench was constituted; and there were three separate judgements, viz., the majority judgement of Mr. Justice Sikri, Mr. Justice Shelat and Mr. Justice Vaidyalingam; and then the separate judgement of Mr. Justice Bhargava and another one by Mr. Justice Mitter. While the petition was dismissed ultimately, the observations made by them go to the root of the matter, which is the subject-matter of this bill. The most important fact which was discussed in the judgment of the Supreme Court, was the charge of undue influence, which is now sought to be removed altogether from this bill; and all the judges, except perhaps Mr. Justice Bhargava held that there was undue influence and there was proof adequate enough to show that it was so. The only missing link under the Act was that either the connivance of the candidate had to be proved or if that was not proved that the result of the election materially affected had to be proved. Neither had been proved and so the petition was dismissed. I will read

one or two paragraphs from the Judgment of the Learned Judges of the Supreme Court. The three Judges in their judgment referred to a pamphlet which had been distributed by some persons against one of the candidate for the presidential office, Mr. Sanjiva Reddy and very strong strictures have been passed by three judges on these activities. The three judges in their judgment observed: "A series of anonymous attempts in a country like ours would have as much, if not more, effect as one open powerful attempt. It would be dangerous to provide a sanctuary to anonymous attempts. On the facts of this case, can we say that the distribution in the Central Hall is the same thing as anonymous publication? If a member of Parliament distributes a pamphlet, is he not identifying himself with it unless he expressly disassociates himself from the pamphlet? It seems to us that the distribution in the Central Hall by members of Parliament has the same effect as if they had endorsed the pamphlet in writing. We are accordingly of the opinion that distribution of the pamphlet by post as also distribution in the Central Hall constituted an attempt to interfere with the free exercise of the right to vote within Section 18 of the Act." That is to say undue influence was exercised by these means in this case. Then I come to the same judgment para 34: "We may here compare the provisions of Section 18(1)(a) and Section 18(1)(b)(i), read with Section 18(2) with Section 123 of the Representation of the People Act 1951. This section lays down corrupt practices for the purposes of that Act which include undue influence upon proof of which an election has to be set aside." With those provisions undue influence and bribery will remain. I will now continue: "Though undue influence for purposes of that Act has the same meaning as in the present Act, that section does not go as far as Section 18 of the present Act so as to provide that even if it is committed by a third party, that is to say, not an election agent nor a person with the

consent of the returned candidate, the election would still be declared to be void, provided of course that it has been materially affected by such undue influence. From the fact that both these Acts were enacted by the same Legislature and Act 31 of 1952, was passed after the Representation of the People Act was passed, it is clear that Parliament deliberately made Section 18 stricter than the Representation of the People Act firstly by using the words "connivance of the returned candidate" instead of the words "his consent", and secondly, by including undue influence committed even by a stranger, having nothing to do with the returned candidate, as a ground for declaring the election to be void, the only condition in respect of such an act being that it should have materially affected the election. The object of doing so is obvious, namely, that Parliament wanted to ensure that in respect of an election for the highest office in the realm the election should be completely free from any improper influence emanating even from a third party with whom the returned candidate had no connection and without any connivance on his part. The only limitation is that in such a case it has to be established that the election was materially affected." Then towards the close of the judgment the three judges have remarked that a number of witnesses have not told the whole truth. Very severe stricture upon the witnesses. I will read one paragraph from Mr. Justice Mitter's judgment.

It comes towards the close of his judgement, on p. 239:

"The litigation was not one of an ordinary type and it was conducted with great zeal on either side. It has divulged a sad lack of responsibility and uprightness in the elected representatives of the people figuring either as witnesses for the petitioners or as witnesses for the respondent. In a case like this where both sides are responsible for putting into the witness box a large number of persons who deliberately gave evidence which was not true"—

a most damning statement, it is unfortunate 'deliberately gave evidence which was not true'—

"the proper course is not to award costs even to the successful party".

Before I close this part of my evidence, I would like to refer to two or three paragraphs in the majority judgement also which have got a bearing upon the subject matter of this Bill—that is the judgement of Sarvasbri Sikri, Shelat and Valdyalingam, pp.72/73, para 113. I am not going to read the whole of it, but only the opening sentence:

"Shri Kanwar Lai Gupta, MP P. W. 11, wrote a letter ext. P. 7 on August 14, 1969, to the Chief Election Commissioner. It is urged that the first para of the letter clearly indicates the distribution in the Central Hall".

I shan't waste the time of this Committee by reading the whole paragraph, but towards the end of the paragraph, on page 73, there is a very enlightening piece of observation which merits reading:

"In our opinion, this letter which is contemporaneous strongly corroborates the story told by the petitioner's witnesses that some persons alleged to be the supporters of the Prime Minister were distributing the pamphlet in a way other than post"....

that is exercise of undue influence....

"Reading the letter as a whole, we would interpret the words 'active in it' as active in the distribution because the sentence in which it occurs follows immediately the sentence "These pamphlets are being distributed by the supporters of the Prime Minister".

Then kindly turn to the bottom of p. 206:

"The pamphlet in this case plumbs the depths of filth and meanness seldom reached"....

this is Justice Mitter's judgement—

"It was not a mere attempt to dub Shri Sanjeeva Reddy as a man generally devoid of good principles. It accused him of conduct wholly unbecoming a gentleman, not to speak of a person who aspired for election to the high office of the President of India and charged him with acts of misdemeanour towards members of the other sex giving instances, and in most cases mentioning the occasions at which he is said to have committed the indecent acts imputed to him. It was calculated to engender strong prejudice in the minds of electors against Sanjeeva Reddy both in his personal capacity and as being the nominee of a group of persons described as usurpers of power in the Congress Party. It is difficult to find suitable words"....

this is very interesting—

"to condemn the making and publication of such a vile pamphlet in an election to the highest office in the land and it is certainly a great pity".....

please mark the words—

"that the authors thereof"—
of the pamphlet—

"have not been tracked or suitably dealt with".

One more paragraph I would like to read: it is on page 216, para 319:

"Although the pamphlet on the face of it was anonymous, there are certain indications in it to show its probable origin. The document purports to be addressed to 'fellow Congress Members of Parliament and the Vidhan Sabhas' by 'Congress Workers Committee to combat the Syndicate' and bears the date 9th August"—

a historic date in our struggle for independence, as you are well aware. I won't read the rest of it. I hope you, Chairman Saheb, and the other hon.

members will have enough time to read the entire paragraph. It is interesting to read the entire paragraph and I hope you will kindly find time to read it at your leisure.

The last one is at page 219, para 322:

"At or about this time, there was frequent reference in the daily newspapers to a group in the Congress dubbed as syndicate and another group described as Young Turks"—

who are still active, I think—

"who were in open rebellion against the syndicate. The pamphlet shows that the authors thereof were of the view that the Prime Minister was attempting to give what according to them was a correct lead to the country and that she was sought to be thwarted by the members of the syndicate. So much so that the latter were said to have entered into a conspiracy to oust the Prime Minister from her position and set up a coalition government. This is sought to be supported by writing ascribed to Smt. Tarkeshwari Sinha as openly threatening the defeat of the Prime Minister by the syndicate"—

This is the relevant portion:

"There are thus strong indications in the pamphlet to show where it could have come from and who were interested in the defeat of Shri Sanjeeva Reddy and the motive behind this move. It has come out in the evidence of a number of persons examined on behalf of the respondent some of whom admitted themselves to have been described in the press as Young Turks, that their views about the management of the affairs of the Congress Party by some senior members of it described as syndicate was similar to that expressed in the pamphlet..."

That is all I would like to read from the Supreme Court judgment.

Now, with your permission. I would like to make a few more general observations in regard to this Bill. As I said earlier, this Bill has come in the wake of that election of 1960 and, particularly, so after the strictures passed by the Supreme Court in their judgment. Therefore, the motives of the Government have become suspect in the eyes of the people with regard to the genesis and the provocation for this Bill. It is just because the Supreme Court made those strictures with regard to undue influence particularly. Fortunately, there was no allegation of "bribery" or, in a way, it could not be proved. But the Supreme Court did hold that there was undue influence.

What does the Statement of Objects and Reasons say? It took my breath away when I read:

"(4) The ground relating to the offence of bribery or undue influence for challenging an election to the office of President or Vice-President should be omitted altogether."

This is a bald, bare, statement without assigning any reason or even any plausible reason. I have not had any access to any secret document except once only in regard to CBI Report on Orissa affairs some years ago. About the Election Commissioner's Report, whether that Report has made this recommendation or not, I am not aware. Whether it did give or did not give reason for this omission is nowhere stated.

Look even at the opening paragraph of the Statement of Objects and Reasons. I am sorry to say that the opening paragraph of the Statement of Objects and Reasons has been put before Parliament in a very light-hearted manner—I am using the word "light-hearted" that finds a place in this paragraph. After all, the Supreme Court judgment is a very important judgment and I may even

say it is a historic judgment. Please read the second sentence of the opening paragraph. It says:

"Another matter which is of equal, if not greater, concern is the light-hearted manner in which persons resort to a court of law...."

SHRI K. P. UNNIKRISHNAN: Is the witness giving evidence before the Committee or making a political speech here?

SHRI HARI VISHNU KAMATH: If the Chairman says it is irrelevant, I will stop.

SHRI PILOO MODY: He is making a very fair comment.

MR. CHAIRMAN: You have sufficiently dealt with that point. You go on.

SHRI HARI VISHNU KAMATH: This is the Bill before us. The Statement of Objects and Reasons is a part of the Bill. It says:

"Another matter which is of equal, if not greater, concern is the light-hearted manner in which persons resort to a court of law for challenging the election to the office of the Head of the State."

Nobody will say that it was challenged in a light-hearted manner. The Supreme Court did hold there had been undue influence, that it had been exercised but only the link with the candidate was missing.

I venture to submit that you, Sir, and your colleagues will agree that elections, whether to the office of President or Vice-President, whether to Parliament or to State Legislatures, should be pure, free and fair and that the purity of elections is something which goes to the root of the matter in every election. So much so that even the United State which in some quarters is dubbed as reactionary and un-progressive and all that, has enacted a law recently with regard to this. I shall come to that later. Now, the Bill before the Committee could be looked at from three dif-

ferent angles, can be examined from three different aspects. One is the procedural matter. About that, I think it is good that so many things have been clarified. I find myself free to say that the election petition that I filed after having contested unsuccessfully the election to Vice-Presidency in 1969 has perhaps led to some procedural clarifications. I would not dwell on that and waste your time.

I would now come to the crux of the matter. In the Bill one of the main provisions is the nomination, the nomination of candidates for these two highest offices in the land. I will deal with that first.

I would invite your attention to clause 5(a). Any person may be nominated as a candidate for election to the office of President or Vice-President if he is qualified to be elected to that office under the Constitution. What does the Constitution say? Art. 58 of the Constitution says:

"No person shall be eligible for election as President unless he—

- (a) is a citizen of India,
- (b) has completed the age of thirty-five years, and
- (c) is qualified for election as a member of the House of the People."

Then, of course it is a bar to a holder of an office of profit. But I read this out deliberately because 58(c) has a very important bearing on this Bill. Please mark the words:

"is qualified for election as a member of the House of the People."

Now, under the RP Act of 1951, a person who has committed any of the corrupt practices, among which are included bribery and undue influence in the course of election to the House of People, he will be debarred for six years from contesting election to the Parliament. But look at what this

Bill seeks to do now. I hope I am not putting it into *reductio ad absurdum*. That is what I feel it will lead to, the constitutional provision read with the provisions in the Bill. A person who is a candidate for presidency or Vice-Presidency, if he commits the offence of bribery or undue influence, he will go scotfree because his election cannot be challenged on those grounds, but a person who is a candidate for the Lok Sabha or seeks to be a candidate for the Lok Sabha or for Presidency or Vice-Presidency would be debarred from contesting the election if he has been previously found guilty of corrupt practice or has been convicted. This is a thoroughly irreconcilable position and I see no way for this august committee or august House of reconciling these contradictions and inconsistencies. As a matter of fact, after what happened in 1969, I would even go so far as to say that a candidate in a Presidential election or Vice-Presidential election, if he is found guilty of having committed the offence of bribery or undue influence within the meaning of Sec. 171(c) of the Indian Penal Code, should be debarred also from contesting any election to the office of Presidency or Vice-Presidency for six years. The same bar should operate in his case also as in elections to Parliament and State Legislatures.

Will you permit me to come to clause 5(b)(i)A which seeks to provide that unlike in the principal Act, there should be 20 electors as proposers and 20 as seconders for the Presidential candidate; and for the Vice-Presidency, there should be five electors as proposers and five as seconders. I am inclined to believe that this will be an unreasonable curb, an unreasonable restriction on the right of an Indian citizen, otherwise qualified to contest the highest office in the land. I am reminded of what Mahatma Gandhi, wrote—

I suppose it was sometime in 1947-48 to the effect that he would regard Indian democracy as having fulfilled itself if the poorest Harijan woman, otherwise qualified, could be elected to the highest office of Presidentship of India. That was his observation. I leave it at that. This has a bearing on the second provision also regarding security.

MR. CHAIRMAN: We have also called another witness. Mr. Kamath will take some more time because he has yet to develop his argument. Then we have to ask questions. May I inquire of him if we can postpone, will it be possible for him to appear before the committee after some time?

SHRI HARI VISHNU KAMATH: I will be at your service after February 18th.

Also I am here till 25th January.

MR. CHAIRMAN: By Saturday we will tell you about the exact date when we may request you to appear before the Committee.

(The witness then withdrew).

IV. Shri N. S. Dass Bahl, Advocate, Supreme Court, Delhi.

(The witness was called in and he took his seat)

MR. CHAIRMAN: Mr. Dass, we welcome you. You must have read direction 58 and you have signed it also after reading it. You have also submitted the Memorandum. The Committee would be glad to hear your point of view on the proposed amending bill that is before the Select Committee and afterwards the Members can put the questions.

SHRI N. S. DASS BAHL: I may first express my opinion regarding omission of the provisions relating to the undue influence and bribery.

Hon'ble members are aware that in the existing Act there is a provision if bribery or undue influence has been

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committed by the candidate, then the election is liable to be set aside. Now it has been proposed that these provisions may be omitted. I can understand the background. There is one sentence—'light hearted manner in which petitions are made'. Perhaps, that may be the reason. I quite understand because of the position of the President who is the Head of the State, there should be some sort of protection, but you will all agree that nobody is above the rule of law. There is a corresponding provision in Section 123 of the Representation of the People Act, I feel there is nothing to fear about these allegations even if they are levelled against the President. I hope some of the Members must have gone through the judgement of the Supreme Court in this very election and both these allegations against the President have not been proved. If these are omitted these will be hit by Article 14 and 19(a) of the Constitution which enjoins the Freedom of Expression of Speech. I can understand that things will not go wrong but in a democracy there is a duly elected body and the President is also elected by the Parliament. In my humble opinion those provisions may continue as they were before.

I may read out passage from the judgement itself which I have just copied. It is at para 38, AIR 1970 Supreme Court, Page 2111:

From the fact that both these acts were enacted by the same legislature—in ACT No. 3 of 1952 after Representation of Peoples Act was passed, it is clear that Parliament deliberately made Section 18 stricter than R.P. Act partly by using the words 'connivance of the returned candidate' instead of the word 'his assent' and secondly by including undue influence by stranger having nothing to do with returned candidate as a ground for declaring the election as void'.

If we compare both the Sections even in the case of the President and

Vice-President anybody can make allegations. This has been made more stricter. If an agent of the elected candidate has violated Section 123, it may be held invalid provided that it must affect materially. If you are interested to know the corresponding provision of the United States of America, a Democracy, I may be allowed to read certain provisions of the Act. There even in the case of the election of the President and Vice-President such like allegations can be made after the election. It is "Federal Corrupt Practices Act 25 as amended."

"POLITICAL CONTRIBUTIONS AND EXPENDITURES BY NATIONAL BANKS, CORPORATIONS, AND LABOUR ORGANISATIONS; PENALTY. It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political, office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labour organization to make a contribution or expenditure in connection with any election at which Presidential and Vice-Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every Corporation or labour organization which makes any contribution or expenditure in violation of this section shall be fined not more than \$ 5,000; and every officer or director of any corporation, or officer of any labour organisation, who consents to any contribution or expenditure by the corporation or labour organisation, as the case may be, and any person who ac-

cepts or receives any contribution, in violation of this section, shall be fined not more than \$ 1,000 or imprisoned not more than one year, or both; and if the violation was wilful, shall be fined not more than \$ 10,000 or imprisoned not more than two years or both. For the purposes of this section "labour organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labour disputes, wages, rates of pay, hours of employment or conditions of work.'

In my humble opinion these provisions may continue.

MR. CHAIRMAN: It is only for purposes of contribution.

SHRI N. S. DASS BAHL: It is an offence. If we analyse bribery and undue influence this will come to the same. My submission is that these provisions may continue. After all Freedom of Expression should be there for every citizen. As I have already submitted nobody is above the rule of law. It is in public interest that these provisions should continue.

SHRI T. N. SINGH: We have gone through your Memorandum and we have heard you. I will take two questions—one relates to nominations. They are procedural, nominations and the election petition. I need not say anything on the procedure. Let us take nomination. The nomination provision now stipulates that there should be in all 40—12 Members of Parliament, 24 of Legislatures and 4 another. I think you are in favour of the provision as it exists to-day. Supposing we assume that there is force in the statement that there have been frivolous applications, how do you meet that point by saying that the restrictive clauses now suggested, are not correct? There have been frivolous applications, petitions and nominations; and therefore, we must curb them. What do you suggest in place of this, as a measure to curb them?

SHRI N. S. DASS BAHL: At the end of my memo., I have submitted that there should be two more provisions in the amending bill. (i) that when the elections to these two offices are set aside, they shall be disqualified. In case the election is declared valid, petitioners should be made to pay special damages.

SHRI T. N. SINGH: I might agree with you in regard to the first alternative. Secondly, we have seen in Mr. Giri's case, the judges allowed no costs—rightly, according to me—because the petitioner had a very strong and reasonable case. Therefore, the provision that you suggest will prevent the Supreme Court from taking a similar view in future. Why do you want to prevent this?

SHRI N. S. DASS BAHL: It should be in the Act itself; and we should let the court decide. The cost is always a matter to be decided in the discretion of the court. There is no need for a fresh suit to recover the damage. The Supreme Court can grant complete relief in any cause under Article 142 of the Constitution of India.

SHRI T. N. SINGH: Supposing one were to suggest that any man who does not get even 5 per cent votes, shall be debarred for the next years, would it not be better than any amendment suggested?

SHRI N. S. DASS BAHL: I am afraid that the right to stand for election will then be violated. You will agree that the percentage of educated persons in our country has not increased greatly. Since we continue to be uneducated people, we should not have such provision.

SHRI T. N. SINGH: Every person has a right to get himself nominated, provided he fulfils all the other conditions. Now, I will take you to the election process and clauses on election. I agree with you that the omission of the provision on bribery, corruption and unfair practices, should be restored. Don't you think that, when this provision has already found a

place, its omission now would give an impression that we are in favour of the prevalence of undue influences?

SHRI N. S. DASS BAHL: That might give a licence.

SHRI T. N. SINGH: In regard to undue influences, one of the witnesses who came before us, said that this term is rather difficult to define; and the IPC provisions on this question should be referred to the Law Commission and modified in certain ways. If the Law Commission's recommendations are accepted, which unfortunately are not, in the amending bill, don't you think that will, in a way, meet some of the points of the proponents of what is called indiscriminate filing of nominations? The Law Commission says that undue influence—I do not remember the exact phraseology Mr. Sundaram used—can the Law Minister re-state the position? If not, we can hold this question over to a later time. The third stage is that of the petitions; and I am saying that we both agree that the corrupt practices clause should be restored. But there are other provisions also. In the eyes of the law, the President enjoys no different status as against an ordinary citizen. In the old law, supposing I am a Member of Parliament and I get disqualified; yet I can seek election to the President's office next time.

SHRI N. S. DASS BAHL: Is it so? It should not be so.

SHRI T. N. SINGH: I will put it to you this way. You agree with me that such a disqualification should be one of the grounds for disqualifying a person in the Presidential election.

There are certain other provisions in the R.P. Act which do not apply to the President. The contention is that in the case of a person seeking election as a Member of Parliament there are many more restrictions upon him than the President. When the Act was passed in 1952 it was felt that the President election was on a different footing. He

is a first citizen of the country and it should be made simple yet provide against corrupt practices etc. Now keeping in view this objective in what way could you suggest certain important provisions of the R.P. Act to be incorporated in the proposed Bill?

SHRI N. S. DASS BAHL: I shall have to make a further study. So far as this provision in the Bill is concerned, I suggest this may be added at the end of section 5-A of the proposed Bill—'provided the candidate has not been disqualified in any of the previous elections and the disqualification does not subsist.' This is what I am suggesting. After all, under the Constitution any person may be nominated as a candidate for election to the office of President or Vice-President. This could be provided in the Act.

SHRI T. N. SINGH: About scurrilous propaganda the Justice was strongly of the opinion both in private talk as well as in the report itself that something must be done under the existing provisions. I personally think, though the judgment also refers, that something has to be done to prevent scurrilous propaganda at that time.

SHRI N. S. DASS BAHL: One I have submitted and the second is so far as the prevention of this propaganda is concerned, I am afraid again the Court says that publication is not prohibited. So, to prevent anybody from publication, I am afraid, will be not conducive in a democracy.

SHRI T. N. SINGH: Law against scurrilous writing, we can recommend. While saying under this particular Bill the law of scurrilous writing should be further strengthened. Now another thing. In the case of Members of Parliament and others an eminent witness was of the view that once we have come across the people we do not attract the discriminatory provision of article 14 of the Constitution. What do you say about that?

SHRI N. S. DASS BAHL: The first reaction may be this because what is the law today 'equality among equals'. I can understand the argu-

ment. I was also thinking that this question might be put to me here by the Members of Parliament that this is a different election under the different Act. Here is the election of the President and Vice-President but the genesis of the election is the 'Election'. Here more moral standards are required to be observed. As we go higher and higher the public expects us to be more scrupulous, more honest. I am of the opinion that since genesis of the election is the Election, it will be obviously discriminatory and then I have Article 19(a) of the Constitution—pertaining to freedom of speech. In the American Constitution section 4 provides that even the President and Vice-President shall be removed from office on charges of corruption or conviction or bribery or other high crimes. When we profess to be democratic we have to observe democratic principles. So the norms of democracy require that nobody should be above law. My basic argument is that nobody should be above law.

SHRI NITIRAJ SINGH CHAUDHARY: To supplement your question, you said that genesis of the election is the Election and there should be the identical provision otherwise this is discrimination. If this is so, there are so many elections—Panchayat election, Rajya Sabha election, Lok Sabha election etc. For Lok Sabha election the age is 25 and for Rajya Sabha the age is 30. Will you call it a discrimination?

SHRI N. S. DASS BAHL: This age is already provided in the Constitution, so it is not discriminatory.

SHRI T. N. SINGH: In the case of the presidential election, the Constitution envisages that every citizen above 25 should have the right to seek election. Gandhiji also felt that even a Harijan should have this right. Except for this restriction, there is none else. Supposing in an amending measure we bring forward we start putting curbs and restrictions, will it not go against the intentions of the framers of the Constitution? I am referring to restrictions in regard to bribery and undue influence and so

many other things. Do you agree with me?

SHRI N. S. DASS BAHL: Yes, I have already said that any provision which violates the Constitution will naturally be hit by the relevant Article.

SHRI T. N. SINGH: It has been suggested by some witnesses that as the MPs and MLAs who are the voters in this case, they are representatives of the people, we should assume that they will be above board and no provision regarding corrupt practice, impersonation etc. is at all required here. What do you say?

SHRI N. S. DASS BAHL: I can understand the psychology of hon. members. Let us also not lose faith in the integrity of the common man in the street. I had expected this question. Objectively speaking, I quite agree. I have nothing to comment. We have to repose faith in the elected representatives of the people and we will have to honour their activities.

MR. CHAIRMAN: According to witness, we should have faith in the common man and in his elected representatives.

SHRI N. S. DASS BAHL: Life is a game of faith. As long as faith is there, nothing can daunt us.

SHRI T. N. SINGH: It has been said that we have been changing our laws and even the Constitution too often and we are not giving a fair trial to the laws enacted. Would you not think that this constant change, whether it is in the Constitution or election law, need not be there and we should allow the forces of democracy and time to adjust things properly?

SHRI N. S. DASS BAHL: Change is the law of life. There is a couplet:

सकू महाल है कुदरत के कारखाने में ।

सबात एक तगेयर को है जमाने में ॥

It means: It is very difficult to be stationary in life. Only change is permanent.

SHRI T. N. SINGH: We should not be rigid. Change will come of its own. Why should we try to impose it from above?

MR. CHAIRMAN: He has answered.

SHRI NITIRAJ SINGH CHAUDHARY: You also said that art. 19(1)(a) will be attracted. How?

SHRI N. S. DASS BAHL: Excuse me for being frank. Suppose somebody has information about some untoward incident that has happened during the election. How will he express it? This is the only channel—filing an election petition.

SHRI NITIRAJ SINGH CHAUDHARY: We are not stopping his expression.

SHRI N. S. DASS BAHL: You are definitely, so far as these allegations go. Kindly direct your attention to these two allegations.

SHRI NITIRAJ SINGH CHAUDHARY: He said it without explaining it. Hence my question. The Attorney General is coming. This question would be put to him.

SHRI N. S. DASS BAHL: It amounts to obstruction.

श्री जगदम्बी प्रसाद यादव: राष्ट्रपति और उपराष्ट्रपति के चुनाव में 'ग्रनड्यू इन्फ्लूएस' और 'बराईवारी' के चार्जज लगाने की बात आई है, उसको रखने के बारे में आप निश्चित है ?

श्री एन० एस० दास बहल: मैं इस में बिल्कुल डेफनीट हूँ ।

श्री जगदम्बी प्रसाद यादव: दूसरा साल यह है कि अगर इन शब्दों को अगर नहीं रखते हैं तो इससे एक आदमी के राइट का हनन होगा कि वह कोर्ट में जा सके और दूसरे यह कि क्या यह भी ठीक होगा कि इस विशाल देश का जो सब से उच्च अधिकारी हो, वह "बियॉड डाउट" हो, इस से आप सहमत हैं ?

श्री एन० एस० दास बहल: जी हां ।

श्री जगदम्बी प्रसाद यादव: और वह "बियॉड डाउट" हो, इस के बारे में आप का क्या सुझाव है । डाउट एराइज होने पर उस का क्लेरीफिकेशन तो कोर्ट में ही हो सकता है ।

MR. CHAIRMAN: What he means is that the person holding the highest office in the country should be above board. If there is any doubt, there should be some ways and means to clear it.

SHRI N. S. DASS BAHL: Article 71 provides so. It should be so. Here, I may be permitted to recite a Persian couplet, meaning thereby "Those whose accounts are clear should not be afraid of auditors."

آن رکن حساب پاک است از حسابها
چو پاک

आ के हिसाब पाक अस्त अज्ञ महासवा
चे वाक

श्री जगदम्बी प्रसाद यादव: एक बात यह जानना चाहता हूँ कि अगर "क्वशन" और "अनड्यू इन्फ़ॉर्मेशन" के चाजड के बारे में राष्ट्रपति या उप-राष्ट्रपति के चुनाव में कोई इक्वायरी नहीं हो सकती, तो यह भी हो सकता है कि पार्लियामेंट के सदस्यों के चुनाव के सम्बन्ध में और एसेम्बली के सदस्यों के चुनाव के सम्बन्ध में भी यह सवाल उठ सकता है कि उन के विषय में कोई इक्वायरी हो ।

SHRI N. S. DASS BAHL: That is my apprehension. This may even amount to discrimination. This may become a debatable issue in public.

श्री जगदम्बी प्रसाद यादव: आपने अपने मेमोरेण्डम में हल आफ ला के बारे में भी कहा ।

SHRI N. S. DASS BAHL: The rule of law must be enforced.

श्री जगदम्बी प्रसाद यादव: आपने एक शब्द "डिस्क्रिमिनेटरी" भी कहा है ।

You say, "There is a condition in clause 6 that the election petition should be presented by at least 40 persons and that is discriminatory."

SHRI N. S. DASS BAHL: It may be held discriminatory.

श्री जगदम्बी प्रसाद यादव: "डिस्क्रिमिनेटरी" किस के द्वारा होगा । क्या आप इस को एक्सप्लैन करेंगे ।

SHRI N. S. DASS BAHL: It may be held discriminatory. What I want to submit is, if the election of Members of Parliament and Legislatures is challenged, there is no such condition that 40 persons should be there. It may be held discriminatory.

श्री जगदम्बी प्रसाद यादव: एक बात यह है कि यहां पर 40 आदमियों का प्राविधान कर के आप किसी आदमी के अधिकार को छीन रहे हैं, क्या ऐसी बात नहीं है ?

SHRI N. S. DASS BAHL: It is so. It will discourage the filing of the election petition. 40 persons may not come together.

SHRI G. VISWANATHAN: What is your view on Clause 5B (1) (a)?

SHRI N. S. DASS BAHL: I have submitted already that it may be held discriminatory. It being a procedural aspect, it needs no comment. Both sub-clauses (a) and (b) may be held discriminatory.

SHRI G. VISWANATHAN: It is not procedural. It makes a material difference between the present law and the proposed one. Do you feel it is justified, whether the number should be increased, retained or decreased?

SHRI N. S. DASS BAHL: This again is a sort of curb on the making of an election petition.

SHRI G. VISWANATHAN: What should be done? Whether it should be deleted or not?

SHRI N. S. DASS BAHL: Let the previous provision continue.

SHRI G. VISWANATHAN: Regarding the deposit, it has been fixed at Rs. 2500. What do you think about it?

SHRI N. S. DASS BAHL: This amounts to a curb. The poor man may not be able to stand for election. He may be an outstanding candidate. But he may not have Rs. 2500 in his pocket at that time.

SHRI G. VISWANATHAN: Do you want to fix some amount or you do not want to fix any amount?

SHRI N. S. DASS BAHL: Let it be a nominal amount, say, Rs. 250.

SHRI G. VISWANATHAN: Even for an M.P., it is Rs. 500.

SHRI N. S. DASS BAHL: This is my view.

SHRI S. B. GIRI: You say that there should not be any discrimination. Now, suppose, there is one person, one elector, who comes to know about bribery or undue influence by the candidate or his agent. Others may not know about it. Even if others know, there may be political pressure not to join with him. Will that candidate not go scot-free if the election petition is not allowed to be made by one person according to the amended law?

SHRI N. S. DASS BAHL: As I have already submitted, this will discourage the filing of election petition.

SHRI S. B. GIRI: That means you agree with me that even one elector must have the right to go to the Supreme Court and file an election petition.

SHRI N. S. DASS BAHL: Yes.

श्री सरखंडे राय : मैं यह जानना चाहता हूँ कि 'प्रोपोजर' और 'सेक्रेटरी' को जो बादात इस बिल में दी गई है, क्या इस से काम नहीं चल सकता है ?

SHRI N. S. DASS BAHL: That will discourage and will put a curb on the filing of the election petition. In a democratic society, even one person should be enough to file an election petition, provided he is a Member of Parliament or a Member of the Legislature, in this case.

श्री सरखंडे राय : दूसरा मेरा प्रश्न यह है कि अगर इन चीजों को नहीं रखा जाता है तो देश की राजनीति में तानाशाही पैदा होगी और हमारा मुल्क फासिज्म की तरफ जा सकता

SHRI N. S. DASS BAHL: Yes, it will encourage unlawful activity. But I will not use the word "fascist". That will be too strong a word to be used. This is a sort of check on the presentation of an election petition and it is not desirable in a democratic society. If anybody has any grievance against even the highest office of the State, then let it be investigated by an independent tribunal that is the Supreme Court.

MR. CHAIRMAN: Now, I thank you very much on behalf of the Committee.

SHRI N. S. DASS BAHL: May I just say a word? There is an Article 361 of the Constitution. Since the Attorney-General is coming to give evidence before the Committee, you may put it to him. There are certain concessions granted to the President under Article 361. So far, there has been no settled view. One view says that these proceedings are in the nature of quasi-criminal nature and yet Section 116C of the People's Representation Act says, these proceedings are of a civil nature. So, if you could put it to him as to what will be the effect of this provision, you may know the answer. Under Art. 361 no criminal proceedings whatsoever can be taken against the President.

MR. CHAIRMAN: May I suggest to you that you do send us a written down question which may be put to Mr. Wanchoo?

SHRI N. S. DASS BAHL: Would you like to have some more suggestions?

MR. CHAIRMAN: You can send them to us.

SHRI N. S. DASS BAHL: Thank you very much.

MR. CHAIRMAN: Thank you
(The Committee then adjourned).

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE PRESIDENTIAL
AND VICE PRESIDENTIAL ELECTIONS (AMENDMENT) BILL, 1972

Friday, 19th January, 1973 from 11.00 to 13.30 hours and again from 15.00 to
17.15 hours.

PRESENT

Shri S. A. Kader—*Chairman*

MEMBERS

Lok Sabha

2. Shri P. Gangadeb
3. Shri P. K. Ghosh
4. Sardar Mohinder Singh Gill
5. Shri S. B. Giri
6. Shri Jagannathrao Joshi
7. Shri J. G. Kadam
8. Shri Piloo Mody
- 9 Shri Samar Mukherjee
10. Shri Pratap Singh Negi
11. Shri Tarkeshwar Pandey
12. Shri Rasiklal Parikh
13. Shri Jharkhande Rai
14. Shri Rajdeo Singh
15. Shri J. Rameshwar Rao
16. Shri M. S. Sanjeevi Rao
17. Shri Digvijaya Narain Singh
18. Shri Nawal Kishore Sinha
19. Shri M.G. Uikey
20. Shri K. P. Unnikrishnan
21. Shri Virbhadra Singh
22. Shri G. Viswanathan
23. Shri Niti Raj Singh Chaudhuri

Rajya Sabha

24. Shrimati Maragatham Chandrasekhar
25. Shri Krishna Bahadur Chettri
26. Shri Lalbuala
27. Shri Ganeshlal Mali
28. Shri Balachandra Menon
29. Shri Loknath Misra
30. Shri Kota Punnaiah
31. Shri Emonsingh M. Sangma
32. Shri T. N. Singh
33. Shri Triloki Singh
34. Shri Gunanand Thakur
35. Shri H. M. Trivedi

REPRESENTATIVES OF THE MINISTRY OF LAW & JUSTICE

1. Shri K. K. Sundaram—*Secretary*.
2. Shri A. K. Srinivasamurthy—*Additional Legislative Counsel*.
3. Shri H. C. Vermani—*Under Secretary*.

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*.

WITNESSES EXAMINED

- I. Dr. Nagendra Singh,
Chief Election Commissioner.
- II. Shri M. Hidayatullah,
Former Chief Justice of India.
- III. Shri A. K. Sarkar,
Former Chief Justice of India.
- IV. Shri K. V. K. Sundaram,
Former Chief Election
Commissioner.

I Dr. Nagendra Singh, Chief Election Commissioner.

(The witness was called in and he took his seat.)

MR. CHAIRMAN: Since I have your signature in regard to Direction 58, I take it that you have gone through it, and, therefore, I need not go through the formality of repeating it here.

DR. NAGENDRA SINGH: I have no objection to any part of my statement being published.

MR. CHAIRMAN: You have before you the parent Act as well as the amending Bill. First, we would like to hear from you, and then Members would put their questions.

DR. NAGENDRA SINGH: At the very outset, may I say that I am beholden to you, Mr. Chairman and I

am very grateful to the Members of the Committee for the opportunity that they have given to me to express my views before this august body.

I think that the amending legislation does serve a very useful purpose. I intend to divide my submissions into two parts. In the first part, I would deal with the amending legislation, and in the second part, I would like to submit something which is over and above what is contained in the amending Bill.

As far as the amending Bill is concerned, there are three very broad aspects, rather, two basic ones and one subsidiary one. The first is in regard to the time-table of elections, which is contained in clause 3 or the old section 4. The second is in regard to the avoidance of frivolous nominations. The third is the avoidance of frivolous election petitions. These are the three major aspects.

As far as the time-table is concerned, the period has been reduced from 29 to 25 days, which is excellent for all practical purposes and should meet the approval of all concerned.

In regard to avoidance of frivolous nominations, I think the provision is very essential and very important, if the election to the highest office in the State is not to be reduced to a mockery. You have made a very salutary provision in the amending Bill namely that you have first put security deposit as a check and secondly you have also put in a clause relating to the nomination of a candidate being sponsored by 20 proposers and 20 seconders, of whom at least 12 shall be Members of Parliament and 24 of the State Legislatures. This may appear prima facie to stagger someone who wants to stand for the election and who may get support, but in view of the fact that we have had a lot of frivolous nominations in the past, I think that this is a very salutary provision. In fact, in 1967, none of the 17 contesting candidates secured a single vote. In 1969, five out of 15 contesting candidates did not secure a single vote. What is the point

in having a candidate who does not secure a single vote at all

In the circumstances, the number fixed of 20 proposers and 20 seconders is on the whole a very salutary number, and I would be very willing to support it.

As far as the security deposit is concerned, at the moment, there is none, and you are now putting it at Rs. 2500. The principle is already there that you have a security deposit of Rs. 500 and Rs. 250 for the parliament and Assembly elections. This is an extension of that principle. So, it is not a new innovation. I would say that it is the rule. It is a good rule to stop these frivolous nominations taking place.

The third broad aspect which the amending Bill deals with is to avoid frivolous election petitions. For this, it has been proposed and quite rightly that the number of persons required for presentation of a petition should be the same as the number of persons required for sponsoring and seconding. I cannot see any objection to that also. I hope that this will put an end to these frivolous applications, though I have a suspicion that even with these numbers of 20 proposers and 20 seconders, still we may get frivolous election petitions with the result that the office of the Head of the State may be put into some sort of ridicule. I would have thought of some more stringent methods than these to save the dignity of the office. But this is the least that can be done in the circumstances.

I would support whole heartedly the provision in the Bill dealing the grounds of bribery and undue influence from among the grounds for setting an election void. While I do so, I have another submission to make which is outside the purview of the amending Bill, and that is, that the abolition of section 18 of the old Act would considerably help in effecting a wholesome change in regard to the election to the offices of the President and the Vice-President.

I now come to the third aspect which I wish to submit for your earnest consideration. It is very true that at the last election petition which went right up to the Supreme Court, there were frivolous allegations made. What was more painful was that the President after he had been sworn in was dragged before the Supreme Court. I am not doubting for a moment the principle of rule of law which is the very bedrock of any democratic principle. No democracy can function without the rule of law, and the President himself agreed to be present before the Supreme Court; and that was indeed a very gracious gesture on his part, consistent with that basic principle.

But then it is against the dignity of the Office of the head of the state to be dragged into a litigation and to have been brought before the Supreme Court after he had been sworn in.

If you have to have election petitions, they must, I would respectfully submit, be cleared before the President takes over his high office. Once he takes that office he must not be challenged by anything. Otherwise, you are murdering the executive, and you are really jeopardising the position of a sovereign State in relation to another State bilaterally and in relation to the international community as a whole multilaterally or the members of the world community of States, because the organ of a State which is in direct contact with other sovereign States is the head of the State. He receives Ambassadors, he signs and ratifies treaties and he meets the other Heads of States, and he is the mouthpiece and he is the principal organ of a sovereign national State in relation to the world community of States. But here what do you do to him? You are eclipsing his position by saying that he is undergoing a trial and by creating a doubt whether he is the President or he is not the President, and that if he is the President, he is so till the re-

sult of the Supreme Court judgments out. If he is out, then what happens to his previous acts? You may legalise them. But the whole thing is shabby. It is not wholesome, and this must be cured. The amending Bill does not cure it. I would beg of you to examine the submission which I wish to make.

First, I shall quote from some of the Constitutions that already exist, in which a litigation challenging the position of the President is not allowed—I would repeat the phrase 'not allowed'—when he has been sworn in. The Constitution of France and the Constitution of the United States will not allow, after the President is sworn in, his election to be challenged in any way. In Nigeria, Tanzania and Ghana, there are specific provisions according to which once a person is declared elected to the office of the President, no question as to the validity of the election can be entertained by any court or authority. Senegal has another very important and interesting provision. The Constitution of Senegal provides that in case the election of the President is challenged, the Supreme Court shall rule within ten days of the provisional proclamation whether the election is valid or void, and the elected President shall take office only after the definitive proclamation of his election has been made. The Constitution of Chile has its own peculiar method to settle this issue, but it respects the basic principle that the election petition if it is to be filed, must be disposed of before the President takes over his office. Once the President has taken office, there shall be no challenge to his position. The Constitution of Chile provides that the President shall be elected by the direct vote of the citizens and that the election shall take place 60 days before the date on which the term of the existing incumbent expires. Complaints regarding the election are considered by a special qualification Court. Two branches of the Congress convened

in public session, 50 days subsequent to the voting and majority of the total membership being present, shall take into consideration the general safeguards taken by the qualification court and shall proceed to proclaim the person as the President of the Republic. In fact, disputes regarding election should be disposed of, before the new President enters upon that office. Based upon this constitutional provisions of other countries and the very sad experience which this country has faced consequent upon the dragging of the President to the Supreme Court in 1969, I have respectfully to submit that we cannot do away with the institution of the election petition. Article 71 of the Constitution makes it incumbent. We must respect the Constitution. Election petitions are saultary. They must be there. I do not want to challenge Article 71 and there is no idea of introducing an amendment to the Constitution; but why can't we so time the holding of the election of the President that the whole process is completed within a fixed period? I have four stages to suggest: First, it should be possible to time the election not earlier than 90 days before the expiration of the term of office of the outgoing President or Vice-President. The election petitions, if any, should be presented not later than 7 days from the date of declaration of the result by the returning officer. The petition should be tried and completed within one month from the date on which it is presented these three conditions are possible only if you do away with clause 18 of your existing Act, because if you allow the clause of bribery and undue influence to remain, the Supreme Court has to record evidence. If you delete it, there is nothing left. It should then enable the Supreme Court to dispose of, finally, by having a special bench constituted of three judges or one judge; to finish it off within one month; and the Supreme Court must by an Act of Parliament, be ordained to finish this election petition within one month; and then, the

President is sworn in. The President or the Vice-President should take office after the election petition has been disposed of. To enable the whole process, the bribery and undue influence clause should be deleted. I agree with the amending bill there, despite the fact that legally, it may give rise to some dubious and dual interpretations, the first being that you had this provision early and now you delete it. Inferentially, you will be encouraging it. May I submit that *prima facie*, there is an interpretation, but not an interpretation which will stand a minute examination, based on the application of socio-judicial principles. After all is said and done, an Act says that such-and-such a thing is an offence. Then it removes it. It looks as if you permit it; but surely, the basic principles of civilization, of culture, of legal philosophy etc., on which the whole of the social existence of a State depends, if that is to be read correctly, you cannot really interpret it in a manner in which it would encourage the offence—criminal, civil or anything like that. These are taboo. It is only helping a process. I would, therefore, venture to submit that I would wholeheartedly support the amending bill; but would request that the President is not dragged in to give evidence himself before Supreme Court; and that he should never be sworn in, until the election petitions are disposed of. Thank you.

MR. CHAIRMAN: Thank you very much, Dr. Nagendra Singh. I would like to put two queries. We are intending to discourage frivolous nominations, which number about 20.. By increasing the number of proposers and seconders, we are certainly curbing the number of frivolous applications. Then there is another clause relating to deposit. Do you think that in view of the first clause, the deposit is necessary? It is not there till now. The deposit of

Rs. 2500 will be a deterrent to frivolous nominations.

DR. NAGENDRA SINGH: I agree with you. The amount of Rs. 2,500 is nothing to-day for a man who aspires for the office of the Head of the State. This amount is neither here, nor there you should raise it to Rs. 10,000. Of course, it may be argued that in a democracy, the man in the street is entitled to fight for the highest office; but then, a man in the street certainly must be such that he will get due support and he will have the resources. I do not see any objection to putting a deposit of Rs. 2,500. It is not an effective check. It is not a big sum.

MR. CHAIRMAN: In view of the first curb is it absolutely necessary to have that deposit clause?

DR. NAGENDRA SINGH: I would say that the first check of 20 supporters and 20 seconders is a good and effective check. The monetary deposit of Rs. 2,500 is neither here nor there. But if you wish to put it, you can do it.

MR. CHAIRMAN: You do not think it will make much difference.

DR. NAGENDRA SINGH: I have been Chief Election Commissioner for only three months; and during these days, there have not been many by-elections. The papers that usually come to me, have been to disqualify candidates on one ground; and I have disqualified hundreds of them in these four months, the reason being that they will not submit their financial statement of expenditure. They just disregard it. These are also frivolous candidates. They are manking a mockery of it.

MR. CHAIRMAN: I would put it this way. The electoral college is different in the case of election to President and Vice-President. In view of this and the fact that we are proposing another curb, would the deposit be necessary?

DR. NAGENDRA SINGH: If you wish to delete, it, I would endorse it; but if you have it, I would not object.

MR. CHAIRMAN: You have said something about the constitutions of some African countries, like Senegal, and also Chile etc. The proposal here is to remove the bribery and undue influence clause from the purview of the court. Supposing we adopt the same procedure that the election should be held about 90 days in advance of the expiry of the term of the outgoing President; and the new incumbent should take office on the date on which the outgoing President retires. Would it not be possible to retain the bribery and undue influence clause then?

DR. NAGENDRA SINGH: No, Sir. Once you have bribery and undue influence the result will be that evidence will be led and if you want to lead evidence then it is bound to take the court a lot of time to finish it. If you entrust this to the Supreme Court, they will say that if you have bribery and undue influence and if evidence is brought then it must be heard and it is doubtful whether it will be finished in one day. If you delete this, then the discussion will be confined to a very small matter.

MR. CHAIRMAN: If prime facie the court is satisfied that the charges are not correct, it can dispose of it in one day.

DR. NAGENDRA SINGH: It will be placing a very big problem before the Supreme Court. I am sure you will have to consult before you think of incorporating my submission, my proposition into the amending Bill and if you ask them they will say it is impossible for us.

MR. CHAIRMAN: If it is possible for them to dispose of, then we can put this bribery and undue influence. I agree that so far as the President is concerned, he should be above everything. Here a via media has been suggested by you, and that while amending Article 71 of the Constitution we

will see that after the President is elected, he is not brought to the court on any charge. If it is possible that the Supreme Court can deliver the judgement before the date on which President takes office, will it not be advisable? Of course you suggested we must enquire what difficulties are there if they say 'Yes' are you in favour of it?

DR. NAGENDRA SINGH: It is the chosen few—the Constituency which elects the President and Vice President. Why should you even ever think that they will resort to bribery and undue influence?

MR. CHAIRMAN: Legalising bribery and undue influence.

DR. NAGENDRA SINGH: I would not say you are legalising bribery and undue influence. Since the Supreme Court say that they will do, I have no strong views.

SHRI PILOO MODY: Starting with your observation that it is undignified for the Supreme Court to ask the President to come and give evidence, would you say that the President by virtue of the fact that he has become the President of India loses his dignity if another institution of democracy asks him to co-operate with it in establishing certain facts.

DR. NAGENDRA SINGH: No, Sir. I submit that in democracy the basic principal is the rule of law and the Supreme Court has an authority. The President does not lose any dignity by going to the Supreme Court. As I understand it has its repercussions externally as well. Internally it puts the whole country into a doubt as to the Head of the State, externally it makes a mess. What does a foreign sovereign State think? Mr. 'A' who is undergoing a trial whether his election is valid or not. Is the Head of the State in vacuum? Is the whole matter in parenthesis? No State can exist without a Head because it is the Head who corresponds with others and is the organ and mouthpiece for the purpose

of another State and relations within the world community. Why do you want to take it up?

SHRI PILOO MODY: On the last occasion during his charge in which the Petition had not been disposed of, he did all the things that you said as functions of the Head of the State. Do you think that he did it with less credibility?

DR. NAGENDRA SINGH: He did most effectively and efficiently and in the manner any President would have done it. It left doubts, difficulties, apprehensions in the minds of the Ambassadors whose credentials were accepted. I was the Secretary to the President. They asked me what is the position? I said, no, he is the full President unless he is dislodged. Whatever he signs is and will be apt and is to be respected as law of the land, because he is the President on date. This will be respected even though he is dislodged. Why should this bad taste in the mouth be enshrined in a Constitution or in an amending Bill?

SHRI PILOO MODY: Let us indulge in more suppositions. We feel that our democracy is a great functioning institution. Within the framework of our democratic institutions if there are certain doubts which have been cast on the validity of a particular election, how are the doubts of 500 million people to be reconciled with the doubts of future Heads of State and Ambassadors presenting their credentials. I am talking about the Presidential elections. I would also like to ask you, had we been such a perfect functioning democracy as by some miracle the President is unseated, as a result of the Petition what would have been the situation?

DR. NAGENDRA SINGH: The Constitution may not have been much different in the sense that all acts which he did as President would have been followed. But may I respectfully submit that there is one aspect of a matter which is clean and straightforward which is the norm and the standard. The other is the deviation

from the standard. The deviation is the doubt—whether it is the Institution, whether it is an individual. Normal functioning is desired of even the framer of the Bill or the Constitution. If doubts and difficulties are created, it is the *raison d'être* of the framer to eliminate them. A doubt does exist and the query is there from the normal man in the street. An Ambassador who is educated came to me and asked me 'What is the position? Do I lose my presentation of credentials, if the President is declared as unseated?' and I told him 'No' but why should we allow an Ambassador to have that feeling?

SHRI PILOO MODY: On what authority did you say 'No'?

DR. NAGENDRA SINGH: As long as he is there, till he is unseated, he is the President. There would otherwise be a violation of the Constitution which says that there shall be a President or a head of the State, which means that it does not visualise any vacuum. The moment you unseat him, there must be another man to take his place, and you cannot have a vacuum.

SHRI PILOO MODY: Your point is that in spite of the objection or hesitancy or doubt in the minds of the people and the Heads of States and Ambassadors that the President, even though he may or may not be unseated or he may be unseated or he is to be unseated, is still the President of India, irrespective of his moral character?....

DR. NAGENDRA SINGH: I think I have not made myself clear....

SHRI PILOO MODY: In other words, the functions of the Government of India as symbolised by the President are really functions of the Government of India, that is, of the territory of India, or shall we put it in another way, of the Rashtrapati Bhavan, irrespective of who its incumbent is? So, your second argument should take care of your objection.

DR. NAGENDRA SINGH: I was quite satisfied that whatever the President was doing was valid and lawful. But then I had to give these explanations to even the distinguished Ambassadors and to the man in the street if he asked me. Why are you leaving a lacuna and why are you not rectifying this?

SHRI PILOO MODY: You should have broadcast to the people what you explained to these few people.

DR. NAGENDRA SINGH: I am not a public speaker nor a Member of Parliament so that I can come out and broadcast.

SHRI PILOO MODY: Incidentally, all public speakers or Members of Parliament do not have to clarify anything. I do not have to clarify anything in front of anybody and say that the President is really the President and not a President to be unseated. I do not have to clarify it to anybody.

MR. CHAIRMAN: Did anybody ask for a clarification from him?

SHRI PILOO MODY: This is the point that I am making that nobody asked me for a clarification.

DR. NAGENDRA SINGH: I did it as the Secretary to the President.

SHRI PILOO MODY: To your knowledge, how many election petitions were filed in regard to the Presidential elections hitherto?

DR. NAGENDRA SINGH: Two, one against Dr. Zakir Hussain's election and the other against President V. V. Giri's election.

SHRI PILOO MODY: So, only two petitions have been filed against the Presidential elections?

SHRI T. N. SINGH: He said; to his knowledge.

SHRI PILOO MODY: In the Statement of Objects and Reasons it is said:

"Another matter which is of equal, if not greater concern, is the light-

hearted manner in which persons resort to a court of law for challenging the election of the head of the State."

DR. NAGENDRA SINGH: So, what is the conclusion to be drawn?

SHRI PILOO MODY: Would you from the material available suggest that these petitions had been filed in a lighthearted manner?

DR. NAGENDRA SINGH: I would have thought that the election petition against Dr. Zakir Hussain was filed in a lighthearted manner and it was disposed of very quickly. How can I guarantee what the future will be? There are political parties, and there may be some who do not want an individual who belongs to a particular party, and they may resort to every possibility to put him into an eclipse, and the way to eclipse the President's position is to file a petition against him particularly after he is sworn in.

SHRI PILOO MODY: According to you, if the President belongs to a political party and therefore a part of the so called political game, then he must play that game. Our contention is that the President should be above politics and that is also the wording of the Constitution. So, if the candidates for Presidentship are from the political arena, and not with the stature of public men, then the natural corollary is that the political game must apply to him. Do you not think so?

DR. NAGENDRA SINGH: I have no doubt, of course, that the President is above party-politics, but that is once he is sworn in. Before he is sworn in, he is a member of a political party, and you cannot stop him from that; he may or may not be a member, but if he is a member of a political party, that is no bar to his being elected as the President.

As regards the second point that the political game must be played, certainly it can be played, but do it in a manner in which it behoves your

country. If you say that there should be this provision for filing election-petitions, I say that let it be there, but I say that the election petition must be disposed of before the President is sworn in. Do not make a mockery of the President after he is sworn in.

SHRI PILOO MODY: That point is well made that the petition must be disposed of before the President is sworn in, and that is perhaps a point worth considering.

DR. NAGENDRA SINGH: There is nothing more than that that I want to submit.

SHRI PILOO MODY: In your earlier deposition you said that article 71 of the Constitution required that the petitions should be permitted against the election of the President. You also said at the same time that such petitions should be of a frivolous nature and not substantive in the content, by eliminating the real charges for which the President could be unseated, if he has indulged in them. In other words, what you said earlier was that you must have petitions against the election, because the Constitution says that you must have petitions, and, therefore, you say, let us play the game and show to everybody that we are very democratic because we are allowing petitions even against the President, but you are restricting the petitions to such things that nothing can be substantial and nothing can be alleged against the behavioural pattern of the Presidential election.

DR. NAGENDRA SINGH: My statement was a simple one and it has been twisted to a position in which it appears as a *reductio ad absurdum*. I did not mean to bring it to that level. My submission was only this that—and this is a factor to which you may give the highest importance—the President once sworn should not be challenged.

SHRI PILOO MODY: That point is finished now.

DR. NAGENDRA SINGH: If you accept that, then you must make certain additions and alterations in your thinking in order to meet that possibility. If you put in bribery and undue influence as factors, then you will never be able to get the Supreme Court to agree to the disposal of the case within one month.

SHRI PILOO MODY: If bribery and undue influence are eliminated, are we to presume thereby that bribery and undue influence cannot and must not and does not take place thereafter?

DR. NAGENDRA SINGH: Bribery and undue influence have taken place and they are a common feature, but when you are dealing with a highly educated intelligentsia, the pick of the whole country....

SHRI PILOO MODY: Question.

DR. NAGENDRA SINGH:....Out of 550 million you pick and choose through the democratic processes 4250 people who constitute the constituency for the election to this highest office, and then you also suspect them of bribery and undue influence. How could Members of Parliament ever be subjected to any undue influence when they are wedded to their programmes and their policies and their people? At least, if this aspect is eliminated, you will have plain-sailing in bringing into effect what I have submitted, namely that the Presidential election petition should be disposed of before the President is sworn in.

SHRI PILOO MODY: Do you agree, according to the personal views, the electors—so called highly qualified people that you are referring to—have according to the law been subjected to same scrutiny and same enquiry about bribery and undue influence and that many of them have been unseated and some of them should have been unseated but have not been unseated because of insufficient evidence?

DR. NAGENDRA SINGH: I have no answer to give.

SHRI PILOO MODY: People have been unseated, elected members have been unseated on these grounds. But what I am suggesting is that we must make laws which are applicable to us today and there is no point in indulging in law of suppositions about not only the quality of legislators but also about the quality of the President. I mean it is held for the sake of assumption to make certain suppositions of this nature. We also as legislators in this Committee should look to the reality as it exists. And, therefore, to say that the presidential election, as it has taken place in India with these legislators, is not subject to bribery and corruption and, therefore, should not be considered, I think, is trying to create an illusion that does not exist. We know and it is not merely a question of personal political opinion, the Supreme Court itself in the judgment that it gave in the last case has made certain very derogatory remarks regarding the manner in which the election was conducted. What it is done is absolving the incumbent from the responsibility of such activity. So to that extent, you might say that the incumbent has escaped but the fact is that the election itself, it has been established, was conducted with undue influence. This is an established fact now of Indian history.

MR. CHAIRMAN: This is a matter of opinion of a person.

SHRI PILOO MODY: This is not the opinion of the person, this is the judgment of the Supreme Court of India.

MR. CHAIRMAN: About a person whether he is fit or not.

SHRI PILOO MODY: A pamphlet was sent by post. Further the pamphlet was distributed in the Central Hall of Parliament. Incidentally I received one myself. This thing itself constitutes undue influence within section 18(1)(a). Now what I am trying to get on is that these things are happening and it happened. How do we as responsible legislators try to form laws to guard against these happenings if we remove these particular provisions from the law?

DR. NAGENDRA SINGH: I would submit that if we regard that bribery and undue influence are so intact in our public life that they are bound to be of prime importance even in an election which concerns 4000 people, then he can have this provision. But by and large such provisions do not exist for election to the high office of President. They exist for the low strata of society. There is a saying in our part of the country that even a witch which eats away young children, at least saves one house. So save at least the house of the head of the State.

SHRI PILOO MOOY: It is now more or less established that the more restrictive the election and the more restrictive the elector, the greater the bribery and corruption. That is prevalent in such election. In Panchayat election, in election to the Legislative Council, in election to the Rajya Sabha, there is far more chance of bribery than in general election. The simple principle is that it is more easy to bribe 4000 people than to bribe people in other elections.

DR. NAGENDRA SINGH: It is much more easy to bribe 4000 illiterate electors than to bribe 400 who are educated and who are convinced in one way or the other. The hon. Member may be right but I was never a candidate for any election.

SHRI PILOO BODY: I come to the other little twinkling point about a number of people who should propose and second and the number of people who should sign petitions. What I see from the evidence that I have heard so far, the petition is only a meaningless formality and in order to get rid of it we may amend the Constitution accordingly. It is even before the Committee and I do not mind telling you that there should be 40 or 50 or 80 or hundred people to nominate a particular candidate. In today's context to make a suggestion where the single largest party in this country in the Lok Sabha has only 25 members and to suggest that there should be 40

people to nominate a particular candidate is in other words to say that let only the majority party nominate a candidate and let nobody else nominate a candidate. We will have one party rule, one candidate, one President, one party, one country. This is the sort of thinking which to me has inspired this suggestion. Would you say that it is desirable that there should be a contest for the President or not?

DR. NAGENDRA SINGH: Of course, there must be a contest.

SHRI PILOO BODY: Therefore, the law should be so framed that it should be possible for several candidates to contest presidential election. In fact, it would be desirable if each party can put up its own personal candidate. I see no reason or harm why each party should not be allowed to put up its own candidate. Therefore, I ask if the laws we are making and the evidence you have given, would make it possible in the present context of things?

DR. NAGENDRA SINGH: I would have thought that if somebody going to be a candidate had a reasonable prospect of success, if a bona fide candidate is there, he should be able to get at least 20 proposers and 20 seconders throughout the country, some MLAs and 12 MPS. It is not such a difficult thing; if he cannot get that even, it is useless for him to contest.

SHRI PILOO MODY: What do you mean by 'useless'?

DR. NAGENDRA SINGH: Certainly, every political party should have a right to set a candidate.

SHRI PILOO MODY: I did not say that I want to exercise that right. I merely asked whether it would be desirable to allow each political party to set up a candidate, whether such a contest would be good from the overall democratic projections of this country in the future.

DR. NAGENDRA SINGH: It would certainly be desirable to have as many candidates as the people want. But

they must be genuine candidates who have some chance of success. No good if a person is definitely going to fail, putting his neck into the noose, just for the fun of it. Then he is only wasting his time and others' time.

SHRI PILOO MODY: You will admit that only one can win.

DR. NAGENDRA SINGH: I do not say that.

SHRI PILOO MODY: You do not agree that only one can win?

DR. NAGENDRA SINGH: Of course one will win. But I do not say that the majority party candidate will always win.

SHRI PILOO MODY: Last time the majority party candidate lost.

DR. NAGENDRA SINGH: The candidate must be bona fide. He must have a chance of getting an affirmative decision. If you know for certain that you cannot win, if you do not get 20 plus 20, what is the good of your entering the contest?

SHRI PILOO MODY: You are avoiding my question. I want to know whether it is desirable that legitimate political parties in this country can run their candidates for the presidential contest or not.

DR. NAGENDRA SINGH: Certainly.

SHRI PILOO MODY: Therefore, the law should be such that that is made possible, to run their own candidates within the context of their relative strengths.

DR. NAGENDRA SINGH: Correct. The law should not in any way hamper a genuine candidate from standing. When I say genuine, I mean he must have some plausible chance of success.

SHRI PILOO MODY: I think that contradicts your answer. They are all genuine candidates selected by genuine parties. We put up candidates even when we know that we cannot form the government. Is it not?

DR. NAGENDRA SINGH: If you have no chance of success, you are a bogus candidate.

SHRI PILOO MODY: Therefore only the ruling party should set up a candidate because he would be the only genuine candidate.

MR. CHAIRMAN: That you can presume or assume.

It is 12 now. Justice Hidayatullah has come. At the same time, there are many members wanting to ask questions of Dr. Nagendra Singh. You know he has been elected a Judge of the World Court at the Hague. I congratulate him on his election. It is a matter of pride for India. Most probably he will have to go there next month. So we could call him again during this session only. When are you leaving?

DR. NAGENDRA SINGH: I have to be sworn in on the 8th February. I have to leave on the 6th.

MR. CHAIRMAN: We will inform you about the date and time.

SHRI J. RAMESHWAR RAO: Meanwhile, I may ask one question. Witness spoke about undue influence not being there. I raise a new point and would like specific consideration of it. The electoral college here is different from that of parliament or the assemblies. It is the practice in Assemblies and Parliament that political parties issue whips for voting on Bills, resolutions etc. It has been observed in the last four presidential elections that political parties have issued whips to the members of the electoral college. Would you or would you not consider this undue influence because the electoral college is different and also a whip is a direction with consequences like expulsion from party etc. if disobeyed?

DR. NAGENDRA SINGH: Democratic functioning is based on parties, so much so that the nature and character of government, whether it is going to be a strong executive or weak exe-

cutive, whether it is going to be responsible government responsible to the people directly or representative government or a hotch-potch coalition—all that depends upon the functioning of political parties. The political parties will then become the bases for the working of organs of the State. Party discipline is the essence of a political party. How can you rule out party discipline in the manner in which the elections take place? Party discipline is there. You have already given your allegiance to a political party and in that way you have committed yourself to a party discipline. If you cut across this, then you would really be going into a field which would disturb the democratic functioning of our Constitution, because the organs of the State are governed by the parties.

SHRI J. RAMESHWAR RAO: I am not objecting to the functioning of Parliament and the Assemblies. The electoral college is different. Let us not confuse the issue.

MR. CHAIRMAN: The hon. Member wants to know whether the issue of a whip by a political party will not be an undue influence exercised in the election of the President or Vice-President.

SHRI J. RAMESHWAR RAO: An appeal or request is all right. But a whip in my view is an undue influence. He may say either "yes" or "no".

DR. NAGENDRA SINGH: "yes" or "no" would not be possible here.

SHRI J. RAMESHWAR RAO: It means that the electoral college does not function freely. It is not a free election. An appeal or request is all right but not a whip. You are the Chief Election Commissioner and you should know that no party whips are issued in general elections. This has happened only in the case of the election of the President, Vice-President, members of the Rajya Sabha and State Legislative Council. This is because a distinction has not been made between the functioning of the Assembly and Parliament and the electoral

colleges. This is a basic defect. The whole idea has been blurred. The electoral college is distinct from Parliament and it is not disputed. The question is whether a clause should be included here that no whip should be issued in the election of the President and Vice-President.

DR. NAGENDRA SINGH: I can certainly think over it. But, prima facie, all the organs of the State which are democratically filled up by electoral processes are based on party organisation, and party is an essential element of a democracy. Therefore, I cannot see how a party whip can be regarded as an influence. I will certainly give more thought to the point raised of the electorarte being different and I will try to furnish an answer at the next hearing after more mature thought.

MR. CHAIRMAN: Thank you. We will inform you of the next date of our meeting in due course.

DR. NAGENDRA SINGH: I am sorry, I have taken a little more time. I do not know whether I have been able to satisfy the Committee.

(The witness then withdrew.)

II. Shri M. Hidayatullah, Former Chief Justice of India

(The witness was called in and he took his seat.)

MR. CHAIRMAN: I hope you have gone through the Direction placed before you. So, I need not refer to it.

You have before you the Amending Bill. With your vast experience of jurisprudence as well as the Supreme Court, the Committee will certainly be glad to have your opinion on the Amending Bill, as presented to Parliament and referred to the Joint Committee.

SHRI M. HIDAYATULLAH: I view this Bill as incorporating two important points, apart from amendments of a minor nature. Firstly, it seeks to prevent persons who have no chance

whatsoever of obtaining any support from standing for the high office of the President and Vice-President. Secondly, it seeks to take away the right to move the court for corrupt practices indulged in by any of the candidates.

These two have to be viewed from two different angles. The first point has all my sympathy because I do not think it is really right that any person who has no chance of getting elected should offer himself as a candidate. It speaks very ill of our society. Even in America there are some candidates who obtain only a very small fractional vote, but they are not of the same type as some of our candidates who do not get even a single vote. So, something has to be done for preventing them from standing for election. I am in full sympathy with the objects of the Bill on that score.

The second object of this Bill is to take out from the jurisdiction of the court any inquiry into corrupt practices. The corrupt practices are of several kinds. Corrupt practices such as intimidation, coercion, duress and threat need not be included here because no person should be able to get away with them. But, then there is the question of corruption. Really speaking, if I may say so with due respect, it is for the members of the Committee and their colleagues in Parliament to decide—it is not for me to suggest—as to what should be the nature of the enquiry into the allegations. But I think it should be done to keep in check any untoward happenings which might occur if there is no deterrent in the law about it.

On the first point I am quite clear that there should be some provision. What it should be, of course, is a different matter. I may be able to say something on that later. On the second, some kind of provision is probably necessary for keeping out intimidation, threat and coercion. Otherwise, we will have cases of intimidation quite easily. When the election

gets into its full stride, there may be cases of intimidation and so on.

Of course, if a person is not qualified, or a nomination paper has been wrongly received or wrongly rejected, there should be provision for that and provision is made. I do not think there are many cases of corruption of the usual type of which I am well aware, having done quite a number of election petition cases, of Parliamentary elections. But if the room is there for making allegations, the allegations will always be made. I think it would not be to the credit of the country if allegations of that type are publicly enquired into. It is a painful procedure and if we can avoid it, we should risk it rather than having the law keeping it open for our people to move. That is how I look at it. I look at it in the larger interests of the country. We should not let people make false scurrilous accusations and bring them before the court and have them examined in the public eye. That is my personal view of the matter.

There are some defects which I may point out. The language of one of the amendments is rather unfortunate, but I shall point it out at a suitable stage. That is how I view the whole of the amending Bill and these are my general observations.

MR. CHAIRMAN: Before I request Members to put their queries I would like to have one point cleared. It is suggested that the Presidentship being a high office, all the allegations made in the elections petitions must be disposed of before the President takes office. The President has to take office on the appointed day. Now, if the election is so adjusted that there is sufficient time for petitions to be disposed of before the President takes office, that is one of the suggestions that was mooted. I would like to ask you whether it is possible to dispose of petitions including that of bribery and undue influence as they

are in the present Act, before the President takes office. From your experience, we would like to know.

SHRI M. HIDAYATULLAH: As I have said, courts move at a lower speed than some other body could move. If you trust the courts to do that, the courts will take time because they have to hear it at greater length than, say, a Committee of Parliament. In England till 1948 election matters used to be decided by Parliament and if you have a Committee of Parliament to decide this summarily without much evidence, you will be able to get it done quickly. Although I am trying to save my courts—they are not mine now—ordinary elections will be all right but presidential election is a different matter. The allegations will have to be inquired into in a different manner, not like the election petition.

MR. CHAIRMAN: Supposing if we remove from that bribery and corruption charges, then will it be possible?

SHRI M. HIDAYATULLAH: Even then it will take time. One has to hear both parties. The other side must have a chance of considering the allegation. Then the reply, then the lists of witnesses are filed. Meanwhile, the President is sworn in and it would be rather odd for a President to be sent out. In the USA there is only one ground, and that is the President is not qualified to be the President of USA and if such a question was raised it will be undoubtedly inquired into whether he has the requisite qualifications or not.

MR. CHAIRMAN: That can be done at the time of considering the nominations.

SHRI T. N. SINGH: Corrupt practices are banned in America.

SHRI M. HIDAYATULLAH: I have not made a study of it. I thought there could not be any election petition of the type that we have in our country. May be your committee being a more expert body than myself might make a study.

SHRI P. K. GHOSH: The learned witness has just said that we can just take it for granted that Members of Parliament and members of the State legislatures are honest and they will not be corrupted. In view of the number of election petitions in which charges of corruption by the Members of State legislatures in the case of election to Rajya Sabha have been filed in the courts and courts also have upheld in many cases that members have resorted to corrupt practices and that they have taken bribes and voted for a particular candidate and in few of the fact that the position of President is a very high position, shall we not also keep the provision that there should be sufficient provision for election petition for those who adopt corrupt practices?

SHRI M. HIDAYATULLAH: You are perfectly right that in the legislative assemblies there have been instances of corrupt practices. But when I said that, I was only trying to save, not the man, but the office. There is a difference between trying to save the man and saving the office. We have to think of the office first and the man afterwards. By having some restrictions on the election petition we will be saving the office and not the man.

SHRI P. K. GHOSH: Is it your contention that the office being a very high office we should try to select persons who are not corrupt and who are above all corruption? But since this provision for election petition for adopting corrupt practices if you take that out from the Act, then what happens is that a man who adopts corrupt practices may also feel that as he occupies a high office, nobody will level the charge of corruption against him. So, what will be the safeguard for debarring persons who adopt corrupt practices to occupy such a high office?

SHRI M. HIDAYATULLAH: The only difficulty is that in the making of the allegation, truth and fiction get mixed up and that harm is done by trying to find out the fiction and expose it. But the harm has been done to the office, its dignity and to the

highest representative of our country. You may find that the election petition fails in toto. But it leaves behind a stink, a stink which if we can, we should avoid. That is my personal view.

SHRI J. RAMESHWAR RAO: I would like to pose a hypothetical question to the witness with reference to what he said just now that we should save the office, not necessarily the man. It is known that when a person contests to Parliament, either for Rajya Sabha or Lok Sabha or the Assembly, it is possible that election petitions may be filed on the basis of corrupt practices and undue influence against the winning candidate. This, I suppose, is known all round that Members of Parliaments election can be challenged on the basis of corrupt practice and undue influence

SHRI JAGANNATHRAO JOSHI: Suppose a person is elected to Parliament while a case is pending in the Supreme court on the basis of corrupt practices and undue influence suppose that gentleman contests for Presidency and is elected, and after he is elected as President, if the Supreme Court holds that his earlier election to the Parliament or the Assembly as the case may be, is set aside on the grounds of corrupt practice and undue influence, then what would happen?

SHRI M. HIDAYATULLAH: I do not think that membership of Parliament is a condition precedent to being President of India. So, his election to the Presidency might well stand. But I think that if a law is made that no person against whom a petition is pending for corrupt practice shall stand for election or offer himself as a candidate, that will meet the case.

SHRI JAGANNATHRAO JOSHI: So a clause has to be introduced in the Bill saying that any person against whom an election petition is pending shall not be eligible for being a candidate? I have raised this question specifically because the consensus of the committee or the thinking of the committee has been in this direction

that we may have to suggest such a clause in the Act.

MR. CHAIRMAN: He has answered that clearly.

SHRI JAGANNATHRAO JOSHI: We are a democratic country where elections are supposed to be free and fair, and every individual is supposed to vote according to his conscience. It has been observed in the Presidential and Vice-Presidential as well as the Rajya Sabha and Legislative Council elections that political parties issue whips. There, the electoral college is distinct from the Assembly or the Parliament. I would like to know whether the issue of such whips to the members of electoral colleges would or would not constitute undue influence.

SHRI M. HIDAYATULLAH: If there is an electoral college and the members belong to a particular party, they may be issued a whip. In America also, the vote does not go according to the party affiliations. Sometimes, it is quite against it. That is to say, they exercise their vote quite freely and may not depend on the whip in so to speak. But normally I do not know what kind of whip is issued, because I have not really interested myself in that. But even if a whip were issued, it would depend upon the member whether he obeys it or not.

MR. CHAIRMAN: His point is this, Suppose candidate 'A' is from one party, candidate 'B' is from another party and candidate 'C' is from a third party, and the respective parties issue whips to their members to vote for their respective candidates, would that constitute undue influence in relation to the election of the President?

SHRI M. HIDAYATULLAH: I would imagine that to bind the vote by a whip might be regarded as making the vote unfree. A person should be free to vote as he likes. As I said, in America, the voting pattern completely changes: it is not always

the party vote that takes place. In fact, in America it sometimes does happen that the popular vote goes to the defeated candidate and the electoral college vote goes to the successful candidate, and yet in spite of that, the electoral college vote has prevailed. But even at the electoral college voting, there are arrangements or there is scope for voting down, because they do not hold their elections separately for the Vice-President's post, but the Presidential and Vice-Presidential elections together. There are other offices also which are clubbed together in this election, and the voting sometimes takes the effect of the other elections also, and for that reason, the voting pattern changes at the time of the secret voting, but I do not know much about it. Here, if a party whip is to be ignored, I think it would be all right; it would be better if there is no party whip and everybody has the right to exercise his franchise freely, but I would not say that it would amount to undue influence.

SHRI JAGANNATHRAO JOSHI: Would you favourably consider it if we suggest a clause in the Bill to prohibit political parties from issuing whips so that the elections could be free?

SHRI M. HIDAYATULLAH: A clause may be added, but I do not think that would work, because a whip might be quite secret and may not be known. What you need to do is to see that the vote should be absolutely free, and to achieve that by some means of legislation or some kind of mixing up of the votes should be adopted so that it would not be known who voted for whom.

SHRI JAGANNATHRAO JOSHI: So, we are basically agreed and you agree that the vote should be free. In what form it should be brought about is a matter for the committee to consider.

SHRI M. HIDAYATULLAH: Yes, the vote should be free.

SHRI JHARKHANDE RAI: The provision for security deposit is there. Is it at all necessary as a curb?

SHRI M. HIDAYATULLAH: If you succeed on the first part, namely of having nominations from a large number of people, this would not be such deterrent as it was before. But I personally think that this deposit might well be retained, though of course people who stand and do not get votes are wealthy enough to forfeit the deposit and not mind it.

SHRI T. N. SINGH: As I understand the basic principles underlying the amending Bill, there are three or four objectives. One is to shorten the duration of the whole election, and procedural changes have been made. I would like to know whether reducing the gap between the notification and the filing of nomination from 14 days to 7 days will make any material difference?

SHRI M. HIDAYATULLAH: With all respect, I do not think it would.

SHRI T. N. SINGH: The other objective is to prevent frivolous elections and nominations. I believe, I have heard you aright in saying that the restrictions regarding deposits are not going to affect in any way the number of nominations that have been filed. Am I right in understanding you?

SHRI M. HIDAYATULLAH: Yes, because some of the candidates who had stood at the previous elections had deposited this amount and not bothered about it so long as their names got publicity in the papers.

SHRI T. N. SINGH: So, the main motive is to get some publicity. I am glad that you have put your finger aright on the point.

In regard to the nominations being filed by a certain number of Members I would like to put it this way.

There is a concept in our Constitution that every State is on a par with the rest. There are States in the country with hardly two or three MPs as their representatives, and even if the entire membership of the legislature of that State and the entire members of Parliament from that State were in favour of a particular candidate, they cannot put up a proposal for a candidate of their choice under this restriction. Will it be correct to deprive a whole State when you want?

SHRI M. HIDAYATULLAH: I have given my personal opinion on the Section earlier. The number is put so high that it makes it somewhat difficult for any but a very strong party member to come forward. You are perfectly right in saying that if there is a desire to get somebody from a particular State, it would be possible for the other States not to let him be supported at the nomination stage. The number chosen is extraordinarily high, if I may say so with due respect to the draftsmen, because partly, in a nomination paper, there is a provision that nobody shall sign more than one nomination paper, which means that a candidate can file upto four nomination papers but he must get 160 members to sign. That is an unworkable proposition altogether. There is also the provision that if a person signs two nomination papers—it does not say for the rival candidates; maybe even for the same candidate—both the nomination papers might become void. The risk involved in having forty nominations, questionable in the court of law, is enormous. To keep out undesirable people from coming forward, a small number like 4 or 5 would have been ample; because they would never be able to get a large number of persons, unless we have got, in our country, especially in the legislatures, people who support anyone. I am sure that so many Members of Parliament and Legislatures will not be found who will support an undersir-

able candidate, who has no chance of success. Since the number of prescribed is so high, it may actually work in the way the Hon. Member suggests.

SHRI T. N. SINGH: I am in Parliament since 1949, I feel that we have been changing our laws too frequently. During the 25 years after independence, we have been amending our laws too frequently, including the Constitution itself and thereby not allowing healthy traditions and conventions to grow. Is this necessary, because the number of people getting zero votes has been gradually going down? The number of election petitions is not at all frivolous. In the case of Mr. Subba Rao, it was an important case and in the case of Mr. Giri, the court did not award costs. Therefore, should we not allow traditional conventions to govern these things, rather than come up with amendments frequently? It is a general question.

SHRI M. HIDAYATULLAH: An amendment without purpose, is not called for. This amendment is there because of the way in which the whole election of the President is taken light-heartedly. If there is a restraint there, there will be no need for having this curb on the standing by undesirable people. With regard to corrupt practices, I am aware that in the first instance, it was a technical point against Dr. Zakir Hussain; but the petition against the present President was more bodied and had more allegations; and the court did not accept them. It is obvious that such allegations, though they might turn out to be nothing should be avoided from being made. Otherwise, we will make a mockery of our high office.

SHRI T. N. SINGH: A very experienced Chief Election Commissioner told us that he had lost faith in the manner in which indirect elections were held. In the case of election to Upper Houses in the States as well as to the Rajya Sabha here, he had to send observers to the States to guard

against possible corruption etc. I need not spell out the actual allegations. If the Chief Election Commissioner felt the need for the safeguard in those indirect elections, why should it be omitted in this case?

SHRI M. HIDAYATULLAH: Those allegations are of a different type. Here the election is through an electoral college consisting of very responsible people.

SHRI T. N. SINGH: Probably I have not been understood. The electoral college here also consists of the MLAs and M. Ps. i.e. same set of people.

SHRI M. HIDAYATULLAH: I did not bear the Election Commissioner speak about it.

SHRI T. N. SINGH: You can take it from me that I am making a correct statement.

SHRI M. HIDAYATULLAH: If that is so, then some provision will have to be made for safeguard against such a mischief.

SHRI T. N. SINGH: You have said that the unseemly spectacle of these election petitions should be prevented as far as possible; and I am one with you there. I hold my country's honour as dear as anyone else. The scheme of things under the Indian Constitution is distinct from other constitutions. There are African countries where the President, once elected, cannot be questioned; in Ireland, his election can be questioned according to the law of the land. Our President is a constitutional head. He is not a person elected directly by the voters and the entire citizens of the country, as in America. So in view of the fact that the Constitution also treats the President under article 114. He is not immune in the eye of the law. He is subject to law. Why should not an attempt be made to go into the very fundamentals of the law to put him into the same pedestal?

SHRI M. HIDAYATULLAH: It is not a question of being put on a pedestal. The question really is that our election to the high office should be conducted in such a way that the high office is

not brought into peril. It is not for me to suggest, it is for the legislators to find out how the office can be saved and the wrong man can be kept out.

SHRI T. N. SINGH: My suggestion is that in our country there is very restrictive law or law on scurrilous writing. I had the privilege of being a member of the Press Commission and there the Chairman of the Press Commission was also of the opinion that the law should be made more stringent. In this case there was scurrilous propaganda. It may or may not prove who has done that. Would you agree that the law on scurrilous propaganda irrespective of the persons involved may be made more stringent simultaneously with the present act?

SHRI M. HIDAYATULLAH: The trouble would be that this is again a kind of operation where we never know who has spread this scurrilous matter and as you cannot catch him, you cannot punish him. If you can catch him, you can punish him.

SHRI T. N. SINGH: That is another matter. That is an administrative failure.

SHRI M. HIDAYATULLAH: You can make a law. You propagate false things about a candidate to the presidential office but a part from its being made deterrent in practice, it will amount to the same thing. Unless you know who did, you will never put to use this machinery.

SHRI T. N. SINGH: The actual culprit has to be traced and punished, I agree with that. Now in the British Constitution it is said that the king can do no wrong. In our Constitution the President is not on that concept of law. There are people who have pleaded that because he is a special person, so, there should be two things. Either there should be no petitions against him once he is elected or in case he is elected and if he has sworn in office, there should be no petition. What do you say about this?

SHRI M. HIDAYATULLAH: It would be very difficult to choose between the two. The damage that is done will be there in either case.

SHRI T. N. SINGH: Why should we tamper with the present provision in the act as against unfair practices and corrupt practices etc?

SHRI M. HIDAYATULLAH: The provision is already there, and so long as wild allegations are made under cover of law, which was intended for a different purpose, false allegations may be made and much damage may be done.

SHRI T. N. SINGH: You are experienced and know that people misbehave despite the law. The only safeguard is better traditions, better practices, better conventions, that is the only provision.

SHRI M. HIDAYATULLAH: My own feelings that if you do not have the law the conduct of the people will probably improve rather than worsen.

SHRI TRILOKI SINGH: The scheme of the bill provides for too deterrent provisions against frivolous candidature, those who have not a ghost of chance to win, at the stage of nomination or filing of election petition. I would like to draw the attention of the learned witness that an unusual provision seems to have been made that a nomination paper can be rejected on the ground the signature of the proposer or seconder is not genuine, rather that signature has been obtained by fraud. I would like to have his opinion whether such provisions exist in the existing law or in the existing law relating to the election to the President, and Vice-President. This is an additional provision for the rejection of a nomination paper on the ground of fraud as a result of the summary enquiry conducted by the Returning Officer. Don't you think that it will lead to unnecessary harassment and lead the public and the candidate in a disadvantage position?

SHRI M. HIDAYATULLAH: I have stated that this whole arrangement

about having the nomination papers signed by so many persons, requires a second look. It is because first of all, too many people are there and the chances of the signature being faulty are always great. You expose that nomination paper in 40 different ways. If you have forty different signatures. That is the first thing. And the second thing is that sometimes a person signs it without realising what he signs. If there is some fraud, that is some can be brought to his notice. The idea is that he may withdraw his signature. There is no provision that once he has signed he has signed for ever. Unfortunately, that is my experience over these years. Perjury seems to run with these elections.

SHRI TRILOKI SINGH: If 'A' nominates me and 'A' comes forward and says that he did not sign that nomination paper and he is believed by the Returning Officer then my nomination paper will be rejected without any lapse on my part but for the simple reason that the man whom I got to propose my nomination paper has been won over by the other party. It is not unusual in this country.

SHRI M. HIDAYATULLAH: It is not unusual to have these things, but how to prevent these things. If you try to secure forty signatures then somebody might come forward and say that he did not sign that nomination paper.

SHRI TRILOKI SINGH: Suppose there is one proposer and one seconder and if he is won over by the other party, the candidate is at the disposal of the proposer and the seconder.

SHRI M. HIDAYATULLAH: You can have four or five nomination by different persons so that the risk of somebody proving if I may use the well understood word 'defector' is reduced and he can rely on another nomination paper.

SHRI TRILOKI SINGH: It also happened that those who got themselves proposed for the high office of President did not get a single vote not in one case but in many cases. Do you not think it is easy for the proposer to be won over to the other side of the candidate?

SHRI M. HIDAYATULLAH: The number of persons signing the nomination should be brought to a reasonable size and then the candidate should be allowed to file more than one nomination paper to avoid this kind of risk. You have concentrated all your proposers into one—40 and if it falls to 39 the paper goes. The risk of person walking out on that candidate has increased 40 times. May I suggested that each candidate may file six nomination papers or more proposed by one proposer and one seconder. He must keep his number upto six instead of having 40 signatures on one paper. He can safeguard himself with five or ten or four nomination papers.

SHRI TRILOKI SINGH: I would like to know whether finding of fraud can be given summarily?

SHRI M. HIDAYATULLAH: Fraud has a very special type of law. Particulars of fraud have to be pleaded with great certainty and also chance must be given to the other side. The officer has to examine the paper summarily and if he finds that something has to be said, he has three days time to decide.

SHRI TRILOKI SINGH: It may be three days or three minutes for a summary enquiry.

SHRI M. HIDAYATULLAH: I have experience of this sort. My father was a Member of the Assembly. He stood three times and I know how quickly these things were decided, getting no time to think.

SHRI TRILOKI SINGH: If I have understood the learned witness correctly he is in favour of the deletion of the clause—curb offences of bribery and undue influence and, also grounds of procedural irregularity whether on the part of the proposer or returning Officer, and intimidation.

SHRI M. HIDAYATULLAH: Intimidation—No. you cannot beat a person and make him vote.

SHRI TRILOKI SINGH: Intimidation can be there while exerting undue influence and bribery. An unhappy experience has been that in the matter of election to the Upper House I mean Rajya Sabha and the Legislative Council in the States bribery is said to have prevailed on a wide scale in the matter of elections where the electorate is very limited. The same is the case with the election of President. It is common knowledge that rich people with a money bag support independent candidates and inspite of partyhood have got them elected not from one State but most of the States in India. Will it not be necessary to retain this provision because the electorate is the same, and I hope the hon'ble members of this Committee share this experience with me, that bribery has prevailed on a more rampant scale among the electors constituting in Rajya Sabha and Vidhan Parishad. In view of the finding of the Supreme Court it was right that Mr. Giri has not done, but there is a definite finding in the Supreme Court that undue influence was committed by certain sections of responsible people belonging to a particular party. Do you not think that it would be better in the interest of purity of elections relating to the highest office in the land that these provisions are retained?

SHRI M. HIDAYATULLAH: It scares me to learn that bribery has played a part in the election of Rajya

Sabha and the Council. I was not aware of it. I was relying on the good sense of those people and I said at some stage that if we do not have this provision we can probably induce a better morality than by keeping the provision.

SHRI GANESH LAL MALI: In view of the fact that the proposer is there, would you consider it necessary that the provision proposed for security deposit would be equally necessary at the same time?

SHRI M. HIDAYATULLAH: It is hardly a deterrent. The idea is to keep the undesirable person out. The person must not have the support at the very start. The provision for money hardly matters at all.

SHRI D. N. SINGH: You said in your evidence that you want to save the officer rather than save the man. In our Constitution, there is a provision for impeachment of the President. According to art. 61, charge can be preferred by either House of Parliament. What is required is only 14 days, notice and signature of one-fourth of the members of either House. The membership of Rajya Sabha is 250. That is even if 40 members sign a petition of impeachment, the charge shall be preferred. It is just possible it may not be accepted by either House. But the damage is done. Would you say that this article should also be deleted from the Constitution?

SHRI M. HIDAYATULLAH: That stands on a different footing. The impeachment originates in the House. It must originate in one of the Houses with a sufficient safeguard as to number, whereas an election petition as the law stands can be preferred by anybody.

SHRI D. N. SINGH: No, it can be preferred either by a candidate or by an elector.

SHRI M. HIDAYATULLAH: In that restricted field, it will be presented by the persons authorised to present it. But they are of a different character. In the case of impeachment, it will be proved misconducted; it would be voted upon in the House by a two-thirds majority. Unless the person was sure that two-thirds majority would be available, he would hardly try to move such a resolution in the House. Therefore, it is on a different footing. But election petitions run riot. You can have any kind of allegation made and the nature on not present proof of it. So one must stop this kind of thing with regard to our high offices, if our country is to emerge as a respectable country. That is why they did not like to have this kind of thing brought in the American constitution also. Othrewise, they would have also allowed such allegations to be made. Therefore, the indirect elections are better. Here also we have indirect election. We must cultivate it in such a way that we do not run into all these defects.

SHRI D. N. SINGH: You also said that the election should be conducted in a dignified manner. In the last presidential election, a pamphlet was distributed about which your brother judges of the Supreme Court have made certain observations that it 'plumbs the depths of fifth and meanness seldom reached'. This is how justice Mitter has described it. Justice Sikri has also said:

"...a series of anonymous attempts in a country like ours would have as much, if not more, effect as one open powerful attempt. It would be dangerous to provide a sanctuary to anonymous attempts".

Would you suggest that in an election such scurrilous pamphlets etc. should not be distributed, and if a person is found distributing it, what would be the penalty against him? Any concrete suggestions to check distribution of such pamphlets which plump the depths of filth and meanness seldom reached?

SHRI M. HIDAYATULLAH: I must say that it was shocking to have had such a propaganda in the last election. I am not saying who distributed the pamphlet or who was responsible for it. I must say that it shocked me that for such a high office with two such dignatories in the field, such a thing should have been done at all. How to prevent it is a very difficult proposition indeed. You can always make a law, but a breach of it is always open. You may make it punishable with death; still breach can be possible and the man may get away with it. After all, we have laws which punish offences with death; still those offences are committed. No amount of rigour in the law will stop it. It is the good sense of the people that will stop it. If we have not the good sense, there is an end of the matter. I cannot advance the matter any further.

SHRI D. N. SINGH: Justices Mitter and Sikri have referred to the probable origin of the pamphlet. Justice Sikri also observed that it was distributed to MPs in the Central Hall. Justice Mitter made a reference to its origin. If there is a judicial pronouncement about its distribution and about its probable origin, why should it not be made incumbent on Government to find out the culprit and punish him?

SHRI M. HIDAYATULLAH: If a law were made for investigation and for special trial of such people. It may be possible to catch somebody.

Unfortunately, if it has been distributed like that. I can only say it is very regrettable that it should happen in that body. That is about all.

How to stop it, is very difficult to say. You have got such stringent laws, DIR, Essential Services (Maintenance) Act etc. Yet you see what is happening in UP. There is always a breach possible of the most elaborate law you can make. Treason is the gravest offence in England; the man has to be hanged, disembowelled and buried with a stake through him at the cross-road. Even that does not stop treason being committed. It is not the punishment that will stop it; it is the good sense of the people that will do it. The greatest hope was that this election is an indirect election through an electoral college of MPs and members of Legislative Assemblies. That itself should be a safeguard against any frivolous, scurrilous or other proceeding. It is impossible for one who does that to get support for one one's candidate in such a body. If that fails, I am afraid nothing else will succeed.

SHRI D. N. SINGH: The Supreme Court held in Sheel Bhadra Yajee's case, election to the Council of States, that some members did accept money and voted for a particular candidate. He was disqualified. He was Mr. . .

SHRI M. HIDAYATULLAH: I am not interested in any name.

SHRI D. N. SINGH: The members of the Rajya Sabha are elected by the members of the State Assemblies. The then Chief Whip, Shri Raghuramaiah, mentioned about it. The then Home Minister, Shri Chavan, also mentioned about Aya Rams and Gaya Rams. They are expected to know better about the conduct of members. In view of the various judicial pronouncements, in view of the recommendations of the Whips' Conference regarding defections which you

have yourself mentioned, in view of the frequent floor crossing, in view of many of the pronouncements of the Supreme Court regarding the conduct of Chief Ministers when they were in office some of whom have been put to jail, would you not think that the provisions about "undue influence" should be retained?

SHRI M. HIDAYATULLAH: That this is an indirect election, can be the only justification for keeping a curb on law. That is the only thing one can say. Some curb on law will have to be kept. I hope—and I hope I am not hoping against hope—that our society will improve if it is found that it is being trusted. After all, it will be an indirect election.

SHRI H. M. TRIVEDI: You have appeared to suggest that the present provisions regarding bribery, corruption and undue influence need not be present there because you hold the office high and you would rather expect the society to act in a manner where such charges should not come about. But you did suggest that some provision against threat, intimidation or violence should in fact exist. Under the present Act, undue influence comes to be defined really under the Indian Penal Code. I believe the Law Commission has suggested some alternative definition of "undue influence". Do I take it that you would support the inclusion in the present bill the definition suggested by the Law Commission for "undue influence". because that is exactly what you have in mind, intimidation, violence, duress etc.?

SHRI M. HIDAYATULLAH: As I have said these categories, namely, intimidation, duress, threat and violence will have to be kept there. Whether they are brought under one general term "undue influence" or they are defined separately, they will have to be there because they are well-understood terms. You can define "undue influence" as meaning

all these. But bribery and corruption unfortunately leads to false imputation that reflects upon the character of the man, whereas intimidation and coercion does not in the same way reflect upon the man as showing moral turpitude. That is the slight difference between the two.

SHRI S. B. GIRI: You have stated just now that whips constitute an undue influence. In a parliamentary democracy, as we have, we have to abide by the party discipline. If we say that the issue of a whip is an undue influence, then we are encroaching upon the rights of political parties. Is it not a genuine right of a party to direct its members to act in the manner the party wants?

SHRI M. HIDAYATULLAH: The party may issue a whip. But it should be open to the voter to vote as he likes.

SHRI S. B. GIRI: In the last elections though the party issued a whip, many people voted against the whip of the party. But one we include this clause, will it not deny the genuine right of a political party to issue whip to its members?

SHRI M. HIDAYATULLAH: I would rather have no say in this matter. No whip in this matter would be much better. While the ideal situation is that each person is left free to vote as he likes, when a party system is developing, it is of the essence of a party system that it will issue a whip. Therefore, the whip will have to be retained. But it should be clearly understood that the whip may be ignored as in America it is sometimes done.

SHRI VIRBHADRA SINGH: There is a view that there should be no election petition or litigation regarding the election of the President after the President has assumed office and if there is to be any election petition it should be finally decided before the President assumes office. I would like to know your views.

SHRI M. HIDAYATULLAH: The difficulty in our country that there is no settled date for election, unlike America, for example, where there is a settled date for election known in advance. We generally break up our time into so many days for nomination, scrutiny and so many days for canvassing, so many days for election and counting of votes and then there is the swearing in by the President. If there is an election petition after the election, it takes a long time to dispose of it.

SHRI VIRBHADRA SINGH: Could we not say that an election petition should be disposed of within a particular period?

SHRI M. HIDAYATULLAH: Just now hon Member said that we can not investigate fraud summarily. If you fix a time limit, then there can be only a summary investigation into the petition. If the President can be impeached and removed from office his conduct during the election can also be examined. But the area of the conduct should be reduced so that wild allegations are not made.

SHRI VIRBHADRA SINGH: Personally I feel that it should not be difficult to provide that an election petition should be filed and disposed of within a certain period, may be one or two months.

SHRI M. HIDAYATULLAH: It can be done in the case of other elections, where the petitions can be disposed of by the High Court within a particular time limit. But the Supreme Court has only a limited number of judges. Then, a single big matter consumes much more time than a large number of small matters of much little consequence. For instance, now 13 judges are hearing the case on the amendment of the Constitution. The election petition against the President was heard by five judges, who were continually occupied with that for three months. This kind of trial will always take time. Then, the presidential election having taken

place, the swearing ceremony cannot be kept in abeyance for a long time. That is not for me. It is for the hon. legislators who are here to evolve some formula under which it can be done.

SHRI SAMAR MUKHERJEE: When cases of corruption and bribery are increasing and almost in every election, these charges are coming out in the Press that voters have been purchased and corrupt practices have been indulged, in under these circumstances if we delete the clause on bribery and corruption from this old Act then, will it not appear the people and also in reality will it not help to increase these practices of bribery and corruption and that in the case of election of President and Vice-President, this question of bribery and corruption is being legalised? So, this deletion will increase, not decrease the practice of bribery and corruption.

SHRI M. HIDAYATULLAH: I was hoping the other way because I personally think that if bribery and corruption are brought before the court for investigation, it reduces the office to a mockery even if it unfound that nothing like that happened. As I said, the chances of bribery in the case of a presidential election are very remote—bribery as such, that is money.

SHRI SAMAR MUKHERJEE: In actual practice it is increasing. In every election this charge is common.

SHRI M. HIDAYATULLAH: In the lower elections. i.e. in elections to Parliament.

SHRI SAMAR MUKHERJEE: Even in presidential elections these charges have come.

SHRI M. HIDAYATULLAH: Charges have come. After all, we have had so many elections for the President. This was not the first election and there was never any charges of bribery before. In fact, in the first two elections, there were hardly any election petitions. In the third elec-

tion, there was only the question of subscribing to the oath. Only in the Fourth election it has come.

SHRI SAMAR MUKHERJEE: That means that it is becoming a national feature. When it has turned out to be a national feature, at that stage, if we delete this part, it will further help.

SHRI M. HIDAYATULLAH: It is not for me to contradict an hon. Member here, but I do not think it is a national feature. It was just an accidental thing at that time. I do not think that our society is so bad.

SHRI G. VISWANATHAN: Your experience was—I take it that the number of electors to the President can be between 5 and 10—proposers and seconders.

SHRI M. HIDAYATULLAH: I would have multiple nomination papers. This 40—I feel is too much.

SHRI G. VISWANATHAN: Supposing it is made 5 or more nomination papers, will it be a sufficient safeguard?

SHRI M. HIDAYATULLAH: I am not on the number of nomination papers; I am on the number of electors. If you have two, if one paper fails, the other will remain. One is good enough. If you increase the number of nomination papers, with one proposer and one seconder each; that would in my humble submission, lead to better results than one nomination paper with 40 members.

SHRI G. VISWANATHAN: I want you to put a figure—whether it could be five electors or 10 electors. At present it is proposed 40. What will be your optimum and reasonable number of persons who should propose and second?

SHRI M. HIDAYATULLAH: I would say five proposers and five seconders not necessarily on the same paper, there may be five different nomination papers.

SHRI G. VISWANATHAN: You mentioned that the grounds of duress and intimidation should be there. How would you react if we add the two grounds which are obtained in the Representation of People's Act, namely, appeal in the name of caste, religion and other things and another creating feelings of enmity between different classes of citizens of India?

SHRI M. HIDAYATULLAH: For the general electorate those grounds will be very material. I would not have them deleted for anything. If I remember aright, I set aside or rather upheld the setting aside of an election on the ground of appeal to religion. But this being a limited electorate, being an indirect one through an electoral college, such an appeal will have no meaning whatever. Do you expect that the President will go about saying to the Hindus, 'Vote for me because I am a Hindu'. I am not imagining such a thing work with the kind of electorate we have here. But this may work with the masses; therefore, it has to be retained there, but it is hardly needed here.

SHRI G. VISWANATHAN: From the observations you have heard from the Members, will it not be an open invitation to corruption if you remove these two grounds now considering our experience in the present circumstances?

SHRI M. HIDAYATULLAH: I do not think so, with all respect to you.

SHRI BALACHANDRA MENON: With a view to avoid the highest dignity of the country, namely, the President being tried in a court in an open trial for corrupt or undue influence, would you suggest a new clause be inserted for a Parliamentary Tribunal or a committee?

SHRI M. HIDAYATULLAH: If I am asked, I would like to draft it for you. I cannot give it *impromptu* because drafting will require my reading of the old English law to see

what kind of a Parliamentary Committee it was.

MR. CHAIRMAN: Hon. Members want to know whether in view of this can it not be left to a Parliamentary Committee to examine?

SHRI BALACHANDRA MENON:to have a Parliamentary Committee for that and see that it is disposed of.

SHRI M. HIDAYATULLAH: It can be done. The Supreme Court is not a *must* in every case. It can be done through another agency. It can be done more conveniently than in the Supreme Court.

SHRI NITIRAJ SINGH CHAUDHARY: Art. 58 of the French Constitution provides for such matters being heard by a Parliamentary Committee.

SHRI M. HIDAYATULLAH: If you want me to draft it, it can be done.

MR. CHAIRMAN: Thank you Mr. Hidayatullah.

(The meeting then adjourned to meet again at 15.00 hours)

(The Committee re-assembled at 15.00 hours)

III. Shri A. K. Sarkar, Former Chief Justice of India

(The witness was called in and he took his seat).

MR. CHAIRMAN: You have before you the amending Bill. With your wide and varied experience in law and judiciary the Committee would be glad to hear you first about this Bill and then Members want to put questions.

SHRI A. K. SARKAR: I have gone through the Bill. There are certain minor points concerning the Bill on which I have some little suggestions to make later. Broadly the main things you are dealing with are undue influence and bribery which now form grounds for setting aside

the election. Now this is not really a matter of law nor. I am experienced enough in this kind of thing to give valuable. I think it would be better to retain them and then have the case before the Supreme Court, and they decide it as a *prima facie* case, that is to say, reject it if, there is no case to be gone into. Then perhaps so far as Presidents' election is concerned, the proceedings might be held *in camera*. Then the people indulging in the things against which you have now provided would be foiled. That is what strikes me. About the rest of it I have nothing to say. Looking at clause 3 of the Bill, Sub-section (1) clause (b) says: "the date for the scrutiny of nominations, which shall be the day immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;". I think the notification should fix the date mentioned in clause (a) only and the other dates should be fixed by the Statute without needing fresh notifications. That would make the notification simple and avoid disputes. Then another thing strikes me. You have mentioned in some of the clauses in the proposed sub-section (1) of old S.4, the last date, but which is the first date? In clause 4, you will find two things. Section 5 talks of another notification. First of all, it says it is for intended election. This follows the notification mentioned in the proposed sub-section 1 of old Section 4. Then the point arises which is the first date for filing the nomination. Then in clause 4 under the new section 5 the place has to be specified where the nomination papers are to be filed. Now the date of the scrutiny is the date immediately after the last day of the filing of the nomination paper. I take it that the scrutiny will be in Delhi. So far as that is concerned, if a holiday is declared after the notification is issued under sub-section 1 of section 4 then under new section (1A) of old section 4 if necessary, suitable amendment in the notification issued under sub-section

1 may be made. It strikes me that it is not clear what 'if necessary' means. What is the special case that makes it "necessary". And then suppose a holiday is declared immediately before the next day fixed under clauses (b) or (c) or (d) of sub-section 1 for a sudden reason, as happened in the case of Rajaji, then where is the time to make the amendment. I take it when it is said that amendment may be made, it is also intended that the amendment will be published otherwise we will only be keeping it in the archives. Perhaps you will have to find a way out for that purpose. Then come to new section 5A which states 'if he is qualified to be elected...'. On what day is that test to be applied about his qualification? The day of nomination or the day of scrutiny? If you mean the day of the filing of the nomination paper, if that is meant, then how do you reconcile that with section 5E, (3), (a) which is at page 4. Here is mentioned the date of the scrutiny and not the date of the filing of the nomination paper. At the time of the nomination paper the man is fit but if something happened in the meantime, how do you reconcile with that? Then section 5A unless you explain what is "if he is", I am not clear myself. Before we pass on. I refer to the words 'inviting nominations' in section 5. There is section 5B sub-sections 1 and 2 which provide, I believe, that the nomination will be by filing of the nomination paper. I should like to retain something of the kind as in old section 5(2) to make it clear that the nomination will be by filing of the nomination paper or something like that should be retained. That is what I feel there. On Section 5 B: I have nothing to say as to the main part of it. As for the language of clause (a) there you say 'elected members, it seems to me these words are not necessary. Earlier you have mentioned '20 electors as proposers' and '20 electors as seconders'. Electors imply that these gentlemen must be elected members.

MR. CHAIRMAN: There is Rajya Sabha which is not directly elected.

SHRI G. VISWANATHAN: There are nominated members also.

SHRI A. K. SARKAR: Under article 54, the election is to be by the elected members.

SHRI NITIRAJ SINGH CHAUDHARY: 'elector' is also defined in section 2(d):

" 'elector' in relation to a Presidential election, means a member of the electoral college referred to in art. 54, and in relation to a Vice-Presidential election, means a member of either House of Parliament".

SHRI A. K. SARKAR: Yes, that is what I thought. No harm if these are retained, but it might be more elegant if they are left out.

Then 5E(8):

"For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950".

If that is proved, he ceases to be an elector for the purpose of this election. I do not know whether you would like to clear that up in that section as proposed in the Bill...

Permit me to say that this requires an intensive study which I do not think I have made.

SHRI T. N. SINGH: You have gone into the full details of this.

SHRI A. K. SARKAR: Then 5B (3):

"The returning officer shall not accept any nomination paper which is presented on any day before eleven o'clock in the forenoon and after three o'clock in the afternoon".

What does 'any day' mean? It may perhaps be argued, that this enlarges the time that is fixed by the 1st day, which I mentioned, and the last day which the notification is required to state. 'Any day' may be a bit too wide.

Then passing on to the proviso mentioned in sub-section (3), of Section 5, I do not think it is necessary. It is mentioned in the statute and has to be followed. It is in 5B(1). It is already mentioned there. Why take up an extra burden?

If the Returning Officer forgets to mention it, argument can be raised. Litigation can be started.

SHRI T. N. SINGH: Proviso (b)?

SHRI A. K. SARKAR: Same thing.

If you keep it, you may consider whether the expression on 'available date' should be defined. I follow it myself, but I think more precision would be better.

Then sub section (4) of section 5B.

"Any nomination paper which is not received before three o'clock in the afternoon on the last date appointed under clause (a) of sub-section (1) of section 4 or to which the certified copy referred to in sub-section (2) of this section is not attached shall be rejected and a brief note relating to such rejection shall be recorded on the nomination paper itself".

What is to happen to the rejected nomination paper? Is it to be returned to the person presenting it or kept on the file? If so, is it to be given any kind of publicity? Certain notices have to be hung in the office. Is anything like that to be done in this case.

SHRI T. N. SINGH: Under the rules, there is a provision for hanging it on the notice board in the Parliament House.

SHRI A. K. SARKAR: Should not some provision be made about communicating this rejection to the party

concerned presenting the nomination paper?

SHRI T. N. SINGH: Should we not leave these details to the rule-making powers?

SHRI A. K. SARKAR: That you can. But the intention, I find from the notes on clauses, is to put some things considered more important in the Act itself—see note on clause 4.

SHRI T. N. SINGH: That is so.

SHRI A. K. SARKAR: Then 5B(5):

"No elector shall subscribe, whether as proposer or as seconder, more than one nomination paper at any election."

What is the idea behind it? I have not got it. Why do you wish to debar him?

SHRI T. N. SINGH: Some member may propose more than one name.

SHRI NITIRAJ SINGH CHAUDHARY: The election is for the Presidentship. I may propose your name and Singh Saheb also.

SHRI T. N. SINGH: This prevents some persons nominating more than one person.

SHRI NITIRAJ SINGH CHAUDHARY: One contestant for one post proposed by one person.

SHRI A. K. SARKAR: Then going on to 5D(a), (b)—page 4. Is it necessary to do this, because this is already in the notification? You are repeating the same thing. It will be simpler to leave it in the notification.

The new section 5E(1) reads:

"On the date fixed for the scrutiny of nominations under sub-section (1) of section 4, the candidate, one proposer or one seconder of each candidate and one other person duly authorised in writing by each candidate, but no other person shall be entitled to be present at the time of scrutiny of nominations. . . ."

Would it not be better to give a little more time to scrutinise the nomination papers. Supposing here is a week available for filing nomination paper, the scrutiny will be immediately the day following under sub-section (4). If you give them a little more time, would it not help to scrutinise with greater care? That is a point for the Committee to consider.

Coming to section 5E(2), will the candidate whose nomination paper is rejected be present at the scrutiny? It is not provided for. If that is the intention, it is all right. You may consider whether you can make a provision for that as a matter of policy and expediency.

In section 5E(3) when you say "reject nomination" I suppose you mean the nomination paper by which the nomination has been made. That is why I drew attention to sub-section (2) of section 5 of the old Act which has been deleted.

Before coming to the grounds of rejection, though the draft Bill indicates that the scrutiny has to be by the Returning Officer, that is nowhere expressly stated. I would prefer it to be stated that the scrutiny that is provided for will be by the Returning Officer.

Sub-clause (3) (b) says:

"that any of the proposers or seconders is not qualified to subscribe a nomination paper under sub-section (1) of section 5B;"

I suppose "is not qualified" means on the date of the signing of the nomination paper. Does it mean that? Because, the scrutiny is at a much later date. You may make that clear so that there is no doubt.

You have earlier provided in section 5B that there will be at least 20 electors as proposers and 20 electors as seconders, so that there may be more than 20 of either variety. Now by section 5E(3) (b), if one of these persons is not qualified, the whole thing goes. Is that the intention even if there

are more than 20 proposers and twenty seconders.

Then, in section 5E(3) (c) will you not add that these proposers and seconders have to be not only of a certain number but they have to have certain qualifications mentioned in section 5B? Should you not add here "as provided in section 5B(1) (a) or (b), as the case may be".

Coming to sub-section (d), I suppose it is intended, as in the earlier case, if there are more than 20 persons, say 30 persons, and if the signature of any one of them has been obtained by fraud, deliberately put it in knowing it is not genuine, then it is intended that the whole nomination should go, even though there are sufficient genuine proposers and seconders even otherwise. I would take that view. If that view is taken, I could not object to that.

I have no objection to sub-clause (e).

Coming to (f), some of these points have been covered earlier. For example, rejection is covered by sub-section (4); certified copy is covered by section 5B (2). So, this becomes duplication and, may be, contradictory at times. Putting it broadly and comprehensively like that may not be a very wise thing. That could be examined.

Sub-section 5E(4) says:

"Nothing contained in clauses (b) to (f) of sub-section (3) shall be deemed to authorise the rejection of the nomination...."

Suppose this nomination paper comes under sub-section (3) (e). Then will it go? I do not think it should go, when there are sufficient number of proposers or seconders left. I come now to section 5E(6). Supposing some evidence is necessary to complete the inquiry, that is in view here and that is not available, would you not make some provision for that also that, at the discretion of the Returning Officer—the officer scrutinises certain things—but all things could not be foreseen—

so you may say that if he did not see it earlier, he should be given time. Would you not like to make some provision or must he do it immediately.

Then again 5E(6). Once he starts, he shall not allow any adjournment of the proceedings. I am thinking of something in support of it.

These are the matters of great importance. But if you think it will help the idea you have in your mind, you may incorporate it; not otherwise.

Clause 8—Here what is the point of time you have in view?

That is all I have to say on the proposed provisions.

SHRI G. VISWANATHAN: Regarding the deletion of the two provisions—bribery and undue influence, you said that it is better to retain it and you also qualified it by saying that there should be a *prima facie* enquiry. Would you please throw some light on it?

SHRI A. K. SARKAR: I am putting it this way. As I understood it from the draft that was circulated to me, I refer to the Objects and Reasons, it is certainly unseemly that allegations of this character should be openly canvassed before the public against a person of the eminence of the President. Even if it is found that those allegations were justified and the person elected as President is removed from the office as a result of the Supreme Court's judgement, it does not help the country. I entirely agree, but, at the same time—I think you will pardon me for this—I am not doing justice to my country and I am one of the country. I feel that if you remove this kind of provision from the Act, then it may be it would act as an encouragement to people so minded. That is why I would suggest that those grounds for setting aside the election of the President or Vice-President should be retained but we should try and find out a method by which least harm is caused to the country as a whole by such retention.

SHRI G. VISWANATHAN: Shall I say that, according to you, the *prima facie* inquiry can be held in camera or the whole thing should be held in camera?

SHRI A. K. SARKAR: I have not really suggested it, but I agree with you that the entire case may be held in camera.

SHRI G. VISWANATHAN: Regarding the number of electors—that is supposed to avoid frivolous nominations and at the same time taking into consideration the present political set-up, there are certain States which not nominate a candidate if the number is put at 40. Don't you think it is too much and excessive and is it not better to bring it down—the number of proposers and seconders? For example 10 or 5.

SHRI A. K. SARKAR: If you permit me to say so, I am not competent enough. I have had no experience of politics and I could not really help you on this question whether it should be 10 or 20 but I do not quite follow when you say that a State could not get sufficient number of proposers and seconders. I have not said that. But, is the nomination to go by States? So, we need not consider whether there can be a State which could not muster enough number of qualified electors to nominate proposers and seconders of a presidential candidate. Have you not proposed—I do not know, with your leave I am saying it,—a parochial point of view?

SHRI G. VISWANATHAN: At present, the strength of the largest Opposition Party is 25 in the Lok Sabha. It seems that in the present political set up, the party, even if it wants, will find it difficult to nominate a candidate. Will it not be putting too much restriction on Parties to nominate Presidential candidate? 40 Members.

SHRI A. K. SARKAR: It is certainly obvious. I could not disagree with you there. But why are you mentioning parties in this connection.

SHRI PILOO MODY: I would like to re-frame the question which was

just asked. The reality is that we have to-day in the political arena several Parties in opposition and none of them has the requisite amount of strength to be able to field a candidate of its own. The question first arises is: whether legitimate all-India political parties should or is it desirable that they should be able to field their own candidates for the Presidential election, whether it is in the greater interests of democracy that they can field their own candidates or not? What is your opinion on that? Do you think that it would be in the greater interest of democracy in India if legitimate political parties could field their own candidate for the Presidential election?

SHRI A. K. SARKAR: There could be no objection to that. But I do not know that this post should always go by political parties?

SHRI PILOO MODY: Our 25 years experience shows it has.

The question is if it is desirable that political parties should field their candidate, then bearing the political situation in mind the qualification for nomination should be brought down to the level where it is possible.

SHRI A. K. SARKAR: That must be so.

SHRI VIRBHADRA SINGH: What are your views regarding the provision of security deposit in the proposed Bill?

SHRI A. K. SARKAR: I have no objection to the amount being fixed and the system of security deposit in the kind of things that have happened may have a salutary effect.

SHRI VIRBHADRA SINGH: The purpose is to prevent frivolous nominations, etc. It is for this purpose that the number of proposers and seconders is sought to be raised to 40. Do you not think that it is sufficient deterrent for the frivolous candidates coming forward or we should have the provision of security deposit also?

SHRI A. K. SARKAR: The two things are different. One is nomination and the other is in regard to the petition for setting aside the election.

SHRI VIRBHADRA SINGH: The security deposit is not for fighting the election but for the candidature.

SHRI A. K. SARKAR: It may not be achieving much.

SHRI RASIKLAL PARIKH: Regarding so many members of Parliament and so many members from the State legislatures, would you consider that the suggested provision is all right or if it is a mixed lot—altogether 40 either of Parliament or legislatures, would that suffice?

SHRI A. K. SARKAR: On that point I have not much of experience.

SHRI RASIKLAL PARIKH: It is felt that it would be difficult for the members to get so many members from Parliament or Legislature. If that is a mixed one, that would meet the objection.

SHRI A. K. SARKAR: I find no objection to the suggestion that you have made.

SHRI NAWAL KISHORE SINHA: We should think some way whereby the election petition against the President is disposed of within a reasonable time limit so as not to interfere with an early swearing of the man for the post of the President.

SHRI A. K. SARKAR: You are thinking of the method by which decision could be made quickly by the court.

SHRI NAWAL KISHORE SINHA: Despite such instructions by the Government we find that cases are not disposed of quickly. Can any law be amended or system formulated whereby the court may be able to dispose of such petition early than the normal election petitions or cases under ordinary provisions of the Indian Penal Code?

SHRI A. K. SARKAR: The only suggestion I can make on that point

is you give wide powers to the court to take as summary a procedure as they think would suit the occasion. Litigants and not the judges hearing the parties prolong the case and no kind of procedure can shorten it. The time is mostly taken by the witnesses and their cross examination by the counsel. It is difficult to stop this lengthy cross examination unless you give the court summary power to deal with it in any manner it thinks fit.

SHRI NAWAL KISHORE SINHA: Do you think it is possible that the courts can be given power to dispose it of summarily within one or two months?

SHRI A. K. SARKAR: Yes. But there has to be co-operation from the people, litigants.

SHRI BALACHANDRA MENON: The charges of bribery and corruption on the President may not be taken up in the open court. Have you got any suggestion to make as to how it should be done? What form should be adopted?

SHRI A. K. SARKAR: It can be heard *in camera* as has been suggested earlier here.

SHRI D. N. SINGH: Would you like any damaging statement with regard to a candidate, if it is published, to be a cognisable offence?

SHRI A. K. SARKAR: It is already an offence.

SHRI D. N. SINGH: During last election the Supreme Court of India has held that a pamphlet was circulated in the Central Hall of Parliament by Members of Parliament. I want to know if a person is in possession of a filthy pamphlet, why that should not be forfeited by the Government on the ground that it should not be circulated?

SHRI A. K. SARKAR: Who decides the question? Is to be a Police Officer, but then this is a question of giving power to the Police Officer which may also be put to abuse. There are very large number of things to be considered when it is done.

SHRI TRILOKI SINGH: The whole scheme of this amending Bill seems to be to discourage frivolous candidates and to deter the electors from filing an election petition in a light-hearted manner. So in view of the past experience of so many elections and two petitions before the Supreme Court, I would like to know whether one deterrent provision is not enough. The nomination should be made easier so that it may be possible for a party to nominate a candidate. Although the candidate is very good and he may win but because of the necessary number required, he may not be able to file his nomination paper. The filing of the election petition may be made difficult.

SHRI A. K. SARKAR: Would it not be better for the country as a whole not to have people contesting for this post who are really not fit for it.

SHRI TRILOKI SINGH: The present President had no support when he stood and gathered support everybody and ultimately he won. My point is that a person may be worthy, he may get elected and he is not only capable and great but has all the qualities that go to make a President but he is not prepared to come out of his office and one elector goes and says that you come out for election. Therefore, my submission is that the filing of the election petition should not be permitted in a light-hearted manner but in so far as the nomination goes anybody can come forward. I want to know if the nomination is retained more or less on the existing lines but the filing of election petition provision may be made more stringent as proposed in this Bill or even a little bit more is added so that people may not come to file election petition in a light-hearted manner, what is your reaction?

SHRI A. K. SARKAR: In what form it should be retained is for you to consider.

SHRI T. N. SINGH: My first objection is in regard to producing the time of the whole election procedure from the time one is nominated and to the time one is elected. And the

greatest change they have made is in regard to 'from 14 days to 7 days' from the date of notification. Don't you think that our country is a very big country, there are tribal areas where communication does not reach before 10 days and is it not necessary to retain the same i.e. 14 days? Is this change worthwhile?

SHRI A. K. SARKAR: I could not say whether there is anything very much desirable achieved by reducing it from 14 to 7. An election has to be made in certain cases within a specified time. Those cases include one when he has resigned. Even in the case of his term coming to an end, the election has to be made before he leaves.

SHRI T. N. SINGH: I do not think under the Constitution there is any rigid time limit.

SHRI A. K. SARKAR: That you will find in article 50(1)(c) of the Constitution.

SHRI T. N. SINGH: Now one of the suggestions made was that we should prevent election petitions as far as possible and therefore, we should make it as stringent as possible. But in that attempt various clauses like bribery and corruption have been omitted. You have rightly felt that things will not be desirable but there are other things also like undue pressure. Will that undue influence include all these things? How do we define it? We have the earlier Act including 'undue influence'. In that case, will undue influence include intimidation, communal appeal, religious appeal etc.

SHRI A. K. SARKAR: I think not strictly legally.

Communal appeal which, I believe, is a kind of communal activity may be undue influence. The distinction between intimidation and undue influence, as I understand it from the legalistic point of view, is this. When one is said to act under undue influence, it is his act, but there is a compulsion on his mind behind what is done. But that compulsion has been created by certain forces which it is

the policy of law to prevent. Intimidation is something which a person does not do out of his own volition but because of his being forced to do it by threat of physical violence or other things.

SHRI T. N. SINGH: Should we not add intimidation to this list of points on which a petition can be filed?

SHRI A. K. SARKAR: As I see it the whole object is to keep out of court anything which may reflect on the person of the elected candidate or of the high office to which he has been elected. If that is the object—and that object I appreciate—then retaining 'intimidation' would not achieve it.

SHRI T. N. SINGH: Under the Constitution, the election law in the case of the President is no different from any other individual. Why should we make a distinction in this case? Will it not amount to discrimination under art. 14?

SHRI A. K. SARKAR: I do not think so. After all, the President has a lot more amenities, honour and other things which other people do not have. But nobody questions them as discriminatory. So far as election to the office of President is concerned, there is no discrimination. Everyone is free to contest and get elected.

SHRI T. N. SINGH: You have favoured reducing the number of proposers and seconders from 40 to a lower number. There is a suggestion that instead of that, we can make it a nomination by one proposer and one seconder, provided there are not less than 5 nomination papers. So in each case that will bring in 10. At the same time, it will provide for a greater variety of numbers without impinging on this law of proposer and seconder.

SHRI A. K. SARKAR: Are you suggesting that each candidate, in order to have a competent nomination paper, must file 5?

SHRI T. N. SINGH: Yes.

SHRI A. K. SARKAR: In each case there will be a proposer and seconder.

I have not seen the difference between the two.

SHRI T. N. SINGH: This was a proposal made by one witness before us. I was wondering whether you would welcome it.

MR. CHAIRMAN: Each nomination will have a proposer and seconder. But one candidate must file 5 nomination papers.

SHRI A. K. SARKAR: That I follow. What I have not followed is what is the advantage in one system as against the other.

SHRI T. N. SINGH: I am asking is whether it will be advantageous to have this instead of the other one. Your idea is to reduce it to 10. It comes to the same thing.

SHRI A. K. SARKAR: If I may make a correction, I was not in favour of 10 against 20, neither of 20 against 40. What I meant to say was that what the number should be is a question on which I am not competent to answer. You are in the midst of it. I personally have no opinion on it.

SHRI T. N. SINGH: The whole purpose of this Act is to prevent frivolous nominations, frivolous election, frivolous election petitions. In any country where the presidential system prevails, one can understand some justification. In this country that system is not extent. The President is only a constitutional head; there is the executive, judiciary and legislature, functioning independently with almost equal status. Why should we become so perturbed when in other countries, say for example, Ireland they have it. We should not be finicky about the President's position.

SHRI A. K. SARKAR: With your leave, I would not agree with the view that you expressed, because if the President's office or President's dignity is brought down, I would feel myself brought down, the whole country will go down with it. It is necessary that you should have some tradition built up, to look up to and follow. That is what I feel.

SHRI T. N. SINGH: I share that view. But I ask this question because a suggestion was made that once a President has been sworn in, we should prevent election petitions. The conclusion is inevitable that that the gap between the election and the actual assumption of office by the President should be increased in order that all these election petitions can be disposed of before he actually occupies the *gaddi*. Would you favour such a longer gap?

SHRI A. K. SARKAR: Before the results are declared and his assuming office?

SHRI T. N. SINGH: After the results are declared and he assumes office as in America where it takes 5-6 months for the President to come into office.

SHRI PILOO MODY: 2½ months.

SHRI T. N. SINGH: It can happen here also. Within that time, any election petition can be disposed of.

SHRI A. K. SARKAR: If I may ask, what is the reason why in America these 2½ months must export.

SHRI T. N. SINGH: I cannot say anything about the constitutional aspect. America has a very small constitution. I have read of elections for the last 20—30 years. In each case, the time gap has been 2—3 months.

SHRI PILOO MODY: President Nixon is still not in office as the newly-elected President.

SHRI A. K. SARKAR: I do not know why this gap has been provided. Speaking entirely for myself, I do not think it would make any difference if there is that gap or no gap at all. If a person who has been elected but has not assumed office is removed, as much harm is done to the country's dignity and character. It is what is in the country's interest and not ours that is important. Whether he is removed before the assumption of office or after the assumption of office, makes

little difference to the damage to the country's image.

SHRI T. N. SINGH: So you would not mind election petitions after the President has been sworn in and that should not be a ground to rule out petitions?

SHRI A. K. SARKAR: No.

SHRI J. RAMESHWAR RAO: There is an electoral college for the election of the President and Vice-President, which is composed of the members of the Assembly and Parliament. For the normal business of Parliament and Assembly the political parties issue whips. But it is seen that in the last few elections for the selection of the President and Vice-President the political parties have issued whips to the members of the electoral college. Is this not an undue influence in the sense that there is no free voting? When a member of a political party receive a whip he is bound to vote according even though he may not like to do that, because if he votes against the whip then he would be acting in an indisciplined manner. So, could the whip not be prohibited in such an election?

SHRI A. K. SARKAR: A democracy cannot work without parties. If the members of the party act on their own, I suppose they will be in the wilderness. Without concerted action nothing much can be achieved. That being so, if we have necessarily to act with the parties, we cannot do away with whips. And the President once elected, he is the President for each one of us. That being so, everyone is interested in seeing that a proper person according to his own way of thinking is elected to the office. If that is so, then I can see no objection to his trying and arguing with his friends and other electors to that office to see that a man of his choice is elected. I see no objection to that. It has certainly to be a free election, but a free election outside the party cannot be imagined. If in the ordinary functioning of Parliament a whip is permissible I think it should be put

down that it should be permissible in the case of the election of the President also.

SHRI K. P. UNNIKRISHNAN: We find that the Supreme Court has not been able to give a satisfactory or clear-cut definition of what constitutes "undue influence". A feeling as grown that it varies from case to case and that it is an elastic concept and more often it is a subjective appraisal or feeling. Do you think that any good would be done by bringing in such a concept within the strict legal framework and making it punishable? Because, as long as party system prevails there will be campaigning and canvassing and allegations are bound to be made. Here I would like to differentiate it from bribery and corruption, because that is something which can be objectively proved. But the same thing cannot be said about "undue influence".

SHRI A. K. SARKAR: You started by saying that the Supreme Court has been unable to give a precise definition. If I may return the compliment, it is because the legislature has been unable to do the same thing. The Supreme Court can only interpret the law. The law is not laid down by it. Without going into the question of apportionment of blame, there are conceptions in this world of ours which it is very difficult always to state with precision. We have to live and put up with them and, as our ideas enlarge, change them from time to time. Which I think is all to the good.

MR. CHAIRMAN: I thank you for coming and giving evidence.

(The witness then withdrew)

IV. SHRI K. V. K. SUNDARAM, former Chief Election Commissioner.

(The witness was called in and he took his seat)

SHRI J. RAMESHWAR RAO: There is one point which has been causing me a little concern in this whole electoral process that we are devising for the election of the President and the

Vice-President. It has been the normal practice that for the purpose of conducting the business of the House the political parties issue whips. But there is a clear distinction between the electoral college on the one side and the Assembly or Parliament on the other, even though it may be that the members in both cases may be the same. In the electoral college the voting has to be free. Would you consider the political parties issuing whips in the case of the electoral college an undue influence?

SHRI K. V. K. SUNDARAM: I believe this question came before the Supreme Court in one or two cases and it has given its opinion. I think it is only a question of interpreting the expression "undue influence" as it is used in the India Panel Code. Considered from that point of view, I suppose the decision of the Supreme Court is that it does not amount to an undue influence. I personally think it cannot and need not be held undue influence.

SHRI T. N. SINGH: I have been very much impressed by your preliminary remarks the other day which were very illuminating and educative to me. But I would like to ask you about this question of undue influence as it has not been defined and as the Law Commission's recommendations in this regard have not found a place in the IPC Amending Bill. Should we not add any undue influence namely intimidation and threat of violence?

SHRI K. V. K. SUNDARAM: I think there can be no doubt that any form of threat of violence is definitely undue influence. The point I was trying to make yesterday was really that the way in which the expression 'undue influence' has been interpreted by the Supreme Court, by the majority of the Court, makes me feel that it is going a little too far and we need not include the other types of undue influence. That is what the Law Commission has recommended.

SHRI T. N. SINGH: Here, you have suggested that we may retain the

clause of the original Act as it is, on undue influence and bribery. If you retain it, then we might make some verbal changes. I would seek your advice because you have gone into that question in some depth.

SHRI K. V. K. SUNDARAM: My feeling is that the Law Commission have recommended in their report on Indian Penal Code to restrict the definition of undue influence as I read out yesterday and that would be quite sufficient from all points of view including the Presidential and Vice-Presidential Elections. How exactly it should be translated in this amending Bill, on the assumption that IPC does not require amendment in that Particular section that will be for the draftsmen to settle on the final recommendation of the Committee.

It is a bit difficult, as I mentioned yesterday, if you want to put in the definition of undue influence. Then it will be having three different definitions of undue influence. One for IPC, one for the Presidential election and one for the ordinary parliamentary elections. It will be a situation which I think might lead to confusion. I believe it is better to have a simple definition, a common one.

SHRI T. N. SINGH: I am second to none in ensuring the dignity of the office of the President and nothing should be done to bring down that office. But I want to know whether to safeguard against any unseemly proceedings once he is in the *gadi*, he should have a bigger time gap between his election and the actual swearing in as President as it happens in America, say two or three months, so that the petition might have been decided by that time.

SHRI K. V. K. SUNDARAM: The law enables the election to be held within a stipulated period.

SHRI T. N. SINGH: I think the law does not provide any specific time.

SHRI K. V. K. SUNDARAM: Not later than six months from the date of occurrence...

SHRI T. N. SINGH: Six months is enough time. So, what I felt was suppose the election time schedule was so arranged that, there was a gap as it happens in America. Then you would have dealt with all the petitions by that time.

SHRI K. V. K. SUNDARAM: First, where the vacancy has already occurred, there is no time limit in the law as to when exactly the election commission can start holding the election.

SHRI T. N. SINGH: Supposing, it is a five year term. We can then start the whole thing much before.

SHRI K. V. K. SUNDARAM: I think there is some provision in the Presidential Elections Act, like we have in the case of parliamentary elections. Parliamentary elections cannot be held more than six months before the date on which the life of Parliament is due to expire.

SHRI T. N. SINGH: Now, the timings have changed completely. We can make a specific provision in the law.

SHRI K. V. K. SUNDARAM: I think it is going to be very awkward to hold an election much before the time of the date on which the President's term is due to expire. Apparently you are now thinking of a few months before the date of expiry. We have got this specific provision in regard to parliamentary elections. If it is going too long, then I feel it should not be done.

SHRI T. N. SINGH: Three months will be all right?

SHRI K. V. K. SUNDARAM: Whether we restrict it to two months or three months, it is most unlikely that any petitions of that type will be disposed of. Any case which comes up before such a body like the Supreme Court, with five judges sitting and hearing the case, it could never be disposed of in a short period.

SHRI T. N. SINGH: In order to shorten the period, there have been two proposals. One proposal is mine

and another one has been made by an hon. Member that proceedings should be in camera and (2) we need not have a whole Bench. The Chief Justice of the Supreme Court should be enough as a single-man Tribunal.

SHRI K. V. K. SUNDARAM: That would really be a matter for the Supreme Court. But they say that, specially in a very important matter of this type, a single judge may not be enough. May be that the Supreme Court may not consider five judges as absolutely essential for disposing of a petition. But I personally feel that a Bench of three judges should be there in a very important case of this type. As I said, this is a matter for the Supreme Court. They can reduce the number.

SHRI T. N. SINGH: As I understand, the basic idea underlying what you have stated is that we need not worry so much about the time taken for the disposal of the petition and try to legislate specially for that purpose.

SHRI K. V. K. SUNDARAM: Yes, I think so.

SHRI T. N. SINGH: There is another suggestion on which I would like to have your reactions.

SHRI K. V. K. SUNDARAM: The Act can be amended but there was some limitation of the time on which the Election Commission can start proceedings in the normal course, i. e. 60th day before the expiration of the term of office of President or Vice President.

SHRI T. N. SINGH: The Constitution does not prevent.

SHRI K. V. K. SUNDARAM: We can say three months. I should say 60 days have been given and it is quite easy to complete the election.

SHRI T. N. SINGH: I think a number of valuable suggestions have been made by some of the witnesses regarding entire procedure to be made simpler and the time schedule as provided in the amending Bill should be strengthened because of the vastness

of the country. Would you mind the amendments to be made? I am talking of general principle.

SHRI K. V. K. SUNDARAM: If you are asking me about the over-all period taken as provided in the Bill now for holding the election, personally I think no longer time need be given. In the Presidential election, propaganda or electioneering business does not please me.

SHRI T. N. SINGH: I am not much concerned about the time—nomination, scrutiny. I am worried that the present Bill provides—the very next day it should take place. Why should we have such a stringent measure? After all there would be 40 nomination papers. It may be four nominations which means 160. All this needs time.

SHRI K. V. K. SUNDARAM: After all we do not want people to go round and find the source. So long as it is assured that he has the support of such and such persons, is it really essential for the people to go about to know whether the persons' names have been correctly signed? Of course no nomination should be rejected for a trifling irregularity. There is a provision in the law. If it is assured that 40 persons or so many persons have supported, why should there be any difficulty? Why should we spend time over nomination paper scrutiny? I do not feel any difficulty.

SHRI T. N. SINGH: In regard to the election to the Upper House, we found that a number of malpractices were occurring. In this case also of malpractices occur as the Members are not above board, even though they are selected set of persons, in that case why should we not allow fair play to be observed?

SHRI K. V. K. SUNDARAM: I think I still hold the view, the shorter the time the better it is. 15 days time between the last date of withdrawal of candidate and the date of election is sufficient.

SHRI T. N. SINGH: Would you not like deposits to be omitted altogether and the number of proposers?

SHRI K. V. K. SUNDARAM: As between the two, I personally attach greater importance to the number of proposers and lesser importance to the deposits. I would prefer the proposers but you may have the deposits.

SHRI T. N. SINGH: There should be five nomination papers in each case—each having a proposer and the seconder. In other words 10 members would be roped in. Should it be better to alter the whole scheme

SHRI K. V. K. SUNDARAM: That is one way of achieving the same object viz. that there are prescribed number of electors supporting the particular candidates nomination. It can be achieved in different ways either by putting 15 proposers with one nomination or 10 proposers with one nomination. I was thinking on the same lines. If persons get 5 nomination papers with one proposer or two proposers on each, it may avoid difficulty for the persons to go about for collecting signatures on one paper.

SHRI T. N. SINGH: Generally you favour smaller number of proposers and seconders.

SHRI K. V. K. SUNDARAM: 10 people for the purpose of lodging the petition should be quite sufficient.

SHRI T. N. SINGH: The general trend in 25 years has been to amend our laws, even the Constitution several times. We have never given a fair chance to the law or we have seldom given a fair chance to law to work it out itself through case laws, experience, traditions, conventions. I would ask you whether any of these minor changes, as well as some of the major changes in process of nominations, etc., need be insisted upon by the particular experience where scurrilous propaganda was done and should we not be satisfied by the present Act as it is expected that in the IPC or elsewhere we may re-define unfair practice and about scurrilous propaganda, etc.

SHRI K. V. K. SUNDARAM: I think it is fully recognised. The only major proposal in the Bill is the omission of all references to bribery and undue influence as affecting the result of an election. My view is that we should go only for major corrupt practices like bribery and undue influence and not scurrilous propaganda as such. Apart from that, there are various minor proposals, we might have left that to the Government.

SHRI TRILOKI SINGH: In stead of 'connivance' would you like to have 'consent'?

SHRI K. V. K. SUNDARAM: I have not fully thought over that. But in the Representation of People Act we have changed it right through 'consent'. I think that is better. My feeling is that it should be 'consent' and not 'connivance'.

SHRI D. N. SINGH: In the original act there was a provision which has been retained in this Bill that the Supreme Court is of the opinion that the result of the election has been materially effected because of the non-compliance of orders made under this act. If at the time of the voting the major order, the rule made by the Election Commission, is not adhered to because of certain reasons, would it not be better if it comes to the notice of the Election Commission or the Returning Officer that it is not adhered to in a particular polling station and then the polling of that station should be cancelled and a fresh poll ordered?

SHRI K. V. K. SUNDARAM: Very difficult to visualise such happenings.

SHRI D. N. SINGH: This has happened in the last election and I can quote from the report of the Election Commission itself.

SHRI K. V. K. SUNDARAM: Generally speaking, any provision to provide against such contingency would necessarily result in postponing the holding of the election, and that I do not think it is worthwhile going for small breaches.

SHRI D. N. SINGH: In the last election when the election was keenly

contested, would it not have been advisable and still the re-poll was ordered. To safeguard against those contingencies would it not be better to make a statutory provision in the act itself?

SHRI K. V. K. SUNDARAM: That would be a remedy worse than a disease.

SHRI D. N. SINGH: But there is a provision in the act. It comes under non-compliance of any of the rules. That provision has been retained in the amending Bill.

SHRI K. V. K. SUNDARAM: I am not sure whether it was an order made under this act. But if it is done by the Election Commission in exercise of its power to supervise the conduct of the election, I don't think it comes under this. But the general point arises if it comes to the notice of the Election Commission, I think it may not happen and it might be put in extraordinary cases but they are all complaint cases. Where it is desirable the Election Commission should introduce at the introduction stage and reconduct the poll at the particular station and so on. There is a provision like that. But I do not think any such thing will be either necessary or desirables in the case of a presidential election. Suppose at one particular polling station, there is disturbance resulting in inability to complete the election on that particular day. I do not know whether they have made any provision for that sort of thing. What do we do in such a case?

SHRI D. N. SINGH: Postpone the election.

SHRI K. V. K. SUNDARAM: The Election Commission will act, in its inherent power. Otherwise, the election is incomplete. We cannot hold the election in one place. So pass an order cancelling that thing without any provision. I am only suggesting that in such particular cases or rather when obviously something is going wrong, we may leave it to the inherent power of the Election Commission to do something which

is necessary. I would not bother what the Election Commission does in a small case of this type.

SHRI D. N. SINGH: It is not a small thing. It is a very big State. The margin was very small—only 14,000, and that too in the second count.

SHRI K. V. K. SUNDARAM: Just because the number was not blocked by an opaque paper, I do not think it materially affects the vote.

SHRI D. N. SINGH: The Supreme Court would have taken the view that has materially affected the vote. To guard against such a contingency, so that the returned candidate's election may not be declared void, why leave it, why not make a statutory provision?

SHRI K. V. K. SUNDARAM: It is a rather small point. Already the Act has become much more detailed than it was before.

SHRI JHARKHANDE RAI: As a curb, are you in favour of increasing the number of proposer and seconders to 100?

SHRI K. V. K. SUNDARAM: My whole point is that it should be much reduced. I am not in favour of even 40.

SHRI K. P. UNNIKRIISHNAN: You told us that the number not less than 40 seems to be a little in excess of requirement which you had in mind. Apart from defending the right of any individual to contest to the highest office in the land don't you think it is also desirable that such legislation should keep in mind the requirement of a healthy evolution of the party system? When we say 30 or 40, it means that apart from a candidate consenting to be nominated, he should also reflect a large percentage or volume of political opinion in the country?

1799 LS—8.

SHRI K. V. K. SUNDARAM: I should leave that to the result of the election, not at the stage of nomination.

SHRI K. P. UNNIKRIISHNAN: The is that a large number of people should go round, find an eligible person for the highest office in the land and nominate him, instead of some body coming up and soliciting votes from the electoral college and saying 'I am qualified to be President.'

SHRI K. V. K. SUNDARAM: That is the idea of having a certain number of proposer and seconders. It is a question of striking a golden mean, not to have too few, nor too many.

SHRI K. P. UNNIKRIISHNAN: For a large electoral college of 4000, don't you think 40 is a reasonable number?

SHRI K. V. K. SUNDARAM: I am only looking at the difficulty and inconvenience of having so many.

MR. CHAIRMAN: There is an apprehension in the minds of members that by having this 40 or whatever be the number political parties in a minority will be shut out from nominating candidates for the presidential election. Do you agree? If so, what should be the alternative?

SHRI K. V. K. SUNDARAM: I think any party which is of some considerable size should be able to get together a number of members from the electoral college. Otherwise, it is practically like an Independent standing.

MR. CHAIRMAN: Taking the composition of the present Parliament, where the highest number of an opposition party is only 25—some are only two or three—is this apprehension well-founded? How will they get 12? To that, what would you suggest?

SHRI K. V. K. SUNDARAM: First of all, if at all the presidential election is being run on party lines and if we take the parties recognised by the Election Commission for allotment of symbols, surely I think they could find 15 or 20 electors from all over India because members of Legislative Assemblies are equally eligible to propose a candidate. But if there is

such a party which cannot find even that small number of electors, then the position is the same more or less slightly better perhaps but only a little better—as an Independent standing without any party support.

MR. CHAIRMAN: Thank you.

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON
THE PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTIONS (AMEND-
MENT) BILL, 1972

Saturday, 20th January, 1973 from 10.00 to 13.15 hours

PRESENT

Shri S. A. Kader—*Chairman*

MEMBERS

Lok Sabha

2. Shri P. Gangadeb
3. Shri S. B. Giri
5. Shri Jagannatharao Joshi
5. Shri J. G. Kadam
6. Shri Piloo Mody
7. Shri Samar Mukherjee
8. Shri Pratap Singh Negi
9. Shri Tarkeshwar Pandey
10. Shri Jharkhande Rai
11. Shri Rajdeo Singh
12. Shri M. S. Sanjeevi Rao
13. Shri Digvijaya Narain Singh
14. Shri Nawal Kishore Sinha
15. Shri Sunder Lal
16. Shri M. G. Uikey
17. Shri Virbhadra Singh
18. Shri G. Viswanathan
19. Shri Niti Raj Singh Chaudhury

Rajya Sabha

20. Shrimati Maragatham Chandrasekhar
21. Shri Krishna Bahadur Chettri
22. Shri Lalbusia
23. Shri Ganeshlal Mali
24. Shri Balachandra Menon
25. Shri Loknath Misra
26. Shri Emonsingh M. Sangma
27. Shri T. N. Singh
28. Shri Trilokj Singh
29. Shri Gunanand Thakur
30. Shri H. M. Trivedi
31. Shri Jagdambi Prasad Yadav

REPRESENTATIVES OF THE MINISTRY OF LAW & JUSTICE

1. Shri K. K. Sundaram—*Secretary.*
2. Shri A. K. Srinivasamurthy—*Additional Legislative Counsel.*
3. Shri H. C. Vermani—*Under Secretary.*

SECRETARIAT

Shri H. G. Raranjpe—*Deputy Secretary.*

WITNESSES EXAMINED

- I. Dr. Nagendra Singh,
Chief Election Commissioner.
- II. Shri Niren De,
Attorney General of India.
- III. Shri P. Ram Reddy,
Senior Advocate, Supreme Court, Delhi.

I. DR. NAGENDRA SINGH, Chief Election Commissioner.
(*The witness was called in and he took his seat*)

MR. CHAIRMAN: We shall continue yesterday's evidence.

SHRI S. B. GIRI: The amended Bill seeks to provide that the nomination for President should be proposed and seconded by 40 electors. Do you not think that the number is too large?

DR. NAGENDRA SINGH: I would submit that this is just approximately the right number. If you make it more, then it will look as if you are putting obstacles and difficulties. If you make it less, then the check aspect of the matter namely that you want to prevent frivolous applications would go away. I think that 20 is about the least number. It is arbitrary. You may have 15 or 25 or even 10. Somebody has fixed 20. I would say that I would not touch it.

SHRI NITIRAJ SINGH CHAUDHARY: 40 is about one per cent of 4200.

DR. NAGENDRA SINGH: That is also a relevant factor that out of a constituency of 4200, one per cent has been fixed, which comes to about 40.

SHRI NITIRAJ SINGH CHAUDHARY: That is how the number 40 has been fixed.

DR. NAGENDRA SINGH: Then I apologise for saying that it was arbitrary. So, there is logic and there is principle behind this number 40.

SHRI S. B. GIRI: Suppose one of the proposers says that he has signed under undue influence or pressure on him, what will happen to the nomination?

DR. NAGENDRA SINGH: If it fails to meet the requirement of 20 proposers and 20 seconders, then that nomination will fail.

SHRI S. B. GIRI: My point is this. Supposing one of them says that he has been made to sign the nomination paper under undue pressure, then what will happen?

DR. NAGENDRA SINGH: If the signature is not legally admissible, then the nomination would fail. The requirement is 20 proposers and 20 seconders. If one is less or one claims not have signed it, it fails.

SHRI VIRBHADRA SINGH: Yesterday you spoke about the provision which seeks to delete the clause regarding bribery and undue influence in the parent Act and the reason given by you was that it would expedite the disposal of election petitions. Have you any other reason for it?

DR. NAGENDRA SINGH: Apart from fitting into my theory that the main defect in the election law was that the President was being dragged into the court after he was sworn in while explaining that aspect I had posed a question as to why should MPs and MLAs who are the voters in this case, and who constitute the chosen elite of the country and who are also a small number, be subjected to such a provision. It is not an election on a regular basis for Parliament, for the whole of the geographical area of a constituency. Therefore, it does not behave to have that rule for MPs and MLAs themselves who should be above bribery, corruption and undue influence. An MP cannot be unduly influenced. If he is, he is not a good MP. That, I think, is another reason.

SHRI VIRBHADRA SINGH: Suppose we are able to find out a mechanism by which any election dispute could be disposed of within a stipulated period of a month or 2 months, even then would you support the deletion of this clause?

DR. NAGENDRA SINGH: My main theme is that the major defect in the electoral system for the President and Vice-President lay in this that you are dragging the President after he was sworn in and has been in office for a long period. If the Supreme Court says that they can dispose of these petitions within a

period of one month, I could not have such strong objection. But I think it is an unnecessary provision because it means that if you allow the present system to remain, you will allow election petition to go on which would take 3-4 months. Therefore you should really cut out this element also. If you could fit into my way of thinking that they must dispose it of in one month, you will be compelled to get rid of this bribery and undue influence provision in the present electoral law. Because the Supreme Court will take months on end to dispose such allegations. So this clause I think should be deleted.

SHRI D. N. SINGH: What are your concrete suggestions for putting a curb on the circulation, distribution or publication of filthy and vile pamphlets during the presidential election with a view to affect the result. After all, in the last Presidential election a vile and filthy pamphlet against one of the distinguished candidates was published and circulated. It is possible that such a candidate might get elected. That can also create a very bad impression that such a person who has been charged with these things has been elected.

DR. NAGENDRA SINGH: On this aspect, you could not really frame a law one way or the other. It is not possible to regulate the human nature of the man who lives in India. Is he up to the mark to do this or not up to the mark. If we have a big country ranging from the Himalayas to Kanyakumari, we must produce a big man with a big heart. If we produce a small man, a narrow-minded man who does these things, these are defects inherent in the human being who lives here. You cannot regulate for anything and everything.

SHRI D. N. SINGH: What happens if such narrow-minded people get elected to Parliament and indulge in these things? If you are doing away

with that provision regarding corruption, bribery and undue influence, such narrow-minded people who accept bribes might get elected. There have been cases. In our Parliament, one member was turned out—this was in the Provisional Parliament—for having accepted bribes—I am referring to Shri Mudgal. Then again there was the case I cited the other day, Sheel Bhadra Yajee's case. The Supreme Court and the Election tribunal have passed judgment that members of a State legislature did accept money and vote for a particular candidate. The Supreme Court set aside the election of the member to the Rajya Sabha.

DR. NAGENDRA SINGH: What would you propose—some sort of a law?

SHRI D. N. SINGH: What would you propose because you have thought about it?

DR. NAGENDRA SINGH: You think the retention of bribery and undue influence would check that sort of other ancillary problems which is created by publication of these pamphlets?

SHRI D. N. SINGH: Can certainly.

DR. NAGENDRA SINGH: If you can get the Supreme Court to decide the case in one month, keep bribery and undue influence in the Act.

SHRI D. N. SINGH: Will it not be desirable if the election petition is heard in camera, not a public trial?

DR. NAGENDRA SINGH: No objection. But it must be disposed of before the President takes charge. You would have solved all your difficulties. The whole scene is made so ugly because of the protracted trial.

SHRI D. N. SINGH: You are sup- after the President was sworn in. because of the protracted trial, because the trial will be held in public. If it can be disposed of quickly if it can be held in camera you have porting deletion of the clause be-

no objection in retaining this provision in the original Act in this Bill also.

DR. NAGENDRA SINGH: The fact that the trial is held in camera or in public makes no difference. The fact that the trial is protracted does make a difference, because you elect the President and instal him in office and then the whole thing is eclipsed when this goes on for three months. Whether it is in public or in camera is not material. It is, however, a very material factor if the trial is protracted for months on end after the President is installed. Frivolous applications are bad. They create a lot of problems. Frivolous nominations are also bad. But if you can dispose of the whole thing in a reasonable time and clear the President and instal him there, it will make sense. But if you have numerous candidates, it will make for some difficulty because then you have numerous election petitions. Numerous election petitions are much more objectionable, because after all is said and done, somebody has been elected and if there is any doubt, it should be settled before he takes office.

The fact that there are numerous candidates is bad. It should be avoided. It can easily be avoided by the provisions incorporated in the amending Bill.

Yesterday I felt that Rs. 2,500 was a very small figure. But I have now come to the conclusion after some reconsideration that there are some candidates who just file their nomination because there is no deposit and the result is that they have a sort of fun or enjoyment without any trouble and without any expenditure. If you put even Rs. 2,500 a small figure, nobody wants to lose money for nothing. Because, out of the 17 candidates 9 candidates got no votes at all, then why were they doing it? They were doing it for fun. If they had been asked to pay Rs. 2,500 they would not have done it. So, that would be a check.

For expeditious installation of the President in office, the *prima facie* presumption is in his favour, namely, that he is not corrupt. But you cannot really have an absolutely idealistic society. We have our frailties and human weaknesses. But, by and large, the majority among the constituents, being MLAs and M.Ps., must be presumed that they are honest, though exceptions are bound to be there.

If you have that clause there will be protracted trial. The main purpose being the expeditious installation of the President in the office, it will be defeated if you have a provision like this, because you will have frivolous election petitions; even if it requires 20 persons, some party will get 40 persons and the poor President will be dragged again and it will go on for months. That must be stopped.

SHRI D. N. SINGH: The election of the Prime Minister can be challenged on the ground of corrupt practice, even though the Prime Minister happens to be the head of the Government. The Prime Minister is not only the leader of the entire country but also the Leader of the House. So, would you like the same facilities to be extended to the Prime Minister?

DR. NAGENDRA SINGH: The electorate in the case of the election of the Prime Minister is quite different from the electorate which elects the President.

SHRI D. N. SINGH: Do we take it that you think that simply because a common man becomes a Member of Parliament, he becomes some sort of a different species from the common man from whom he comes? Is it in keeping with the principle of natural justice?

DR. NAGENDRA SINGH: I do not see how natural justice comes in here. Even equality before the law, I do not know how it comes in here. It is

a fact that out of 550 million. We choose so many, 4,000 or 2,000 whatever it is. The chances are that these chosen people will be above the common man. I do not certify that everyone of them will be so, but the presumption in law should be that they are not corrupt. If we proceed on that basis, it will simplify so many things. You still have article 71 and the election petition in the case of the election of the President. You are not disturbing it.

SHRI D. N. SINGH: Today there was statement in the press to the effect that you expressed a sense of apprehension and that you do not like so many frivolous nominations in the election.

DR. NAGENDRA SINGH: I was thinking of submitting to the government that in the case of failure to submit a return the disqualification should be for three years. May be, it can be extended. There you are depriving a citizen of his right. Here one has to go rather carefully. But there are completely frivolous and bogus returns.

SHRI D. N. SINGH: When you are putting in so many conditions, are you not depriving a citizen of the land from contesting the election to the highest office?

DR. NAGENDRA SINGH: You are not making impossible for a man who is likely to succeed, a genuine candidate. If a candidate does not get 20 plus 20, he is really not worth the name of a genuine candidate for the presidential election. This is one out of 550 million you are choosing. Out of a constituency of 8 lakhs to 9 lakhs you are choosing one. The whole context is different. You seem to think that undue influence is a very important element in our life and it has to be curbed. If you keep it, I should not be surprised at all if what happened earlier is repeated because 20 plus 20 people may sign an election petition and the same drama will be

enacted. This amending Bill will have no meaning because you have allowed the ugly scene to be repeated. The only way you can get rid of the ugly scene is to give credit to the Members of Parliament and M.L.S. that they are above corruption and then ask the Supreme Court to dispose of it within one month.

SHRI D. N. SINGH: Do you think this amending Bill will not work only because of the ugly scene that was enacted in the election campaign?

DR. NAGENDRA SINGH: This does not deal with the ugly scene which was enacted. It merely deals with the frivolous election petitions, frivolous application and frivolous nomination. We can ask the Supreme Court to dispose of the case within one month. But that will be after the President is sworn in; not earlier. For this you have to bear the small sacrifice of taking credit yourself that you are not corrupt.

SHRI NAWAL KISHORE SINHA: I was looking at the question from a different angle. Our real executive head is the Prime Minister and the office of the President is more or less a decoration. If the Prime Minister in India is subject to election laws, including election petitions, like any other Member of Parliament so far as the office of the President is concerned, even though he occupies a very high position, perhaps the highest in the country since he has no executive responsibility as such, will you agree with me that there would be no harm done if some exception is made in his case in such matters as election petitions, as is being provided by this amending Bill?

MR. CHAIRMAN: In other words, would you agree to the provision provided here?

DR. NAGENDRA SINGH: Yes, I have said so.

SHRI NAWAL KISHORE SINHA: The way I am looking at it, the President is not the executive head he is more or less a decoration. Still, we attach some sanctity to the office of the head of the state, which is a high office, and certain privileges are attached to that, as certain privileges are attached to the post of Member of Parliament, which the common people do not enjoy. I am referring to this point, because some of my friends wanted to draw a parallel between the election of Members of Parliament and the election of the President. It is a fact that Members of Parliament and Members of Legislative Assemblies have got certain privileges which the common people have not got. For example, if a common man walking in the street is stopped from going to his destination, then the man who stops him can be charged, say at the most put to simple imprisonment. But if a Member of Parliament is stopped from attending Parliament, you have got a Privileges Committee to go into the case because he has been prevented from discharging his obligations and responsibilities as a Member of Parliament. Whether we like it or not, the Members of Parliament and Members of Legislative Assemblies have got certain privileges which the common man has not got.

DR. NAGENDRA SINGH: Yes.

SHRI NAWAL KISHORE SINHA: If certain privileges are attached to the office of the President and he is the first citizen of India, would you agree with me that that will not look very bad as some of us are trying to make out?

DR. NAGENDRA SINGH: It will only look appropriate if you can have some concessions in favour of the head of the State. It will be in conformity with the practice which exists in other countries. In fact, in some of the countries there are laws which prevent any election petition against the President once he is elect-

ed. There is a bar to it. Once he is elected, he becomes the head of the State. There is so much sanctity attached to it. To drag the President in the manner in which you would like to equal him to either a Member of Parliament or anyone else will not be correct.

SHRI TRILOKI SINGH: In view of the recent judgment of the Supreme Court holding that the offence of "undue influence" was committed in the last Presidential election—it is another thing that the President had nothing to do with it—will it not be proper or expedient to retain this provision of bribery and undue influence? Or if we delete it, will it not be taken to mean as if we have given green signal to the commissioning of these offences not only by a person who is not a candidate but by the candidate himself? This is a continuing process. The law is not made in vacuum. We have not come forward with the Bill for nothing. There was a reason behind the old Act which was put on the statute book. I would like to know how you view it.

DR. NAGENDRA SINGH: *Prima facie*, to a layman it may appear like that. But I would respectfully submit that that should not be the interpretation of it, that which is bad, and that which is taboo, is always taboo. Corruption is bad and nothing will make it good in public or legal eye. It is not necessary even to highlight it.

SHRI TRILOKI SINGH: Under the original Act, the candidate was bound by something done with his connivance. In 1956, the word "connivance" was dropped out and the word "consent" was put in. Don't you think there is a difference between the two, something done with the consent of the candidate and something done with the connivance of the candidate?

DR. NAGENDRA SINGH: There is a lot of difference.

SHRI TRILOKI SINGH: If some corrupt practice was indulged in furtherance of the prospects of an election by a person who is not an agent or who has done it with his consent, the law makes it easy. Therefore, once the provision is deleted, it will certainly be open to prospective candidate for Presidential election or even one of his best supporters who is with him all the time to commit an offence of undue influence and bribery and go scot-free.

Personally speaking, I cannot think of an election petition only on procedural grounds for non-compliance of certain rules more on the part of the Returning Officer than the candidate himself. What is your view about it?

DR. NAGENDRA SINGH: I appreciate what you say. It is really repeating the same argument over and over again. If the feeling is that bribery and undue influence is such a potent factor in our life, that it should be curbed, it may be kept but you will upset the whole thing. Though you may retain "undue influence" and bribery, then you will have the same ugly scenes repeated over and over again.

This is what I feel. If you keep "bribery" and "undue influence", the Supreme Court will take 3-4 months. Somebody is bound to make a charge. If you make a charge, then it must be enquired into. We have a saying in Rajasthan that even if there is a witch or a demon that eats away everything, it at least saves one house. Whatever may be faults in our character, that we have bribery and undue influence as a potent factor in elections, let this election the Presidential Election, be at least free from it.

Each case of theft is not checked; each case of offence is not brought to court. How can you stop illegalities either incorporating or deleting a provision? Here, you will have a straight-forward election with all the

prestige of the head of the State. I am more worried about that aspect.

SHRI TRILOKI SINGH: How, I want to put another question.

In view of the experience that there have been frivolous candidates but not frivolous election petitions, will it not be feasible to just let the election petition be filed in the manner provided in the existing Act and whatever restrictions are proposed to be put should be at the nomination stage, not at the election petition stage? There have been very few frivolous election petitions. The mere fact that the election petition has to be filed before the Supreme Court, it means even if the man wants to file a petition, it is expensive. It will involve thousands and thousands of rupees expenditure. No lawyer will charge less than Rs. 100 to draft a petition. Why should there be any curb or restriction on it? A defeated candidate along with 10 persons joining together can file an election petition as in the ordinary Election law. Why should it be 40 and 50 persons? Nobody will file an election petition in the light-hearted manner. What is your opinion about it?

DR. NAGENDRA SINGH: There is some sort of a check proposed by the amending Bill. The existing law makes it easier to file an election petition.

SHRI TRILOKI SINGH: But nobody has availed of it so far.

DR. NAGENDRA SINGH: It is true. The candidate himself probably files an election petition. In most cases, others do not bother about it.

SHRI T. N. SINGH: You have made the assumption that there is no need for any provision against bribery and corruption for the simple reason that it is very selective type of electorate and we should trust them for their honesty and integrity. But at the same time you endorse the provision wherein it is stated that there should be at least 20 proposers and 20 seconders. That means, you cost

aspersion on a Member. How can we say that 20 persons will be more honest than one Member? How do you justify that?

DR. NAGENDRA SINGH: There are at least 20 people thinking in that way. One man thinking that way can be an error but if 20 think, it may not be an error. It is purely a principle of democracy that you want the number in order to establish *bona fides*.

SHRI T. N. SINGH: I must say that I am not at all satisfied with the answer that you have given. Anyway, I will now refer you to another point. I think, you will be content if restrictions are put on bribery and corruption provided all these things are over well before the swearing-in ceremony. supposing we were to provide in the law that the gap between elections and assumption of office would be six months, will that not meet the situation?

DR. NAGENDRA SINGH: Six months becomes too long a period.

SHRI T. N. SINGH: Such a gap is there in America.

DR. NAGENDRA SINGH: In the United States, it is about 2½ months. If you restrict it to three months. . .

SHRI T. N. SINGH: I want a bigger gap, say, six months. . .

DR. NAGENDRA SINGH: If you put six months, then you defeat the very purpose. Suppose there are no election petitions the President will be rubbing his feet on the ground for six months.

SHRI T. N. SINGH: In jurisprudence or in any law or practice of any other countries, is there any sanctity attached to three months?

MR. CHAIRMAN: He has put two questions. One is that if you make this gap of three months and within that time all the things are done and the President assumes office on a

clean slate, then the proposal about 40 nominations should go. Also, the provision about bribery and influence should be kept as it is.

DR. NAGENDRA SINGH: My answer is this. You are trying to achieve the impossible within three months. If you do not introduce the amending Bill—the only possible lacuna it has is that you have not provided for the expeditious disposal of election petitions; you try to restrict frivolous ones I want you to consider also that you must have expeditious disposal of election petitions. You are really making it impossible for anything to be decided within three months if you have an inviting door to election petitions. You will have innumerable people who are not *bona fide* candidates, bogus candidates, coming in and you will have many election petitions I would be happy if all this ugly scene can be eradicated but I am afraid this is not the solution.

SHRI T. N. SINGH: I have not been able to appreciate this point. In one case regarding scurrilous propaganda you have said that it is unfortunate that it is indulged in, but in another case you make an exception saying that it is a selective electorate. If members are capable of scurrilous propaganda or if members are capable of withdrawing their support after making their proposals, how do you now try to trust the members so much as to take away all the healthy provisions of the Act?

DR. NAGENDRA SINGH: It is just the approach that is important. There may be some black-sheep, but, by and large, I hold the Parliament and the Assemblies in great esteem and I do not think they can be persuaded in their entirety. It is also wrong that the whole world should watch court proceedings in an election of the President—as my distinguished Members quite rightly

pointed out, when he is only a constitutional head and he has no power. where the power is concentrated, certainly you should have the most rigid electoral law to see that nobody gets into the citadel of power by corruption. But here is a constitutional head who should be really welcomed by the entire nation. Once he is installed, why should we think of doubts and difficulties. He is not wielding any power. He is not responsible to the Parliament. He will face the most stringent electoral college. But let the President's office be saved and the election conducted in a dignified manner and by calling him in a court of law and making him face the charges of bribery and corruption, I think, we will be putting a slur on our own country and on ourselves as a nation. This is the only difficulty which I have. You are very right when you have pointed out that he is only a constitutional head, so you show him a concession and forget it. But, for the Prime Minister and those who are responsible the Ministers responsible to the Parliament, certainly penalize them if they do anything which is contrary to this law or contrary to that rule but have a dignified way of electing the President and forget about it.

SHRI T. N. SINGH: I do not know how to compress my various questions because sometimes one answer leads to another question. unfortunately, the answer which is given leads towards that question. But the time is short..

I may put it to you. The scheme of things in India is different from the scheme of other countries. The President in an African country may be virtually a dictator. Here he is a constitutional head as you have rightly pointed out. Neither does he enjoy the overwhelming majority support as in the case of a Republican President. Therefore, there is all the more reason to see that the election to such an office is carried out in honestest atmosphere, if I can put it that way.

DR. NAGENDRA SINGH: Certainly, all elections should be that way. The Presidential election also should conform to those standards.

SHRI T. N. SINGH: You wanted to make an exception because it was a constitutional head. That is why I ask this question. My question was flowing from your answer, I am glad that you have answered that. The framers—I was then in Parliament—very advisedly thought that we should differentiate between presidential elections and other elections and, therefore, we omitted the clause relating to deposits advisedly because a deposit of Rs. 1000 or Rs. 2500 does not mean anything. Why do you now want to bring in the position of the presidential election to the status of the ordinary election by providing deposits?

DR. NAGENDRA SINGH: I entirely agree with you but the problem is the *tamasha* coming into the picture, the bogus candidates will not be prepared to spend even Rs. 2500 and it should be some sort of a check upon them. Some mad cap also files his nomination and if a deposit is provided, he will not spend that much money and you will at least have some genuine candidates.

SHRI T. N. SINGH: Some mad caps may find even that Rs. 2500. I think there are millionaires who are mad caps and it will not be difficult for them to find such persons.

DR. NAGENDRA SINGH: I agree and I share the concern of the hon. Member that the election should be as dignified as possible and it is from that point of view that I made my suggestion.

SHRI T. N. SINGH: I want your reaction on one or two points. One is regarding my suggestion that the Election Tribunal should consist of the Chief Justice only—the Chief Justice of the Supreme Court. No. 2—the election should be held well before the actual installation of the President and there is no sanctity about 3 months or 6 months. If we

can do these things that will meet your problem.

DR. NAGENDRA SINGH: As far as the period is concerned, certainly three months is the maximum. You do not want the President-election really to almost a sort of fade out of existence after the election. There must be some proportion that must be maintained.

As far as the Election Tribunal is concerned, if you wish to set up an *ad hoc* body which would have the sole function of disposing of the election petitions concerning Presidential and Vice-Presidential elections, it is a good thing and then you can prescribe for them this period of one month. Let them sit day and night and finish it off. I support that. Take it from the Supreme Court and put it to a Special Election Tribunal or a Bench of the Supreme Court consisting only of the Chief Justice.

SHRI T. N. SINGH: I am glad that on major issues there is some approximation in our views. We imitate the same provisions one in regard to petitions and the other in regard to nominations; almost every section seems to be the same and my question is, why should we do that at all, because, petition must be treated as something different from nomination. Why can't we allow traditions and conventions to take place, conventions and traditions to get built up in due course of time?

DR. NAGENDRA SINGH: What would you like to propose?

SHRI T. N. SINGH: we have seen once some 9 frivolous applicants in one of the elections; we saw that once. Today there were only 5 such. Generally the number of frivolous candidates is getting reduced. We have to rely on good sense of the electors, MPs and legislators. We should allow healthy development of traditions and conventions.

DR. NAGENDRA SINGH: If you believe in the good sense, then why do we hear talk of bribery and corruption etc.

SHRI T. N. SINGH: You cannot have it in one way and not have it in another. In one case you do, in another case you don't trust such confidence, that is what creates difficulty, in understanding the consistency of your logic.

DR. NAGENDRA SINGH: If 20 people have done something it may be a genuine sort of case than what would be if one person does, possibly if one person does it, it may be an error; it is possible for an error to be committed by one man, but not by 20. In that approach, one may feel that this is probably better.

SHRI T. N. SINGH: You are too eminent a jurist; I can't cross swords with you.

MR. CHAIRMAN: I was expecting something would come out of that, but it does not materialise! Now, Mr. Rajdeo Singh. Only one question is allowed. Kindly be very brief. We have exceeded the time.

SHRI RAJDEO SINGH: Can you fix date for election of President and swearing as in America?

DR. NAGENDRA SINGH: We can certainly state the period rather than the strict rigidity of the dates, for example, if we say, 20th January, possibly, it makes things a bit rigid and it becomes difficult, but I do agree that periods can be prescribed, that is, we can say, 3 months before the termination of President's tenure the whole process will start.

SHRI RAJDEO SINGH: Do you think it advisable to accept some sort of minimum educational qualification for the post of President/Vice-President, because this is such a high office of the country, representing the country?

MR. CHAIRMAN: I am not allowing this. This is not in the scope of the Bill.

श्री बगदरुनी प्रसाद यादव : राष्ट्रपति का पद जितना महान है, उतना ही उस का सन्देह और शंका से परे होना आवश्यक है।

हम चाहते हैं कि राष्ट्रपति के पद के लिए जो व्यक्ति चुना जाये, उस पर ऐसा दोषारोपण न किया जाये, जो उस पद की प्रतिष्ठा के विरुद्ध हो, लेकिन उसके साथ साथ यह भी आवश्यक है कि अगर उस पद के चुनाव के सम्बन्ध में देश के किसी भी नागरिक को गलत या सही शंका हो जाये, तो उसका समाधान भी किया जाना चाहिए। राष्ट्रपति के गत चुनाव से पहले एक लीफलेट, पर्चा, वितरित किया गया, जिसको इलैक्शन पैंटीशन के सम्बन्ध में न्यायाधीशों ने बड़ा महत्व दिया। यद्यपि उस पर्चे का सीधा सम्बन्ध एक प्रत्याशी के साथ नहीं जोड़ा गया, लेकिन यह मत प्रकट किया गया कि वह पर्चा बड़ा भयंकर और दूसरे प्रत्याशी के चरित्र को हनन करने वाला था और निश्चित रूप से उस प्रत्याशी के चुनाव पर उस पर्चे का प्रतिकूल प्रभाव पड़ा होगा। उस पर्चे को हम चाहे चरित्र हनन करने वाला कहे, या करप्ट प्रैक्टिस या अनड्यू इनफ्लूएन्स के अन्तर्गत लें। मैं यह जानना चाहता हूँ कि अगर किसी भी नागरिक को यह शंका हो कि राष्ट्रपति का चुनाव गलत ढंग से हुआ है और उस में ब्राइबरी और अनड्यू इनफ्लूएन्स का उपयोग किया गया है तो उसका समाधान करने के लिए जो व्यवस्था पहले थी, उसको कायम रखने में क्या आपत्ति है।

अगर इस चुनाव में ब्राइबरी और अनड्यू इनफ्लूएन्स से सम्बन्धित व्यवस्था को नहीं रखना है, तो इस चुनाव में भाग लेने वाले पार्लियामेंट और असेम्बली के मेम्बर वही हैं जिन पर उन के चुनाव में ब्राइबरी और अनड्यू इनफ्लूएन्स के चार्ज लगाये जा सकते हैं। और उसके आधार पर उन के इलैक्शन सैंट एसाईड किये जा सकते हैं। इस स्थिति में क्या यह मार्ग नहीं की जा सकती कि इलैक्शन सम्बन्धी कानून से ब्राइबरी और अनड्यू इनफ्लूएन्स सम्बन्धी व्यवस्था को ओमित कर दिया जाये ?

डा० केशव सिंह : ब्राइबरी सम्बन्धी व्यवस्था को इलैक्शन के विधान से तो नहीं निकाल रहे हैं। उस का केवल एक आफिस

के इलैक्शन के लिए निकाल रहे हैं, जो एक स्पेशल आफिस है।

श्री जगदम्बी प्रसाद यादव : स्पेशल आफिस तो पार्लियामेंट के मेम्बरों का भी है और स्टेट एसेम्बलीज के मेम्बरों का भी है।

डा० नगेन्द्र सिंह : पार्लियामेंट के मेम्बर पांच सी हैं, जब कि हैड पाफ़ दि स्टेट एक है। वह इज्जत की जगह है। इस लिए इस में कुछ फर्क रखना होगा। इलैक्ट करने वाले पार्लियामेंट के मेम्बर है। वे कौन सी आइवरी वॉयरह करेंगे ?

श्री जगदम्बी प्रसाद यादव : इसी लिए मैंने उस पर्व के बारे में कहा है, जो पार्लियामेंट के सेंट्रल हाल में वितरित किया गया था और जिस का जिक्र न्यायाधीशों ने किया था। इसी लिए मैं चाहता था कि आप इस बारे में अपने विचार प्रकट करें। तभी आप का उत्तर संतोषजनक हो सकता है।

डा० नगेन्द्र सिंह : यह तो दृष्टिकोण की बात है। आप का दृष्टिकोण भी सत्य है और दूसरा दृष्टिकोण भी सही है। इन दो दृष्टिकोणों को मिलाना ज़रा कठिन समस्या है।

श्री जगदम्बी प्रसाद यादव : हमारे देश के एक साधारण नागरिक को भी यह अधिकार मिला है कि वह राष्ट्रपति पद के लिए चुनाव लड़ सकता है और अगर उस को उस चुनाव के बारे में कोई शंका हो, तो वह उस के बारे में पेटिशन दे सकता है। लेकिन इस बिल में यह जो व्यवस्था रखी गई है कि नामांकन-पत्र देने के वक्त और इलैक्शन पेटिशन दायर करने के वक्त भी चालिस व्यक्तियों के हस्ताक्षर दिये जायें, क्या इस व्यवस्था से वह अधिकार कर्ब नहीं होगा ?

डा० नगेन्द्र सिंह : चँक होगा, कर्ब नहीं होगा।

श्री जगदम्बी प्रसाद यादव : जहर की मात्रा अधिक हो जाने से आदमी मर जायेगा जब कि उस की मात्रा कम होने से बीमारी

दूर हो जायेगी। जो साधारण या गरीब आदमी, जिसकी बहुत इज्जत नहीं है, राष्ट्रपति पद का उम्मीदवार होना चाहता है, उस के लिए यह व्यवस्था रुकावट साबित होगी, जब कि अधिक अच्छी स्थिति वाले आदमियों के लिए, जिन्हें पूंजीपति कहा जाता है, उस के लिए यह व्यवस्था अच्छी हो सकती है।

SHRI G. VISWANATHAN: Suppose provision is made for time, will you be in favour of retaining these two-bribery and undue influence?

DR. NAGENDRA SINGH: If you feel so strongly on bribery and undue influence, it may be retained, but if you retain it you will not achieve the result. No Supreme Court or Tribunal worth its name would be able to dispose of the application in time. It will take months because evidence will have to be gone into.

No Election Tribunal can dispose it of because it leads to the recording of evidence. If you keep that 'as long as it may be possible for the Election Tribunal to do' it will have no repercussion on the foreign dignitary that you doubt such and such a person.

SHRI G. VISWANATHAN: To have some sort of compromise and to avoid frivolous nomination, would it be enough to have 5 proposers and 5 nomination? At present we are supposed to have 40. Will it be a compromise between the two?

DR. NAGENDRA SINGH: I do not know the principle on which 20 and 20 was proposed by the Government. I thought this is an arbitrary figure. You could have more or less. But you must have some sort of proper check, not a curb.

Nobody can lay down whether 10 is proper, not 15 or 5 is proper and not 20. Hon'ble Member was good enough to point out that the principle behind this 20:20 is 1 per cent of the electorate. It is a good principle. 20 is not a herculian task to achieve and especially for a man who is going to be the Head of the State. He must have atleast the support of 40. 20 in

Parliament and 20 outside Parliament. Or say 16 Members of Parliament and 24 outside also looks reasonable. I would not like to quarrel with it. It is a check. You can reduce or increase it as you like. There should be some check so that you do not have a bogus man. Out of 17 candidates 9 candidates got no votes. They were bogus entities.

SHRI G. VISWANATHAN: At present grounds for election petition in a presidential election are bribery and undue influence. It has been suggested to the Committee that the ground for bribery should be omitted, but undue influence be kept so as to cover intimidation, violence and duress. What is your suggestion?

DR. NAGENDRA SINGH: Why do you want to have these doubts cast upon the distinguished Members of Parliament. I would say that as a Member of Parliament he should not be under undue influence.

MR. CHAIRMAN: The provision in the Bill—would it be hit by Article 19 or 19(1)(a) or any other Article of the Constitution?

DR. NAGENDRA SINGH: I have not studied that. I will give in writing.

MR. CHAIRMAN: 40 Members are required but the candidate who is bogus will have to incur a lot of expenditure to get 40 signatures, and, therefore, is it necessary that we should have deposit of 2,500 over and above that. You can consider this point also.

DR. NAGENDRA SINGH: I have full regard for what you have said. You have imposed one big restriction, why then should the deposit be there. Make it free. It is not easy to get 20 and 20. Somebody will have to go round. Then the party members may go round.

MR. CHAIRMAN: It is our last meeting with you and probably, you will be out of India; I wish you all best on behalf of the Members of

the Committee and hope that on your new appointment you will bring lustre not only to your name but to the name of the country also.

DR. NAGENDRA SINGH: Thank you, Sir, very much for your good wishes. I will try to fulfil your expectations.

(The witness then withdrew)

II. Shri Niren De, Attorney General of India.

(The witness was called in and he took his seat).

MR. CHAIRMAN: Welcome, Mr. Niren De. I see that you have already signed direction 58. So, there is no need for me to go into that formal procedure. You have got the amending bill that is before the Select Committee; we would be happy to hear your views on it; and then, perhaps, Hon. Members can put questions, if they want some information.

SHRI NIREN DE: I must apologize for not giving a close study to the amending bill, for lack of time. But there are 2 or 3 things which strike me, mainly on drafting matters; and, perhaps, some changes may be necessary for clarification. Under sub-clause 1A of Clause 3, i.e., in the last three lines, it is said that "... the Commission may, if necessary, make suitable amendments in the notification issued under sub-section (1) so as to bring it in accord with the provisions of that sub-section." I take it that it refers only to sub-clause (1) (a), (b) and (c) of clause 3. So far as sub-clause (a) is concerned, the Election Commissioner has to give a notification appointing the last date for making nominations and I see from sub-clause (a) that the date for scrutiny will be the day immediately following the last date for making nominations. It might happen that either the last date which has been notified, or the day before, suddenly becomes a public holiday. In such an event, so far as sub-clause (a) is concerned the last three lines will become difficult to operate. I would, therefore, suggest that so far

as sub-clause (1) (a) is concerned, it should be omitted altogether and the cation itself should mention that the last day will be a particular date; and if that date happens to be a public holiday, the last day would be the next working day. That is my first comment. In Clause 4, you have re-cast section 5; and it is said that on the issue of the notification under subsection (1), notice would be given for inviting nominations of candidates for such election and specifying the place at which the nomination papers are to be delivered. I find that it may be difficult, if you do not mention the place in the notification under Clause 3 itself, because there might be very little time for people to know what exactly is the place where the nomination papers are to be delivered. As such, the place should be mentioned in the notification under Section 4 itself, rather than have another public notice regarding the place—it may be Delhi, Bombay or anywhere else. We do not know. That is my second suggestion. Thirdly, so far as Clause 5B is concerned,—I mean proviso to sub-clause (3) thereof—I personally do not feel that this proviso is necessary at all, because it is already provided earlier that the nomination has to be presented not before eleven o'clock on any day and not after three o'clock. It shall not be accepted otherwise. Again, I would request you to read sub-clause (1) of clause 5E. I find it a little difficult to understand the meaning of the expression "candidate" here. May be it refers to a candidate who has already been rejected under subsection 4 of section 5B. So, I would suggest that it be made clear that it is intended that this is the candidate whose nomination has not been rejected; otherwise, it may mean anybody. Further, in sub-clause (3)(b) of Clause 5B (at page 5) it is said, "that any of the proposers or seconders is not qualified to subscribe a nomination paper under sub-section (1) of section 5B." That is to say, this is one of the grounds for rejection. I notice that you have a minimum number of proposers and seconders laid down in

Clause 5B(1)(a) in the case of the President; and Clause 5B in the case of the Vice-President. Now in the case of the President the minimum number seems to be 20 electors, 40 altogether and in the case of Vice-President five proposers and five seconders. Now what happens instead of 40 people as proposers and seconders there are 50 or 60. If you go back to clause 5B and again to clause 5B sub-clause 3(b) there may be a lot of trouble. So I think in sub-clause 3(b) the number of proposers and seconders should be specified although (in Clause 5B) the number is 40. But that is really a matter of policy. Speaking as a lawyer I do not find any loophole in it.

MR. CHAIRMAN: Members would certainly like to put questions to you. I would like to ask whether any of the provisions of this Bill would hit article 14, 19(a) or any other article of the Constitution?

SHRI NIREN DE: Frankly speaking, I cannot say anything at this stage.

श्री जगदम्बी प्रसाद यादव : आपने प्रोसेस में कुछ सुधार की बात कही है। उसी संदर्भ में मैं यह जानना चाहता हूँ कि राष्ट्रपति के लिए प्रत्याशी बनने के लिए 20 प्रोपोजर और 20 सेक्रेटरी और उप-राष्ट्रपति के लिए प्रत्याशी बनने के लिए 5 प्रोपोजर और 5 सेक्रेटरी की सम्पूर्ण देश में संख्या जो रखी गई है, तो यह प्रत्याशी बनने के पूर्व सम्पूर्ण देश का दौरा करने के मुकाबले नहीं हो जाएगा।

दूसरी बात यह है कि उप राष्ट्रपति का चुनाव जो लोक सभा या राज्य सभा के सदन में ही सम्पन्न होता है, उस में 5 प्रोपोजर और 5 सेक्रेटरी को जो आवश्यकता रखी गई है, उस में क्या एक एक से काम नहीं चल सकता है ?

SHRI NIREN DE: To your question of seconders and proposers the answer is yes. There must be a proposer and a seconder. That is well known even

in voluntary organisations. Regarding the number etc. the answer to the question is not for me to give. That will be decided really by Members of Parliament. But I suppose the object that there should be sufficient number for the election of President and Vice-President is because of the very high offices and that possibly has been introduced with the object of excluding frivolous candidature as has happened in the past. Regarding the number for the presidential election, well it may be 13, 14, it may be for you to decide but I do think that a sufficient number is desired.

श्री जगदम्बी प्रसाद यादव : एक बात मैं यह कहना चाहता हूँ कि 2500 रुपये की जो राशि प्रत्याशी बनने के लिए रखी गई है, यह दो प्रर्थों में सही नहीं है। एक तो यह की जिसके पास 2500 रुपये नहीं है वह राष्ट्रपति पद के लिए प्रत्याशी नहीं बन सकता और उसको प्रतिबन्धन करना है कि वह राष्ट्रपति का चुनाव न लड़े और दूसरी बात यह है कि इतने बड़े उच्चतम प्रतिष्ठित पद के लिए, किसी भादमी से इतना रुपया जमा करवाना उचित नहीं जचता। तो यह दोनों प्रर्थों में ठीक नहीं है, इस विषय में आप की क्या राय है ?

SHRI NIREN DE: I am afraid my reaction is that there should be a deposit. So far as the sum of Rs. 2500 is concerned, it is quite a large sum. I entirely agree. If that sum is not available with the candidate himself, I do not see why there should be difficulty, for the simple reason that the candidate can procure the sum from his friends, and in fact, even in the ordinary elections to Parliament, the fact that a candidate has hardly any money does not prevent him for contesting and defraying the election expenses. So, I do not think that that would stand in the way. For, if a person has no money and he has no backing, particularly as we run our country on the basis of parliamentary democracy based on political parties and the sponsors are really the political

parties, they will find the money for him, and, therefore, there would not be any difficulty in raising the sum of Rs. 2500 for any candidate who is sponsored by a political party or parties.

श्री जगदम्बी प्रसाद यादव : इसी के बारे में आप देखेंगे कि स्कूटिन के लिए तारीख नियत की गई है और उस में कुछ रेस्ट्रिक्शन डाले गये हैं कि कौन कौन व्यक्ति प्रत्याशी बनने साथ ला सकता है। आप की समझ में ये रेस्ट्रिक्शन ठीक हैं या इसका कोई दूसरा निराकरण हो सकता है ?

[Do you think that the restrictions that have been placed on the number of persons allowed to be present at the time of scrutiny, namely the proposer, the seconder and the candidate, is desirable or there should be some other method by which the scrutiny can be allowed?]

SHRI NIREN DE: If the hon. Member would be so kind as to make an alternative suggestion, that would help me in answering the question. Of course, the proposer and the seconder and the candidate must be there. But is there any alternative suggestion which the hon. Member has? If I could know that, it might help me in answering the question. Does he mean that we should have more than one proposer and one seconder or some third party should be there?

श्री जगदम्बी प्रसाद यादव : हमारा यह कहना है कि अगर वह अपनी मदद के लिए एक से ज्यादा अच्छे वकील लाना चाहे—दो या तीन लाना चाहे—तो उस में क्या आपत्ति हो सकती है ?

MR. CHAIRMAN: He wants the presence of some lawyers. He wants that there should be some provision by which lawyers could be permitted to be present.

SHRI NIREN DE: I think of lawyers we have had enough.

SHRI BALACHANDRA MENON: With a view to keeping the office of the President above all possible suspicion or slander, do you not think that there should be some machinery to go into this, if you like, a separate tribunal to go into this and to make sure that it is kept above suspicion?

SHRI NIREN DE: Frankly, when I read clause 18, I was not shocked, but I was a little surprised that there was no reference whatsoever to the question of undue influence or bribery as we have in the original section 18. Please do not misunderstand me; it is entirely my personal reaction. I think if you see original section 18(1)(a) you will find that : it says:

"That the offence of bribery or undue influence at the election has been committed by the returned candidate or by any person with the connivance of the returned candidate."

Speaking entirely for myself, I would retain that clause.

Sub-section (b) of that section says:

"that the result of the election has been materially affected—

(i) by reason that the offence of bribery or undue influence at the election has been committed by a person who is neither the returned candidate nor a person acting with his connivance....".

When I read it a couple of years back, it struck me as rather extraordinary kind of provision. This should never be retained. But I am in favour, personally again, of retaining some kind of restriction on the basis of undue influence and bribery, even so far as the Presidential election is concerned. I do appreciate that it is a very high office, the highest in the country. But at the same time, there is no reason why this should be eliminated altogether. That is my personal view.

SHRI BALACHANDRA MENON: Instead of this matter being agitated in a court like the Supreme Court,

why should the Parliament not suggest a tribunal where there could be a Supreme Court judge along with two or three others elected by Parliament? This tribunal may go into it, and further, it should not be an open trial....

SHRI NIREN DE: Frankly, so long as the Supreme Court is there in the country, I would prefer the Supreme Court to any *ad hoc* tribunal appointed by the Government. That is the answer to the first part of your question.

The answer to the second part of the question is this. I would like to have added really at the outset that you should statutorily incorporate a provision that so far as the election petition is concerned, it should be heard by the Supreme Court first on the basis of affidavits and then decided on the facts whether the matter requires further inquiry by means of open trial and so on. As a matter of fact, as you would perhaps recollect, that has been the procedure in the last Presidential election cases, in the case of Dr. Zakir Hussain as well as our present President. I would incorporate that for the sake of safety although the procedure has already been adopted by the Supreme Court, so that on the affidavits themselves, the Supreme Court might come to the conclusion that there is nothing in the case or that the case needs further scrutiny. If you do not have such a provision now, although as I say the Supreme Court itself has devised that method, whenever disputes about election of the President have come up before it, I think it is safer to have it statutorily incorporated that the election petition should be heard in the first instance on the basis of affidavits and after that, the Supreme Court should decide whether it will go further with the matter or with the open trial or not. That is my personal view.

SHRI H. M. TRIVEDI: I take it that you are in favour of the retention of the present clause relating to bribery and undue influence. It has been suggested to the committee that since

the electoral college really consists of Members of Parliament and Members of the Legislatures, the ground of bribery may be omitted as a ground and the term 'undue influence' may be more strictly defined and retained. Would you support this suggestion?

SHRI NIREN DE: I have great respect for Members of Parliament and for everybody in this country. But at the same time, if you think that bribery may be omitted, then undue influence has also to be omitted.

SHRI H. M. TRIVEDI: It has been suggested to the committee that the trial of the election petition in the case of Presidential and Vice-Presidential elections should be held *in camera*. Would you support that suggestion?

SHRI NIREN DE: No.

SHRI VIRBHADRA SINGH: It has been suggested that no election petition should be permitted after the President has assumed office, and if there is to be any election petition it should be decided before he actually takes office. Your views?

SHRI NIREN DE: I think that is an impossible suggestion because we cannot wait. The President has to take office as soon as he is elected. Of course, there is the very important question of acts done by the President in the meantime just before the petition is decided. We have to take account of the possibility of an election petition succeeding; to that extent, if necessary, there should be an amendment of the Constitution validating all the acts done by the President during the time he has acted as President. This is my personal view.

SHRI VIRBHADRA SINGH: Can it not be stipulated that the election petition has to be decided within one month of the filing of the petition?

SHRI NIREN DE: I am sure the hon. member knows the way things go on in courts of law. That being so, if you fix a certain timelimit, I do not think that object will be achieved, because you cannot prevent people from bringing witnesses to give

evidence. It may be 6; it may be 525. It is just impossible to fix a timelimit so far as the hearing of an election petition is concerned. Therefore, I think it is a very impractical approach to fix a timelimit. In the meantime, to make a change in the Constitution to say that the existing President will continue until the case of the candidate who has been returned is decided by the court—this is going to be a very very difficult proposition also. I am of the view that the President elected as President should take office immediately and that all acts done by him should be validated, if necessary, by an amendment of the Constitution. I think that is a very important point.

SHRI T. N. SINGH: That provision is already there.

SHRI NIREN DE: If it is already there, good—I was ignorant of it.

SHRI S. B. GIRI: Under the Bill, if an election petition is to be filed, 40 electors should join together. Is this necessary? Is not a petition by one elector enough?

SHRI NIREN DE: My personal view is that a sufficient number is necessary. We have the experience of not only of election petitions, but any petition for that matter. I do not think it should be desirable to have one person filing an election petition regarding the presidential election.

SHRI G. VISWANATHAN: By filing an election petition, do you think any damage is being done to the office of President?

SHRI NIREN DE: I do not personally think so. If the provision is there, it is there. If you have it, carry out the provision. If the law is there, it should take effect, whatever the consequences may be. Damage occurs in many cases. Even apart from the President, many writ petitions are filed damaging people's prestige or reputation. That just cannot be helped. The other alternative is not to allow any election petition at all.

SHRI G. VISWANATHAN: There are certain countries in Africa and Latin America where an election petition against the President is prohibited. Is it desirable to have such a law in our country?

SHRI NIREN DE: I would not follow the African model.

SHRI JHARKHANDE RAI: Do all these changes proposed by the amending Bill to the original Act bring about or tend to bring about an inherent tendency towards the emergence of a dictatorial party leading to semi-fascism?

SHRI NIREN DE: I personally do not think so. I do not think dictators are born as a result of provisions of statutes.

SHRI T. N. SINGH: The drafting changes suggested are very welcome and appear to me to be reasonable. May I ask your reaction to one such change. In clause 3(1)(a), the last date for making nominations has been reduced from the 14th day in the parent Act to the 7th day in the Bill. In such a vast country of ours, where communications are difficult and take time,—even letters do not reach in time—, is this change so materially necessary that we should go in for it?

SHRI NIREN DE: That is a matter of policy. Whether it is 14 days or 7 days, it is up to MPs really. But I suppose the question of shortness of time is not really material because people know well ahead when the time is coming, because the period is fixed in the Constitution. That being so, whether it is 14 days or 21 days does not matter. It should not be difficult to prepare the candidate or rather decide on the candidate in the normal course. Unless a last-minute hitch among people occurs, normally, well before the time of the notification referred to in cl. 3, they decide on their candidate.

SHRI T. N. SINGH: Unfortunately, the average citizen does not know the Constitution as you do.

Anyway the basic considerations for this Bill are, that there has been frivolity in election and the experience of the past two elections has compelled Government to bring forward this legislation. At the same time, as you have rightly said, the consideration of bribery and corruption coming in has to be kept in view. We cannot give it up simply because of certain experiences of the past. So keeping that in mind, don't you think that this procedure of having 20 proposers and 20 seconders—whose signature has to be verified under the law, doubts can be raised at the time of scrutiny—will add to the problems of the concerned authority? Suppose one man files four nominations. It might need verification of signatures of 160 persons. Why complicate matters?

SHRI NIREN DE: I suppose it may be covered by seven days.

SHRI T. N. SINGH: I am on the question of proposer and seconder to a candidate for the presidential election. There are 20 proposers and 20 seconders. Suppose a man files four such nomination papers. It will mean 160 signatures. An allegation may well be made that this is fraudulently obtained. Do we not add to the problem?

SHRI NIREN DE: Of course, the problem is always there whether you have got 20 or 2; probably, it will take a long time. That is all, I think the main object of 20 electors is very different. The main object is that we should have a nomination by at least a group of responsible people which I think is more important than a little delay in scrutiny.

SHRI T. N. SINGH: For the non-inclusion of the clause on bribery and corruption the argument advanced was that Members of Parliament are responsible people and, therefore, we need not have this clause, because they will not be guided by scurrilous propaganda. So, we have given up this provision. So, why presume that

a single member as proposer and seconder is less responsible in any way than 20 such people?

SHRI NIREN DE: I am not suggesting anything at all. As a matter of fact, I have accepted the theory of integrity of Members of Parliament. We live in a world which is not perfect.

SHRI T. N. SINGH: According to what you have already stated, the assumption that simply because there is one proposer and seconder, so there will be frivolous application is unfounded.

SHRI NIREN DE: So far as section 18 is concerned, my personal view is that it should retain "undue influence and bribery". But that has nothing to do with the question how many people are required as proposers and seconders. The number required has nothing to do with the question of integrity.

SHRI T. N. SINGH: Why 40 members should be required for filing an election petition?

SHRI NIREN DE: It is necessary. For challenging the election of the President a substantial number is necessary rather than a man in the street should go and file a petition.

SHRI T. N. SINGH: He is not a man in the street; he is a Member of Parliament.

SHRI NIREN DE: The number does have some sanctity. If I may say so, with respect to Members of Parliament, sometimes we all become a little unsound for the time being.

SHRI T. N. SINGH: Laws are amended in the light of the experience gained. Past experience shows that during such elections there are scurrilous attacks. According to the judgment of the Supreme Court itself, it is a demeaning sight that scurrilous propaganda was being made in the Central Hall of Parliament and outside. Do you not think that some provision regarding scurrilous propaganda should be made, either here

or in the Indian Penal Code, and no exception should be made, be it the election of the President or any other person?

SHRI NIREN DE: If a scurrilous attack is made by somebody against an opponent, why should a man be held responsible for that? My personal view is that it should retain the original clause 1(a) "by a candidate or with his connivance". There may be cases where somebody do scurrilous attack with the object of seeing that one person is defeated. It does not necessarily follow that the man making the scurrilous attack wants the other man to be elected. That being so, there is no reason why scurrilous attack by a third party without any knowledge of the candidate or his connivance should be a disqualification for the election.

SHRI T. N. SINGH: As a member of the Press Commission, the chairman of which was Justice Rajadhyaksha, we had occasion to see a great many scurrilous propaganda and we found that the law on the subject is inadequate to deter people from making such allegations. So, deterrent measures have to be provided in our law against scurrilous propaganda, yellow journalism etc.

SHRI NIREN DE: It is a very difficult question. It depends on the person writing, his own mentality. It is more a question of character. We cannot statutorily try to change the character of people.

SHRI T. N. SINGH: As a very eminent lawyer you know that in the case of scurrilous attack, the man who is attacked virtually becomes a defender of his character, and question can be asked about him. Therefore, defamation is not resorted to. In England any citizen can originate a libel suit. We have no such deterrent whereby scurrilous attack could be prevented. So, should not the Committee recommend that the provisions of IPC should be strengthened for the purpose?

SHRI NIREN DE: What exactly are you suggesting? I take it that you are suggesting some change in clause 18.

SHRI T. N. SINGH: Under section 18, bribery or undue influence would be an offence. Scurrilous propaganda with consent or connivance is not one of them in clause 18.

SHRI NIREN DE: I am afraid it is a very large question. I do not think we should enlarge the items there by including scurrilous propaganda. It would be difficult to find out whether it is with consent or not. I will not be in favour of enlarging original section 18.

MR. CHAIRMAN: I think Mr. Niren De on behalf of the Committee for the trouble he has taken to come and given evidence.

(The witness then withdrew)

III. Shri P. Ram Reddy, Senior Advocate, Supreme Court, Delhi.

(The witness was called in and he took his seat)

MR. CHAIRMAN: Mr. Reddy, I welcome you on behalf of the Committee. You have seen Direction 58 and you have signed it. I need not go into the formality of it. You are aware of it.

SHRI P. RAM REDDY: Yes.

MR. CHAIRMAN: Now, the Committee would like to hear your considered and experienced views on this Bill. Then, if the Members want to put questions, they will put to you for clarification. Your Memorandum has been circulated to Members.

SHRI P. RAM REDDY: In addition to that, I have got one more page to give you which I could not do before.

MR. CHAIRMAN: That will also be circulated.

SHRI P. RAM REDDY: First, I will give my general views on it in brief.

I think, by and large, the principles behind the Bill are all right. For example, you take the provision of 20 plus, 20, i.e., 40 electors. I think, that is a step in the right direction. Secondly, fixing a deposit of Rs. 2500 is also a step in the right direction. You have also provided for forfeiting the deposit in case you do not get one-sixth of the votes. That is also a step in the right direction. Far too many candidates are contesting for this high office with very remote chance of being elected. So, all these things are in the right direction in order to reduce the number of candidates for the election to the high office.

So far as clause 7 is concerned, I have taken a slightly different view. I take that view in the interest of purity of elections. So far as section 18(1)(a) of the previous Act is concerned, that is sought to be deleted now, I have suggested a via media between complete deletion and retention of it. I am suggesting an amendment on the lines of the People's Representation Act.

My reasons are that there have been four Presidential Elections and four Vice-Presidential Elections. Attributing corrupt practice to the candidate has been only in one case, that is, in the case of Shri V. V. Giri. Even that the Supreme Court has found to be not true. So, I want to really provide this. Of course, with the enlightened electorate of MPs and MLAs, the chances of corrupt practices being indulged are narrow. All the same, a provision like that will be in the interest of purity of elections.

Particularly, "bribery" and "undue influence" apart, as you are aware, in the People's Representation Act, you go on the grounds of religious, linguistic and communal things. I think, we should keep some such thing. That is my suggestion.

In my written statement, I have also suggested that so far as section 18(1)(a) is concerned, the word was "connivance". Connivance might mean there is a corrupt practice with the connivance of the candidate and the candidate may just keep quiet. That will be rather too much. That should be replaced by the word "consent". The word in the principal Act was too stringent. You could more easily allege a "corrupt" practice. In the third column, so far as that is concerned, I have suggested "Any corrupt practice has been committed by a returning candidate or his election agent with the consent of the returning candidate..."

I have also suggested this. There is Clause 2. On the lines of the People's Representation Act and, on that model, I have suggested some matters to be taken into consideration.

I have also suggested that so far as "materially affected" provisions are concerned, you have really three categories. You have transferred "nomination" one into the category of "materially-affected" provisions. That is a good provision. The reason why I am saying is this. So far as corrupt practice is concerned, there is immunity in the Constitution. That is what I have supplied in my additional note. Under article 361(2) there is an immunity that for the Presidential office, during his term of office, there can be no criminal proceedings against him. Taking that into consideration, also in the Indian election law, the Supreme Court has also held that so far as "materially-affected" provisions are concerned, it is very difficult to prove unlike in the English law where the burden is on the other side, whereas it is not so here. It is only in rare cases that really the court can set aside elections. There can be petitions filed against high-office by some people. For that also, I have suggested that a penalty can be imposed in the case of false election petitions.

These are some of my views on the Bill. I have also suggested some

other thing. It is for the Committee to consider. So far as p. 8 of my note is concerned, after the nomination stage, the returning officer gives a decision. I am suggesting that the question of nomination wrongly accepted or wrongly rejected must go to the Supreme Court as a first instalment so that that is once and for all decided, so that there is no question of re-election again.

What might happen is this. In the case of Mr. Pathak, the question raised was that one nomination was rejected and the person said, "My application was wrongly rejected." It was sent by post. The Supreme Court held that it was in conformity with the rules. If there is a case where the Supreme Court reverses the judgment of the returning officer saying that this particular nomination was wrongly rejected, then there should be a re-election.

Also, for all these questions of nominations, I have suggested an additional clause saying that this must go as a first instalment to the Supreme Court and the Supreme Court also is to give decision within a particular time. I have provided for that. In case it does not happen, the election can go on. We need not postpone the elections. This is a new clause I have suggested for the Committee to consider.

Again, certain election practices are provided in the People's Representation Act. They should also be included, e.g. Section 125, 127A, 128A, 136 pertaining to electoral offences.

Then this is a matter of small formality. Section 4(2) of the principal Act need not be there. That can be deleted. I have also suggested two amendments to the Constitution. As things stand at present, the members of the Legislatures of Union Territories have no right to vote for the Presidential election. The Supreme Court has also held in the case against Shri V. V. Giri that, so far as Union Territories are concerned, they do not come within the definition of 'State';

since Union Territory is not a 'State', they are excluded. I have, therefore, suggested amendment of Article 55 to include Union Territories also.

The other Constitutional amendment that I have suggested is this. This is in respect of the office of Speakership. It has been provided that the office of Minister is not an office of profit. I am suggesting that the office of Speaker should also be included in that category to say that it is also not an office of profit, so that the Speaker, if he wants to contest Presidential elections, should be in a position to do without resigning.

These are the points that I have suggested.

MR. CHAIRMAN: Thank you very much. Now I would ask the members whether they would like to put questions.

Mr. T. N. Singh.

SHRI T. N. SINGH: I have gone through the note circulated by you. I find that your principal suggestion is in respect of section 18. You have proposed an alternative draft. In that draft you begin by saying "that the result of the election has been materially affected.....by any corrupt practice committed." etc. But in the existing Act, this clause is separate; in the case of corruption and bribery, there is no need for proving whether it has materially affected. That is a material difference which you have suggested. Do you mean to say that if the election is not materially affected by bribery and corrupt practices committed, yet, the President should continue?

SHRI P. RAM REDDY: He should not continue. If you see what I have proposed, you will find that I have divided my proposal into two parts: one part is 'materially affected', i.e., (a); and the other, which is (b), is 'without being materially affected', i.e., *per se*. If I may come to (b) (i), it is already there in the proposed Bill; I am agreeing with that,

and in addition I am also suggesting inclusion of sub-clause (ii) to (b). I will just read this out. It reads:

"(ii) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent;

"the Supreme Court shall declare the election of the returned candidate to be void".

The view that I have taken is that if a candidate committed a corrupt practice, *ipso facto, per se*, whether the result of the election has been materially affected or not, the election must be set aside.

SHRI T. N. SINGH: You will find this in the existing Section 18 of the Act:

"(b) that the result of the election has been materially affected—

"(i) by reason that the offence of bribery or undue influence at the election has been committed by any person who is neither the returned candidate nor a person acting with his connivance . . ."

You seem to omit that part. Why?

SHRI P. RAM REDDY: I have not omitted. I have provided that in section 18(a)(iv). See the mark that I have put against 18(b)(ii)—'that any corrupt practice has been committed...' etc. So, you will find that I have retained that. In fact, I am going a step further. In the existing Act, the word 'connivance' appears; I have suggested 'consent'. If somebody commits a corrupt practice and the candidate keeps quiet, the Court may say 'connivance'.

SHRI T. N. SINGH: When the original Act was passed, I happened to be a Member of Parliament. The general feeling then was that we should give a certain high level to this elec-

tion—certain purity; it was said that bribery and corruption should be an offence *suo moto*, whether it affects the election materially or not. Another thing that was said was about the formality regarding deposits. The present law seems to re-introduce what are the norms in regard to ordinary elections to panchayat. Why should we degrade the election of President?

SHRI P. RAM REDDY: It is certainly a high office. There are two aspects. One is regarding the number of candidates contesting the election. I want that it should be made more strict and the steps that is proposed in this regard is a step in the right direction.

So far as purity of the election is concerned at the time when the original Act was passed, you were thinking that since the office was high, the purity must be greater. The higher the office, the purer it should be. So you had put even 'connivance'. I have taken a *via media* attitude between that and the proposed Amendment Bill where you have completely deleted it. I am saying that it should not be completely deleted and it should also not be kept as it is. I have suggested a *via media*, namely, 'consent' and not connivance, because to have 'connivance' will be harsh as the defeated candidate can go and say that there was a corrupt practice and the returned candidate knew about it. Actually, this distinction between connivance and consent has been clearly brought out by a ruling of the Supreme Court.

SHRI T. N. SINGH: We have stipulated in the proposed Bill that there should be 20 seconders and 20 proposers for a particular candidate; yet it is the legitimate right and I think it can be done and it should be done to see if the signature is fraudulently taken and if the signature is not genuine before the objection can be raised by the other candidate. By enlarging the number of proposers and the seconders you make the task of the scrutinising officer very difficult and it may

be possible not to do it within the time prescribed by the law. Why should we not leave it as a simple affair?

SHRI P. RAM REDDY: Between the two things—the difficulties of the returning officer to scrutinise all the 20 or 40 names within a day as against the other principle of trying to reduce the number of candidates who are not seriously contesting, I would rather suggest that we may give one more day for the Returning Officer to scrutinise them. But because of that I will not take the view that we should stick to the previous ruling. I personally think that it is a question of just seeing the things. I should think that within a day he should be able to scrutinise.

SHRI T. N. SINGH: As I am able to understand, the framers of this Bill seem to be very much concerned that some times in the past frivolous nomination papers have been filed and they want to prevent that. On the other hand, they have suggested that bribery and corruption should be omitted because it is a special electorate of Members of Parliament and legislatures who are responsible people. In the one case, the same member is capable of a frivolous nomination paper and in another case, he is not capable of any bribery or corruption and he will not be influenced by anything or by intimidation. Why should then we have this restrictive provision at all of this nature? It is not necessary, according to me, because gradually the number of frivolous candidates has been going down. It was 9 or 10 and then it went down to 5. Members of Parliament are responsible and are not to be supposed as frivolous members. Why not leave it to them?

SHRI P. RAM REDDY: I have already expressed my view in regard to that.

There are two things. So far as candidates are concerned, I rather take the view that you should not freely allow each and every person, however remotest the chance he has:

श्री जगदम्बी प्रसाद यादव : आपने क्लार्क चार के सम्बन्ध में एक उदाहरण दिया है कि आयरलैंड में भी नामिनेशन के समय में बीस लोगों की जरूरत पड़ती है—20 मेम्बर आफ ग्राइवर हाउस। मेरा सन्देह है, मेरी आप से अर्ज है आयरलैंड एक छोटा सा देश है और वह भी बनों का उसेज का है। यदि एक प्रत्याशी 40 आदमियों को प्रोजेक्टर और सेकेन्डर के लिए खोजें ज.ये तो चुनाव के पूर्व ही समूचे देश का एक राउन्ड हो जायेगा। इस सन्दर्भ में मैं कहना चाहता हूँ कि कोई प्रत्याशी किसी अन्य प्रत्याशी से चमक सकता है जैसे कि पिछले बार हुआ तो वंसी स्थिति में इन चालीस आदमियों को रखना एक कर्ब होगा या नहीं?

SHRI P. RAM REDDY: In the Irish Constitution, 20 Members of either House and not less than 4 Administrators are needed. But here you have put 40 Members. 40 Members really do not mean 40 Members of Parliament. Some may be MPs and some MLAs—total 40. When the total electorate is 500 Lok Sabha MPs and 300 Rajya Sabha M.Ps. plus 4200 MLAs. I really do not think it should be really difficult for a candidate to get 12 M.Ps. and 24 MLAs as I proposed.

श्री जगदम्बी प्रसाद यादव : मेरा दूसरा प्रश्न यह है कि कोई भी साधारण आदमी यदि राष्ट्रपति के पद का प्रत्याशी होना चाहे तो इस ढाई हजार की हकावट से वह रुक सकता है। यदि इस पद की प्रतिष्ठा को देखते हुए आप इसको रखना चाहते हैं तो 2,500 से इस पद की प्रतिष्ठा को आंका नहीं जा सकता। ऐसी स्थिति में इसका रहना जरूरी है या नहीं—इसके सम्बन्ध में आपके क्या विचार है ?

SHRI P. RAM REDDY: I am in favour of keeping it because if there are 12 MPs and 24 MLAs to support, it is a reasonable one. Regarding the deposit of Rs. 2500, it will really prevent those persons—we have had the

experience of some persons contesting every election and things like that we may be able to prevent by putting a deposit and also making a provision that if the candidate does not get one-sixth of the votes, he will forfeit.

MR. CHAIRMAN: So you want to retain it.

SHRI P. RAM REDDY: Yes.

श्री जगदम्बी प्रसाद यादव : मैं आपके उत्तर पर एक उदाहरण आपके सामने रखना चाहता हूँ जिससे विचार करने में आपको सहूलियत होगी। जो मौजूदा राष्ट्रपति है वह एक इन्डेपेन्डेंट प्रत्याशी रहे है। जैसा आपने कहा कि किसी पार्टी से सम्बन्ध होगा लेकिन वे किसी भी पार्टी के सदस्य नहीं थे और जिस वक्त वे अपना नामांकन दे रहे थे उस वक्त उनको किसी पार्टी का समर्थन भी नहीं था। ऐसी स्थिति में कोई प्रत्याशी इन्डेपेन्डेंट भी हो सकता है, बिना किसी पार्टी सपोर्ट के भी हो सकता है। दूसरे जहाँ तक चालीस सदस्यों का सम्बन्ध है, कोई पार्टी ऐसी भी हो सकती है जिसके पास इतने सदस्य न हों तो फिर उसके प्रत्याशी को समर्थन नहीं मिल पायेगा। आपने देखा है कि मौजूदा प्रेसीडेंट किसी पार्टी के नहीं थे और इन्डेपेन्डेंट होने के नाते ही उनको सारे देश का दौरा करना पड़ा था। ऐसी स्थिति में यदि 40 सदस्यों की संख्या रहती है प्रोजेक्टर और सेकेन्डर के लिए तो उससे कठिनाई उत्पन्न हो सकती है—इस संदर्भ में आपकी क्या ओपीनियन है ?

SHRI P. RAM REDDY: I agree with the hon. Member. He need not necessarily be party man. But the point is this. We want to reduce the number of people contesting the election, if there is very very remote chance of success. The candidate should not contest just for the sake of contesting and nothing else. This amount of 2500 should be there to see that people do not take it lightly. For Independents also that must be there.

श्री जगदम्बी प्रसाद यादव : जब प्रत्याशी चुनाव के लिए खड़े होते हैं उसी समय यह नहीं कहा जा सकता है कि इस प्रत्याशी को समर्थन नहीं मिलेगा, हो सकता है बाद में उसके पक्ष में एटमास्फियर बन जाये। हो सकता है एक प्रत्याशी को ग्रारम्भ में कम ही समर्थन हो लेकिन बाद में पोलिटिकल इविन्ट्स के कारण उसके पक्ष में एटमास्फियर बन सकता है जैसा कि वर्तमान राष्ट्रपति के संबंध में हमने देखा है। तो ऐसे अवसर पर आप इसको कब समझते है या नहीं ?

SHRI P. RAM REDDY: So far as political events are concerned, that is a different matter. The question now is whether we can have Rs. 2500 deposit or not. Even for MLA and Lok Sabha election the deposit is there. For scheduled caste, half the amount is there. Why should there not be some amount here also? I think it is all right, Sir.

श्री जगदम्बी प्रसाद यादव : मेरा कहना यह है कि ओपीनियन बोनो तरफ जाती है। जहां एक तरफ आप फ्रिवलस पेटिशनर को रोकना चाहते है वहां दूसरी तरफ जेनुइन पेटिशनर भी रुक सकता है।

SHRI P. RAM REDDY: I would plead for retention of the clause. The amount is not such a big thing. You cannot say genuine candidate will be debarred. The amount is not such a big amount, in any case, Sir.

श्री जगदम्बी प्रसाद यादव : स्कूटिनी के सम्बन्ध में कुछ रेस्ट्रिक्शंस डाले गए हैं तो उसके संबंध में आपकी क्या ओपीनियन है ?

SHRI P. RAM REDDY: You can argue your own case without lawyer; without lawyer things can be done. On that ground alone you can't say that the present provisions are not good.

श्री जगदम्बी प्रसाद यादव : आपने मेरी क्लॉज 18 में एक और क्लॉज जोड़ा है जबकि मेरी राय में क्लॉज 18 ही पर्याप्त है। आपकी क्या राय है ?

SHRI P. RAM REDDY: Why have I put in clause (2)? If you take the Peoples Representation Act in Section 100 there is a corresponding sub-clause (2). It is just a copy of the sub-clause 2 of the Peoples Representation Act. If you read it closely, it really governs the "materially affects clause," 4 sub-clause IV of (a) in section 18(1). I have suggested two additions—one is with respect to (b) ii about which hon'ble member asked me. I have explained that. The other is with respect to Clause (iv) of 18(1), (a), the corrupt practice by the returned candidate or by an agent other than his election agent'. Who is that agent? I have copied verbatim from the People Representation Act.

Agent includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

Agent is defined as one who has been employed by him with his consent. If such a man commits corrupt practice, I have suggested that he must go into the category of "materially affecting" clause. I have modelled the whole thing on the Peoples Representation Act.

श्री जगदम्बी प्रसाद यादव : मेरे ख्याल में "कानाइबेंस" शब्द की निस्वत "एजेन्ट" शब्द परेशानी पैदा करेगा। जहां तक पिछले इलैक्शन का सम्बन्ध है, जो लीफलेट बांटा गया, चाहे वह इलैक्शन एजेन्ट की तरफ से बांटा गया और चाहे किसी अन्य व्यक्ति की तरफ से, वह किसी भी इलैक्शन को सैट एसाइड करने के लिए काफी था। शब्द "एजेन्ट" रखने से सब व्यक्ति कवर नहीं हो सकेंगे, क्योंकि एजेन्ट तो कैंडीडेट की स्वीकृति या

एकपिडी से ही नियुक्त होगा। लेकिन "कान्नाइसेंस" शब्द रखने से कोई भी कार्य उसके अन्तर्गत आ सकता है, चाहे उसके लिए कैंडीडेट की स्वीकृति हो या न हो, वह सिर्फ अंडरस्टूड हों, और कोर्ट उस को उस के लिए जिम्मेदार ठहरा सकता है क्या "एजेंट" शब्द रखने से कान्नाइसेंस करने वाले को बच निकलने का चांस नहीं मिल जायेगा ?

SHRI P. RAM REDDY: In the old Act there is Section 18(a) and 18(b). So far as 18(a) is concerned, the word is 'connivance'. The idea was to declare the election void in case of bribery and undue influence by the returned candidate or by some other person helping him, with his connivance. This I may suggest, may be substituted by clause iv (b)(ii).

'Any corrupt practice committed by the returned candidate election agent or person with his consent'. So far as this is concerned connivance and consent' I have already said earlier on this. There is a decision of the Supreme Court. There is a difference between connivance and consent. Consent is something positive but connivance can come with ones keeping silent. In the Peoples Representation Act the word is 'consent' and not 'connivance'. I want to model it on the Peoples Representation Act itself. I prefer word 'consent' to connivance. I do not want to make it easy for anybody to say that the President kept silent, and therefore he has connived. At the same time I do not want to delete it. But if a man has really given consent to that though no doubt he is an important person. he too like others must be liable for the consequences.

Coming to another aspect 18(b) that is the "materially affected" clause. Section 18 divides into two classes *Per se* class and 'materially affected' class. Bribery and undue influence—may be by third party and he does something and if it affects the result of the election that election must be set aside. I

am saying third party's should not affect. If he is an agent, I have substituted—'by any returned candidate or an agent'.

MR. CHAIRMAN: He has asked specially—connivance or consent.

SHRI P. RAM REDDY: I want consent and not connivance.

SHRI BALACHANDRA MENON: Considering the sanctity of the high office, would you accept that even if there is no connivance or consent but a third party has somehow tried to influence the election, the election should be set aside and the same candidate can again contest because it is high office. It is not a question of this individual being effected or that but it is the question of the President's position.

SHRI P. RAM REDDY: So far as third party is concerned, I have taken the view that so far as third parties are concerned the returned candidate has no control. That should not affect the election and I think the proposed Bill on that aspect is right. Also there I have struck *via media* which is like Peoples Representation Act. If third party is an agent on whom he has control, then of course it should affect.

SHRI S. B. GIRI: It is stated under Clause 6 as:

"(2) An election petition calling in question may be presented on one or more of the grounds specified in sections 18 and 19 to the Supreme Court by any candidate at such election:

Provided that—

- (i) in the case of Presidential election, such petition may also be presented by at least forty electors of whom at least twelve shall be elected members of Parliament and at least twenty-four shall be elected members of one or more State Legislative Assemblies joined together as petitioners;
- (ii) in the case of Vice Presidential election, such petition may also be presented by at least

ten electors joined together as petitioners."

Now, my question is: why 40 electors should join together and file a petition? Why not one elector should file a petition?

SHRI P. RAM REDDY: Even in the old Act, the number was 10.

SHRI S. B. GIRI: Then why this proposal of imposing a penalty of Rs. 5000 and Rs. 10,000 for false election petition?

SHRI P. RAM REDDY: I am for retaining both the conditions. But if it is the question of number of electors, the previous Act provided for 10.

SHRI G. VISHWANATHAN: In the present Act for nomination of Presidential candidate, one proposer and one seconder is enough. It is now sought to be raised to 20 proposers and 20 seconders to avoid superfluous nominations. In the present set up which is obtaining in the country, if you strictly take the proposed 40 electors, then many of the parties may not be in a position to put up a candidate for this high office. So would it not be sufficient to increase the present number to 2, 4 or 6 or even 10 to avoid superfluous nominations and at the same time some political parties may be able to put up their own candidates?

SHRI P. RAM REDDY: I have really given a thought to it. At the time of putting up the nomination papers, really this question arises that there is a remote chance of a candidate getting into this and therefore the question of superfluous etc., will come only after the election is over. So far as the nominations are concerned, considering the total number of electors, so many Members of Parliament and so many thousands of Legislators, trying to find a *via media*, one can always say that the number is too much and it is not possible to consider this and fix this but giving a thought for that I am saying that it is not too easy or too difficult to do that. I think the organised party will still have the

chance with this number and that is why the number is being retained.

SHRI G. VISHWANATHAN: In the present Act there is no provision of security deposit for the election of President and Vice President. If you want to make it, Rs. 500 will it not be sufficient because it should be two times the security deposit fixed for M.Ps.

SHRI P. RAM REDDY: That is a matter of opinion. Any figure that is suggested may be taken. There may be two views: why not this figure and that figure but having considered the matter I think for a person who is really serious about the election the Prescribed security deposit may not at all be unnecessary.

MR. CHAIRMAN: Thank you. Mr. Reddy.

SHRI P. RAM REDDY: Thank you, Sir. (Mr. Reddy then withdrew).

MR. CHAIRMAN: Now, friends we are trying to get in touch with Mr. Kamath but he has not been able to come. Tentatively, we will be meeting on 17th February or 24th February or 10th March in so far as Mr. Kamath's evidence is concerned. We will give these three days to Mr. Kamath out of which he may select one.

SHRI G. VISWANATHAN: We have not received any response from the States. I want that at least a few Law Ministers of the States should be examined

MR. CHAIRMAN: It was put up before the Committee that the Department will send to all the Secretaries of the Parties as well as the Secretaries of the State Legislatures to inform all the Legislators about this Committee and practically they have received a few replies or no reply. Anyway, we shall consider his question when we meet next time. All right, thank you.

[The Committee then adjourned]

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE PRESIDENTIAL
AND VICE-PRESIDENTIAL ELECTIONS (AMENDMENT) BILL, 1972

Tuesday, 19th June, 1973 from 10.00 to 11.45 hours

PRESENT

Shri T. N. Singh—*In the Chair*

MEMBERS

Lok Sabha

2. Shri P. Gangadeb
3. Sardar Mohinder Singh Gill
4. Shri S. B. Giri
5. Shri H. R. Gokhale
6. Shri Jagannathrao Joshi
7. Shri J. G. Kadam
8. Shri Pилоo Mody
9. Shri Samar Mukherjee
10. Shri Pratap Singh Negi
11. Shri Tarkeshwar Pandey
12. Shri Jharkhande Rai
13. Shri Rajdeo Singh
14. Shri M. S. Sanjeevi Rao
15. Shri S. C. Samanta
16. Shri Digvijaya Narain Singh
17. Shri Nawal Kishore Sinha
18. Shri M. G. Ukey
19. Shri Virbhadra Singh

Rajya Sabha

20. Shrimati Maragatham Chandrasekhar
21. Shri Krishna Bahadur Chettri
22. Shri Lalbuaia
23. Shri Ganeshlal Mali
24. Shri Lokanath Misra
25. Shri Kota Punnaiah
26. Shri Emonsingh M. Sangma
27. Shri Triloki Singh
28. Shri H. M. Trivedi

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(LEGISLATIVE DEPARTMENT)

1. Shri K. K. Sundaram—*Secretary*.
2. Shri A. K. Srinivasamurthy—*Additional Legislative Counsel*.
3. Shri H. C. Vermani—*Under Secretary*.

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary*.

WITNESS EXAMINED

Shri T. Swaminathan—*Chief Election Commissioner*.

(The witness was called in and he took his seat).

MR. CHAIRMAN: We shall be profited very much from your intelligence, Mr. Swaminathan, because you have wide and varied experience.

As you know, our procedure is what you and I say in the Committee becomes a public document and is open for publication.

Before we ask questions from you, it may be profitable if you give a general view of your points.

SHRI T. SWAMINATHAN: The matter is of great importance and significance for the country because the Bill deals with appointment to the highest offices in the country.

The amendments are simple. The statement of Objects and Reasons describes the reasons behind those amendments. The two main objectives are:

1. Avoidance of frivolous nominations which have been found to be done in the past. For instance, in the election held in 1970—Presidential Election—9 out of the 17 candidates did not secure even a single vote. Similarly in 1969, a number of candidates did not secure even a single vote. In a contest for the highest office of the country, this appears to be somewhat improper. There should

be certain criteria laid down for contesting for these offices. We should ensure that there are no frivolous nominations. With this end in view, a provision is being introduced that the Presidential candidates should get the support of at least forty electors and the Vice-Presidential candidate should get the support of at least ten electors. I support this provision.

Then under the existing Act, there is no provision for any deposit in the case of election to the offices of President and Vice-President. Even for election to the State Assemblies there is a provision for deposit. Now the suggested provision is that if a candidate for these offices fails to secure one-sixth of the number of votes necessary to secure the return of a candidate, he shall forfeit the deposit of Rs. two thousand and five hundred. This would avoid the filing of frivolous nominations.

Further, in order to avoid filing on frivolous objections regarding elections to these offices, a provision is being introduced that a minimum of forty Members and ten Members in the case of President's and Vice-President's elections respectively will be necessary to join together as petitioners for challenging an election to these offices. It does not seem proper that there should be frivolous objections raised against these elections and the elected candidates be subject to controversy. This would be a welcome addition to take care of that aspect.

Then they are a few minor amendments suggested in order to bring election to these high offices in line with the Representation of the People Act.

MR. CHAIRMAN: There is a clause relating to corruption. What have you to say to that?

SHRI T. SWAMINATHAN: The ground relating to the offence of bribery or undue influence for challenging elections to these two offices is being omitted. This in my view, is correct. The electoral college in both the cases consists of elected Members i.e. Members of Parliament and Members of the State Assemblies in one case and Members of Parliament in the other. Unless our public life becomes sadly deteriorated, it seems to me that Members of Parliament and Members of the State Assemblies will not become subject to corrupt practices. But if there is any such thing, there is enough provision in the Constitution to deal with the situation.

SHRI H. R. GOKHALE: As you said, the electoral college in the case of election to those offices consists of either the Members of Parliament and Members of State Assemblies, or Members of Parliament. Don't you think, there is qualitative difference in the voters.

SHRI T. SWAMINATHAN: In the general elections, everybody votes, the number is very large, but in the case of these elections the number of voters is much less and they are elected Members of Parliament or State Legislatures. There is no doubt about it that there is a qualitative difference between the two. We consider representatives of the people very responsible. They would not ordinarily be subject to corruption.

SHRI H. R. GOKHALE: Are you aware of any other country, where a similar system of Government prevails and where elections to the highest office are challenged on the ground of corruption and bribery?

SHRI T. SWAMINATHAN: It is very difficult to say which countries are exactly on all fours with India in regard to its democratic political system. Almost every country has got some variance. The conditions are, therefore, not strictly comparable. There are provisions in the electoral systems in some countries like Senegal and Chile for challenging the validity of the election to the offices of President and Vice President. But in the United States, for instance, there is no provision specifically for challenging the election of the President, but there have been cases in the history of the United States, where the electoral system which provides for the election of the electors has been challenged. In one case in 1876, when four States were accused of manipulating the election, the matter was taken up by an Electoral Commission appointed on an *ad hoc* basis by both the Houses of Parliament. They went into this matter for a long time and the Congress itself considered the report of the Commission for over a month. The inauguration of the President was delayed by two months. Of course, there is provision in the United States for impeachment of the President.

SHRI H. R. GOKHALE: Impeachment is different. What I am asking is, whether on the ground of undue influence and corruption, are there instances where the law provides for such a challenge in election petitions?

SHRI T. SWAMINATHAN: I have mentioned two cases, where there is a definite provision. But there are other countries in which no challenge is possible, as in France.

SHRI H. R. GOKHALE: The Government has an open mind on this. We want to find out the views of all the Members. This Bill is based partly on the experience of the past few years of the election petitions challenged in the Supreme Court. The Head of the State had been subjected to a position where all kinds of allegations are made but, ultimately, the petitions have not resulted in any proof of the allegations. In the last election petition also it happened and it was noted in the international press also. That is one of the reasons why the proposed amendment has been suggested. What is your view in the light of past experience?

SHRI T. SWAMINATHAN: My view as Election Commissioner and as a citizen is that it is right and proper that the holders of the highest offices in the country should not be dragged into a controversy. Therefore, I am of the view that the omission of the provision in regard to challenge on grounds of corrupt practices is correct and it should be maintained.

श्री शारदादे राय : आप के विचारों से काफी स्पष्ट हो गया है। मैं आप से दो सवाल पूछना चाहता हूँ। पहला—इस तरह की प्रिविलेज पोस्ट पर पहुंचने के लिये नामजदगी के साथ एक निश्चित जमानत की रकम रखी जा रही है। क्या आप महसूस करते हैं कि भारत के अन्दर जो पूँजीवादी व्यवस्था चल रही है, उस में कुछ पैसे के आधार पर ऐसी चीजों को रोका जा सकता है—क्या ऐसा होना समुक्ति है ?

SHRI T. SWAMINATHAN: Whether we like it or not, we are still in a social and economic system where money does play an important part. For instance, even for changes in the electoral rolls, a small fee of ten paise is prescribed. Of course we are trying to do away with the fee because it seems an unnecessary imposition, if we genuinely want to

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get our names included, but it is true that all kinds of people who do not have a genuine desire to compete properly or with any degree of success will be excluded by the payment of a fee. For instance, even in some of our monuments, there is a fee prescribed. It is not that the zoo or public monuments are maintained purely on the fee provided, but it is a deterrent for undesirable people to go into the places and vitiate the purpose for which such institutions are provided. When our social system changes and our economic culture changes, perhaps this idea will also change and we may not then think that the fixation of a high fee will act as a deterrent to non-serious entrants.

श्री शारदादे राय : आज 1973 से हम इस अमेंडमेंट बिल पर विचार कर रहे हैं। 1967 के बाद से राजनीतिक क्षेत्र से जिस तरह का स्टीप-फाल हुआ है, आया-राम और गया राम की कहानियां प्रसिद्ध हैं, सरकारों के बनने और गिरने की कहानियां हमारे सामने हैं। पूरा भ्रूणहपन तेजी से देश में फैल रहा है, ऐसी स्थिति में क्या भ्रष्टाचार को आप इस कानून से रोक पायेंगे ? क्योंकि 1967 से पहले ऐसा नहीं था, पिछले 6 वर्षों में हम काफी नीचे गये हैं—इस के सम्बन्ध में आप का क्या विचार है ?

SHRI T. SWAMINATHAN: I shall answer the question as a citizen. I should like to say that whatever the deterioration in the standards of public life, still the representatives of the people are upholders of the principles of democracy. To consider in isolation whether the provision in regard to corrupt practices would not be correct because of this view that there is a fall in public standards and therefore a penal clause should be provided is a challenge to our very basic concepts. In my view the remedy for the situation is to tone up the spirit in public life.

and improve the standards of public life rather than provide checks and penalties in regard to the representation of the people.

SHRI TRILOKI SINGH: May I ask Shri Swaminathan whether, in view of the Supreme Court's finding that in the last general elections undue influence had been committed, it would not be desirable to re-introduce the provision in regard to undue influence?

SHR T. SWAMINATHAN: If the Committee desires to hear my view as Election Commissioner who has been conducting and supervising elections for Parliament and State Legislatures, my reading of the finding of the Supreme Court is that the result of the elections was certainly not vitiated by any undue influence and therefore the election was held proper and binding. In any action before any Court, there are always different views expressed but, at the same time, we should be guided by the final result rather than by any arguments which are provided in support or defence of any view. My view in regard to this matter is that holders of the highest offices in the country should not be subjected to such controversy. Moreover, there are other remedies which already exist.

SHRI TRILOKI SINGH: It was definitely the finding of the Supreme Court that undue influence was committed; only, the Supreme Court did not have sufficient proof for connecting it with the candidate, though it was done with his connivance. It is a fact that undue influence was committed in the last election. So, will it be desirable to delete this provision altogether from this Presidential Election Act? Our experience has been that the finding of the Supreme Court should be a guide and we should benefit by that experience. It is not impossible in our country to commit undue influence in the election to the highest office and this provision is very, very essential in

the interests of pure elections and a clean public life.

SHRI T. SWAMINATHAN: My answer would be that there can always be two opinions. I have given my opinion and it is for Parliament to finally decide whether this clause should be re-introduced or whether the amendment should be passed.

SHRI TRILOKI SINGH: In the existing law there is this provision which is proposed to be retained in the amending Bill. The amending Bill proposes two changes—one at the time of nomination and the other in the matter of filing an election petition. There is one at the time of nomination, and the other at the time of filing of election petitions. I would like the witness to tell this Committee whether this type of double check is necessary. Formerly, there were no checks. A person can be nominated by one elector and seconded by another elector and the election petition can be filed by any ten persons jointly or individually. Now, a large number of electors have to be there, for filing nominations. Once that check is there is it necessary that we should have another check in the matter of filing of election petitions, because once a man gets elected, as the President or Vice-President of the country, he can certainly exercise influence upon an elector, not to come forward to file an election petition, even if there are grounds for setting aside these elections? Therefore, do you think this double check is necessary?

SHRI T. SWAMINATHAN: In the light of the view I have earlier expressed, it seems to me that the proposed provision in regard to election petitions is even more important than the proposed provision in regard to nomination; because frivolous nomination is a simple matter. Not a great deal of damage is done. We only feel that having in view, the dignity of these offices, we should not

have all and sundry competing in the election. But in the case of election petitions, I would repeat, in the light of the opinion I have already expressed, that those who hold these high offices, should not become unnecessarily and undesirably subject to controversy. The second provision that there should be 40 signatories in the case of the President and 10 signatories in the case of the Vice-President, in my view, is very necessary.

SHRI TRILOKI SINGH: Then, the provision regarding filing of election petitions, should be made than stringent, than the provision on filing of nominations

SHRI T. SWAMINATHAN: Frivolous nomination is a small and simple issue. The election of President and Vice-President, which is a much more serious matter, should be made free from controversy. We should have every possible safeguard. In one case, no great damage is done to the reputation of these offices, but in the other case, making the holders of these offices, i.e., the electees to these offices the subject of controversy, is much more serious.

SHRI TRILOKI SINGH: There is another question. Supposing this Committee decides—and the Parliament also decides—that the provision should be retained, how is the witness likely to react? In a particular Act, a corrupt practice is not an offence, I do not know why the word “offence” has been used. How would you like it to be framed?

SHRI T. SWAMINATHAN: I must confess that this matter has not occurred to me and I have not given much thought to it. But I think it should be in line with other practices and it should be an offence. A corrupt practice can be a somewhat looser concept than an offence, so that in anything which relates to the office of the President and Vice-President, a provision of penalty in the case of

an offence is preferable to a provision on the ground of a corrupt practice.

SHRI RAJDEO SINGH: In Section 80 of the main Act, in Part-II, the word “bribery” is, in my view, most repugnant to the high offices. Because I think “undue influence” refers to bribery also. Because money creates undue influence. Only the word ‘undue influence’ should be there. And the word ‘bribery’ should be dropped. I want to know your opinion on this. The term ‘undue influence’ is so wide that it covers so many practices.

SHRI T. SWAMINATHAN: In the proposed bill, this clause is omitted; and the Hon. Member wishes to have my opinion as to whether in the existing Act, the word ‘bribery’ should be omitted, because it is repugnant to the idea that the electoral college may be subject to these influences. It is already covered by the concept of improper influences. I would certainly agree with him, in the light of the opinion I have already expressed. The electors being Members of Parliament, I consider them to be upholders of high principles.

SHRI D. N. SINGH: The learned witness quoted the amendments that the Government proposes to bring in the original Act, so far as the offences of bribery and corruption are concerned. The Members of Parliament are subject to the whip, one way or the other. In view of the Constitution Amendment Bill that is being brought, we may also lose our seat otherwise. Then, we have said that MLAs and MPs are electors to the offices of President and Vice-President; and, therefore, these things should not be there. So far as election to Rajya Sabha is concerned, in a way they are the voters. Members of Rajya Sabha are elected from the Assembly constituencies and others. His argument leads to the logical conclusion that there should not be any petition against the Member of the Rajya Sabha, or of Legislative Council who is elected from the Assembly constituencies, on

the ground of bribery and corruption. Would he like that so far as election to the Rajya Sabha and Legislative Councils are concerned, this reference should be deleted?

SHRI T. SWAMINATHAN: By a stretch of the arguments that I have made, it is possible to hold the view that there should be no election petition to the elections for Rajya Sabha also. But, there is a difference here: There are about 200 and odd Members in the Rajya Sabha. They are, after all, in the ultimate analysis, political nominees—elected on political grounds—through the assemblies whereas the offices of the President and Vice President are considered to be the highest repositories of the dignity of the country. We and other countries do have this form of democracy. In the case of election to President and Vice-President an ideal situation would be that the selection of persons should be above all political or such grounds. Apart from their integrity and reputation their experience and various other factors also do count.

MR. CHAIRMAN: Is it your argument or is it your view that the presidential election is to be held above politics?

SHRI T. SWAMINATHAN: I think that is an ideal situation.

SHRI D. N. SINGH: Just as the nomination of President and Vice President is made by different political parties, the Members of Rajya Sabha too are accordingly nominated by different political parties. Then how do you justify that when you say that they will be subjected to undue influence?

SHRI T. SWAMINATHAN: There is no difference in the matter of nomination. But the Members of the Rajya Sabha still continue to be the Members of political parties after their election whereas the President and Vice President do not.

SHRI D. N. SINGH: Shri Sanjiva Reddy, after he was elected as Spea-

ker, resigned the membership of the particular party. Then, he was nominated by the party and he was accepted for the membership of the party. Simply because he resigned his membership after he became Speaker, how can you say that he should not be continued as a member of the political party.

SHRI T. SWAMINATHAN: So long as the electoral college consists of Members of Legislatures at the Centre and at the States, this situation is likely to continue because the electorate themselves are members of Political Parties.

SHRI D. N. SINGH: I have not been able to follow him.

MR. CHAIRMAN: Will you please repeat that?

SHRI T. SWAMINATHAN: I said that so long as these electoral colleges are consisted of members of Legislatures at the Centre and the States, this situation would continue. They will be members of political parties. I also say that from experience there are independents who have offered themselves as candidates for the office of resident and who did secure nominations from Members of Parliament and State Legislatures.

SHRI D. N. SINGH: Now I would like to invite the kind attention of the learned witness to the following findings of the Supreme Court judgment. In page 113, para 214 of the note which has been circulated to us, their judgment says:—

“This distribution itself constitute undue influence within Selection 18(1)(a) of the Act. It is, however, not proved that this pamphlet was distributed by the workers of the respondent or with the connivance of the returned candidate. We further hold that it has not been proved that the result of the election has been materially affected by the distribution of the pamphlet.”

They also say:—

"In our order dated May 11, 1970, we had directed that the parties will bear their own costs. We passed this order regarding costs because we were satisfied that the pamphlet had been sent by post and distributed in the Central Hall and this justified the petitioners in bringing to us the two main petitions....As a matter of fact, we were distressed to see truth being sacrificed at the altar of political advantage by these witnesses."

This is the findings of the Supreme Court. There were some strictures passed on the witnesses. We also had the experience of an election being set aside in Rajya Sabha because some ballot box had been tampered. Because of that the Government has brought forward Anti-Defection Bill. Many members are crossing the floors. Take for example Orissa. A lot of people joined one party or the other.

In view of all this, how do you justify the deletion of the clause?

SHRI T. SWAMINATHAN: I have said earlier that it is possible to hold two views in the matter. It is desirable that the dignity of the highest office has to be maintained. And there should be no controversy in the matter. Speaker about the Anti-Defection Bill, it seems to me—I speak as a citizen—that this is certainly a right move.

SHRI D. N. SINGH: As regards clause 18, would you like that to be retained—this speaks about setting aside of the election of President due to non-compliance of the provisions of the Constitution or any rules or orders made under this Act.

SHRI T. SWAMINATHAN: I would humbly submit that this should be retained to deal with particular situations e.g., one which the hon. Member just now mentioned, namely, tampering of the ballot box.

SHRI D. N. SINGH: Now I would like to invite the attention of the hon. witness to the report of the Election Commission. An innovation was introduced this time to ensure strict secrecy of the ballot. This however could not be done in the case of U.P., Legislative Assembly. When anything is brought to the notice of the Election Commission or should it not be incumbent upon him to take immediate action? For example, if there is any discrepancy noticed in the both of the Members of Parliament or State Legislatures, should it not be cancelled?

SHRI T. SWAMINATHAN: As I said earlier, this innovation was a move in the right direction. I do not think there should be any penalty of ordering of re-poll because of this so long as the result of election is not materially affected.

MR. CHAIRMAN: So long as it does not materially affect this can be ignored. If it affects action can be taken. If it materially affects action can be taken. This is his view.

SHRI T. SWAMINATHAN: By the Constitution and by parliamentary Acts the Election Commission is vested with large authority and discretion. The Election Commission is empowered to use its discretion whenever it is necessary and order a repoll.

SHRI KRISHNA BAHADUR CHETTRI: At the time of election partymen are guided by party whips. Do you think it is correct? Do you not think it is a sort of undue influence?

SHRI T. SWAMINATHAN: I don't think so. Political parties are subject to party discipline.

SHRI KRISHNA BAHADUR CHETTRI: Is Rs. 2500 deposit necessary? What is your reaction?

SHRI T. SWAMINATHAN: This is not an inflexible figure and Parliament can change this figure to any amount it likes.

SHRI JAGANNATHRAO JOSHI: In view of the Watergate episode and the disclosures which have since been made, it is evident that even the highest authority could be acceptable to corruption, human nature being what it is. We have got after 1967 the spectacle of *Ayarams* and *Gayarams* in this country and don't you think that the clause regarding undue influence and corruption should not be as in the original Bill?

SHRI T. SWAMINATHAN: As I have said, the Anti-defection Bill should be considered as a corrective to the situation mentioned by you and by other hon. Members. In regard to the Watergate matter, it is a matter which is still under investigation and as a public servant I would not wish to comment on a matter which is still under investigation.

SHRI JAGANNATHRAO JOSHI: Anti-defection Bill may not stop purchasing of MLAs, MPs. Even elected legislators are susceptible to corruption.

SHRI T. SWAMINATHAN: This is a somewhat larger question and the question is whether we should consider public life to be so corrupt as to provide all kinds of penalties against all contingencies. I for one would think that public life should be cleaned up rather than the other way about.

SHRI JAGANNATHRAO JOSHI: For impeachment you need 2/3 majority. For election petition you need not have that majority. Even if he is convinced that corrupt practice has been used, his hands are tied and there is no room for him.

SHRI T. SWAMINATHAN: I never used the word impeachment. I said, there are remedies provided under the constitution.

SHRI S. B. GIRI: The Bill proposed 20 or 30 members for nomination. Can you avoid this provision of nomination.

SHRI T. SWAMINATHAN: This is in respect of persons holding high office.

SHRI S. B. GIRI: For Member of Parliament, only one proposer is there. For President and Vice President why should so many persons? Is it not a disgrace, trying to curtail democracy in this country?

SHRI T. SWAMINATHAN: The whole concept of this Bill is an integrated one. If you take an integrated view of the whole thing that there should be no frivolous nomination or frivolous election petition and all that, it is a correct view to take that there should be some larger number of nominations than there would be in the case of Members of Parliament.

SHRI S. B. GIRI: Let us delete this provision for 20 or 30 nominations. What do you say?

SHRI T. SWAMINATHAN: The Constitution provides for dealing with disputes in regard to elections. I don't think this provision can be removed except by a constitutional amendment I don't think this provision should be removed.

SHRI S. B. GIRI: He has got some facts. Why should he not have right to file election petition?

SHRI T. SWAMINATHAN: If he has bona fide facts that will vitiate the result of the election, he can gain the support of 20 or 40 people.

SHRI H. M. TRIVEDI: It is said that a stage has not been reached now for making amendment at all. Is it correct that such amendments is not at all necessary? Do you think that the Constitution, as it stands, should be allowed to have its run for certain times before making attempt to bring in amendments?

SHRI T. SWAMINATHAN: It is always possible to have more than one view in this matter, and it seems to me that we have sufficient experience of these elections which have gone on

now for twenty years and more, to think in terms of simplifying and making more perfect whatever legislation we have.

SHRI PILOO MODY: I was rather disturbed to hear the testimony of the witness. On occasions, the witness testified as a citizen of this country; on other occasions, he has testified as a public servant. Yet, I presume that he has been invited here, because he is the Chief Election Commissioner of India. Therefore, in view of his constant reiteration that there can be more than one view on a subject like this, I would like to know which particular view at any one time he was expressing, his views as a private citizen, or his views as a public servant or his views as the Chief Election Commissioner?

SHRI T. SWAMINATHAN: Fortunately or unfortunately, I have all these capacities. Except when I had said that I was speaking as a citizen, or that I was speaking as a public servant, I spoke as the Chief Election Commissioner.

SHRI PILOO MODY: Does his department have any means or methods or mechanisms by which he can prevent corrupt practices in the election?

SHRI T. SWAMINATHAN: I would only refer to the responsibilities placed on the Election Commissioner that he should try and see that there are fair and free elections which he would do by all the means at his disposal.

SHRI PILOO MODY: I am afraid that that reply does not quite answer the questions that I have asked. Is he in a position to prevent the corrupt practices?

SHRI T. SWAMINATHAN: By mechanical means, yes, that is, to ensure that the ballot boxes are safe, that the polling stations are properly arranged and so on.

MR. CHAIRMAN: I think he means that there are rules and procedures in this regard.

SHRI PILOO MODY: If I may interpret the reply of the witness, it means that by mechanical processes, he has the capacity to ensure that the ballot boxes are not tampered with, but that he has no capacity as the Chief Election Commissioner to see that there are no malpractices in the actual conduct of the elections.

SHRI T. SWAMINATHAN: What happens outside the polling booths and outside the mechanism for the elections is not within the purview of the Chief Election Commissioner.

SHRI PILOO MODY: Therefore, I take it that the views that he has expressed about corrupt practices in the conduct of the elections are views that he can only give as a citizen and not as the Chief Election Commissioner of this country, for the simple reason that he has no means of controlling or knowing what happens outside the polling booth.

SHRI T. SWAMINATHAN: The Chief Election Commissioner is in charge of those mechanical means and there are rules and regulations which govern his conduct and his powers. But what happens outside the area or what happens in public life generally, unfortunately or fortunately, is something which the Chief Election Commissioner cannot control.

SHRI PILOO MODY: Therefore, may I take it that the views expressed by the Chief Election Commissioner can only be considered as his personal views in the matter of the conduct of elections.

MR. CHAIRMAN: It relates to the field whereby the procedures and other things are set in motion....

SHRI PILOO MODY: I understand the reply of the witness quite clearly. It does not need any further elucidation. Therefore, I would like to seek some clarification of the observations that he has made.

At one time, he said that the representatives of the people were supposed

to be above certain suspicions and therefore in the interests of public life, no penalty or penal provision should be introduced. I take it that this is a wish on the part of the Chief Election Commissioner that public life should be cleaned up and therefore should be free of practices such as we are trying to curb through the laws that we have made.

SHRI T. SWAMINATHAN: It is as Chief Election Commissioner as well as as a citizen that I had expressed that.

SHRI PILOO MODY: At the moment, it is being suggested that this cleanliness of public life should only be attached to the office of the President and Vice-President and not other public servants and other offices.

SHRI T. SWAMINATHAN: The purpose for which I have been asked to come and testify here, it seems to me, if I may say, with great respect to the hon. Member, does not seem to cover the question that he is asking me, because we are now discussing only the Presidential and Vice-Presidential Elections.

SHRI PILOO MODY: I recall that the witness had earlier on opined that this procedure may not be adopted for elections to the Rajya Sabha. It was only in that context that I had asked this question.

SHRI T. SWAMINATHAN: I am afraid that the hon. Member has put what I had stated negatively. I said that in the case of the elections to the Rajya Sabha and the Presidential and Vice-Presidential elections, there was a basic difference, and that whereas an election petition may be justified on certain grounds in the case of elections to the Rajya Sabha the same grounds may not apply to the elections to the office of the President and the Vice-President.

SHRI PILOO MODY: I have tried to take down what the witness had said as closely as I could, and I think he said that holders of such high

offices or such dignitaries should not be subjected to such indignities.

SHRI T. SWAMINATHAN: I did not use the word 'indignity'.

SHRI PILOO MODY: He had perhaps used something equivalent to that, say, that he should not be subjected to that sort of treatment or that sort of petition, and that was the reason why that clause should be deleted from the present Bill. In view of the statement that the witness had made a little earlier that before a man acquires the high office of President, he is just like any other ordinary man, and in view of that, the crimes, if any, that he is being prosecuted for were committed at a time when he was just an ordinary man before he had acquired the office of President, may I know why in the opinion of the witness, he thinks that such ordinary people should not be subjected to the common law?

SHRI T. SWAMINATHAN: I said that while he is a candidate, he is a citizen. But the moment he becomes successfully elected, he becomes the holder of the highest and most respected office in the country. I also said that the instruments through which those practices which are suspect can be practised are the representatives of the people who, I hoped, and I say it again, would show the highest sense of responsibility and exercise their franchise in the Presidential and Vice-Presidential elections in the highest traditions and principles of democracy.

SHRI PILOO MODY: Would the learned witness say that things like Watergate should not happen in this country?

SHRI T. SWAMINATHAN: I have said that Watergate is still under investigation, and so, I would not wish to make any comments on that.

SHRI PILOO MODY: The matter may be *sub judice* in some other country. What I am saying is this. Should such sort of probes into the activity of a President, whether

American or India, take place or not? That is the only question which I am asking.

SHRI T. SWAMINATHAN: In the United States, the House Committees of the Congress are investigating into this matter.

SHRI PILOO MODY: I would like to know from the witness where he thinks this special breed of men is found, who are entitled to contest for the office of President or Vice-President in this country.

Are there any special breed of people either having a third eye or two horns or some special things that we lesser mortals do not have?

SHRI T. SWAMINATHAN: The Constitution provides the qualifications for the candidates to the office of President and Vice-President.

SHRI PILOO MODY: I assume, if the Constitution is read correctly, that millions and millions of people can also contest for the office of President. Now the constitutional position of the President, has, whatever the founding fathers may have intended, over a period of time come to mean that he acts merely on the advice of the Council of Ministers. Am I correct?

SHRI T. SWAMINATHAN: Yes, the Constitution does provide that the President acts on the advice of his Council of Ministers.

SHRI PILOO MODY: Therefore, the President's behaviour must at all times be in conformity with the political aspirations of the ruling party.

SHRI T. SWAMINATHAN: It is not for me on this occasion to comment on the basic assumptions under our Constitution.

SHRI PILOO MODY: It has also been suggested that when party whip and party discipline are exercised it would not constitute an undue influence on the election. Am I to take it, therefore, that the last presidential election should be vitiated on the

ground that party whip and party discipline were in fact violated?

SHRI T. SWAMINATHAN: It is not the function either of the Chief Election Commissioner or, I take it, of any other authority concerned with the Presidential and Vice-Presidential election to safeguard party discipline.

SHRI PILOO MODY: I have heard witness say time and again that he was interested in cleaning up the public life of our country. In that, I would like to assure witness and you in the Committee that I am just as keen, in fact very keen, that the public life of our country needs a considerable amount of cleaning up. I have heard the opinion of witness, which he says can be one of many opinions, that such cleaning up cannot be done merely by penal provisions in the law but through some other means. Can I, therefore, be bold enough to ask witness what other means he would like to suggest for cleaning up the public life of our country?

SHRI T. SWAMINATHAN: I submit I came here as a semi-expert witness to give my opinion on a Bill before Parliament. I have not given thought to the matter of how public life can be cleaned up.

SHRI PILOO MODY: I asked this question of him as a private person.

MR. CHAIRMAN: I think he has answered the point; we need not try to argue.

SHRI T. SWAMINATHAN: If I may say so, I shall be glad to discuss this matter with Shri Piloo Mody but elsewhere than here.

SHRI PILOO MODY: How does the removal of penal provisions clean up public life in our country any more than the elimination of the I.P.C. clean up criminal acts in our society?

SHRI T. SWAMINATHAN: I am afraid I did not say that the removal of penal provisions would clean up

public life; I only said that penal provisions are a reflection of our society on anything and everything and that in view of the respect in which we hold the representatives of our people I did not think it right that we should proceed on a basis of suspicion and provide all kinds of penal provisions against them.

SHRI PILOO MODY: I wanted to end up by asking a very personal question but in view of the wish expressed by witness, I will do it privately.

MR. CHAIRMAN: I have a few questions. Today by accident, I am in the Chair and so there are certain disadvantages for me as I am not a free member, as I wish to be when sitting on the other side. Anyway, I want one or two clarifications.

Every law that we make must have some logic behind it. If the logic is that members are capable of filing frivolous nominations, how are they not capable or being subjected to undue influence? I cannot reconcile the basic arguments underlying these two things.

SHRI T. SWAMINATHAN: If I may say so with respect, I do not think there is any contradiction or incongruity in the situation. If there are a number of people contesting, it is because they hope they would be elected; half a dozen serious candidates do compete. Then I do not think there is any underlying contradiction between the one and the other; I do not think there is any logical correlation between filing nominations and undue influence.

MR. CHAIRMAN: I asked this question because of past experience. We have found that it is not obligatory on one who nominates a person to vote for him. So if you have got a clause which says so many nomination papers, will it in any way prevent that particular person from not voting for the person whom he has nominated and, therefore, that should lead to a number of frivolous nomination papers?

SHRI T. SWAMINATHAN: So long as there is secrecy of the ballot...

MR. CHAIRMAN: That is exactly the point.

SHRI T. SWAMINATHAN:... it is not possible to know for whom the person who has nominated has voted. But if I may say so with respect, I would not assume that a person who has nominated X does not vote for X.

MR. CHAIRMAN: I do not want to argue because this is a matter of public knowledge where people openly said that they should vote for a particular person. Anyway, let us leave it at that.

You have already got a provision in the existing law which says that undue influence bribery shall be a corrupt practice. When this law was made, I was also an MP. I believe Dr. Ambedkar was piloting the measure. Some members did raise the issue that the presidential election should not be brought within its purview. The view then held was that we should not try to differentiate in the matter of corrupt practice from the highest to the lowest; a corrupt practice is a corrupt practice whether committed by a high personality or a low personality. Having taken that view, my anxiety is that if you omit it now, it will give the impression as if you are making corrupt practice permissible. If there were no law on the subject, that would be a different matter, but to omit it now gives the impression, not only internally but internationally, that we are now waking this kind of deviation from what is a healthy thing after all.

SHRI T. SWAMINATHAN: I would say that the view expressed is certainly a very weighty consideration, and I will repeat that it is my view that it is possible to have more than one view on this subject. But the original idea perhaps when Dr. Amedkar introduced this law was that in actual practice there would be no frivolous election petitions or situa-

tions under which the head of the State and his Vice—would get involved in unseemly controversy. But in the course of the 20 years, actual practice has been the other way around. Therefore, the current thinking seems to be that this should be provided against.

MR. CHAIRMAN: I quite agree that all laws are made according to the experience gained of the functioning of certain measures as well as certain manners or modes of behaviour of the whole population; the provisions of the law are governed by that factor. But what is worrying me is that according to the judgment of the Supreme Court, there has been shameful pamphleteering in the last election. Whoever has done it, it has happened. That in an election to such an office such an offence committed by anyone whatsoever should go unnoticed, unpunished, and there should be no provision in regard to that at all, whether direct or indirect.

SHRI T. SWAMINATHAN: It seems to me there is provision in the ordinary law for dealing with such situations and recourse to a specialised law like the election law may not be necessary.

MR. CHAIRMAN: Can it ensure that such unseemly things do not happen? Can the common law prevent it?

SHRI T. SWAMINATHAN: It should certainly be possible under the common law to punish such cases and to the extent that punishment is a deterrent to the commission of an offence, I should think it is possible to prevent it also.

MR. CHAIRMAN: You have taken the line that it is a chosen electorate, the MLAs and M.Ps. and so we need not be restrictive in the provision for the election of the President and Vice President. I am myself a Member of Parliament and our democratic traditions are yet to grow. In this context do the Members of Parliament or the

State Assemblies deserve to be placed on such a high pedestal

SHRI T. SWAMINATHAN: It is a matter of opinion. It seems to me that something outside the law should be the agency through which public life should be cleaned. For instance, there is a strong view that prohibition should not be enforced by punishing addiction to drinks and instead there should be a moral upsurge which should keep people away from the evil habit. There is something similar, though the example of prohibition is on a very much lower plane than the one we are talking about.

MR. CHAIRMAN: Take the recent events in England, involving some Ministers. Earlier there was the Profumo cases. In the United States, The Watergate case is going on. Whatever may happen, certain conventions have grown in those countries and it is impossible to flout those conventions. Real democracy is preserved through the growth of healthy conventions but then it takes time. Should we not allow conventions to grow?

SHRI T. SWAMINATHAN: It seems to me that conventions are growing in this country too and there was a very recent instance of such a convention being applied. It seems to me that it is again a point of view in regard to our political evolution, whether you want to go initially on the basis of suspecting everything and providing penalties or do you want to assume there is a certain cleanliness. If you find the opposite to be the case, then one should provide for it.

MR. CHAIRMAN: I was trying to understand the rationale behind this law. The framers of the Bill have been perturbed by what they saw at the time of presidential election. I can see that point. Presidential elections will always be governed by political considerations. But are we not jumping at the earliest opportunity to amend the laws instead of allowing time and good sense to prevail?

SHRI T. SWAMINATHAN: It is difficult for me to answer this question because Government have brought a Bill before Parliament; ultimately Parliament may decide not to go on with the whole or part of that Bill.

SHRI TRILOKI SINGH: Even though the Representation of the People Act contains many provisions dealing with corrupt practices, it is known to all that some political parties and united fronts have watered down the provisions. Let us not forget that.

MR. CHAIRMAN: In the Select Committees we are not guided by

party considerations. That is the practice in the Public Accounts Committee also. I congratulate the Members that irrespective of political ideas they have tried to ask questions objectively. I thank Mr. Swaminathan, who is an old friend of mine, for having come and given evidence.

SHRI T. SWAMINATHAN: I thank you for your very kind words and for your courtesy and consideration.

[The Committee then adjourned]

**RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON
THE PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTIONS (AMEND-
MENT) BILL, 1972**

Wednesday, 20th June, 1973 from 10.00 to 12.30 hours

PRESENT

Shri T. N. Singh—*(In the Chair)*

MEMBERS

Lok Sabha

2. Shri P. Gangadeb
3. Sardar Mohinder Singh Gill
4. Shri S. B. Giri
5. Shri H. R. Gokhale
6. Shri Jagannathrao Joshi
7. Shri J. G. Kadam
8. Shri Piloo Mody
9. Shri Samar Mukherjee
10. Shri Pratap Singh Negi
11. Shri Tarkeshwar Pande
12. Shri Jharkhande Rai
13. Shri Rajdeo Singh
14. Shri M. S. Sanjeevi Rao
15. Shri S. C. Samanta
16. Shri Digvijaya Narain Singh
17. Shri Nawal Kishore Sinha
18. Shri Virbhadra Singh
19. Shri Niti Raj Singh Chaudhury

Rajya Sabha

20. Shri Krishna Bahadur Chettri
21. Shri Lalbuai
22. Shri Ganeshlal Mali
23. Shri Kota Punnaiah
24. Shri Emonsingh M. Sangma
25. Shri H. M. Trivedi

**REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(LEGISLATIVE DEPARTMENT)**

2. Shri A. K. Srinivasamurthy—*Additional Legislative Counsel.*
3. Shri H. C. Vermani—*Under Secretary.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESS EXAMINED

Shri Hari Vishnu Kamath, *Ex-M.P.*

Shri H. V. Kamath, Ex-M.P.

(The witness was called in and he took his seat).

MR. CHAIRMAN: Mr. Kamath, your evidence was incomplete last time, and unfortunately, we had to adjourn for want of quorum when you came last. Now you may please resume, if you have got anything further to add to what you said the other day. Or shall we start our queries?

SHRI HARI VISHNU KAMATH: If you will kindly permit me, Mr. Chairman, I will add a few more observations to what I said on the last occasion.

MR. CHAIRMAN: Who can withhold permission from you?

SHRI HARI VISHNU KAMATH: Very kind of you.

When I took leave of the Committee last time, that is, more than five months ago, on Jan. 18 to be precise, I had developed the point with regard to the last presidential and vice-presidential election of 1969 which, in my humble judgment, has provoked, if I may use that word, the introduction of this amendment Bill. And after having read the relevant extracts from the judgment of the Supreme Court in that case to reinforce my point that undue influence had been exercised in that election, I proceeded to offer my views on the clauses of the Bill. I was, on that date, when I took leave of you and your colleagues on the Committee, if my memory serves me right—because it was long ago—on clause 5. I crave the indulgence of the Committee to dilate further upon the merits or demerits of this particular clause before I proceed to the more substantial provisions of the Bill.

I come to the proposed section 5B(1) (a) and (b) which is the crux of this section. To me it appears that the curb or restriction which this proposed section seeks to impose is uncalled for. I will briefly indicate the reasons for my view.

Before I do so, may I straightaway say that the provision for seconders may not be necessary at all. I do not know why there should be seconders at all. Proposers should be enough, as a matter of fact in any election, though I do not concern myself with other elections here; but I will straightaway say that in regard to the presidential and Vice-presidential elections, there need be no provision for seconders at all. Proposers should be quite sufficient. I do not see why there should be, as sought to be provided in this clause, 20 electors as proposers and 20 as seconders for presidential candidates and 5 electors as proposers and 5 as seconders for vice-presidential candidates.

If this is accepted, I am afraid—unfortunately in our developing democracy barring the ruling party at the Centre as well as in the States, the opposition parties are scantily represented, I use the word 'scantily' because this is a relative term—I do not know the correct position in the Lok Sabha now but, I believe, the biggest opposition party may perhaps number about 25 or 30, and the Speaker has fixed 10 per cent as the minimum for a party to be called 'Opposition Party'—that if that be the case, I fail to see how any Party, which commands only a little strength in the Lok Sabha, will be able to set up a candidate. Please look to the other sub-clause of 5B. That will reinforce my point further. Sub-Clause (5) of Clause 5B(1) says:

“(5) No elector shall subscribe, whether as proposer or as seconder, more than one nomination paper at any election.”

Further it says:

“(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper for the same election:

Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer”.

The sum total of all this is that every candidate is at liberty to file four nomination papers. He need not file all of them. But, he is at liberty to do so. Each nomination paper will have to be signed by 20 electors as proposers and 20 as secondors for the Presidential candidate and for the Vice-Presidential candidate by five electors as proposers and five electors as secondors. I shall deal with the Vice-Presidential candidate later when I come to that. At present I am dealing with presidential candidates. For the Presidential candidate, as I said earlier, under clause 5B(1)(5) 'No elector shall subscribe to more than one nomination paper'. That means, for four papers, there would be 160 Members in all from the Electoral College. So, by putting in 80 proposers and 80 secondors, is this not too big a restriction which will prevent a candidate from venturing into the field? But, what is more serious is that a party which commands a strength of less than 160 Members in the electoral college will not be able to put up its own candidate. It will only go against the concept and practice of democracy. After all, the democracy in our country is yet to develop and to take deep root in our soil which, I am afraid, has not been done. I am sure that every party should have equal right and equal opportunity, with the ruling party, to contest every election. It does not matter at all whether the outcome is defeat or victory. Let me quote what the Gita says if I may be permitted to do so.

सुखदुःखे समे कृत्वा लाभालाभौ जताजयो

The battle is the thing, and not defeat or victory. In a democracy, every party in Parliament—big or small,—may be five, ten or fifteen or twenty-five strong to-day—should have equality of opportunity to contest. If such a party is not permitted or is not able to contest the election, what will happen to our democracy? What I would beg of this Committee to bear in mind before they accept this so-called safeguard is this. You know

that in the 1952 Presidential election my friend and colleague in the Constituent Assembly, the late Prof. K. T. Shah was the other candidate, besides Rajendra Babu. I casually asked him: "Prof. Shah, why do you fight this unequal battle, when you have no chance of winning it?" The reply he gave me was remarkable. He said: 'it does not matter. In this election there must be an opposition candidate also, even if it be taken opposition. So, whether you win or lose in the end, every party must have the right and opportunity to set up a candidate in the presidential election. It may not exercise that right; that is another matter. This is the highest office in the land. A plea may be advanced' that this is the highest office in the land and so, there should be no frivolous candidate, no candidate who has no chance of winning it. May I ask here a question? Is not the Prime Minister's Office one of the highest offices? Can its dignity be eroded by an election on the democratic pattern or by several rival candidates? Why should we not enforce this restriction so far as rival candidates are concerned in a constituency where from the would-be Prime Minister is to contest? Do we impose the restriction there? No. Any number of candidates may be set up by any party against the Prime Minister. Why, only for these two offices of the land, should there be undue anxiety to prevent so called frivolous candidates from contesting. Who is to decide who is frivolous and who is not frivolous? It is time that a party may set up a candidate and may get five or ten votes while another candidate may get only one vote or even zero vote. I am told that in the last election, five or six candidates did not get any vote at all.

The remedy for that, in my humble judgment, would be to debar a candidate or disqualify the person who has secured much less than the required minimum number of votes. I shall come to that later on when the clause is taken up. You may debar him from contesting the Presidential or Vice-

Presidential Election for 6 years or may be even for 12 years. There is the instance of Mr. Norman Thomas in America who went on losing seven times he contested for the Presidency but every time he lost—but he did not lose heart nor did anybody say he should not contest. He did poll a fairly sizeable number of votes. Further during his campaign, he could project his own policies and views as to how the American administration should be run so that some of his proposals were adopted by the government later. That is another consideration I would like the Committee to bear in mind.

But if the Committee do insist that there should be some sort of curb or restriction, I would suggest, that you may have at the most 5 proposers for a Presidential candidate, and two for a Vice-Presidential candidate. There should be no seconders at all. That is my view with regard to this particular clause. Further, please bear in mind that every party, however small it may be, should have the right to contest the Presidential election.

Now, I take up clause 5(c) regarding a security of Rs. 2,500/- that is sought to be provided for. Perhaps it is imagined by the Ministry that this will act as an effective curb. But may I submit in all humility, Mr. Chairman, that in our country today, whose system is being fast transformed from a 'Jana-tantra' in to 'Dhan-tantra' the monetary quantum or limit will not act as a sufficient and effective deterrent and always there will be people who can find money or have other people find the money for the purpose. Therefore, that thing is absolutely meaningless. As such, this provision should be deleted. Instead of that, as was suggested by me earlier, the more effective curb would be that if a candidate secures less than, say 1/10th of the number of votes required to secure the return of a candidate for such election, then he should be debarred from fighting an election for six years, so as to prevent frivolous

candidatures. That is my suggestion to the Committee for their consideration. That will, to my mind, act as a more effective deterrent than fixing a monetary requirement of Rs. 2,500/- as security.

Now, I take up clause 5(E). Please see the wording of clause 5(E). It seems to me that the able draftsman of the Law Ministry has merely copied the old clause verbatim from the earlier clause in the principal Act. This clause, if adopted with the previous one, provides that the candidate has got the right to have only one proposer or one seconder at the time of security; and what will happen if at the scrutiny one out of the 40 who signed that one is found to be disqualified from seconding or proposing? Does he forfeit his right to contest election? What will happen if at the scrutiny stage, one of them says, I have not signed, but my signature was obtained by undue influence or under duress"? He just walks out. The poor candidate has to suffer: Is that proper? I think, I have made my point clear enough and I will not dwell on it any longer.

Now, I come to clause 8 before I take up clause 7. That is the most important clause. I would invite your attention to sub-clause (4) of clause 8. It reads:

"Subject to the provisions of subsection (3), the deposit shall be forfeited if at the election where the poll has been taken, the candidate is not elected, and the number of valid votes polled by such candidate does not exceed one-sixth of the number of votes necessary to secure the return of a candidate at such election."

May I also invite your attention to the Statement of Objects and Reason? This is what sub-para (2) says:

"A prospective candidate should deposit a sum of two thousand five hundred rupees, which amount shall be liable to be forfeited in case the candidate fails to secure one-sixth of the number of votes necessary to secure the return of a candidate."

I think, the Draftsman has tripped slightly here. What will be the meaning of sub-clause (4) of clause 8? It says, "does not exceed one-sixth". That means, it should exceed one-sixth. Otherwise, he forfeits the deposit. Now, if he gets just one-sixth, not more than one-sixth,—what happens? The Statement of Objects and Reasons says, only one-sixth. That means only if he gets less than one-sixth, he forfeits the deposit. What is the real intention?

MR. CHAIRMAN: There is one thing here. This election is by "single transferable vote" and several permutations and combinations of "first preference", "second preference", etc. which can be thought of can contribute to make it one-sixth. I do not know whether that is easily calculable. I think, the Government will probably look into it.

SHRI H. R. GOKHALE: According to your suggestion, it should have been, "does not get at least one-sixth".

SHRI HARI VISHNU KAMATH: The candidate should get at least one-sixth of the number of votes; in other words, it should not be less than one-sixth.

SHRI PILOO MODY: The argument is about a fractional vote. As you know, an M.P. has 500 votes and an M.L.A. has 120 votes or whatever it is. If the total is 120,000 votes, then one-sixth will be 20,000 votes. He needs to get 20,001 votes according to the Statement of Objects and Reasons. So, it is a question of a fractional vote. There is a slight contradiction which can be eliminated.

SHRI HARI VISHNU KAMATH: I think, that should be eliminated.

SHRI PILOO MODY: In order to secure election to the office of the President, you need 50 per cent plus 1 votes. I think, the definition that has been drafted would mean one-twelfth of the votes plus 1 vote.

SHRI HARI VISHNU KAMATH: According to sub-clause (4) of clause 8, it is one-twelfth plus 1 vote. But

according to the Statement of Objects and Reasons, it can be only one-twelfth. That needs to be looked into.

MR. CHAIRMAN: Yes.

SHRI HARI VISHNU KAMATH: Now, I come to clause 9, sub-clause (2). That is the usual empowering clause in all legislative measures, but here, it is invested with some importance and significance. The next Presidential and Vice-Presidential elections are due in August, 1974, just about a year hence. It is very likely, unless the Government is expeditious, the Ministries concerned are expeditious, with regard to their obligations and duties, the rules made under the Act, according to this clause may not come before Parliament till the next Budget session. It has happened once before in regard to Parliamentary elections. History may repeat itself. A cynic has said, "History, like idiot, repeats itself." I will not say that, but it is not impossible. The rules made under the Act may not come before Parliament till the next Budget session. The Budget session is such a crowded session that you hardly get any time for discussing any matters excepting the Demands. So, I would request the Committee to ensure that the Bill is passed during the coming Monsoon session, and the rules made under the Act are laid before Parliament during the winter session. This is very important if the Parliament as got to have some control over the rules that will be made under the Act. That will be because sometimes the rules, by some devious process undo the provisions of the main Act as it happened once in the case of Parliamentary elections; and we took up the matter on the eve of the last 1967 elections, but it was too late. So, that should not happen in the case of these elections.

MR. CHAIRMAN: This point is well taken up because in 1974 there will be Presidential elections. So, there is not much time for all these formalities to be gone through. They

must be gone through well in advance, before the elections take place. The point has been very well emphasized and the Government should take note of it.

SHRI HARI VISHNU KAMATH: Before I come to clause 7, may I, with your leave, refer to clause 6 also in passing?

Clause 6 provides for election petitions, I do not know, it is rather incomprehensible, on what logic it provides that at least 40 electors should band themselves together to challenge the election of the President, and ten that of the Vice-President. Of course, the candidate who has lost can file the petition singly but there should be 40 electors to challenge the election of the President. This is wholly unwarranted and I think the present provision which is given here at the end should remain. Ten electors are enough. That is more than ample. Why forty? Ten is the minimum and I think that should remain. It is more than sufficient to meet the needs of the situation, and you, Mr. Chairman, were a member of the Parliament that enacted the principal Act, and you will recollect as to why it was done, why that provision was made. After great circumspection it was thus provided for. I do not know why the present Government has taken it into its head to change it so—I do not say—radically but so meaninglessly as to provide for 40 electors.

MR. CHAIRMAN: You are at your usual self Mr. Kamath.

SHRI HARI VISHNU KAMATH: Now, with your permission, I come to clause 7.

You will kindly permit me to be a little more explicit and a little more elaborate with regard to this particular provision.

On the last occasion, in January, I sought to convince the hon. Members of the committee from the observations made by the Supreme Court in its judgment the election petition filed in the wake of the Presidential elec-

tions of 1960, that undue influence had been exercised as the Supreme Court Judges themselves had held; and to refresh your memory, Mr. Chairman, of yourself and that of your colleagues, may I read out just one sentence from the Supreme Court's judgment with regard to the scurrilous pamphlet which had been circulated among the members of Parliament during the election campaign. Justices Sikri, Shelat and Vaidyalingam held:

"We are accordingly of the opinion that distribution of the pamphlet by post as also distribution in the Central Hall constituted an attempt to interfere with the free exercise of the right to vote within Sec. 18 of the Act."

That was the considered observation made by the majority Judges of the Supreme Court in the judgment on that election petition. Having said that, I will not dwell any longer on that point with regard to retaining the provision so far as undue influence is concerned, because it was so done in the last election. The only thing that the Supreme Court could not establish was the nexus, the link between the exercise of undue influence and the successful candidate. Had satisfactory evidence or convincing evidence been adduced to satisfy the Judges that there was a link, there was a connivance on the part of the successful candidate, with regard to the exercise of undue influence, then that election would have been set aside. The nexus, the link not having been established, the election was upheld.

MR. CHAIRMAN: You had raised this point last time also.

SHRI HARI VISHNU KAMATH: Five months ago I made that point, and so I thought I might refresh your memory.

Now, with regard to bribery, the present provision with regard to bribery should also be retained, though there was no observation or remark in the judgment or any charge made

with regard to bribery. Any way, there was nothing in the judgment with regard to this corrupt practice of bribery. But even so, I am keen on the retention of the present provision. The plea may be advanced that this being such an august office, invested with great dignity, neither the candidate nor the members of the Electoral College will stoop to such a thing—receiving illegal gratification. But can we lay our hands on our hearts and say that this is the real situation, though that will be an ideal situation which we want? Can we, with an honest conscience, say that it has been so in the last few years? Considering the defections that have been going on, defections at the Centre and in the States,—I will not name any Party or Parties, because it is common knowledge, an open secret that not one or two but hundreds of members in the States and at the centre have defected. Can we honestly say that they defected, every one of them—there may be exceptions, of course and some of them might have defected on principle, that they were convinced of the ideology of the other party—but can we honestly say that hundreds of MLAs and MPs who left their party and joined some other party have done so for no consideration whatsoever except for principle or ideology? I, for one, would say, with due deference to the opinions of yourself and your colleagues in the committee who may have a different view, there have been considerations extraneous to principle, extraneous to ideology which have influenced the defectors in the States and also at the Centre. If that is so, can we really be sure that even at the highest level this pollution, this contamination, will not manifest itself?

May I ask one thing in all humility? I do not know, I may be wrong and it may be wild imagination. But sometimes I have thought that this may be a pace setter for other elections also in the sense that if this provision is adopted by Parliament, it may be copied or it may be a pace-setter for Parliamentary elections and

also State Assembly elections. There also, subsequently, at some point of time, certain provisions regarding bribery, undue influence, may be sought to be deleted. I hope, that will not happen. But it is not absolutely impossible. However, if the provision is retained with regard to elections to Parliament and State Legislatures, what on earth can make you willing to accept the suggestion that it should be deleted here? There is a saying—I am not quite sure whether the wording is correct—the higher the position, the greater the responsibility. The Gita has put it differently:

यवदाचरति श्रेष्ठस्तदेषैतरो जनः

स यत्प्रमाथकुरुते लोकस्तदनुव्रतते

If, unfortunately, bribery does take place—human nature being what it is—and the events in the recent past having been what they were in our country, and supposing that takes places in the next Presidential election; and if this is adopted by Parliament, what will be the position?

I would put it to you in detail. This is the most important part of the Bill. If this provision in clause 7 is adopted without any change, that the election cannot be challenged on the ground of bribery or undue influence, under article 19(1)(a) of the Constitution, nobody can shut up anybody's mouth or any newspaper from saying or publishing anything about the election. Nobody can prevent any newspaper from publishing anything or prevent any individual from expressing anything in public meetings or even in Parliament. No M.P. or any non-M.P. can be prevented from making allegations. No newspaper can be prevented from publishing allegations that the candidate had given so much money to some elector and so and so has received money from the candidate. Will it not poison the atmosphere? Can nothing be done? What is the remedy for that? A President is installed in office, against whom there may be allegations.

SHRI PILOO MODY: The Twenty-Fourth Constitution Amendment is the remedy for that.

SHRI HARI VISHNU KAMATH: The President can sue the person for damages. Of course, you can amend the article. I hope, article 19 except in the case of property will not be amended. Even the Law Minister will think twice before introducing such a Bill in Parliament.

After the election is over, if you have got reports that there has been bribery in the election, you will certainly shout from the house-tops and in the Parliament itself, you will say that this thing has happened. Will not an election petition be the remedy or at least the lesser evil, questioning the election on the ground of bribery, and the Supreme Court once and for all coming to a conclusion, that there has been or there has not been any bribery? Otherwise, it will go on indefinitely, perhaps *ad nauseam* throughout the country, from Kashmir to Kanyakumari and from Kutch to Kohima. You will have people saying that such and such a thing has happened. Is that a salutary situation which you will welcome? I think, I have done my best to bring it home to the Committee.

What is bribery? I am sorry to say that our law is not so very comprehensive as the American law though America is dubbed as an imperialist, a capitalist, country and what not. I have with me the latest election law of the United States. I will read only two or three provisions from it. This is Public Law 92—225, 92nd Congress, S. 382, February 7, 1972 which became effective from April 7, 1972. Now, this is the definition of "bribery" in that much maligned land of America. You can see how comprehensive that provision is I quote.

"Whoever, directly or indirectly, promises any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in

part by any Act of Congress, or any special consideration in obtaining, any such benefit, to any person as consideration, favour, or reward for any political activity or for the support of or opposition to any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

That is the definition of "bribery" or "illegal gratification."

There is one more provision that I would like to read. Because of the recent Watergate scandal, these things have assumed much significance now.

The rule says:

"Each Committee or other organisation which represents a national political party in making arrangements for the convention of such party held to nominate a candidate for the office of President or Vice President shall, within 60 days following the end of the convention (but not later than 20 days prior to the date on which Presidential and Vice Presidential Electors are chosen) file with the Comptroller General of United States a full and complete financial statement in such form and detail as he may prescribe of the sources from which it derived its funds and the purposes for which such funds were expended."

President Nixon signed this law, and he is the first victim of this law. For nearly half a century this law was not amended. He changed it. It is called the Federal Election Campaign Act of 1972. This replaced the old outmoded Act of 1925. That was in force till 1972. In 1972 he amended that. Here in our country also we are seeking to amend an Act which we passed in 1952, 20 years ago. I have

already referred to the provision relating to bribery and undue influence. It is my earnest wish that parliamentary democracy should not in any way be imperilled; the right of parties however small to contest elections should not be jeopardised. The purity of elections should not be put in jeopardy. There is also a provision in the Bill which seeks to delete a portion of the earlier Act and this is about wrongful acceptance of a candidature. If a candidature is wrongfully accepted, and the candidate loses election, even then, the election has to be set aside; that is the present provision. You know the position in law with regard to parliamentary elections and State legislatures. Only in case of wrongful rejection it becomes ipso facto void. But with wrongful acceptance it should be proved that it has materially affected the result. The point is whether it has materially affected the result of the election.

At present both cases are lumped together. A candidature wrongfully rejected is lumped together with one wrongly accepted, but who has not withdrawn his candidature. That is not correct in law. If the nomination is wrongfully rejected the election will be automatically set aside. You should prove in the other case that the result has been materially affected. That is the point and the proposed amendment in that regard is right. Sir, I have done.

श्री भारद्वाज राय : आप ने प्रस्तावक और समर्थक की संख्या कम करने का सुझाव दिया है और इस विषय में स्पष्ट करते हुए कहा है कि किसी पोलिटिकल पार्टी के लिए यह कठिन होगा कि इतनी बड़ी संख्या में प्रस्तावक और समर्थक प्राप्त कर सके। यह कहते समय क्या आप के दिमाग में यह धारणा तो नहीं है कि वर्तमान शासक पार्टी शाश्वत है और हमेशा शासन में रहेगी ?

श्री हरि विष्णु कामत : सभापति महोदय, माननीय सदस्य का प्रश्न यह है कि वर्तमान

शासक पार्टी क्या शाश्वत है और हमेशा शासन में रहेगी। इस सम्बन्ध में मेरा कहना यह है कि कोई भी सत्तारूढ़ दल भी शाश्वत नहीं होता है। वह नश्वर है।

श्री भारद्वाज राय : ऐसी स्थिति में यह संख्या कम कराने का सुझाव आप क्यों दे रहे हैं ?

श्री हरि विष्णु कामत : मेरा खयाल है कि जनतांत्रिक प्रणाली के अनुसार देश में एक ही पार्टी नहीं होनी चाहिए। मैं चाहता हूँ कि भगवान करे कि एक ही पार्टी न रहे, अनेकों पार्टियाँ रहे। एक सत्ताधारी पार्टी हो और उस के मुकाबले में कई विरोधी पार्टियाँ रहे, दो रहें तीन रहें। हमारे भारतवर्ष में प्रजातन्त्र की जड़ें अभी तक स्थायी और सुदृढ़ नहीं हुई हैं। ऐसी अवस्था में जबकि पार्टियों के सदस्यों की संख्या कम है लोक सभा में और विधान सभाओं में भी—कहीं पर 5 सदस्य हैं, कहीं 10 हैं और कहीं 40 सदस्य हैं—क्या यह न्यायसंगत नहीं होगा कि सभी पार्टियों को हक हासिल हो कि वह इलेक्शन में अपना उम्मीदवार, अपना प्रत्याशी खड़ा करे।

SHRI VIRBHADRA SINGH: In the Bill before us it is provided that there should be twenty proposers and twenty seconders belonging to Parliament and State Assemblies. Supposing one is invalidated, the entire thing falls through. This could happen even if the number is reduced to five or ten. If you provide for five and if four are valid and only one is invalid, the entire nomination can fall through. The idea behind the proposal is that the candidates should initially have the support of a certain number of electors.

SHRI HARI VISHNU KAMATH: I am glad the hon. Member has raised a very valid point. The risk with regard to forty proposers and forty seconders is larger than the risk which would be there with two proposers and two seconders or one proposer and one seconder. According to the

mathematical law of probabilities, the risk is greater when there are forty than when there are only two or when there is only one. If only one among the forty defects, as happens in elections—it is not unlikely that one of the proposers might suddenly change his mind for some considerations known to himself alone and not known to others, walks out and says: I had not signed it; it is not valid. I signed it under undue influence—the candidate suffers the risk is far greater.

SHRI VIRBHADRA SINGH: Some have deposed before this Committee that because of the august position of the President, he should not be dragged before a court by way of election petition. Any election petition should be disposed of before the President actually assumes office. What is your view?

MR. CHAIRMAN: Some witnesses have taken the view that once the President is inducted into office, he should not be dragged to a court. There should be a time-lag as in the U.S.A. before he assumes office, so that election petitions, if any, could be disposed of before he actually is inducted into the office.

SHRI HARI VISHNU KAMATH: I fail to see how the dignity of the President or the Vice-President is affected adversely, as has been the suggestion, by an election petition filed against him challenging his election, and it taking its normal course. I will have to submit that there is a situation equally undesirable, may be a little less so, that the Prime Minister should be dragged into a court of law for years after her election, as is happening today. More than two years have passed since the filing of the election petition against the Prime Minister; it has not even reached the intermediate stage—I do not know where it is, it may drag on for another two years. If the Prime Minister can stand the odium or that unhealthy miasma in the atmosphere, I suppose the President, indirectly elected, can very well stand it too.

As regards the time lag, the interval between the election and the actual installation in office of the President, this might perhaps be gone into by the Committee. In America, I think, the election takes place on the first Tuesday in November and the 20th January is the date fixed for the assumption of office of President, there. There is a period of two months or so between the election of the President and his induction into office. If it were so devised in this Bill that three months before the expiry of the tenure of office of the President, elections are held to that office, perhaps it might help. I do not know whether there are legal difficulties, if along with parliamentary elections and State Assembly elections, the President's election is also to be held. This point is worth considering, so that the elections are held in January or February and the induction into office takes place in May or thereabout. Within these three or four months the election petitions could be tried and disposed of, though I am not sure whether they could be disposed of within that time. When serious allegations are made, I at any rate will not subscribe to the thesis that the purity of elections, and justice should be sacrificed to time. These should never be sacrificed to time. The court of law should take its own course, maybe three months or six months or one year. Once a petition is filed, its trial should not be hustled for any reason whatsoever.

SHRI RAJDEO SINGH: In your opinion is the term 'undue influence' sufficient to cover bribery and other corrupt practices?

SHRI HARI VISHNU KAMATH: No. That phrase is not adequate to cover bribery and other corrupt practices, because as you see in the law relating to elections to Parliament and State Assemblies, we have got, separately, bribery, undue influence, other corrupt practices. I would very much wish that in this election law also, corrupt practices are

brought in and made part of the law. It could be made part of this law just as it is in the law for elections to Parliament and State Legislatures. If that is so incorporated, I would be happy.

SHRI RAJDEO SINGH: Whether the nominations proposed by a large number of electors or a small number of electors make any difference to the status of the candidates proposed?

SHRI HARI VISHNU KAMATH: No.

SHRI RAJDEO SINGH: Whether the comparison of Presidential Election in U.S.A. and our country is sound in the context of the Presidential powers in two types of Government?

SHRI HARI VISHNU KAMATH: If it is not sound then compare it with the Prime Minister's election. The Prime Minister in India is more or less equal to the President in U.S.A. so far as powers are concerned. If that is done in the Prime Minister's case, why not do so in the case of the President?

SHRI RAJDEO SINGH: Whether you are in favour of putting a bar to a man who has lost in the Lok Sabha or Vidhan Sabha election?

SHRI HARI VISHNU KAMATH: No, there should be no such bar.

SHRI NAWAL KISHORE SINHA: The entire object of the Bill appears to be along with some other small things to get rid of frivolity in the filing of nominations as well as election petitions against high officers. A number of witnesses have testified before us that most of these things should be left to conventions rather than being tied down to specific provisions of law. You also seem to think that we should leave something to grow. Kindly enlighten me when you reply to this question. You are a person of keen insight. I would like

to know, does law have to play any part in the growth of conventions in these matters in a country like India, particularly in the conditions through which we are passing?

SHRI HARI VISHNU KAMATH: At the outset I am thankful to the hon. Member for having paid me compliments which I do not deserve.

In regard to the law vis-a-vis conventions or whether the law has got any role to play in the making of proper conventions, I would like to know whether these can be separated? For the purpose of this Bill, I would not make a cogent observation with regard to that particular part of the question. According to my understanding, the Chairman will correct me if I am wrong, in this particular matter with regard to the provision in this Bill about frivolous candidatures, you were pleased to say that the other distinguished witnesses who appeared before the Committee have said what you have adumbrated, I do not say that it should be left wholly to convention. My view is that the provisions sought to be introduced in the Bill and the changes sought to be made in the parent Act will not act as an effective deterrent, for instance, so far as the security deposit issue is concerned.

SHRI NAWAL KISHORE SINHA: Will you kindly let us know whether you agree that there have been frivolities in the past in the filing of nomination papers and election petitions?

SHRI HARI VISHNU KAMATH: I believe I made a point when I submitted my observation. I did say that it happened even in the election which brought the Prime Minister into office. Since 1952 there have been frivolous candidatures. Candidates, perhaps got a few votes and lost the deposit, then nobody thought to change the law, because the Prime Minister is like any

other candidate under the law. The deterrents sought to be provided here will defeat the purpose, for instance, where the security issue is concerned. In so far as the other issue—40 electors as proposers and seconders—that will tend to deprive the small parties of their right—incontestable, inalienable and unchallengeable right. We want to preserve democracy. If you do not want democracy, you can go ahead with this Bill, but I want to strengthen democracy.

SHRI NAWAL KISHORE SINHA: I hope while saying so, you are keeping in view the offices covered by this Bill and not all offices in the country.

SHRI HARI VISHNU KAMATH: Yes. If you seek to have about 40 electors, that will automatically deprive small parties of putting up their candidates I referred to a worthy candidate in 1952—the late Prof. K. T. Shah. Nobody called him a frivolous candidate. He rendered valuable service in the Constituent Assembly.

SHRI D. N. SINGH: You yourself referred to the distribution of the pamphlet during the last Presidential Election. This was brought to the notice of the Election Commission. But they had no independent staff or machinery to check the distribution of such pamphlets and they continued to be distributed till the last day of the election. Such things can occur again, for example in today's *Patriot*, a mention has been made of what is happening in Patna. There, the Chief Minister is going to seek a vote of confidence. He has charged that those who are against him have taken to money bag politics and the General Secretary and the Chief Whip of the Congress Party have retorted that the whole State knows, who has come to own money bags, meaning thereby that it is the Chief Minister, who is distributing money etc. The paper further goes on to say that the poli-

tical scene in Patna again reminds one of 1967—72, period when MLAs' loyalty changed hourly and the leaders and the party managers fought with each other to have physical possession of the MLAs.

In view of all these things, would you suggest that the Election Commission should be provided with an independent and adequate staff to check such ugly incidents in respect of election to such high offices?

SHRI HARI VISHNU KAMATH: It would be welcome if the Election Commission is provided with the power and machinery, but I fail to see how the Election Commission could be so equipped under the Constitution. The Constitution may be amended for that purpose also, if necessary. But a more effective or desirable way would be to entrust such matters to an independent investigation agency because the Election Commission is burdened with so many tasks; but they do not have the machinery to investigate such matters.

MR. CHAIRMAN: By independent agency, you mean tribunals.

SHRI HARI VISHNU KAMATH: Tribunals or CBI. I wonder if the CBI is independent enough to investigate these matters. Whether the Election Commission can be so equipped is a moot point, which the Committee may carefully consider. I cannot offer any considered opinion on this point straightaway. It would, of course, be good, as I said earlier, if the Election Commission could be so equipped.

SHRI PILOO MODY: With due deference to the witness, I would like to begin with by saying that there is one suggestion of the witness, which is little ill-considered. That is that if a candidate fails to secure 10% of the requisite votes to win, he may be debarred for six years. I think, this would be a very harsh provision because the very same candidate would easily defect to the ruling

party the next year and force hands down and, therefore, a suggestion like that, I do not think, would be consistent with the manner in which we practice democracy in India. I would, therefore, like you to reconsider that suggestion from the point of view of the reality as it exists, and also from the point of view of the fact that this year a very small party may put up a candidate for the office of the President, such as your own Party or my party, and next year, their party may very well be the majority party in this country and in that case, we might put up the same candidate and get him elected. Therefore, I would like you to consider that part of the evidence again.

SHRI HARI VISHNU KAMATH: I am grateful to the hon. Member for the question put to me, because that enables me to clarify the point I made. I am entirely at one with the hon. Member, Mr. Mody, that the suggestion or the view which I have put forth that a candidate who secures less than one-tenth of the votes necessary to secure the return of the candidate should be debarred for six years is not the most desirable or the correct position with regard to this matter. At that time, I was on the two provisions contained in Clauses 5(b) and 5(c). What I had in mind was that the proposals made by the Government, specially the first one, with regard to 40 electors, is pernicious and vicious in my judgement, which may, perpetuate the hold of one party,—may not, deliberately, but certainly may be as a consequence. A pernicious provision is incorporated in Clause 5(B); the other one in clause 5(C) is wholly uncalled for and unnecessary and superfluous, because as I said, and the hon. Member very well put it,—in this country a candidate belonging to a small party may later defect to another party, and may manage to stand again and win the election. While I referred to the evil of defection earlier, I said that Jantantra is now being transformed in Dhanatantra. And, therefore, the provision that I suggest may put

more effective curb on such candidatures. What was in my mind was something as an alternative to 5(B) and 5(C). I would, however, like the present position to continue.

SHRI PILOO MODY: In other words, you would not be averse to this particular suggestion not being implemented?

SHRI HARI VISHNU KAMATH: Yes, you are right.

SHRI PILOO MODY: The other question I would like to ask is whether, in your honest opinion, the Indian democracy has suffered so far by virtue of the candidatures that have been offered in the last Presidential elections. In other words, in the process we have been following so far, has the Indian democracy in any way suffered by virtue of the infructuous candidatures—which we are now in the process of curing?

SHRI HARI VISHNU KAMATH: This is a large question and I would not like to go into details in answering it. But, generally speaking, I will say that Indian democracy has not adversely suffered.

SHRI PILOO MODY: On the other hand, if I may suggest it, the number of infructuous candidatures that are offered for election of Members of Parliament and Members of the Legislature has, in my opinion at any rate, considerably damaged the cause of Indian democracy; and, therefore, if any attack is to be made on infructuous candidatures, I think it should first be made in respect of election of Members of Parliament and Members of the Legislatures before we tamper with something which has not in any way damaged the cause of the Indian democracy.

SHRI HARI VISHNU KAMATH: I would submit in all humility and earnestness that even with regard to election of Members of Parliament and State Legislatures, infructuous candidatures, *per se*, have not damaged democracy.

SHRI PILOO MODY: If I may clarify my question, I do not at any time suggest that a man should be deprived of his right to contest; that is basic to democracy. But there could be a system which would eliminate frivolous candidatures so that elections can take place with greater seriousness. It is in that context that I have suggested it.

SHRI HARI VISHNU KAMATH: Thank you for the clarification. But, as I said, infructuous candidatures (by 'infructuous' I mean the candidates who were defeated in the elections) have not, *per se*, damaged the structure or the spirit of our democracy. What has damaged the system or cause of democracy, the structure of democracy in our country, is not the candidatures by themselves but what has come to light in the course of the election petitions challenging several elections held to the Lok Sabha and the Vidhan Sabhas in the States. The free flow of money and other corrupt practices indulged in by the candidates and the many elections set aside, together with their consequences, are what have damaged the spirit of democracy, the structure of democracy and the roots of democracy in our country.

SHRI PILOO MODY: Much more.

Now, it has been suggested in this Bill that the security deposit, if increased, will partially meet the avowed intention of the Government of India regarding these candidatures. I think you have presented your case on the deposits rather adequately. On the other hand, considering that all those who fought the past elections could have been in a position to raise a higher deposit, the one thing that comes out of this particular provision is that the Government, contrary to its professed intention, would like to restrict the elections to those who can either pay or collect higher amounts of money. Would you not say that this provision—quite apart from anything else—contradicts the socio-economic pretensions of the Government?

SHRI HARI VISHNU KAMATH: With regard to the provision on security deposits, it is wholly arbitrary in the first place. Whose brain-wave it is, I do not know. I do not know who conceived it. It could be higher. As a matter of fact, in our black-market economy, I suppose we could fix even Rs. 10,000—The sky is the limit, perhaps. But, answering your question I think this limit is wholly illusory, and therefore I oppose it.

SHRI PILOO MODY: I think the Statement of Objectives tries to make out that the office of President in this country is a very high office—which you have partially demolished by references to the office of the Prime Minister. Whatever the intentions of the framers of the Constitution might have been, in practice, we have now come to realise that the President acts wholly on the advice of the Council of Ministers and, as such, is part of the political machine—since he is deprived of exercising any judgment independent of that of the Government itself. Therefore, since the President is part of the political machine, should his office be treated on a separate footing than any other public office in this country?

SHRI HARI VISHNU KAMATH: As far as the Election Law is concerned?

SHRI PILOO MODY: As far as discussion on this point is concerned.

SHRI HARI VISHNU KAMATH: That is why I had earlier submitted that it should be brought into line with the Election Law pertaining to Parliament and State Legislatures when I answered another question. The corrupt practices set forth in those laws could very well be included in this Election Law also. I do not consider that there should be any difference.

SHRI PILOO MODY: Thank you.

Now, I will be a little more virulent. The last Presidential election has proved beyond any

shadow of doubt that even during the election there were corrupt practices, there was bribery, there was undue influence. 'and I think there was also something which goes much beyond that and that the most scurrilous, the most demeaning, the most vulgar, the most unethical of methods were used in order to see that the present incumbent was elected, whereas the Courts have opined that they could not link these corrupt practices with the candidate himself. That being the case, if these practices are not to be questioned at all according to the Bill proposed, what would you imagine is the motivation for bringing forward this Bill?

SHRI HARI VISHNU KAMATH: Motivation on the part of Government?

SHRI PILOO MODY: Yes.

SHRI HARI VISHNU KAMATH: The motivation is to give a free rein to the big money bags, to let them open their strings wide. People will get that impression. If this provision is adopted by Parliament and ultimately becomes law, the impression will gain ground in the country that there is something more than meets the eye therein; and that is, that the electoral college which consists of elected Members of Parliament and State Legislatures in the one case; and Members of Parliament all of them, of the Houses of Parliament only, in the case of the other, viz., Vice-Presidential election, has passed this law selfishly—it may be an erroneous impression; but it will gain ground and currency in the country. That is to say, if this becomes an Act, MPs and MLAs are likely to be the beneficiaries of this Act. Moreover, the election will not be challenged on the ground of bribery; and it will be detrimental to the growth of democracy in our country.

SHRI PILOO MODY: In other words this bill will, thereafter, legalise corrupt practices. In that case, I for one

would certainly like to go round the country explaining to the people, what the Government has tried to do by the passage of this bill, till the time Government feels it necessary to restrain me.

SHRI HARI VISHNU KAMATH: It is for you to decide.

SHRI PILOO MODY: I am coming to my question, if you will be a little patient. Therefore, further penal provisions will have to be increased in the common law, in infringement of Article 19(1)(a) of the Constitution, to restrain me from trying to explain to the people. The reason I mention this, is that this may have a snow-balling effect in the restriction on our freedoms, the capacity of people to be able to speak the truth as they see it, in the public. It means that this would be a fore-runner to a more drastic action.

SHRI HARI VISHNU KAMATH: I am of the view that if a Government is really committed to democratic socialism—I emphasize the word 'democratic' and not to 'totalitarian socialism—it dare not if it is true to its professions and conscience, amend Article 19 (1), except with regard to the provision or sub-clause in regard to property. That is the only exception. The first Article 19(1) (a) to which Mr. Mody has referred, is a sacred and sacrosanct provision for all democrats, and no democratic socialist worth his salt will ever try to amend that provision. Further, it is my considered view that no Minister has been born who can shut up the Hon. Member's mouth, prevent him from going all over the country and telling the people, warning the people against the misdeeds of Government.

SHRI PILOO MODY: In this case, I would like to remind you of the 25th Amendment to the Constitution that this Parliament has passed. In its

essence, it has said that if an Act or a bill is passed in pursuance of the Directive Principles of State Policy, then, Article 14 which implies equality before law, Article 19 which enshrines fundamental rights and Article 31 which deals with compensation, may not be called into question, in the exercise and furtherance of the law. I think what you had said a little earlier about no democratic government ever thinking of tampering or restricting the exercise of Article 19(1)(a), has already been done by the Parliament of India.

SHRI HARI VISHNU KAMATH: May be by the Parliament of India, but I mean by the State as a whole. I believe the Supreme Court has struck it down.

SHRI PILOO MODY: Even that is not very clear.

SHRI HARI VISHNU KAMATH: I do not know whether it is not clear; but the Press report seems to be clear on that. According to the Cabinet Minister's statement in the Rajya Sabha, he has welcomed that part of the Supreme Court's verdict also, stating that it is subject to judicial review. That is the impression I gained, as distinct from the contrary view of his late colleague's statement in the Lok Sabha.

SHRI NAWAL KISHORE SINHA: Why should anybody pay anybody? You pay somebody for some consideration. A Member is paid, so that the candidate may become a beneficiary of the voters. In this case, the President is not a beneficiary, because he is not powerful, according to our Constitution. He has to act only on the advice of the Council of Ministers, under our Constitution. Our Ministers are not being kept outside the purview of the election petitions applicable to the common legislators, whether State or Central.

SHRI HARI VISHNU KAMATH: If the Hon. Member's question is that, just because the President is a figure-head and has no real power vested in

him, and he acts on the advice of his Council of Ministers, the candidate will not go out of his way to offer bribes or illegal favours to the voters, I fail to see the point in this question. We are human beings; and the President is also a human being. May be a different kind of human being—less in some ways and more in others; but many human beings accept money for its own sake, not because along with it, they would get some power. Many human beings will do it; I will not say most. I do not say that the President will get rich by offering money to his voters; but certainly, Members of the electoral college will get money.

SHRI NAWAL KISHORE SINHA: What, for? Why should anybody pay them?

SHRI PILOO MODY: There is the rub.

SHRI HARI VISHNU KAMATH: Then, why should anybody contest, if he is only a figure-head? Probably because he will occupy the Rashtrapati Bhavan. It is not a small place, and it might acquire importance in the years to come.

SHRI PILOO MODY: Besides, it carries a salary of Rs. 10,000 with a reasonably good house to live in.

MR. CHAIRMAN: It is a tribute to you that no Member wants to put any more questions. You have been very clear and lucid in your statements. I also, who ask questions many times, think that it is not necessary for me to put any further questions to you. We thank you very much for the pains that you have taken in going into the details after studying the whole thing. Views may differ. That is another matter altogether. Everyone may not agree on every point that you have made. We may or may not agree. At the same time, your evidence has been very useful and we thank you for the same.

SHRI HARI VISHNU KAMATH:
Thank you, Mr. Chairman. I am deeply beholden to you and to your hon. colleagues for the patient hearing that you have given me. The only humble request that I would make to you and to your colleagues is that you may earnestly consider—you need not agree with my views, as you rightly said—the suggestions that I have made: in the interests of democracy in our country, in the interests of democratic so-

cialism in our country and in the interests of the development of healthy and sound parliamentary traditions, the Act may be so amended as not to jeopardise or imperil democracy, moral values and parliamentary standards in our country.

MR. CHAIRMAN : I am sure the Committee will give earnest consideration to whatever you have said.

[The Committee then adjourned]

**RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE PRESIDENTIAL
AND VICE-PRESIDENTIAL ELECTIONS (AMENDMENT) BILL, 1972**

**Friday, the 6th July, 1973 from 11.00 to 13.30 hours in Congress Party Hall,
Council Hall, Bombay**

PRESENT

Shri S. A. Kader—Chairman

MEMBERS

Lok Sabha

2. Sardar Mohinder Singh Gill
3. Shri S. B. Giri
4. Shri J. G. Kadam
5. Shri Piloo Mody
6. Shri Pratap Singh Negi
7. Shri Rajdeo Singh
8. Shri S. C. Samanta
9. Shri C. K. Jaffer Sharief
10. Shri Nawal Kishore Sinha
11. Shri Niti Raj Singh Chaudhury
12. Shri M. G. Uikey

Rajya Sabha

13. Shri Krishna Bahadur Chettri
14. Shri K. A. Krishnaswamy
15. Shri Lalbuaia
16. Shri Ganeshlal Mali
17. Shri Kota Punnaiah
18. Shri T. N. Singh
19. Shri Gunanand Thakur
20. Shri Jagdambi Prasad Yadav

**REPRESENTATIVE OF THE MINISTRY OF LAW JUSTICE & COMPANY AFFAIRS
(LEGISLATIVE DEPARTMENT)**

Shri A. K. Srinivasamurthy—Additional Legislative Counsel.

SECRETARIAT

Shri H. G. Paranjpe—Deputy Secretary.

WITNESS EXAMINED

**Shri N. A. Palkhivala—Senior Advocate, Supreme Court of India,
New Delhi.**

Shri N. A. Palkhivala, Senior Advocate, Supreme Court of India, New Delhi.

(The witness was called in and he took his seat).

MR. CHAIRMAN: Before we start the proceedings. I have to draw the attention of the witness to direction No. 58 of the Speaker which says that the evidence he gives would be treated as public and is liable to be published unless the witness specifically desires that all or any part of the evidence tendered by him has to be treated as confidential; even though he may desire his evidence to be treated as confidential such evidence is liable to be made available to Members of Parliament.

Shri Palkhivala has submitted a memorandum this morning which had been circulated to the Members just now. Possibly they may not have had time to go through it. He should like to have his opinion and then Members may put him questions for the sake of clarification.

SHRI PALKHIVALA: Mr. Chairman and hon. Members of Parliament, I think there are five sets of provisions in this Bill which, in my respectful submission, are highly objectionable. I should like to work out for you the implications of some of the provisions because sometimes the implications escape attention and one thinks that a provision is in public interest or innocuous when in fact it is the contrary.

May I first request hon. Members to turn to clause 3 which seeks to amend section 4 of the parent Act. There is a change sought to be made by clause 3 which is not indicated in the statement of objects and reasons or in the notes on clauses. The time for filing nominations is sought to be reduced to half of what is permitted under the existing law. Today, under section 4 the Election Commission may appoint the last date for making nominations for an election and that means specifying a period for making nominations which may be as long as 14 days from the date of publication of

the notification. That fourteen days period is sought to be reduced to seven days.

Now, since the President has to have the support of not only the Members of the two Houses of Parliament but also of the legislative assemblies of the different States and since this election is to take place in a country where communication and transport are not adequate by any standard, I think the period of 14 days which was fixed in 1952 and which continued to be the law till today should not be disturbed. Under the existing law it is left to the Election Commissioner to fix a period for filing nominations ranging from 7 days to 14 days. Discretion is left to him and I think it is imperative that discretion must remain with him, instead of the discretion being taken away as sought to be done under the amendment.

Consider what would be the position if within these seven days there were three intervening holidays. You have four working days or it may be that in one case two working days within which the prospective candidate has to file his nomination paper and seek out subscribers to his nomination paper. Transport and communication facilities are worse in 1973 than they were in 1952 because the population has been rising faster than transport and communication facilities. In view of that, if anything, there may be a longer time prescribed, but no abridgement of the period is called for.

I must confess quite frankly that to me it is incomprehensible how any candidate without the support of a large political party behind him can ever get forty signatures for the presidential election within a space of seven days. He has to go round the country, he must meet Members of Parliament; he must meet Members of the State legislatures and get their signatures; and forty such signatures are to be got from different parts of India within seven days. This frankly makes no sense at all. I submit that it would

only mean that any candidate however high his integrity and great his eligibility for the highest office in the State cannot get it unless he has a strong political party, preferably the majority party to support him. This is not democratic. It puts an independent candidate, it puts a minority candidate, at a tremendous disadvantage. This, Sir, in my submission, is the abridgement of time contemplated by clause 3. I do wish the attention of the hon. Members had been drawn to this either in the Notes on Clauses or in the Statement of Objects and Reasons, because, this, to my mind, is a very important amendment.

The other thing the hon. Members will appreciate is that a Party which is in power for the time being can always know in advance as to what is going to be the date of the notification. So, it can make its preparations in advance. The Party which is not in power will have no means to knowing when the Election Commissioner will notify the date. So, you are again putting one Party at a tremendous advantage compared to the others, which, I believe, is undemocratic. I myself never belonged to any political Party. So, I am not saying this out of any desire to support or oppose any Party. Only as a humble citizen of this country, I think we must adhere to the democratic traditions which we have built up over two decades where every citizen is treated equally whatever Party he belongs to. This abridgement of time, I submit, gives an unfair advantage to that Party which knows beforehand when the Election Commissioner's notification will be promulgated. This is an objectionable feature of the Bill.

May I come to the second one, which, in my respectful submission, cannot possibly be supported on any principle of reason or fair play, and that is, the amazing clause, clause 4 which seeks to insert a new Section, Section 5B. The new Section 5B is on page 3. It is important to know what the present law is and then to know what is the change sought to be effected. The

present law is that if any one wants to stand for election to Parliament under the Representation of the People Act, 1951, he has to be supported only by one person. Even a seconder is not needed. That is the law to-day. The law for Presidential and Vice-Presidential elections is that a candidate must be supported by two persons—a proposer and a seconder. So, two subscribers to the nomination paper are enough. Now, you seek to have a provision where for the Presidential candidate, you need 40 signatures on one nomination paper—20 of those who propose and 20 others who would be seconds. The question is two-fold. First—is this provision at all constitutional? Secondly, is it proper and democratic?

I shall deal with the first question first. Is it a constitutional proposal? In my respectful submission, it is clearly unconstitutional and *ultra vires* if it is enacted as it stands to-day in the Bill. And I say it is unconstitutional for three reasons. First, under Article 55 of the Constitution, the President has to be elected by a secret ballot. Under Article 66 of the Constitution, the Vice-President has to be elected by a secret ballot. This proposed Section 5B knocks out the very basis of secret ballot and you cannot have a Bill to be enacted into law which conflicts with the Constitution. You would have to change the Constitution first and you would have to say first that the President and Vice-President shall not be elected by a secret ballot. The reason is simple. When you want 40 people to say in public that they support a particular candidate, what you mean in reality is that a slice of the Electoral College must publicly espouse the cause of a particular candidate. After all, not every Member of Parliament and not every Member of the State Legislatures votes. Some of them vote; others do not vote. Out of those who vote, 40 persons is a sizeable portion. Out of those who vote, if 40 persons have to say publicly that they are in favour of a particular candidate, then you are not giving effect

to the principle of secret ballot. Suppose, instead of 40 you have made it 80 and tomorrow some other Government may make it 200; where will it stop? Where will you draw the line between a secret ballot and an open subscription to a nomination paper saying openly that you champion the cause of a particular candidate? Then what is left of the secret ballot? I do not have to remind the hon. Member of the last election. At the last election the candidate of the ruling Party with a huge majority was defeated. Why was he defeated? Because of the secret ballot. People will do privately in a secret ballot what they will not do publicly with the world seeing where they will put their signatures. It is not wrong. That is the very mandate of the Constitution. The Constitution intends that the highest office in the State shall not be filled by the Party whip. The Constitution enjoins that the two highest offices in the State will have men of the highest integrity and stature, elected to them by people who will go by their conscience and not by Party discipline. That is why the secret ballot. But if you want people to collect 40 signatures to say that they support one particular candidate, then you are not paying anything but lip-service to the principle of secret ballot. This provision which goes against the principle of secret ballot is very unconstitutional. The Constitution does not permit Parliament to take away the principle of secret ballot. If you want to take away the principle of secret ballot, you have to first amend the Constitution. This is the first ground on which I submit that the proposed Section 5B is unconstitutional and ultra-vires. So, even if you pass it as a law, in my judgment, it will be struck down by the Supreme Court as void.

The second ground on which the proposed Section 5B is unconstitutional is this. Article 58 lays down the conditions of eligibility for a candidate who proposes to get elected as the President of India. Article 68 lays down the condition of eligibility for the office of the Vice-President. Now, the condi-

tions are three-fold. (1) The candidate must be a citizen of India; (2) he must be 35 years old, and (3) in the case of the President, he must be eligible for election to the Lok Sabha and in the case of the Vice-President he must be eligible for election to the Rajya Sabha. These are the only three conditions of eligibility for the two offices. By the proposed Section 5B, you would be virtually inserting a fourth condition of eligibility. This fourth condition of eligibility constitutes an amendment of the Constitution which you cannot do by a simple Act like this. You are virtually seeking to amend the Constitution—make no mistake—by saying that in addition to the three conditions of eligibility, a candidate must have the fourth condition also fulfilled, namely, 40 persons among his electors must support him in advance. Don't be guided by the figure 40. If you could put the figure at 40 to-day, you can put the figure at 1000 tomorrow. We are on the principle. We are not on the number. This very point was canvassed before the Supreme Court in President Giri's Election case and you would very kindly note what the Supreme Court has said. I am reading from AIR 1970 Supreme Court page 2097 and I am reading the passage at page 2139, para 247 of the judgment. In that case one candidate's nomination paper was rejected and it was rejected because he had no proposer and no seconder. That man argued that the Constitution requires only three conditions to be fulfilled. If I am told that I must have one proposer and one seconder, it means that a fourth condition is sought to be added, the condition of eligibility, which is not permitted to Parliament without an amendment of the Constitution. The Supreme Court rejected that contention on the ground—this is very important—that the requirement of just one proposer and one seconder is not such a grave handicap as to amount to an additional condition of eligibility. May I read their exact words? They are as follows:—

“The requirement laid down by Parliament that every person must

be nominated by two electors as proposer and seconder is a reasonable requirement relating to regulation of election to the office of a President and cannot be held to be a curtailment of the right of a qualified candidate to stand as a candidate under Article 58."

Now, what is reasonable under the present law is sought to be converted into something unreasonable by this Bill. Nomination by two subscribers is a reasonable requirement but, nomination by forty subscribers is an unreasonable requirement by any standard. And if this Bill goes before the Supreme Court again after it is enacted, into law, I think that it will be struck down by the Supreme Court.

I would submit that, having regard to the clear principles of constitutional interpretation and having regard to the judgment already delivered by the Supreme Court this particular provision would be struck down on the second ground that I have mentioned, namely, that it means a new condition of eligibility which is not required by the Constitution.

The third ground on which I submit that the proposed Section 5B would be unconstitutional is that it goes beyond Parliament's power under Article 71, clause (3), of the Constitution runs as follows:

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

Parliament's power is circumscribed here in two ways—it is limited in two ways—firstly, it is subject to the provisions of this Constitution and secondly, the power is merely the power of regulation. It is well-established in law that the power to regulate necessarily implies that the regulation must be reasonable. If you have the power merely to regulate a certain

election or a certain procedure, you can only prescribe reasonable regulations. You cannot make them excessive or unreasonable. This is implicit in the power of regulation, that it must be reasonably exercised, and secondly, it has to be exercised subject to the provisions of the Constitution.

Now, when you want a requirement of forty subscribers to a nomination paper for a Presidential candidate, you are doing two things: (1) you are doing something contradictory to the provisions of the Constitution because, as I said already, you are giving a go-by to the principle of secret ballot and (2) you are prescribing an additional condition of eligibility which is not there in the Constitution. So, you are not doing something subject to the provisions of the Constitution, but in violation of the provisions of the Constitution. So, this regulation, under the proposed Section 5B is void under the first part of Art. 71, clause (3) of the Constitution. It would be equally void because it does not amount to regulation. Two persons is a reasonable regulation—one proposer and one seconder. But forty is clearly an unreasonable regulation. So, on these three grounds I respectfully submit that this proposed Section 5B would be *ultra vires* of the Constitution.

Apart from the unconstitutionality, I now come to the question of its propriety. In a nascent democracy, I would submit with great respect that apart from its unconstitutionality, the proposed section is both undemocratic and improper. I shall give my four reasons for saying this.

Firstly it has been stated in the Statement of Objects and Reasons that the object of this Bill is to deter people from standing for the Office when they have no reasonable chance, not even the remotest chance, of getting elected. Now just consider the same situation and apply it to any election. The Parliament of India is no

less an important institution than the Presidentship of India. Tomorrow you may make a law which says that before a man stands for election to Parliament where he has got to be elected by 4½ lakhs of electors, at least a thousand electors must subscribe his nomination paper as otherwise he has no fair chance of getting elected. Would you not consider this burden as extraordinarily excessive? You may apply the same argument that people who have no chance of being elected to Parliament, thereby forfeiting their deposits should not stand for election. Will, you therefore, prevent the people from standing for election to Parliament with two subscribers to their nomination Papers. In fact, as I told you, you can stand for election to Parliament with only one subscriber, i.e. one proposer nominating you. How far do you carry this argument? In a free democracy what is the public damage caused by 20 people standing for the Presidentship of India and all of them but one being defeated? What is the harm in it? In other fields there are people who stand for all kinds of elections such as Bar Council elections, elections to the professional bodies like the Institute of Chartered Accountants and the Institute of Architects, elections to Parliament, State Legislatures, Village Panchayats, Zila Parishads etc. People do stand for these elections when they have no chance of getting elected. The Offices of President and Vice-President are two big offices. When you say that a man should not be allowed to stand for the elections to those offices unless he has a fair chance of getting elected, who will decide this? This is a calculated and deliberate measure of certain parties. Who is to decide in advance whether one has got a fair chance or not of getting elected to this office? I would submit respectfully that after all this is not like the election of the President of the U.S.A where millions will vote. This is an election where only a few thousands will vote—Members of Parliament and members of State Legislatures. That is all. In our country if you are to insist this requirement, there is no chance for or-

dinary people to get elected. There is no public damage caused by permitting the people to stand for the Presidentship with only two subscribers—the proposer and seconder. But you would be causing a lot of public damage if you have this type of Section where it is the people who may not be concerned with the day-to-day politics who may want to stand for the Presidential election and who may not get forty signatures of any party for filling their nomination papers. It is not that any public damage is caused here! it is not that such a restriction would cause a grave injury to the democratic Processes.

The *second reason* why I submit that this is undemocratic and improper is that to my way of thinking, it gives a very unfair advantage to any party who happens to be in the majority for the time being—I am not here talking of any particular party today. Twenty or thirty years later a different party may come to power with a majority in different circumstances. This gives a very unfair advantage to the party with a majority. A party, which is in a minority, because of the secret ballot, may not have a very good chance of getting its candidate elected whereas the ruling party's candidate, because of secret ballot, may get defeated. In advance you want a candidate to get forty open signatures which he may not be able to get. Then what would happen to him? Let me give you this example.

Suppose there is a party which has not got sufficiently active members to get forty signatures, does it mean that that party's candidate cannot stand for election at all? If today you say forty, what prevents another Parliament from saying 100. We are on the principle, again. Once you sacrifice a healthy principle, you do not know how far you will be dragged by the forces of political fanaticism. My submission therefore is that this is improper and undemocratic because.

it gives an unfair advantage to a party with a large majority which can muster forty signatures. A party which does not have a large majority may not be able to do that. A first-class man whom you can have as the President may not be able to stand at all because of this requirement of forty signatures being impossible of fulfilment.

The *third reason* why I submit this proposed amendment is improper and undemocratic is this. You must read it in the context of the period within which nomination papers have to be filed. I want to make it clear that whatever may be the period for filing nomination papers, even if you give two months for filing nomination papers, the forty signatures requirement is improper; it cannot be justified at all. But the mischief which is done by the forty-signature-requirement gets aggravated when you read it in the context of the existing law which gives fourteen days for filing nomination papers. In 14 days you may not be able to get all these signatures. Parliament may not be in session and hon. Members may have gone back to their homes or constituencies. How are you going to trace them all over India and get their signatures when Parliament is not in session? At least 12 signatures are to be from Parliament Members and at least 24 from members of the State Legislative Assemblies. If the party machine works for you it is all right and it means that the man who stands for the highest office must always be a professional politician. If you want that your finest men should take charge of the highest office of President or Vice President, you cannot prescribe conditions which could be fulfilled only by a party machinery. When you come to the proposed reduction of the period from 14 to 7 days, I submit that for any one person however noble and best qualified he might be to fill the office of President or Vice President, you will make his task impossible; he cannot get forty signatures within seven days.

The *fourth reason* why I submit the 40 signatures requirement is improper is that the Bill seeks to couple it with clause (5) of the proposed section 5(B) which says that no elector shall subscribe whether as proposer or seconder more than one nomination paper at any election. See how absurd is the effect of 5(B)(1) read with 5(5). All Members are aware that when you stood for election you took the precaution of filing two or four nomination papers because one of them may be held to be invalid. See what you want to impose on the candidate for Presidentship. Suppose he wants to file two nomination papers to be on the safe side, he must get eighty subscribers because the same subscriber cannot put his signature on two nomination papers even of the same candidate. Can you imagine anyone getting eighty signatures within 7 or 14 day from different parts of India? If he has to file three nomination papers, you need 120 signatures. I hope you realise how provisions have been made without really bestowing the needed thought on the vital law on the point. This has fortunately nothing to do with a property or vested interests. Men of the highest calibre will be debarred from standing for this office because you can have only the professional politician-leader who alone can stand and who will get 80 signatures. If a man of the highest integrity who is not in active politics wants to stand, he cannot. These are the four reasons why I submit that clause 5(B) is improper and undemocratic.

What I have said applies equally to the new proposals for the Vice-President. It says here that there must be ten subscribers to his nomination paper. This is again unconstitutional for the reasons I have given. The figure ten corresponds to the figure 40. This number is as objectionable both on Constitutional grounds as also on grounds of propriety, as the figure 40 is for the Presidential election. I do not want to repeat all that I have said. It is again contrary to the principle of the secrecy of the

ballot. It is not a reasonable regulation and it prescribes an additional qualification for the Vice-President which is not in the Constitution. Again, so far as propriety is concerned, it gives an unfair advantage to the ruling party. It will prevent honourable men from getting elected to the office of Vice-President, if he has no political support. To ask him to do all this within a few days when Parliament is not in session is a terrific burden on a non-party man who seeks to contest this office.

Coming to 5(B)(5), I submit that in any view of the matter you must permit an elector to subscribe to more than one nomination paper at least for the same candidate. You may not let him subscribe for two candidates, though even there I do not see any reason why it should not be permitted. It is a single transferable vote. Why should you not permit a Member to support two candidates? Why should you support only one candidate. Suppose the hon. Members want to say that a Member of Parliament or of the State legislature must support only one candidate, then I submit in any event you must let him subscribe to two or more nomination papers of the same candidate. There is no rationality behind the contrary proposal. If the same candidate for the sake of caution wants to have two nomination papers, the elector must be permitted to subscribe to both the nomination papers.

I now come to the third objectionable feature of the Bill—the deposit provision in the proposed new section 5(C). It is proposed that a man who want to stand as President or Vice President should deposit a sum of Rs. 2500. To me it seems that this is an excessive amount for a poor country like India. If you stand for Parliament you have to deposit, under section 34 of the Representation of the People Act 1951, a sum of Rs. 500. If you belong to the Scheduled Castes and Scheduled Tribes you deposit only Rs. 250. In a poor country it makes no sense at all if you prescribe

a deposit of Rs. 2500. Suppose your argument is that this is necessary in order that frivolous nominations may not be made, then all that you mean is that a rich man who can afford to throw away Rs. 2500 can have the luxury of an election but not a poor man. Is there anything to choose between a rich man and a poor man for the office of President or Vice President. Take a man like Lal Bahadur Shastri who at his death left Rs. 18,000. A man like him would be hard put to it to find Rs. 2500 to make a deposit. An honest man, a man with great integrity who has made no money for himself is at a tremendous disadvantage. The only effect of this provision is that the rich man will not be deterred from seeking election even though he has no chance of being elected but the poor man will be deterred. To me it makes no sense. In a poor country, why deter a poor man when a rich man is not deterred by the conditions you have laid down? To me, this condition of Rs. 2500 makes no sense in a socialist poor country, but, on the contrary, it is the very negation of true socialism. I suggest that the amount should not be more than Rs. 500 and at the most Rs. 1000. Rs. 500 is the amount required for election as a Member of Parliament. You may say 1000, but, in any case, it should not exceed Rs. 1000. I have finished with this feature of the Bill.

May I come to the fourth objectionable feature of the Bill? That is in clause 5. Clause 6 seeks to amend Section 14 of the principal Act. What it says in effect is this. If you know what the present law is, then you can understand the implications of the change. The present law is that the election to the office of President and Vice-President can be challenged (a) by any candidate or (b) by electors joining together in a petition. In the case of the President, under the present law the election can be challenged by ten electors. In the case of the Vice-President—ten electors joining together in a petition—

that will remain. But, in the case of the President 40 electors have to join together to challenge an election. I submit, this again is not fair—to ask 40 electors to join together is again virtually seeking to ensure that some elections which deserve to be challenged will not be challenged. After all, in our history, how many elections have been challenged so far? We have had Presidential elections, we have had Vice Presidential elections. **How many were challenged? The last elections were challenged—both of the President and the Vice-President—but the petitioners in both of them were defeated.**

Consider what will happen if you take this away. Some elections which deserve to be challenged will not be challenged at all. Are you helping democratic society this way by making it extremely difficult to challenge an election? In fact I read it in the context of the next election, where you want to take away bribery and undue influence as a ground of challenge. Let me use the word advisedly, an absurd provision is sought to be enacted here. If one single vote is wrongly received or wrongly rejected and the result of the election is materially affected, you can set aside that election. But if bribery and undue influence has materially affected the result of the election, you are still told that the election cannot be challenged. Frankly—it does not make any sense. In 1952 when the standards of public life were much higher—if you permit me saying so—bribery and undue influence could be the ground for challenging an election. In 1973, we need the ground more badly than we ever needed it.

What is said in the Statement of Objects and Reasons? This provision is to be enacted to keep up the dignity of the office. If men who can be guilty of bribery and undue influence can have no challenge to their election, do you think by re-

moving this ground you can keep up the dignity of this high office? If anything, you are lowering the office. **You are reducing it to a level where money can play its part instead of calibre and integrity.**

I say that the fourth objectionable feature which is clause 6 that as many as 40 electors must join against 10 which is the present law before a presidential election can be challenged, will make the challenge extremely difficult. I submit there is no reason why you should make the challenge so difficult. You may as well say same thing about the Membership of Parliament. Consider what would happen if you were to remove bribery and undue influence as a ground of challenge. Your opponents instead of you sitting here may get elected, and then their elections cannot be challenged. I do submit that it would be the very negation of a healthy democracy if you are going to permit fraudulent practices, corrupt practices to play their part to the highest election and say that 40 people must join to challenge an election.

Now, I am coming to what I was anticipating, namely, clause 7 which seeks to amend Section 18 and it provides that on the ground of bribery and undue influence an election cannot be challenged. Let me first say what the present law is. I am sure the hon. Members are aware of it.

The present law is this: if bribery or undue influence has been practised and the candidate is guilty of it himself or somebody else is guilty of it with the connivance of the candidate, then the election is void. But, if bribery or undue influence has been practised by a third party without the connivance of the candidate, then the election is not void unless the result of the election has been materially affected by such bribery or undue influence practised by a third party without the candidate's connivance. This is a perfectly sen-

sible law, rational, sensible, fair and reasonable and it is worthy of our great democracy. What kind of a law do you want to put in its place? You want to put in this law that even if the candidate himself is guilty of bribery or undue influence, his election cannot be challenged. I will describe it as the very negation of law. I cannot describe it as a law. It is not worthy of being called a law. This kind of a provision,—for whose benefit we are having? For the benefit of those who are indulging in bribery and undue influence? Will it not benefit only the dishonest people? Do you want to change the law to benefit the dishonest and the corrupt? I repeat again that the argument that to keep up the dignity of the office you will not have any whisper about bribery or undue influence,—by this you would just be lowering the dignity of the President's chair and the Vice-President's chair. You would only help that high office to be occupied by a man who rises to that position by bribery and undue influence. You are not lending dignity to the office, you are only lowering it, and such a man is not worthy of respect. What kind of a man would he be if he gets elected by bribery and undue influence and no one can challenge his election? I feel so strongly about it as a humble citizen. I held no public office at any time. I have no interest of any sort but I do feel if you want to build up and preserve healthy traditions, we should not even think of such a thing before this hon'ble Joint Committee. Clause 7 says that for Section 18 of the Principal Act a new section shall be substituted. What does it say? Bribery and undue influence being out, what you are told is that if the result of the election has been materially affected by the improper receipt or refusal of a vote, then the Supreme Court will declare the election void. Now, consider two cases.

There was a case where 100 votes were rejected wrongly because the

Election Officer thought that the vote was not validly cast or some vote was wrongly accepted instead of being rejected. As a result the election was set aside. And this is the law which you want to have.

In another case, a candidate bought 1,000 votes by bribery. This can be proved. But, still, his election cannot be disturbed. If there is a technical mistake, the election can be set aside. But if there is a deliberate corrupt practice you cannot set aside the election. No reasons are given in the Statement of Objects and Reasons nor in the Notes on Clauses as to why you want to delete the grounds of bribery and undue influence for an election petition. After all, the Supreme Court can be trusted to dismiss a petition in line unless there is some prima facie case made but for entertaining the petition and even if the petition is admitted and heard, it would not succeed unless the prima facie case is proved as required by law. After all just consider this that on the ground of bribery and undue influence even elections to Parliament or to State Legislatures can be set aside. How many cases have you come across where an election has been wrongly set aside on these grounds? Has there been a single case? In the meanwhile the man continues to hold his office. Under the present law, if a corrupt practice is practised by anyone, you do not allow the person to remain in office. You are now removing this deterrent and you are virtually suggesting that without any risk of litigation you can buy your way to the highest office. Finally it means the party which has money power can find its candidate in the highest office. If bribery is now permitted, you can work your way. In our country, does not money play its part in any election? I have said in my memorandum that the proposed change in the law would imply either that we are blissfully ignorant of the realities of our political life or that we are prepared to connive deliberately at

corrupt practices for election to the highest office in our land. We are prepared to concede that corruption is a way of life in our country. There is no other conclusion at all possible. I would beg of the hon. Members not to put your signatures to this most reprehensible proposal that bribery and corruption should be no ground to set aside an election.

I have finished with my submissions. Now I want to answer any questions which the hon. Members would like to put to me.

MR. CHAIRMAN: Thank you very much, Mr. Palkhivala. Of course, the Committee was anxious to hear you being a leading legal luminary in this country. You have of course given your views on this Bill. I want to ask two questions before I ask the other Members to put their queries. I am not a legal man—a man from legal profession. But, I would like to ask you only one or two questions. If you say that 40 people having appended their signatures as proposers and secondors have declared themselves in favour of a candidate, then the same thing could be applied to one and two—then the secrecy of ballot is not maintained at all. It is our experience that those who have given their signatures are not compelled to support a candidate whom they have proposed. To that extent would you say that by just appending a signature, there is, what is called, an expensure of the ballot? Would you go to the extreme length of saying that the vote is cast validly or not?

SHRI PALKHIVALA: My answer to this question is that it is a question of degree. You very rightly posed to me a question as to how can two signatures not violate the principle of secret ballot and forty can. My answer to this is this. It is all a question of degree. Two as such is a small number. The Supreme Court said that it was a reasonable regulation. But, if you increased this number to an extent when it ceased to be a token one, then you are in for a

difficulty. Two is a token number but forty is not a token number. It is a substantial number. If you ask two persons to put in their signatures as subscribers it is a reasonable regulation. But, if you impose this as an additional condition of eligibility for this office, it will be a unreasonable regulation. In our country, take for example, Parliament. There is a secret ballot. You have got a proposer and you may have one seconder. Suppose if you were to say that Members of Parliament will have the nomination paper signed by at least 40,000 out of 450,000 who vote for him, then it is not a secret ballot. In other words, you may reach a point where it ceases to be a reasonable regulation and it becomes a condition for eligibility. It ceases to be merely a regulation.

On the question of the principle of secret ballot, I would submit that I would not be able to define it precisely. In the eye of law, the dividing line is thin. One can say clearly that 2 is a token number and it does not impinge upon the principle of secret ballot. One can very clearly and precisely say that 40 is so high a number that it violates the principle of secret ballot. Here it is all a question of degree only.

MR. CHAIRMAN: The second you made was about corruption. By accepting this clause, you say that we would give a go-by to the principle of secret ballot. This is a bill dealing with the election to the highest office of the land. Don't you think that to challenge the election of President of India in a court is not a healthy sign. I can understand it if it is challenged before he takes charge of the Office of President. That is a different matter. Once he is elected to this highest office, don't you think that the dignity of the highest office in the country has to be maintained? Why should anyone challenge that in a court of law after he assumes the office that he has been elected by indulging in corrupt practices?

SHRI PALKHIVALA: This is a relevant question. I did give anxious consideration to this Bill, before I made my submissions. I see the force in your point.

MR. CHAIRMAN: Don't you also agree with me that the incumbent to this highest office is also exposed to the charge of corruption that is taking place? I have made this statement in the context of the present circumstances.

SHRI PALKHIVALA: So far, our Constitution has been working satisfactorily. It may be that forty years later our democracy may become more mature. Another person who may be giving evidence then might give exactly a different type of evidence. In other words, my submission has been made in the context of the conditions prevailing to-day. Right from 1950-51 to 1973, we have not found wanting the working of this Constitution. In fact, it is working all right. It is true that you wish to change the law now due to the conditions prevailing in India. If you wish to change the law now, my submission is this, Mr. Chairman, of course, you made a very relevant point. And it has great force. It has to be weighed against the disadvantages which would be attendant upon the election by ballot. I am weighing the pros and cons and on balance, I think, the purpose of the change in the law would be to find a way out of the difficulty you referred to.

MR. CHAIRMAN: Taking past experience into account, this has been arrived at. There had been candidates who did not have a chance at all; they did not get the vote of his own supporter. To eliminate such people, not the honest, do you not think that the number forty or some other figure if you like, is necessary to prevent such people from contesting the election?

SHRI PALKHIVALA: The number is so large. But I am on the principle itself. What is the harm it has done?

MR. CHAIRMAN: Would you suggest any other alternative so that such people may not contest?

SHRI PALKHIVALA: In the context of the immature and nascent democracy that we have started only 23 years ago, I submit it is better to give a free field. Let people make mistakes; they will learn from them. But because of some four or five persons wrongly seeking election, we cannot change the law. The most unfortunate tendency in our country is that as soon as you come across four or five exceptions where some wrong is done, we propose to change the law and in the process make the law worse than it was. It is better that four persons wrongly seek office when they have no chance than that the law should be changed. Tomorrow you might apply the same principle for election to Parliament. Are there not people who get only 100 votes? What do we do? We permit them. About the office of President or Vice President, frankly there is no halo as seems to be indicated in the statement of objects and reasons. To my mind, the President, the Vice President, the Prime Minister, the Cabinet Ministers, Members of Parliament and Members of the State Legislature have all their allotted role and each does his job. I should suggest that you treat them in a democracy on the same principle on which you would make any democratic election. We have got so many democratic processes: Parliament, State assemblies, zila parishads, panchayats. Once the principle of forty or fifty is accepted, what will happen? Where will it end? I think it is a pernicious principle in a young democracy. When we become a mature democracy, say after 200 years or so, we may have another look. We have had five Presidential elections so far. No public damage had been done by a few people standing wrongly; it had done no harm to our democracy.

SHRI KOTA PUNNAIAH: Why should we have any proposer at all? We consider the ballot to be secret.

SHRI PALKHIVALA: Frankly I have no objection if the requirement of a proposer or seconder is eliminated.

SHRI KOTA PUNNAIAH: You say that the maximum deposit should be Rs. 1,000 and not more than that, that the maximum deposit should be 1,000 are we not depriving the chance of the poor?

SHRI PALKHIVALA: I have said that the deposit should be no higher than for a Member of Parliament, namely, Rs. 500; it will be Rs. 250 if he belongs to the Scheduled Castes or Tribes. If the hon. Members want to increase it, contrary to my suggestion, I say it should not exceed Rs. 1,000; I am not in favour of Rs. 1,000.

श्री जगदम्बी प्रसाद यादव : आप ने जो पांच आवेकशन्स रज किये हैं वह यह देखते हुए किये हैं कि यह जो वर्तमान एमेंडमेंट बिल आया है, वह प्रापर नहीं है। मैं यह जानना चाहता हूँ कि जिन बातों का ख्याल कर के यह एमेंडमेंट बिल सरकार लाई है, वे बातें उस समय भी कांस्टीट्यूशन-मेकर्स के दिमाग में होंगी, जिस समय कि कांस्टीट्यूशन बनाया जा रहा था और उस में प्रेसीडेंट के इलेक्शन के बारे में प्रोवाइड किया गया था, मिनिस्टर के तौर पर जैसे नामिनेशन पेपर्स फाइल करने के लिए 14 दिन की बात है, प्रोपोजर और सैकेन्डर की संख्या की बात है या फिर इलेक्शन को चैलेंज करने की बात है। मैं समझता हूँ कि यह बात उन के दिमाग में भी थी कि प्रेसीडेंट का जो पद है वह बड़ा वेंच्यूरबिल है और वेंच्यूरबिल होते हुए भी उन्होंने प्रोपोजर और सैकेन्डर की संख्या सिर्फ एक एक ही रखी। पिपिल्स रेप्रेजेंटेशन एक्ट जो है, उस को देखने से भी ऐसा पता चलता है कि उन के दिमाग में यह सारी बातें थी, फिर भी उन्होंने एक प्रोपोजर और एक सैकेन्डर ही रखा। इस बारे में आप की क्या राय है ?

SHRI PALKHIVALA: The answer is 'Yes'. The intention of the Constitution-makers is being violated by

this Bill and this Bill, therefore, is inconsistent with the Constitution and that is why I said that it would be *ultra-vires*.

श्री जगदम्बी प्रसाद यादव : मेरे कहने का मतलब इतना ही है कि जो भी बातें यहां पर उठाई जा रही हैं, उन की जानकारी कांस्टीट्यूशन मेकर्स को भी उस समय होगी। फिर भी उन्होंने आज की तरह के एमेंडमेंट को लाना सही नहीं समझा ?

SHRI T. N. SINGH: The hon. Member's point is that the reasons which are prompting the Government to make an amendment of the law must have been before the Constitution-makers also. Even then they thought it proper not to provide against such a challenge.

SHRI PALKHIVALA: In other words, it is not as if some new problems have been thrown up for the first time. All these were known even at that time when the Constitution was framed. All that we are talking about to-day—people standing for election without any chance of getting elected and people challenging—all these were known fully by the Constitution-makers and still they said that it is right for our democracy—this type of law. The hon. Member is right and I respectfully agree with him that these are not new problems which are thrown up. These are problems which were known to the Constitution-makers. With full knowledge of them they still wanted to embody a right which they enacted.

श्री जगदम्बी प्रसाद यादव : इस बिल में 14 दिन की बजाए 7 दिन करने का जो प्रोवीजन है, उस के बारे में आप ने कहा है कि 7 दिन सफीशियेन्ट नहीं हैं। मैं यह जानना चाहता हूँ कि इतने बड़े देश के लिए आप 14 दिन ही कैसे सफीशियेन्ट मानते हैं ?

SHRI PALKHIVALA: Frankly, even 14 days is inadequate. You are

making it more inadequate. So, my objection is 14 days is a very short period. In fact, if you enlarge it, I will support you. But if you do not want to enlarge it but if you want to reduce it, then you are compounding the mischief, you are compounding the evil.

श्री जगदम्बी प्रसाद यादव : आप के कहने का तात्पर्य यह है कि जब एक प्रोपोजर और एक सैकेन्डर था, तब तो 14 दिन का समय था और अब 40 प्रोपोजर्स और 40 सैकेन्डर्स की बात है और एक आदमी चार नामीनेशन पेपर्स दाखिल कर सकता है। अगर एक आदमी चार नामीनेशन पेपर्स दाखिल करता है तो उस के 160 प्रोपोजर्स और 160 सैकेन्डर्स होंगे और समय भी 14 दिन की बजाए 7 दिन कर दिया गया है। तो मैं यह जानना चाहता हूँ कि इन सब बातों को देखते हुए कितना मैक्सिमम समय आप ठीक समझते हैं ?

MR. CHAIRMAN: Shortening of the period—how do you think it is unreasonable? To what extent?

SHRI PALKHIVALA: My point would be that if at all you wanted more subscribers, then for filing the nomination paper, the period must be at least double. Instead of 14 days, you have to make it at least 28 days.

श्री जगदम्बी प्रसाद यादव : जोभास्ट प्रेसीडेंशियल इलेक्शन हुआ था, उस के विषय में तो आप जानते ही हैं। मेरी ऐसी धारणा है कि अगर यह एमेंडमेंट पहले हुआ होता तो जो वर्तमान प्रेसीडेंट हैं, वे हमारे प्रेसीडेंट नहीं होते। जिस समय उन्होंने नामीनेशन पेपर्स दाखिल किये, तो एक प्रोपोजर और एक सैकेन्डर की आवश्यकता थी लेकिन अब उस को 40 प्रोपोजर्स और 40 सैकेन्डर्स करने जा रहे हैं। इस तरह से जैसा कि आप ने एक्सप्लेन किया कि जो अरूठा कैंडिडेट है और जिस के पास पार्टी बैकिंग नहीं है, अगर वह कैंडिडेट होना चाहें तो उस के लिए 40 प्रोपोजर्स

और 40 सैकेन्डर्स होने के कारण नामीनेशन पेपर्स दाखिल करना मुश्किल हो जाएगा। ऐसा प्रोवीजन पहले न होने के कारण लास्ट इलेक्शन में मेजोरिटी पार्टी का कैंडिडेट हारा और जिस की कोई पार्टी नहीं थी, -बढ़ जाता। आप इस से सहमत हैं ?

SHRI C. K. JAFFER SHARIEF: I do not think it is relevant to the Bill.

SHRI PALKHIVALA: I agree with the hon. Member. In fact, by this kind of amendment what you are ensuring is that an independent candidate virtually has no chance of even filing his nomination paper. Take the last election itself. Suppose 40 people had to openly espouse within 14 days a candidate to the Presidentship, one may speculate whether this thing could have been accomplished or not, and yet the man gets elected by secret ballot. It shows therefore that this kind of provision would prevent a man from filing his nomination paper even if in the ultimate result such a man would get elected if his nomination paper is allowed to be filed without 40 signatures.

श्री जगदम्बी प्रसाद यादव : स्कूटली के टाइम पर सर्टीफाइड कापी देने की बात है और यहां पर सर्टीफाइड कापी देने के लिए कोई समय नहीं दिया गया है। आप का इस सम्बन्ध में क्या विचार है कि सर्टीफाइड कापी लेने के लिए समय की कोई पाबन्दी होनी चाहिए ?

SHRI PALKHIVALA: That provision can be made either by the rule or a necessary provision may be made here.

श्री जगदम्बी प्रसाद यादव : एक बात और जानना चाहता हूँ। इसबिल में 2500 पये जमा करने की बात कही गई है। जहां तक मैं समझता हूँ इस पद की प्रतिष्ठा की देखने हुए कांस्टीट्यूशन मेम्बर्स ने इसको पैसे से

नहीं थाका है। आप का इस बारे में क्या विचार है? अभी जो इस पद की प्रतिष्ठा को 2500 रुपये से थाका जा रहा है, यह पद की प्रतिष्ठा के प्रतिकूल है?

SHRI PALKHIVALA: With respect, I agree with the hon Member.

श्री जगदम्बी प्रसाद यादव : आपने यह भी कहा है और मैं भी उस को किलयर करना चाहता हूँ कि इलेक्शन को चेलेंज करने के लिए जो प्रतिबन्ध लगाए गये हैं, वे जो बेसिक राइट्स हैं, उन पर कुठाराघात है। इस विषय में आप की क्या राय है?

श्री पालखीवाला : जी हाँ।

MR. CHAIRMAN: I think the hon. Member is confirming what you have said.

श्री जगदम्बी प्रसाद यादव : एक अन्तिम बात और जानना चाहता हूँ। आप ने बड़े जोरदार शब्दों में कहा है कि इस एमेंडमेंट बिल से दो खास बातें निक लेंगी। एक तो यह है कि जो कान्स्टीट्यूशन है या पिपिल्स रेप्रेजेंटेशन एक्ट है, उस में जो प्रतिबन्ध प्रेसीडेंटशिप के इलेक्शन में लगाए गये हैं, वे ही आगे जा कर पार्लियामेंट के मेम्बर से ले कर ग्राम पंचायतों के इलेक्शनों में भी लगाए जा सकते हैं और इस के लिए कान्स्टीट्यूशन में एमेंडमेंट किये जा सकते हैं।

दूसरी बात यह है कि अब अनड्यू इन्फ्लूयेंस' और 'ब्राइव' इलेक्शन में इन्क्लूड हो गया है, इसलिए जो पार्टी-इन-पावर होगी या जो इन्फ्लूयेंशल पार्टी होगी, उस के लोग ही इलेक्शन में ज्यादा जीतेंगे और जो ईमानदार लोग हैं या जो माइनोरिटी पार्टी के लोग हैं, उन को ग्राम पंचायत से ले कर राज्य सभा, लोक सभा, विधान सभा और प्रेसीडेंट और वाइस-प्रेसीडेंट के इलेक्शनों में खड़े हो कर इलेक्शन जीतने का मौका नहीं मिलेगा। आप के कहने का तात्पर्य यही है?

श्री पालखीवाला : यह बात सही है।

'Undue influence' has a wide meaning. In my opinion, the term 'undue influence' covers every corrupt practice including bribery.

SHRI PALKHIVALA: The term 'undue influence', for the purpose of this basic Act or the parent Act, bears the same meaning as in the Indian Penal Code. It has a very precise, clear and legal meaning. Therefore, I think that if you do not change the law, still you have a very clear definition of the word 'bribery' or 'undue influence and the law has been working well uptill now. And during the last twenty years or so, no fault has been found with the law at all. Even in the Supreme Court's judgment in President Giri's case you will find that none of these provisions have been found to be unsatisfactory. One change that you have made is for the good. I may incidentally mention this. If a nomination paper has been wrongly accepted of a candidate other than the successful candidate, then that should not vitiate the election by itself unless the result of the election has been materially affected. That is the change made by new Section 18, clause (a), sub-clause (iii). This is good. There is no objection to this. No court has however suggested that changes should be made with regard to 'bribery' or 'undue influence'.

SHRI NAWAL KISHORE SINHA: May I now ask one question from the hon. witness? He has stated that he does not belong to any political party. He has not even subscribed as a proposer or a seconder of any particular candidate. Sometimes voters are examined by courts and action is taken against them if something illegal has been done. Compare the number of proposers and seconds in the Amending Bill to the total number of voters. The number may be 4,000 or so. How do you then reconcile your point that this is a sizeable number? The intention is to propose

the name of somebody as a candidate who has a ghost of chance to win election of the President.

SHRI PALKHIVALA: Firstly, out of 4,000 you are allowed to take into account those who really take part in the election by voting; secondly, you take into account the man who supports him. Before the election, so many things are taking place in politics which are very well known.

SHRI RAJDEO SINGH: I am referring now to that part of your observation namely that there is violation of the principles of secrecy of ballot. I am talking of the other view. As far as you are concerned, you will please confine yourself to that part of your observation.

SHRI PALKHIVALA: I shall confine myself to that part of my observation. I say that forty is a considerable part of the number. Out of 4,000 potential voters, you may have 2,000 and odd voters who would have exercised their franchise. If you take the percentage of the votes, then it is a substantial number. Under the existing law even this 40 is a very high figure.

SHRI NAWAL KISHORE SINHA: Another point is this. In the present Act one proposer and one seconder is proposed. In the last 25 years or so there were a large number of independents standing for the elections. As the provision stands to-day, is it not possible for someone to become a candidate by just commanding the support of one proposer and one seconder. Due to political situation in the country, let us say that in 1974, there may be 500 candidates for the election of the presidentship. You have said that you do not belong to the political party—I am not referring to the fact that we all belong to political parties—but what I say is this. Look at the progress made by the various political parties in the country so far. There may be many frivolous candidates.

SHRI PALKHIVALA: I follow your question. Take the case of election to Parliament. You do not need two signatures. You need only one signature. Have you ever had an occasion where 100 persons have stood for the election. Unfortunately, to-day, everybody thinks that the law must take care of everything. There are others who say that the law cannot take care of everything. Normally the law will make it impossible for hundreds of people to stand for any election. If 15 stand for an election, there is no harm in that. In this country, even if 100 people want to stand for the elections, I would be very happy. If they are interested in public affairs it is good for this country's democracy. It is rather our misfortune that in this country only a few people stand for the elections to Parliament or for any other elections. If they stand for the Presidential election, there is no harm in that. If they do not win, they lose their deposits. The names of those who have not got a sizeable votes would also be mentioned.

SHRI NAWAL KISHORE SINHA: I have one more question to ask from this witness. That is connected with the one referred to already by the Chairman. You may be aware that there are ways and means to challenge the election of President. The usual way of challenging it is in the Supreme Court. Apart from challenging it in the court of law, would you suggest any other alternative for going into the charges of undue influence and corrupt practice indulged in so far as Presidential and Vice-President election is concerned?

SHRI PALKHIVALA: I would suggest that at the moment if the present machinery has been found to be inadequate, then we have to justify that for making any change in the law. What I am at a loss to understand is this—what has happened upto 1973? Only one Presidential election and

one Vice-Presidential election were challenged in the court of law on technical and other grounds which were disposed of by the court. I myself appeared for the Vice-President in the election case in the court. We had no problem at all. So far as election to the presidentship is concerned, only in one election case it was challenged on a certain ground which ultimately failed. In fact, to my mind, it is for the good health of democracy that more persons contest the election to the Presidentship. Such challenges are needed for a healthy democracy.

Take the case of America. Would anyone say that the Watergate scandal is a slur on democracy? On the contrary it shows that their democracy has vitality. It will be able to stand on its own. no one will be above the law. Let us have that tradition in this country; no one will be above the law, not even the President of India as he will be subject to the same laws as everybody else. That is the tradition of democracy and the mandate of our Constitution. I am glad that there was this challenge. Out of this challenge our democracy will become stronger; it will not become weaker.

SHRI NAWAL KISHORE SINHA: You do not consider any alternative possible or necessary?

SHRI PALKHIVALA: I would not say that it is not possible; it is not necessary.

SHRI NAWAL KISHORE SINHA: Would you agree that the time taken in such cases before the Supreme Court should be shortened without sacrificing the purity of election?

SHRI PALKHIVALA: Certainly. We in the Court know that it was a very exceptional case. Probably for the next ten years or thirty years or 100 years, there might never be a case of this kind. One is inclined to think that this would become the normal pattern. Not at all.

SHRI PILOO MODY: What is your view of those electors who nominate a particular candidate but thereafter do not vote for him. Now that I have made my point to my colleagues, I may explain it further. There have been several presidential candidates in the past who have been nominated but who have not received a single vote. I was referring to them and not to the conscience of our colleagues. Records show that some presidential candidates got zero votes inspite of being proposed and seconded.

SHRI PALKHIVALA: That historical fact to which the hon. Member referred only shows that we have a long way to go in learning the art of true democracy.

SHRI PILOO MODY: Therefore I take it that it is your view that if a person nominates a particular candidate, he must also vote for him according to healthy democratic practice.

SHRI PALKHIVALA: I would subscribe to that.

SHRI PILOO MODY: That would be necessary to substantiate your other argument that having the nomination of so many people would violate secrecy.

SHRI PALKHIVALA: I would subscribe to the view that if a man proposes or seconds, it is a moral duty for him to vote for that candidate at the time of election.

SHRI PILOO MODY: There are a few subjective questions which if you feel so you may not answer. I would advise you to catch the bull by the horns and say what you think is correct.

You have several times mentioned that we are an immature democracy and are in the process of finding our way. If I may suggest that these laws and the provisions that are being sought to be incorporated to this Bill are perhaps a measure of that immaturity that our democracy suffers from, would you agree?

SHRI PALKHIVALA: I would.

SHRI PILOO MODY: You have said that from your understanding of what has happened so far in the presidential and vice presidential elections, you see no reason why this law is being enacted. Some of us, Shri Nawal Kishore Sinha and I for instance, who are in politics unlike you have a very good idea as to why this law is being enacted. Therefore, I should like to know from you that if this law is enacted, I have no reason to believe that it will not be enacted as it stands and pass muster in Parliament, to what extent you think we would have damaged our democratic structure? To what extent you think we will be in a position where it would be difficult to retrieve what we have lost as a result of the passing of this Bill?

SHRI PALKHIVALA: I should say that it would cause grave damage to the democratic process in relation to the very high office in the land. We would be demeaning, this is my humble view, our democracy. It is true of course that by a majority one could pass such laws, but once a law is passed retracing the steps becomes difficult. You can keep on going along a certain road till, as Will Durant said, evil usually find their cure through their own excess. In other words, evil would have to be carried to an excess before the cure is found because then alone the position becomes intolerable and the whole process gets reversed. But that road is a very dangerous road to tread and it is fraught with grave risks. I should suggest that it is not only a question of law; it is a question of ethics in public life. Frankly I cannot imagine such a law being proposed in 1952, in Nehru's time; I cannot imagine such a law ever being proposed in the then Parliament.

SHRI PILOO MODY: Arising out of your reply I should like to find out if your present 'incumbent to the highest office in the land', if his elec-

tion had not been challenged in a court of law, he would not have had an opportunity to examine it himself through the due process of law such as there is what you imagine would have been the effect of that on public politics?

SHRI PALKHIVALA: It would have been a great damage to public polity and to the cause of democracy because of the whispers about the President, which he was fortunately able to clear through the legal process; they would have kept on increasing and the office would have been brought into disrepute. Instead of clearing himself as he did, he would have been in a position where there would have been no forum where he could clear himself. Therefore it would have been damaging to the office, to the individual concerned as well as to the future of democracy.

SHRI PILOO MODY: My last observation is not really a question but you react to it if you like. You have mentioned our constitution-makers with great respect and high regard. I might inform you, in case you have to make future depositions before parliamentary committees, that today's Members of Parliament consider themselves considerably wiser.

SHRI GUNANAND THAKUR: You have stated that forty persons, proposers and seconders, are not suitable for a country like India. Britain, Canada, and Australia are mature democracies. Is it not a fact that in England a candidate seeking election to Commons shall have to give a nomination with two persons as proposers and assented to by 8 persons?

SHRI PALKHIVALA: You mean election to Parliament?

SHRI GUNANAND THAKUR: And even a candidate standing for the House of the People has to be proposed and seconded and after that, he has to take the asset of 20 persons of their Electoral College. Even in

Australia, a candidate standing for the House of the People has to take the asset of more than 20 persons. So, for a country like India where many people, even many useless people so to say? I have been even mad people trying to stand for election taking one or two signatures and he does not secure even a single vote. What would you say about this? How do you say that it is not suitable for a poor country like India?

SHRI PALKHIVALA: If you could take the proportion between the figures of subscribers required in foreign countries and the college of electors, you will find that the proportion will not work out to more than 2 subscribers in the case of the President. There the number of electors is so large and the subscribers required is so small. Here the number of electors is so small. If you take the proportion of the subscribers only to the total electorate in all the countries you mentioned, it may not work out to more than 2 subscribers in the case of President and not more than 2 subscribers in the case of Vice-President. In the case of parliamentary elections, when you stand for Parliament, you have one area only where you go. That is your constituency-one area. When you stand for the Presidentship or Vice-Presidentship and if Parliament is not in session, you have the entire country to go round to take the signatures. Is it comparable to the signatures you require when you stand for Parliament? Further, if you are going to ask for 40 signatures for the Presidentship whose total electorate is 4000, will you in the same proportion ask 100 times 40, that is 4000 signatures for parliament elections as the electorate for the parliamentary constituency is 4½ lakhs? I say that if you want a candidate for Presidential election to get 40 signatures out of an electorate of 4000, please first amend the Representation of People Act, 1951 and say that a man standing for Parliament will require 5000 subscribers. The hardship to the Member of Parliament will be much less than the hardship to the candidate to the office

of the Presidentship, because whereas you are concerned with one Constituency whereas the Presidential candidate is concerned with the whole country. You do not need any argument to tell you how unfair it is.

SHRI GUNANAND THAKUR: A person who is going to hold the highest office in the country, if he does not command the open support of at least 40 legislators, how do you expect that he will do well in the election or he is a man of stature?

SHRI PALKHIVALA: If he does not command the support 40 persons, he cannot get elected. The point is not that he must get elected with 40 supporters. The point is: must you ask him to get the signatures of 40 supporters within the few days when he files the nomination papers. That is the point.

SHRI GUNANAND THAKUR: Any person who is going to contest the highest office in the country must have made up his mind to stand for election sufficiently early and it cannot be decided within a few days. The decision should have been taken one month before or two months before that he is going to contest and he should be a man of calibre or a winning candidate. He cannot decide within 7 days that he is going to contest the battle for the highest post. Suppose, only the Members of Parliament are the voters and ten voters are required to propose and second the name of candidate for the Vice-President, so far the highest post in the country, the man who is going to stand, must have at least the support of 40 persons openly in that case. Any voter can then realise that possibly the candidate is going to win.

SHRI PALKHIVALA: Not only may he have the support of 40 persons but he must have the support of 4000 before he gets elected. The real issue is not that he must have the support of 40. The simple issue is: must you ask him to get the signatures in his nomination paper before he stands as a candidate. The support will come

later. If it does not come, he will not get elected, but if you want to fix it at 40, then why not amend the Representation of People Act and ask for an election to Parliament the same ratio of subscribers as you require for the Presidentship? In that case, you may require 5000 signatures. Then you will really be doing injustice.

SHRI GUNANAND THAKUR: That is a must. That is a special electoral college where the voters are the leaders of their respective constituencies or the masses and there are therefore conscious voters. They understand their rights and naturally, at least for the office of the Presidentship I do not think why at least 40 persons should not be there.

Second thing you say the time limit. Do you think that 7 days are enough for filing nominations?

MR. CHAIRMAN: He has already said that it is not sufficient.

SHRI S. B. GIRI: You have said that in our democracy our constitution-makers have provided one proposer and one seconder for the election to the Assembly or the Parliament. After all, this amendment has been brought forward after our experience of the last few elections where frivolous candidates contested to the highest office making fun of the highest office. That is the purpose of this Bill. Will you agree with me that after all democracy does not mean that a man is free to do anything in the country. There must be some decorum and decency also. By allowing these frivolous candidates, you are making fun of the highest post in the country.

SHRI PALKHIVALA: Carrying it to the logical conclusion, where does the number stop? I regard the Members of Parliament are no less important than the President. In fact they are more important than the President. The President cannot make a law while you do. In a free country every man has a right to offer himself for the highest office. You may reject him but he has no right even to offer

himself? Is it a crime on his part to say, 'I regard myself as the most suitable for this post.'?

My point is this. Why should you reject a man whom you do not like? It is an ultimate right of a citizen to offer himself. Why do you want to deny him that right? Why don't you apply that principle to all elections and eliminate almost everybody by asking for 5,000 subscribers for Parliamentary elections and 400 subscribers for the State Elections etc.?

SHRI S. B. GIRI: You know the people of this country are very poor. Why should you ask everyone to make a deposit of Rs. 2,500/- for any election to-day? A candidate for the Parliamentary election has to deposit a sum of Rs. 500/-. Have you made any suggestions in this regard?

SHRI PALKHIVALA: If you say that no deposit is necessary, I am more than happy. I know that you will insist on Rs.500 as deposit for a Member of Parliament. Tomorrow you can change the law for a Parliamentary election, and say that no deposit is necessary. If you say that for an election to Parliament one should deposit Rs.500, why don't you follow the same thing for the election to President? I would be happy if you do that.

SHRI S. B. GIRI: The present law wants that there should be at least 20 persons as proposers of a name. We have our experience of the recent election to the office of the President. So many frivolous petitions are filed. Will it not be worthwhile to substantiate that charge in the election petition? If more number of people are added, we can get out of the present difficulty.

SHRI PALKHIVALA: Without disrespect to this honourable House I may say that I have seen that cases are filed by affixing signatures of Members of Parliament but the Supreme Court rejects the petitions unless and until the facts are proved. In our immature democracy people think that it is all right to put their signa-

tures without even ascertaining what the facts are. You do not make laws simply because you have come across a case of challenge. You must look ahead to see what will result in our country thirty years hence.

SHRI T. N. SINGH: I think I can rightly say on behalf of the Committee that the members are very much impressed upon by your views as also the flexible memorandum which you have given.

I want to put one basic question. During the course of various evidences that we have had, the word 'joker' had been used by no less a person than a members of the Supreme Court. Would you agree that all this thing is happening because it is the jokers who make the present laws?

SHRI PALKHIVALA: So long as the 'Jokers' are not elected there is no harm done.

SHRI T. N. SINGH: I am glad to hear this answer. Another point is this. The framers of this Bill say that there have been in the past, frivolous nomination papers filed and this does not redound to the credit of the office of the President to have such frivolous nominations filed. How would you react to this?

SHRI PALKHIVALA: My point is this. You will kindly look at the facts and figures. During the last 25 years we had fought four General Elections. Let us suppose eight people have offered themselves for this high office. Some of them have got no votes at all. What is the harm in our democracy. I do not understand all this. The constitution says that if you are thirtyfive years old and if you are a citizen of India, then you are allowed to stand for election to the office of President, provided you are also eligible to be elected to the Lok Sabha. We have to see that each citizen has this right. Instead of ten people offering themselves, forty people offer themselves. What is wrong with that in our democracy? It will have much more vitality. The difficulty in our country is this, we

have people who are not interested in public life. Let them get themselves interested public life.

SHRI T. N. SINGH: That has been so in Parliament.

SHRI PALKHIVALA: Let us all participate in the democratic process and let us get the people interested in the State's affairs. The more they get involved the better it would be for our democracy.

SHRI T. N. SINGH: In other words, you are against any abridgement of the right of every citizen of India to seek election to this high office. There you would rather rely on this right to solve the problems rather than to rely on any law.

SHRI PALKHIVALA: That is right.

SHRI T. N. SINGH: There is another thing. Firstly the dignity of this high office is affected by the manner in which these elections are conducted to-day. Secondly the dignity is also affected by the manner in which the election petitions are filed and thirdly look at the way in which the nomination papers are filed. What is your idea about this?

learn lessons by trials and errors. We learn lessons by trials and errors. We will not become better by eliminating any scope for errors. We shall only learn through errors and it is through errors only that you will make our democracy perfect. Otherwise you will just perish. So, let us learn through our errors. The more mistakes we make and learn from them, the better would be our democracy.

Look at the history of England in the 17th and 18th centuries. When Robert Walpole was chosen as Prime Minister, he said that he could buy anyone with gold except one woman who would not accept gold but would accept only diamonds.

Now, may I ask the hon. Members one question? What damage has been done to our democracy by people

offering themselves as candidates in the past Presidential elections?

SHRI T. N. SINGH: You have made a point about secrecy of the ballot. I am one with you and I have the greatest respect that the secrecy of ballot must be maintained.

SHRI T. N. SINGH: I am worried about one thing. Suppose 100 persons need consideration but that is not shall vote for so and so. They declare their votes well in advance. Would you like some law to be made to pre-the subject-matter of this.

SHRI PALKHIVALA: That does need consideration but that is not the subject-matter of this.

SHRI T. N. SINGH: The President was dragged into the court. It was not a very good sight. Would you agree that there should be a time-lag between the election and the actual assumption of office by the President, as it is in America for instance. within that time the objection if any could be disposed of. Will that not be better?

SHRI PALKHIVALA: I would completely agree with that.

SHRI T. N. SINGH: I shall now come to corrupt practices. The present law gives the same amount of immunity as it gives to Members of Parliament. Omitting these provisions at this juncture, will it not give the impression that we are making them legal to indulge in such practices?

SHRI PALKHIVALA: If you remove bribery and undue influence as grounds for challenging an election, what is the consequence? Suppose ten years or twenty years later, a person is elected as President, and it is known all over the country that he bought votes. Assuming that it happens, the man cannot be touched. Are you increasing the prestige of the office, or damaging it and bringing it to a level where no decent man will ever care for your presidentship? There is no halfway house. Either you care for standards or you do not.

SHRI T. N. SINGH: At the time of scrutiny of nomination papers, anybody can raise objections as to whether the signatures are genuine or not. That may well take more than five or six days for a returning officer to decide. The more signatures the greater the complications.

SHRI PALKHIVALA: For the President or Vice President the number of nominations will always be such that it may not create any major problem. Assuming more time is needed, you can give four days instead of two days; you can take even a week. These are small things compared to the importance of the democratic process being allowed to function. One has to have a sense of priority: what is really more important and what is less important.

SHRI T. N. SINGH: In the last case, President Giri's case, there was mention of a scurrilous pamphlet, having been circulated in the Central Hall of Parliament. The judges could not arrive at a conclusion because they could not spot the man who had done it, though the offence was committed. but it was held that it had not materially affected the elections because the person could not be located. When propaganda of such a demeaning nature has been made, should it not be the natural assumption that it had affected the elections?

SHRI PALKHIVALA: Under the existing law it is left to the court to decide. In the case of President Giri's election, court come to the conclusion that it did not materially affect the result of the election. In such cases one would have to leave it to the court; there is no other alternative.

SHRI T. N. SINGH: How would you arrive at a definite conclusion? What are the basic factors which will materially affect the elections results?

SHRI PALKHIVALA: The judge with his trained, judicial mind and experience of human affairs would try to bring them to bear upon the matter and give his verdict. If the propa-

ganda could have been identified with the incumbent or his agent, the election would have been void. But if it cannot be identified with the candidate or his agent, then the election will not be void unless it is proved that it had affected the result of the elections and the burden of proof is on the petitioner.

SHRI T. N. SINGH: I am impressed by your argument that as far as possible the President's office and his election should be kept out of controversies. You have seen that an independent candidate was elected last time. Why should we not say that one shall not seek office as a party candidate?

SHRI PALKHIVALA: I think the hon. Member's suggestion is extremely wise and it will be conducive to be healthy democratic traditions. A man may have belonged to a party; but when he offers himself, he does not offer himself as a party candidate but as a non-party candidate, just as the Speaker does.

SHRI C. K. JAFFER SHARIEF: If you consider the election process you will agree with me that any candidate who wants to contest these elections must have substantial support of the voters. In which case, he will have to spend some reasonable amount for the election. In such a case, how will you justify your argument against the deposit, against getting the signature of 40 members as proposers and seconders as also the time factor? Further you were taking that our democracy has not yet matured. If that is the case, if the law makers think that after taking the realities of the process of election and the ultimate result into consideration and this is an attempt to take the country to greater maturity, why cannot you reconcile with this?

SHRI PALKHIVALA: The answer is simple. You said certain amount of money has to be spent. Then why do I object to the deposit? It is not as if my objection means shutting my

eyes to the reality. It means that certain standards of decency are to be maintained irrespective of the reality. In fact, your standards will never go up by providing for a heavy deposit, by making it compulsory to have 40 members so that strong party candidates alone can stand, or by removing bribery and undue influence as grounds for challenge. What you are doing is that you are lowering the law to the level of political reality whereas the law has to be above it. If the law is above the reality, your reality will one day rise to the level of the law. I do not want the law to be degraded to that level of political realities.

SHRI KRISHNA BAHADUR CHETTRI: There are many political Parties in our country. Each party has its own policy and the party men are guided by party whips. Do you think that the party whip actually goes against the concept of our democracy?

SHRI PALKHIVALA: In the case of elections to the office of President or Vice-President, I think a party whip would undoubtedly go against the concept of a free election by a secret ballot as provided here. I am confining myself only to the subject matter of the legislation, namely, Presidential and Vice-Presidential elections.

SHRI KRISHNA BAHADUR CHETTRI: So I presume that you are against Party system?

SHRI PALKHIVALA: No. There are different activities in a nation's political life. For example, passing ordinary laws, passing special laws like constitutional amendments. There are certain occasions where a Party whip is necessary and a Party system is necessary. What I am saying is that when it comes to Presidential or Vice-Presidential elections, these elections under the Constitution are to

be by secret ballot and it is clear that the constitution-makers did not intend a party whip to interfere with Presidential and Vice-Presidential elections.

SHRI GANESHLAL MALI: According to the parent Act, the number of proposer and seconder is 2. If it is increased to 40 and at the same time keeping in view the principle of secret ballot and if the present bill is passed and enacted, you say it would be unconstitutional and ultra vires. If the number 40 is reduced to 10, would it then make it unconstitutional?

SHRI PALKHIVALA: If the number is reduced to 10 for the President, I do not know what would you say for the Vice-President. It would be quite a debatable point. With regard to the figure 40, have no doubt that it is unconstitutional. If it is reduced to 10, it is doubtful which way the decision of the court will go.

MR. CHAIRMAN: I thank you on behalf of the Joint Committee. I thank you very much for having come. We know at what cost you have come because every moment of yours is very important from all aspects. But you have given us some new light. You have thrown some new light on this Bill. Certainly, the committee will take into consideration what you have stated and your opinion on this Bill.

I thank you once again on behalf of the Committee.

SHRI PALKHIVALA: I thank you Mr. Chairman and the hon. Members for the great courtesy and great patience with which you have heard me. For me it is always a privilege to appear before a committee of Parliament.

Thank you, Sir,

(The Committee then adjourned)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON
THE PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTIONS
(AMENDMENT) BILL, 1972

*Saturday, the 7th July, 1973 from 15.00 to 16.30 hours in Congress Party Hall,
Council Hall, Bombay.*

PRESENT

Shri S. A. Kader—*Chairman*

MEMBERS

Lok Sabha

2. Sardar Mohinder Singh Gill
3. Shri S. B. Giri
4. Shri Jagannathrao Joshi
5. Shri Piloo Mody
6. Shri Pratap Singh Negi
7. Shri Rajdeo Singh
8. Shri M. S. Sanjeevi Rao
9. Shri C. K. Jaffer Sharief
10. Shri Nawal Kishore Sinha
11. Shri M. G. Uikey

12. Shri Niti Raj Singh Chaudhary

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Rajya Sabha

13. Shri Krishna Bahadur Chettri
14. Shri K. A. Krishnaswamy
15. Shri Lal Buaia
16. Shri Ganeshlal Mali
17. Shri Kota Punnaiah ..
18. Shri T. N. Singh
19. Shri Triloki Singh
20. Shri Gunanand Thakur
21. Shri Jagdambi Prasad Yadav

REPRESENTATIVE OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(LEGISLATIVE DEPARTMENT)

Shri A. K. Srinivasamurthy—*Additional Legislative Counsel.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESS EXAMINED

Shri H. M. Seervai—*Advocate General, Government of Maharashtra,
Bombay.*

Shri H. M. Seervai, Advocate General, Government of Maharashtra, Bombay.

(The witness was called in and he took his seat)

MR. CHAIRMAN: I welcome you, Shri Seervai on behalf of this Committee and I would like your attention to be drawn to the Direction Number 58 of the Speaker which says:

"The witness may please note that the evidence he gives would be treated as public and is liable to be published unless he specifically desires that all or any part of the evidence tendered by him is to be treated as confidential. Even though he may desire his evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament."

SHRI H. M. SEERVAI: I thank you, Mr. Chairman, for drawing my attention to this. I have already added a rider to the declaration which I have sent that I have no objection to anything that I say being published. So far as I am concerned, you can do so.

MR. CHAIRMAN: The Committee would like to hear the views that you have in mind. After you finish with your submissions the Members would like to put their queries to clarify certain matters.

SHRI H. M. SEERVAI: Well, Sir, I have not been much concerned with the Election Law except very incidentally. I have gone through the Bill and so far as I am concerned, the only point which strikes me is the one relating to the disqualification of the persons from the office of the President and Vice-President on election. One of the grounds of disqualification is proposed to be omitted. May I be permitted to draw your attention to a clause which has been deleted? If you will please turn to the annexure on page 12, clause 18(1)(a) you will find that:

'If the Supreme Court is of opinion—

(a) that the offence of bribery or undue influence at the election has been committed by the returned candidate or by any person with the connivance of the returned candidate; . . ."

As far as I can see, the whole concept of popular election is that the people should apply their minds or express their feelings honestly which they should do by way of a secret vote. Bribery was a common in great countries where it is now held a ground for setting aside an election. A vote which is purchased either by cash or by an equivalent of cash, for example, offering a job if somebody votes for you, is essentially a ground for disqualification. No reasons have been stated why disqualification is now sought to be removed. It is, however, possible to make a guess. That guess would be that these allegations can be easily made. Also they can be made irresponsibly.

So far as the courts are concerned, there is a procedure devised to discourage frivolous or vexatious petitions. If the idea is to deter people from making reckless allegations, it may be possible to devise some safeguard such as, for instance, if the Supreme Court finds that there was no foundation for the allegation and it ought not to have been made, a substantial penalty by way of costs may be imposed. You may also disqualify a person from standing as a candidate at any election for a public office. Because a thing can be abused, it does not follow from that that we proclaim to the world that we do not object to bribery and undue influence in the election of a President or a Vice-President. That is the only thing which has struck me. May be I have not fully understood it. If the hon. Members wish to put me any question indicating a different viewpoint or asking me to consider certain other aspects whether its deletion is or is not justified, I am prepared to answer that.

Take for instance a man who may be standing without the foggiest idea of ever getting elected. If he does not get the vote of the man who is supposed to support him what should we do in that case? This Bill is meant to discourage frivolous candidature and making it reasonably certain that the person, whose candidature is put forward, has reasonable support. Whether he wins or loses, of course, that is a different matter. Broadly speaking, I approve of the proposal that is put forward. But, as I said, I have gone through the whole Bill twice. This is the only aspect which struck me as something basically opposed to our whole constitutional set up for a free democracy where people are supposed to vote—not for money or for gain but to represent their convictions or feelings honestly. That is all that I have got to say in this behalf.

MR. CHAIRMAN: Thank you, Mr. Seervai. Before I ask the other Members to put questions, I have to put to you one or two queries. You have said something about clause 18(1)(a) that is sought to be deleted. The idea seems to be that the President's office is the highest office in our country. And challenging him after the election to this office on grounds of corruption and malpractices does not stand good in the national and international eye. Therefore, it has been suggested that at least the office of such a type should not be challenged on that ground.

We have heard you patiently. There are some relevacies in what you said. You will agree with us that when the President is in Office, if a charge is levelled against him of bribery and corruption, it does not look good anywhere. Is it not?

SHRI H. M. SEERVAI: Well, Sir, I hold a slightly different view. I have expressed it in connection with the judiciary in my lectures and I do not think that it is a public gain that instead of the allegation being inquired into by the highest court of the country, when throughout the te-

nure of office of President, the rumours that he has been corrupt should persist. If you do not investigate into the charges, there will be the habit of snowballing and the people will assume all sorts of things and you bar all avenues of enquiry. So, I agree with you that the Office of the President is the highest office and once he has been elected, allegations against the President are injurious and so they would not be looked into. Still, we do not gain in the eye of the world by saying that we tell the President "no matter how corruptly you have got elected and once you are elected, the dignity of your office should be maintained." That is the view I hold.

MR. CHAIRMAN: Now I will put it to you. Suppose between the time the President is elected and the time he assumes office, in between, if time limit is fixed for such an allegation or charge that is to be made, would that meet the ends of justice?

SHRI H. M. SEERVAI: I should strongly accept the suggestion. I ought to have made it myself but I am sorry it did not occur to me. In order that this sort of thing may not hold on indefinitely you can prescribe a reasonably short period of time within which such allegations, if at all, are to be made and you may also prescribe a time within which the matter ought to be disposed of. Sometimes our experience of legal proceedings shows that in matters of this kind the party charged may himself ask for time; if fifty charges are made and you are to refer to 500 documents, it also takes a little time. Therefore, as far as practicable the matter should be disposed of in a reasonable amount of time and if the Tribunal is called upon to give it top priority, I think it would meet the needs of the case.

MR. CHAIRMAN: If a time-lag is fixed between the election of the candidate and his induction into that office and if the whole thing is decided within that interval, would it be all right?

SHRI H. M. SEERVAI: Suppose he is elected today and he is sworn in after 15 days, you cannot decide the whole thing.

MR. CHAIRMAN: What would be a reasonable time in this case?

SHRI H. M. SEERVAI: The charges should have to be preferred within thirty days and when preferred the application should be disposed of in the next two months, not less than three months in all, as far as practicable. It is a rough suggestion and if your parliamentary experience suggests that a shorter period would do or a longer time would be needed, you should be guided by your experience, because I had very little to do with election matters and as a lawyer I appeared only once in Mr. Gokhale's election petition here. I did look at the law but the hon. Members are so completely familiar with the processes of election that I would leave it to their judgment to prescribe a reasonable time.

SHRI TRILOKI SINGH: What do you think if instead of undue influence, they are brought under 'corrupt practises'? Will it equally serve the purpose of ensuring fair and free elections?

SHRI H. M. SEERVAI: Speaking for myself, if something is implied in a general phrase and the court has to decide whether it is implied or not, I should like that to be made express. If your idea is that the charge of corruption or undue influence should be treated as corrupt practice, I would respectfully agree but it ought not to be left to judicial determination or decision that corrupt practice includes this.

SHRI TRILOKI SINGH: You have suggested three months' time for the disposal of the election petition against persons who had been elected President. Perhaps our experience shows that a election petition could be disposed of within six months but in practice it has not been possible for courts, generally speaking, to

dispose of any election petition within six months. We want to say that once a person is elected as President, no such charges should be made against him after the assumption of office and these should be disposed of within 3 months.

SHRI H. M. SEERVAI: The question put by the hon. Member relates to election petitions to various legislatures and those petitions can be very large in number and therefore the prescribed time-limit is difficult to apply. But this special provision for the President or Vice President relates to one case in the case of the President and one case in the case of the Vice-President and I do believe that if a court is charged with the duty of giving it the highest priority the time-limit might be observed. Just as in *habeas Corpus* matters all other matters are kept in abeyance and that application is taken straight-away. So also by an Act like this one can indicate to the determining authority, namely, the Supreme Court that it should be treated as a matter of the highest priority.

SHRI TRILOKI SINGH: The witness might have seen from the Bill that two checks are proposed in view of the fact that people file their nominations when there is not even a ghost of a chance and they do not get even one vote. Do you think this double check is unnecessary and one check is enough at the time of the nomination and not the other one in the matter of election petition?

SHRI H. M. SEERVAI: As far as I can see the second check is necessary because one man may be behind the scene and ask somebody else to file a petition, in which case it is desired that a large number of people must be convinced that there is a case for election petition than otherwise.

SHRI TRILOKI SINGH: May I take it that in case of nomination the existing provision should remain and the one relating to filing of election petition should be made from stringent?

SHRI H. M. SEERVAI: I understood your question to be that a provision is now sought to be made for a second check and the number of people other than the candidate who can present the petition is increased. If that is a corrupt understanding of the amendment, then, speaking for myself, I would approve of it and it does no injury to anybody and protects a high public dignitary from frivolous applications. If the defeated candidate comes in, his right is not disputed but if he chooses not to come in, then the right of persons who are interested on public grounds, is preserved provided a sufficient number of people come in to vindicate that right.

SHRI KRISHNA BAHADUR CHETTRI: What is your opinion if a tribunal is set up with the Chief Justice of the Supreme Court as Chairman to dispose of election petitions?

SHRI H. M. SEERVAI: I would very strongly discourage such an idea because the Chief Justice of India is in charge of the whole court. He sets the tone of the whole court and normally presides over constitutional matters which are matters of great importance and to withdraw the Chief Justice and make him the Chairman of a Tribunal to hear election petitions is, if I may respectfully submit, not right because the head of the Judiciary in India should basically be asked to do judicial work and election petitions, compared to constitutional petitions at the hearing of which the Chief Justice almost always presides over, are insignificant. I would not approve of that idea.

श्री जगदम्बी प्रसाद यादव : आप ने 'अनड्यू इन्फ्लूयेंस' और 'ब्राइबरी' पर अपने विचार प्रकट किये हैं। मैं सिर्फ इतना ही इस में जोड़ना चाहता हूँ कि जो पार्टी या दल सरकार में रहेगा, उस को ब्राइब और अनड्यू इन्फ्लूयेंस करने का बहुत बड़ा

अवसर मिलेगा और इस प्रकार की अगर सुविधाएं रहें, तो इन दि लांग रन डेमोक्रेसी समाप्त हो जाएगी और उसकी जगह पर डिक्टेटरशिप का श्री गणेश होगा और यह छूट जो अभी प्रेसीडेंट को दे रहे हैं कि उस में ब्राइबरी और अनड्यू इन्फ्लूयेंस न आये, तो बाद में यह छूट लोक सभा, विधान सभा और बाद में यहां तक कि पंचायतों के इलैक्शनों में भी आ सकती है?

SHRI T. N. SINGH: Regarding the provision relating to undue influence and corruption he says that the party in power is in a better position to exercise this undue influence and bribery and, therefore, the omission of this provisions from the law will mean virtual dictatorship in India because the party in power will be able to manipulate the elections. Am I right in my translation?

MR. CHAIRMAN: Generally.

SHRI H. M. SEERVAI: I would not like to subscribe to a general proposition that the party in power is more likely to do it or more likely to do it successfully. I have no knowledge and I would not like to make that assumption. But, whoever, corrupts—whether the party in power or the party not in power—the objection to corruption, bribery and undue influence is not to the people from whom they come. So, I would not like to answer the question on the assumption which the hon. Member may have good reasons for making for which I have none.

श्री जगदम्बी प्रसाद यादव: एक सवाल और था। इस तरह की छूट जो आप ने राष्ट्रपति को देने की सोची है कि उन के मामले में ब्राइबरी और अनड्यू इन्फ्लूयेंस न लिया जाए, तो आगे चल कर कांस्टीट्यूशन में यह भी एमेंडमेंट हो सकता है कि लोक सभा, लेजिसलेचर्स और यहां तक कि ग्राम पंचायतों के इलैक्शनों में भी इसकी कोई मान्यता न रहे? इस विषय में आप की क्या राय है?

SHRI T. N. SINGH: He says that the offences of corruption, bribery and undue influence may be later on omitted even in the matter of elections to Parliament.

SHRI H. M. SEERVAI: So far as I am concerned, it should not be omitted because it is a basic part of the election law that any success obtained by bribery or by undue influence does not represent the democratic process and, therefore, a person who resorts to it ought to be disqualified. I agree with it.

श्री जगदम्बी प्रसाद यादव: एक बात मैं यह जानना चाहता हूँ कि नामीनेशन पेपर्स फाईल करने के लिये पहले एक प्रोपोजर और एक सैकेन्डर की आवश्यकता थी लेकिन अब उसको 40 प्रोपोजर्स और 40 सैकेन्डर्स किया जा रहा है। अगर यह एमेंडमेंट मान लिया गया, यह अन-कॉन्स्टीट्यूशनल, अनडेमोक्रेटिक अनरीजनेबिल और अनरियेलिस्टिक होगा या नहीं ?

SHRI NITI RAJ SINGH CHOWDHARY: His question is whether the increase in the number of proposers would amount to an infringement of the constitutional provisions or would it be unjust, improper, so on and so forth.

SHRI H. M. SEERVAI: Democracy does not mean that the process has to be brought into contempt. The proof of it is that all elections are subject to forfeiture of a deposit. Now that forfeiture of deposit is not a sufficient deterrent to a frivolous candidate to the highest office. We are not in the realm of general elections. I see nothing wrong in it. Of course, whether it should be 40 or 20 is a matter of political judgement. A man who practises in the law courts is not ideally suited to say whether it is too large or too small but broadly in principle, I do not see any objection. All that is sought to be desired is that there must be a reasonable support for a man. That support by itself will never secure his election.

but, which at least, shows that a number of persons are really interested in the matter of supporting his candidature. That is the principle. Now whether it should be 40 or whether it should be 20 or whether it should be 25 is a matter of political judgement and if the question were asked from me, I would say that I would leave it to the Legislators who are our representatives and whose experience enables them to fix that number.

श्री जगदम्बी प्रसाद यादव: आप के विचार में कॉन्स्टीट्यूशन में एक सिटीजन और प्रेसिडेंट में कोई अन्तर पड़ता है ?

SHRI T. N. SINGH: The hon. Member wants to know the distinction between the President and a citizen?

SHRI H. M. SEERVAI: If I were to answer this question, the distinction between the President and citizen is obvious. It is obvious that the President has to be a citizen. Why should other elections not have this provision and why should a Presidential election have this provision? The answer is that no elected Member is ordinarily called upon to fill up this high office—I am not talking of the Prime Minister or the Chief Minister of the State. The President represents the country in its totality as regards foreign relations. He is the head of the Executive and everything is done in his name. So, the distinction is obvious. A citizen may aspire to become President. He may be elected as President. But, till he is elected, he does not hold that highest office in the realm. So, that is the distinction.

SHRI RAJDEO SINGH: While prescribing the large number of electors, say, 20 or 25, to nominate a candidate for the Presidential election, will the secrecy of the ballot be violated or not?

SHRI H. M. SEERVAI: No. The experience has shown that no real candidature will suffer by it. It is a

matter of judgement that the principles of secrecy of the ballot are not violated by prescribing this number. This may bring the process, if not, into contempt, it may expose it to the criticism that the man is supported by one person while he does not even get one vote. If does not redound to the credit of the citizen who is nominated for this highest office does not even get a vote. Take the case of U.S.A. where the Presidential and Vice-Presidential elections have taken place. There are rival candidates for the Presidentship. In the world outside, each candidate carries a certain amount of weight. It is possible that the man who is proposed and seconded by the persons may not even get their votes. After all these are offices of dignity. May be real power lies with the Cabinet. But, the cabinet itself is interested in seeing that this highest office is filled by a man who generally commands respect. Nobody will command an absolutely universal respect. But, once he is elected as President, he does, broadly speaking, represent the unity of the nation. I would point out a very important feature. As the hon. Member are aware, this is done by an electoral college in which the State legislators in the Lower House are responsible for the election of the President and so, the States are involved; Parliament is also involved. It is desired that this highest office should have as much dignity conferred upon it because we may not think only in terms of internal relations but the outside world looks to the head of the State and sees as to what the head of the State does. The personality of a man is not immaterial when we are dealing with the foreign relations. A man can be nominated by one person and seconded by another. If he does not get a single vote, then that is not conducive to the respect of this high office. As regards the safeguard, as I have submitted, I am not qualified to answer. But, speaking for myself, I would leave it to the political judgement of people who have had considerable experience in elections.

SHRI RAJDEO SINGH: What are your suggestions regarding the minimum safeguards against bogus and non-serious candidates in getting themselves elected?

SHRI H. M. SEERVAI: This Bill attempts to provide safeguards. I do not see any objection to them. On the contrary there is so much to recommend it. But, I have not enough experience in these matters as to suggest any other safeguards. Forfeiture of the deposit is an obvious safeguard. Apparently, it is ineffective. And therefore, something more than this is wanting.

SHRI PILOO MODY: Mr. Seervai, may I draw your attention to the statement of objects and reasons. This Bill has been brought forward and signed by no less a person than the one whom you defended in a great case. On page 8 (un-numbered page) you will find that the reason for bringing forward this bill is fourfold although there are five reasons advanced.

Firstly, the number of nominations that are necessary;

Secondly, the amount of deposit that is necessary;

Thirdly, the number of petitioners that are necessary to file a petition;

Fourthly, the ground to make bribery and undue influence as an acceptable form of getting the President elected.

The last reason is advanced merely on technical grounds. Earlier on you have deposed that in securing the nomination something should be done to see that frivolous and non-serious candidates do not file their nomination. As you know, the existing law is that a Presidential nomination has to be proposed and seconded requiring two legislators to propose a particular candidate. May I now ask you a general question? What is your view on those who nominate a person for the presidentship and who, thereafter, do not vote for him?

SHRI H. M. SEERVAI: Mr. Chairman, Sir, I may be permitted to correct one thing which the hon.

Member said just now. I did not defend. Shri Gokhale. I defended, the Constitution. That is my view of the matter. I was the first to say that Golak Nath case was indefensible, which view has now been accepted by the Supreme Court also. Leaving aside that point, I would like to know to what the question has been directed.

Broadly speaking, in ordinary circumstances, to support a candidate and not to vote for him is wrong. Whether the facts a particular case justify that departure or not would require an investigation of the case.

SHRI PILOO MODY: I think the witness misunderstood my question. Facts as we know then today are that several candidates who have stood in the past as presidential candidates have not secured a single vote. Zero votes. We know that they were nominated and seconded. It implies that the person who nominated and seconded a particular candidate did not thereafter vote for him.

SHRI H. M. SEERVAI: I am obliged to the hon. Member. It is not a proper thing to do, unless you take the view that since a legal requirement exists for proposing and seconding, those who proposed and seconded thought that though they themselves might not support him the person might secure the support of others, but I agree with the underlying assumption of the question that it is not a proper thing to do. If the hon. Member says that steps should be taken to discourage that I would with respect support him.

SHRI PILOO MODY: My second question flows out of the first one, and that is that the present requirement of two had been increased to forty. It has been argued before us that the Constitution requires that such a ballot takes place in secrecy. In other words the secrecy of the ballot had to be preserved. If one were to assume that a legislator should be morally obliged to vote for the candidate he proposes, having such a large number of legislators revealing ahead of time that they intended to support a particular can-

didate—would you think that that violates the secrecy of the ballot to some extent?

SHRI H. M. SEERVAI: That would require, I imagine a modification of the answer to the first question because secrecy is not violated by proposing a candidate and not voting for him because the process of election controversies raised entitles a man to change his mind as to whether a person should be elected or not, unless you say that no public debate and no public controversy has the least effect on the Legislators. The hon. Member himself has answered in part the first question he put that in trying to remedy one evil we ought not to introduce a greater evil. It did not occur to me. A man signs the nomination paper, then public controversies take place, skeletons are revealed in the cupboard and the person who signed the nomination paper feels that he will not vote for him; if he does so it is a normal democratic process.

SHRI PILOO MODY: I do not know whether you are aware of it or not but it is normally considered prudent that a candidate secures at least three or four nomination papers so that in case one gets rejected, the other might hold good. There is a provision in this Bill which says that no legislator might put his signature on more than one nomination paper. If in pursuit of his prudence a particular candidate files four nomination papers, he may require as many as 160 legislators to nominate him for the election. The argument advanced before us was that it might be at a time when parliament may not be in session. Members may be in their constituencies, widely scattered all over the country. Therefore to put such an onerous burden on a candidate and that also within a short space of seven days—even the existing provision of 14 days has been reduced to seven days—would be an unbearable burden which only a very well organised or very large party could possibly undertake on behalf of a candidate. What is your view on that?

SHRI H. M. SEERVAI: I think we ought not to proceed on the footing that people are free to do by way of caution what can be done by care: one nomination correctly inscribed. One of the directions in respect of scrutiny is that nomination papers are not to be rejected on unsubstantial grounds. Therefore once it is known that this is the number of people required to support a candidate by nominating him, then there is really no scope for encouraging people that precautions should be taken that if one is rejected the other will be valid. The duty is laid upon a candidate to see that one nomination is correctly filled in and unless he wants to take the labour of going to another 20 or 40 people, he could not rely on his own negligence as a ground for saying that a reform is not desirable or it puts an intolerable burden because it means you do not do your duty well, you should do it.

SHRI PILOO MODY: In your opinion, therefore to collect forty signatures in seven days would be sufficient time?

SHRI H. M. SEERVAI: If your political judgement and the political judgement of your compeers say that seven days are not sufficient, raise it to 14 days. I do not profess to be able to mention the period which is a matter of political judgement because I lack that experience.

SHRI PILOO MODY: It has also been suggested to us that the increase in deposit from Rs. 500 which it is at the moment to Rs. 2,500 will not serve the purpose but will unnecessarily create an additional financial burden on those independent citizens who may well deserve to be Presidents in this country but who do not have the backing of large organisations behind them, and would prevent them from contesting such election. Would you agree with that view?

SHRI H. M. SEERVAI: Though not a politician, I think it unlikely in the last degree that a man deserving to be the President and standing for it

without the backing of a large organisation will find reasonable body of citizens to sponsor his candidature. Because everybody knows that without a party organisation the chances of success are limited, so that I think that the objective is unlikely to be realised in practice. It may be that in the judgement of the hon. Members who know much better my answer may not be the correct answer but so far as I can see, that is the answer, because after all the value of money has gone down and Rs. 2,500 is now what Rs. 500 used to be about 10 or 15 years ago but that again is a matter of political judgement. If an individual eminent enough to stand as a candidate and likely to secure votes sufficient to make him President cannot get an organisation to give him Rs. 2500, I think it is unlikely.

SHRI PILOO MODY: I was talking in terms of the increase made, the reason why an increase is necessary, in this Bill, from Rs. 500 to Rs. 2,500.

SHRI H. M. SEERVAI: The object of the deposit was to make it certain that the person bore some financial loss, that he was not likely to put his candidature unless he did not mind losing Rs. 2500. One element to prevent frivolous nominations is to require a larger number to propose. The other element is that it may be one thing to have fling at Rs. 500 and have publicity all over India: I have contested the office of President; it may be a slightly different thing to have a fling at Rs. 2,500. That seems to be the idea.

SHRI PILOO MODY: I go to the fourth point. In your earlier explanation you thought that if there were any allegations against the President, he should be cleared of those allegations in public interest. Am I correct in this?

SHRI H. M. SEERVAI: No. If there are any allegations against him for securing election to the office of the

President, then those allegations should be enquired into. That is what I said.

SHRI PILOO MODY: That is what I meant. Shall I take, therefore, that you approve of the existing provision in the law?

SHRI H. M. SEERVAI: I do. But that is subject to the questions which had been put to me by the Chairman here—would you not wish to prescribe time limit so that it should not be open to a party by delay to keep those allegations hanging over the head of the highest executive? Subject to a reasonable time which is a matter of political judgement, I am entirely in favour of an inquiry into the allegations of bribery or undue influence which went into the securing of the office of the President or Vice-President.

SHRI T. N. SINGH: You are an eminent lawyer. Having listened to various questions here, two constitutional and legal points to arise in my mind. Under Art 58 of the Constitution, no person shall be eligible for election as President unless he is a citizen of India. That is the right of every citizen of India, to seek election and it is considered as a very valuable and fundamental right of every Indian citizen. Now, it has been suggested to us that anything which restricts or makes it difficult or increases the difficulties in his way to get himself nominated for this post is *ultra-vires* the Constitution. Saying that you shall have 40 nomination proposers and seconders and if he has to file three in order to take care, he has to run all over India to get these nominations. So, an independent citizen who may not have the support of a political party, will be deprived of a very valuable right given by the Constitution itself. Am I right?

SHRI H. M. SEERVAI: I only wanted to check up the Article under which the Representation of the Peoples Act provides for the election of the President.

First of all, Art 58 confers no rights, it only says that unless a person is a citizen of India, he is not eligible for election as President. Take it this way. Great men devoted to India have come here but who have not acquired Indian nationality—take C F Andrews. But, however great his eminence, however deep his love for India, he cannot be a President. This disqualification is clear from the next provision, namely, he should have completed 35 years. So, it means that in order that a person can stand as a candidate for the presidential office, he must fulfil these conditions precedent. But election is governed by Part XV of the Constitution—Art 324. The rights conferred or the rights conferred by a statute namely the Representation of the Peoples Act can be enjoyed only subject to the limitation of that right and no question of reasonableness ordinarily arises unless a condition so absurd is put that nobody can become the President of India. That may raise rather a moot point but the Supreme Court has held that the rights of election are not common law rights, they are statutory rights, subject to statutory control and the example—given is that a day or two days before—I forget what it is exactly—no candidate can address a public meeting and that was challenged on the ground that it interferes with the freedom of speech. Mr. Justice Bose, speaking for a unanimous court, said that the rights are statutory, if you want to be a legislator, you must conform to the requirement, if you prefer freedom of speech to the position of a legislator, go ahead and make your speech, don't stand as a candidate for election. The article referring to qualifications puts limitations on the person standing for the office. They do not confer a right. A right is conferred by the requirements of the Representation of Peoples Act. Subject to the procedure prescribed and bearing in mind that we are a great democracy, by and large, the Representation of the Peoples Act has adopted a procedure which is recognised as democratic. So I do not think that there

is any substance in the argument of *ultra-vires* because first the particular Article does not confer a right. Secondly, the right being a statutory right, a statute can regulate it. What would happen in an absurd case of an absurd provision—now in the language of the various courts—can be dealt with when such an absurd situation arises.

SHRI T. N. SINGH: You seem to believe or suggest that a reasonable restriction on the right of a citizen is permissible under the Constitution itself. I can see that point. The restrictions on his rights have not only to be reasonable but also to be fair. Here is a man, very great man in his own line, may be, he is at least one among the intellectuals of the country. He has not got any party machine behind him and he does not even have a man to go round the whole country. I want to know whether it is a reasonable restriction if you insist on him that he should be nominated by 20 Members of Parliament and 20 Members of the State Legislatures—40 in all—if he wants to contest the election to this high office?

SHRI H. M. SEERVAI: First of all, what the hon. Member had said just now is to be judged on the basis of a test of reasonableness. The test of reasonableness comes under certain Articles under the Fundamental Rights Chapter. The right to be elected as a Member of the Legislature is not one of them. The Constitution of course gives the right by providing Parliament to regulate it by the Elections Law. The whole process or underlying assumption of our Constitution is that in a democratic government election laws will not be rigged. If that assumption fails, well, one of the postulates has failed. It does not require reasonableness. But, speaking for myself, I see nothing unreasonable and nothing unfair because this fear of a person running about various places and getting people's support pre-supposes that everybody does things at the last moment. Surely, a person makes up his mind to be the

President of India very much earlier than the actual date of nomination so that he may take the precaution to see that his nomination paper is filled by approaching those people in advance and asking them whether they would nominate him or not. I see no practical difficulty in this at all.

SHRI T. N. SINGH: You seem to suggest that he will have enough time to approach people in advance. That is exactly what the new provision seeks to provide. The period has been reduced to 7 from 14 days. Is this time-limit sufficient?

SHRI H. M. SEERVAI: On the question of time, as I told you earlier, if the hon. Members, in their political judgment, feel that seven days is an unreasonable period, then the Assembly, by a majority, can modify it. I have nothing to say against it. But, if one body considers it reasonable after their experience and another group of persons considers it unreasonable, then comes the trouble. I have very little knowledge of the actual working of this. One is right and the other is wrong. That is all I can say. I agree however that if it is felt that this period is unreasonable and if it has been brought out by way of an amendment or a debate, then the Government may come forward and say that 'we shall revert back to 14 days'. I am not familiar with this as it is not of vital importance to me. It is after all a matter of few days here and there. If there is a strong feeling in the House that seven days are unfair and unreasonable, then a suggestion may be thrown in the Lok Sabha in this regard which may very well be accepted by them.

SHRI T. N. SINGH: As a constitutional lawyer we want you to help us to arrive at a conclusion whether the provision made here is reasonable or not.

SHRI H. M. SEERVAI: I would like to point out that this is not a matter of law but this is a matter of practical experience. How often is this contingency likely to arise? All of

us feel that the objection is merely theoretical. It will be rejected if it is felt that there is no force in it. If there is force in it, it may very well be accepted.

SHRI T. N. SINGH: Let me ask you another question. It has been suggested to us that secrecy of the Ballot is one of the inviolable rights of an alien citizen after the birth of democracy in this country. And any infringement of that sacred right will be undesirable. Let us assume that three nomination papers are failed duly supported by 160. Considering the total number of votes, will this be a desirable thing to have this provision in this particular form?

SHRI H. M. SEERVAI: I have seen the Bill. May I answer your question? Firstly filing of three nomination papers is a luxury. This need not be encouraged. Secondly the idea of who has voted for whom is meant to identify the person who has voted. The same difficulty would arise and, I think, is arising where two persons propose a name but the man gets no vote. So it is quite clear—it is known also—that they have not voted for him. So, the secrecy of the ballot only means this that as far as possible nobody should know who has voted for whom. But, if one creates a situation where two persons support him and, assuming that you do not want forty but only two, if he does not even get a single vote, then the secrecy of the ballot will be violated. The secrecy of the ballot is meant to show that the person should not be afraid that he has not voted for a man and so he will be penalised. Suppose forty persons support a man but the man gets only 20. Nobody will know who those twenty are.

SHRI T. N. SINGH: In other words you have rightly observed that the fact of nomination is no guarantee that the vote has actually been cast in his favour.

SHRI H. M. SEERVAI: You are correct.

SHRI T. N. SINGH: That being so, the anxiety of the framers of the amending Bill is to prevent the perverse nomination.

SHRI H. M. SEERVAI: The idea is so simple.

SHRI T. N. SINGH: He should be free to vote.

SHRI H. M. SEERVAI: There are many things which are good in theory but they do not work in practice. It all depends upon the kindness of a person. He may be a friend's friend. What harm is there? I personally think that number forty is likely to be a safeguard. There can be no foolproof safeguard. You try to do the best that you can under the circumstances.

SHRI T. N. SINGH: Now one of the motives for bringing forward this amending law is this. In the past there have been frivolous nomination papers having been filed. We have gone through the twenty-five years of democratic life. These are likely to be frivolous in the matter of election of the President. Therefore, to prevent such frivolous nominations, let us have these restrictions, namely, to have more proposers and more seconders for a nomination. Let us have only those who have the resources to seek an election. If such a restriction is put, it will prevent filing of such frivolous nomination papers. Will they not prevent the freedom of the individual citizen or an individual member of Parliament to function freely and will he have ample time at his disposal?

SHRI H. M. SEERVAI: As far as I can see we are envisaging a case of a man of high capacity wishing seriously to devote his time and energies to the highest executive office. I find it difficult to believe that if the man occupied that position—unless you say things go on party lines in which case none of the questions put to me really arise—, a man of that position would not be able to secure from Members of an elected Parliament the support of persons who are also interested in

public welfare that that person's candidature deserves to be considered. If you say this prevents a person from being elected, it would be an odd thing; a man who cannot get the nomination from forty persons has rationally speaking no chance of being elected at all. It may be 40 or 30. I am not wedded to figures; that is a matter of political judgment. Wherever you draw the line, there will be some below it and some above it. If 30, why not 25, or why not 35? An arbitrary line has been drawn at a number sufficient to indicate that responsible people feel that the candidature of this person for the highest office or the second highest office ought to be proposed in this way.

SHRI T. N. SINGH: Under the existing law, it is possible for any Member of Parliament or voter to file a petition against the presidential election. Now it is made more difficult; so many persons must file a petition. Every voter is supposed to be a responsible person, being an elected representative of the people. Secondly he will have to spend money for an election petition. Therefore, it need not be restrictive at all.

SHRI H. M. SEERVAI: I cannot say I am extremely qualified to answer that but I see no warrant for the assumption that the money which that voter will spend will be his. Experience shows that they have put up people, they have briefed eminent counsel in somebody's name. So, the theory that a voter will necessarily spend his own money does not seem to be quite borne out by experience of election petitions.

SHRI T. N. SINGH: If that be so, how does the provision regarding the increase of deposit money going to ensure it?

SHRI H. M. SEERVAI: It does not but it reduces the chance of it because five men may be willing to contribute Rs. 100 each and make up Rs. 500 but they may not be willing to contribute Rs. 500 and make up Rs. 2500.

SHRI T. N. SINGH: I was saying that in these days of inflation Rs. 2500 is not such a great amount.

SHRI H. M. SEERVAI: If you think Rs. 2500 is not sufficient, suggest Rs. 5,000. That can be one of the suggestions. That is a matter of political judgment on which I pronounce no view because if you in your experience feel that this is not sufficient, you can make it higher.

SHRI T. N. SINGH: The election commission is not that kind of independent body as the judiciary. As an organisation it is subordinate to the Government in power. The whole programme of elections could be known to the Government earlier than to any other individual and this puts the non-governmental people at a disadvantage. They may know it, say, a month after it had been known to the Government. Would you in that case suggest that this task be left to some body other than the election commission or in case it is left to the election commission, extend the time-limit to a reasonable length of time.

SHRI H. M. SEERVAI: The Election Commissioner has been given the status of a High Court or Supreme Court judge. He is irremovable. His salary is charged to the Consolidated Fund of India. In order to secure his independence he is disqualified from holding office after his term is over. If you say that making provisions for a distinguished Indian, conferring upon him the status of a Judge and making him irremovable except by a process analogous to impeachment—all these cannot get a man honest enough to do his duty, I have nothing to say, because if we can trust nobody, no matter what authority you put, you may not be able to run an election properly. The Constitution has done the utmost to make the Election Commissioner master of himself, subordinate to nobody, bound to obey nobody's orders. If he still falls to do his duty, I do not see what safeguards you can devise. What is more, a retired Judge can practice; an election commissioner

cannot hold public office. We must assume that the man taking the oath which the Election Commissioner does will discharge his duty. If he wants to assert his independence, the Constitution has clothed him with the highest impunity. If notwithstanding that we do not get one Indian to do that job, I can only say that nothing will save us.

SHRI T. N. SINGH: There are two provisions existing which treat bribery and corruption and undue influence, corrupt practice as offences. These offences are being omitted under the present amending law. You say that bribery and corruption must be brought in. Am I right in understanding that you would also object to undue influence being exercised in the matter of elections?

SHRI H. M. SEERVAI: Unquestionably. The view I take is this that wherever there is a patent wrong being done, no matter how high is the person guilty of that wrong-doing, the wrong must be set right and the public interest demands it and public interest does not demand that an indefinite delay should take place and, therefore, I, with respect, submit that that deletion is wrong. It will create a most unfortunate impression the world over that in India securing office by bribery, corruption and by undue influence is looked upon as something which can be done because no notice will be taken of it.

SHRI T. N. SINGH: Scurrilous propaganda and dirty propaganda was done during the last presidential elections but it was not possible to locate who did it or was there any connivance. Therefore, it was not considered a valid ground for interfering in the election by the Supreme Court. But it is an unseemly sight in the matter of election of President. Such a scurrilous propaganda gets a free run. Would you like that at least so far as Members themselves are concerned that if the Members of the House circulate scurrilous propaganda, that should be an

offence and at least the Member himself should be liable to prosecution.

SHRI H. M. SEERVAI: You must strike a balance between doing advantage to the public by preventing wrong doing and the disadvantage of doing it frivolously. It is here you have to strike a balance. How will you define what is reckless and what is not. Great public scandals have come to light by people having the courage. As it happened in the Profumo case, Mr. Profumo lied blatantly to the Parliament—a member made the allegation, and the truth was disclosed. So, you must not make it too difficult for wrong-doing to be brought out. If you say a person making allegation and if you provide a sort of disqualification for frivolous complaints and if you give the Tribunal the discretion, I think it can be done. But I think it is very difficult to define the conditions under which these allegations can be made. But I do say this that exposure of commends to the Members and if it is put to the lawyer, he will be able to tell you if it is right or wrong. But I do say this that exposure of wrong-doing is difficult and it should not be made difficult unduly.

SHRI S. B. GIRI: Now, for President, ten electors are there. In the proposed amending Bill 40 electors are prescribed. You think it is justified to increase the number?

SHRI H. M. SEERVAI: I have answered that question, if I may respectfully say, more than once. I say that a sufficient number of people ought to be there. Whether it should be 40 or 30 requires the knowledge of experience which I do not possess. When we recollect that the membership of the legislature is pretty large, *prima facie*, 40 does not appear to be large but if the experience of the hon. Members seems to suggest that it should be a lower number, then when it comes to a discussion, it is a matter of purely political experience and judgment and I can pronounce no opinion on it.

SHRI C. K. JAFFER SHARIEF: I would like to know from the hon. witness one thing. You have more often said that if in the political judgment if the Members of Parliament and the State Legislatures feel proper, you have no objection to certain provisions being brought in this amending Bill with regard to number of supporters and the time factor. If I tell you that the persons who have brought these amendments, have taken the reality and the practicability into consideration in proposing these amendments, I hope you have no objection and you will agree with it.

SHRI H. M. SEERVAI: I unhesitatingly agree. After all, the whole theory of our Constitution proceeds on the footing that in free election people represent the broad view of the community. The States are associated in the presidential elections. Parliament is associated with the Elections. The State Assemblies are elected on universal adult suffrage. The Parliament is elected by universal adult suffrage. If they have taken into account the practical realities, I will support it. The only thing is that the last question put by the hon. Member is that there seems to be some difference of opinion. It was for those who are competent to talk politics. I am not competent. If the realities have been taken into account, I have nothing to say against it. I said, *prima facie*, the numbers put in seem to be all right, but it is all subject to political judgment.

SHRI C. K. JAFFER SHARIEF: With regard to undue influence and bribery and corrupt practice, I would suggest that only the candidate who has lost the election or an aggrieved party or a contender who contested and lost the election should challenge the election. Do you support the idea that anybody has the right to challenge the election and make aspersions on the man who was elected?

SHRI H. M. SEERVAI: Both the candidate and the public are interested in the public elections being honestly conducted. Therefore, assuming that somebody brought over the candidate but there are independent members who feel that there is sufficient ground for saying that there is bribery or corruption or undue influence. They should have the right. Because, after all, the highest executive office and the officer holding it must broadly command the respect and loyalty of the whole of India. Therefore, to let rumours circulate everybody believing that the President is corrupt, giving the President no chance of saying that he is not, is not in the interest of the electoral process or of the constitutional structure and I think if the rival candidate being satisfied that there was corruption does not move for reasons best known to himself, a certain number of persons should have the right to challenge it, but you can make a provision as you have made in the CPC or Cr PC, penalising frivolous allegations but we cannot rule out frivolous allegations. Bribery and corruption is a great injury to the public. On that point I am quite clear in my mind.

SHRI C. K. JAFFER SHARIEF: I would like to put it this way. During the course of your reply to the various questions of the hon. Members you were telling that being the head of the State and he has to deal with foreign relations and he is the Commander of the Armed Forces and so on and so forth, taking all these into consideration, allowing any sort of people to challenge and cast aspersions on such a personality would involve the prestige of the nation.

SHRI H. M. SEERVAI: Yes, Sir.

SHRI KRISHNA BAHADUR CHETTRI: Do you suggest any alternative—any time-limit—so that such kinds of allegations are not made against such big personalities and they are not drawn into the court?

SHRI H. M. SEERVAI: As I mentioned, in one or two cases, the persons concerned were disqualified from being elected to any Legislature. You may give the power to court to impose a heavy penalty. If the court is of opinion that the allegations are false and ought not to have been made, they should impose a heavy penalty. Nothing beyond that. I was respectfully asking the hon. Members whether they have any alternatives to suggest?

SHRI KRISHNA BAHADUR CHETTRI: I am not a legal man to suggest any alternative.

SHRI H. M. SEERVAI: That is not a matter of law in that sense. We have to balance these things. The world should not have a bad opinion that the President has assumed this office by corrupt means. We have to be on guard against every foreign embassy in this country who thinks that everybody here is interested in covering it up. So, a balance has to be struck somewhere. There may be a provision in the election law against frivolous complaints. The basic provision is to penalise the person. The cost in an election petition can be very substantial. If you feel that such a person should be disqualified from standing for election in any Legislature for a stated period of time, it is a matter again based on one's actual experience. I have not got much experience to speak on that. You must discourage people from filing false complaints. At the same time, you must not also discourage the people from making genuine complaints.

SHRI PILOO MODY: There is one general question that I have to ask from the witness. From the evidence you gave so far, one would believe that you are generally in favour of introducing some provisions which will take care of frivolous nominations. What they should be are to be left to the political judgment of the legislators. It is they who know about the facts of how the elections are held. Anyway, some of us, at any rate, have been feeling that the provi-

sions of this Bill are somewhat excessive in erring on the side of trying to eliminate frivolous nominations. Therefore, I would like to ask one question. Do you think that in the past frivolous nominations to the office of President have, in any way, weakened the fabric of Indian democracy?

SHRI H. M. SEERVAI: No. But it does look a little ridiculous when a man says that his qualification is that he has undergone a vasectomy, operation.

SHRI PILOO MODY: I do not think that the President is called upon to give his qualification.

SHRI H. M. SEERVAI: It was given in a published statement.

MR. CHAIRMAN: Now, the hon. Minister would like to ask one question.

SHRI NITI RAJ SINGH CHAUDHARY: In the Representation of the People Act, it has been provided that the election of the returned candidate can be set aside if the returned candidate or the election agent or any other person has indulged in corrupt practices, that is bribery, corruption or undue influence. Then, there is a further provision that "the result of election, in so far as it concerns the returned candidate, has been materially affected by any corrupt practice committed in the interests of the returned candidate by any one other than the election agent etc., etc., . . ." Agent is defined as one which includes election agent, polling agent or any other person acting as an agent in connection with the election with the consent of the candidate. But, in the Presidential Election, the law as it stands to-day and to which you also made a reference, this is what clause 18(1)(b) says. Please see page 12.

"18(1)(b) that the result of the election has been materially affected—

(i) by reason that the offence of bribery or undue influence at the election has been committed by any person who is neither the

returned candidate nor a person acting with his connivance..”

That is, even when there is a nexus between the returned candidate and the person indulging in corrupt practice, the President elect is answerable.

SHRI H. M. SEERVAI: Yes. I suppose there is such a provision that has been put in because a person may not connive at it but still tries to get anything done. So, if it has brought home that somebody has bought votes for the President by bribery and corruption, then you won't blame the President. But, you still say that he cannot retain those votes. If they have materially affected the results, then he would have to go out. That seems to be the idea behind this. The main question is this. He may be completely blameless. Of course you will say that the honour of the President is untouched. Still, the unfortunate fact remains that the voters were bribed.

SHRI NITI RAJ SINGH CHAUDHARY: Certain questions were put with regard to the Constitutional aspect of Section 58. No other provisions were referred to. Incidentally, I feel that all of them were referring to Art. 71(3) namely,

“Subject to the provisions of this Constitution, Parliament may by

law regulate any matter relating to or connected with the election of a President or Vice-President.”

So, with this provision, cannot Parliament legislate that a Presidential nomination, instead of being signed by two persons it may be signed by more than two?

SHRI H. M. SEERVAI: There is not the slightest doubt about Parliament's power. Under Article 71(3), the matter has to be left by regulation by law by Parliament. I look at the other aspect. This is a statutory right to be defined by law. If the law makes the election impossible, what would happen in such an event? It has not so far arisen.

MR. CHAIRMAN: Mr. Seervai, on behalf of the Committee, I thank you very much. I am quite sure that the members would have been enlightened after hearing you. I thank you once more for your having taken the trouble of coming here and giving us your valuable suggestions.

SHRI H. M. SEERVAI: I am grateful for the kind words. I only wish that I have more knowledge about the elections. Then I would have been able to render much greater help to you.

(The Committee their adjourned).

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON
THE PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTIONS
(AMENDMENT) BILL, 1972

Friday, the 27th July, 1973, from 16.00 to 17.00 hours

PRESENT

Shri S. A. Kader—*Chairman*

MEMBERS

Lok Sabha

2. Shri P. Gangadab
3. Shri Robin Kakoti
4. Shri Piloo Mody
5. Shri Samar Mukherjee
6. Shri Tarkeshwar Pandey
7. Shri J. Rameshwar Rao
8. Shri M. S. Sanjeevi Rao
9. Shri Digvijaya Narain Singh
10. Shri Nawal Kishore Sinha
11. Shri K. P. Unnikrishnan
12. Shri Virbhadra Singh
13. Shri Niti Raj Singh Chaudhary

Rajya Sabha

14. Shrimati Maragatham Chandrasekhar
15. Shri Ganeshlal Mali
16. Shri Lokanath Misra
17. Shri Kota Punnaiah
18. Shri Emonsingh M. Sangma
19. Shri T. N. Singh
20. Shri Jagdambi Prasad Yadav

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS
(LEGISLATIVE DEPARTMENT)

1. Shri K. K. Sundaram—*Secretary.*
2. Shri A. K. Srinivasamurthy—*Additional Legislative Counsel*
3. Shri H. C. Vermani—*Under Secretary.*

SECRETARIAT

Shri H. G. Paranjpe—*Deputy Secretary.*

WITNESS EXAMINED

Shri S. M. Sikri—*Ex-Chief Justice of India*

Shri S. M. Skiri, Ex-Chief Justice of India.

(The witness was called in and he took his seat.)

MR. CHAIRMAN : Before we start the proceedings, I would like to draw your attention to the direction—has it been shown to you?—which says that the evidence you give would be treated as public and is liable to be published, unless you specifically desire that all or any part of the evidence tendered by you is to be treated as confidential. Even though you might desire your evidence to be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI S. M. SIRKI : I have seen it.

MR. CHAIRMAN : You must have got the bill. We would first like to know your comments.

SHRI S. M. SIKRI : The only thing which seems objectionable to me, is the proposal to omit, in the Statement of Objects and Reasons, the grounds relating to bribery and undue influence, for elections to the offices of the President and the Vice-President. I think this could be rather dangerous, because I do not think that it should be said of a President that he had been elected, because he resorted to that practice. If there is an allegation and it could not be proved in the court, it would be bad for India. It is the same thing in regard to undue influence. Perhaps the definition may be made stricter. There is a difference of opinion among the judges, as regards the meaning of that word. These two should stay. The other objects are all right; and this may possibly be objected to under Article 14 of the Constitution. If you do not have this clause here, when for every other election, this clause exists, it may be asked, "Why not for Presidents and Vice-Presidents?" But for these remarks, I agree with the Bill.

MR. CHAIRMAN : The idea of not having the charges of corruption to be preferred, seems to stem from the fact that the highest office in the land

should be kept out from them. That is the main purpose of the Bill. But since you do not like it and you would like that it should be there, I would put it to you that if a President is elected and a charge is preferred against the President, it looks awkward, not only nationally, but also internationally. Do you think that we might have a compromise formula and say that between the day on which the result of the election is declared and the date of swearing in of the President, the time-lag should be such that within that period, any of such charges, viz. of bribery or corruption, may be disposed of, i.e. before he takes oath, so that there is no question of charges later on?

SHRI S. M. SIKRI : The only difficulty will be about the delay if there is a serious contest over some questions of fact. We have the example of President Giri's case before us. The evidence alone takes months.

MR. CHAIRMAN : We would put it to you, as the ex-Chief Justice of India, what time-gap, do you think, would be advisable between the date of election and date of taking office?

SHRI S. M. SIKRI : Six months, Sir.

MR. CHAIRMAN : Can it not be reduced, in view of the high office that is involved?

SHRI S. M. SIKRI : It depends upon the quantum of evidence. The party may have a lot of evidence. The court may not be able to shut it out, saying "We have got only two or three months' time." Perhaps you might have an election tribunal deciding the case in stead of the Supreme Court straightway, i.e. without going to the court. The court gives a lot of publicity. I do not know the procedure in the United States. I was enquiring the other day. It does not go to the court there. The Senate or the Congress has some body. They dispose of it.

MR. CHAIRMAN : Within the prescribed time-limit?

SHRI S. M. SIKRI: I do not know whether there is any time-limit.

MR. CHAIRMAN: The idea is that after becoming President there is no charge against him.

SHRI S. M. SIKRI: It is true. I think the maximum can be six months. Sometimes, it may be only a question of law. In the case of the Vice-President's case, it was only questions of law; and then it may be disposed of within a month or two. Only in cases where there is evidence, there is delay.

SHRI PILOO MODY: The object of retaining these two provisions in this Bill is to make sure that the President (a) does not have certain insinuations cast on him after he has taken the Presidency and (b) does not get away with the charge of bribery, corruption and undue influence.

The above is the reason for restating the provisions in the Bill. If, however, the charge levelled against him is that of bribery or undue influence, then, of course, it does not become merely a point of law—rather a matter of law—but a matter of producing evidence and getting answers etc. It has been our experience that in the Indian courts, it takes a very very long time to decide a case. Do you think, that in a case like this, it can be disposed of in six months' time? I take it that you have been trying to make the period as short as you can possibly do. Therefore, I feel that adding a gap of anything like six months between the election and taking oath would be an impracticable proposition. That is so far as I understand it. Is there any other method that you can suggest by which the President can be charged for any misdemeanour for which he has been responsible and, at the same time, he is not being dragged into the court on such charges?

SHRI S. M. SIKRI: The only way of doing that is that the evidence is not heard by five judges but by a

single judge. It will be much quicker too if one trial judge takes the evidence.

SHRI PILOO MODY: Would it not jeopardise the independence of the judiciary?

SHRI S. M. SIKRI: I do not mind if we have to do the unpleasant work. At least I did not mind doing any kind of work personally as long as it was my duty under the Constitution.

श्री जगदम्बी प्रसाद यादव : मैं यह जनना चाहता हूँ कि अगर किसी ऊँचे पद पर बैठे हुए आदमी पर ब्राह्मणी का चार्ज लगने दिया जाए, तो क्या उस से उस की महत्ता घटेगी। आप की इस संबंध में क्या राय है।

SHRI S. M. SIKRI: I think, if I have understood him rightly, I have answered that.

SHRI NITI RAJ SINGH CHAUDHARY: I think you have already answered that.

इस का उत्तर तो यह पहले दे चुके हैं कि जो आप ने कहा, है वह सही बात है।

श्री जगदम्बी प्रसाद यादव : इस के सिवाय आप ने सारी चीजें ठीक बता दी हैं। मैं दो तीन बातें जानना चाहता हूँ। पहली बात तो यह है कि पहले प्रेसीडेंट के इलेक्शन के लिये एक प्रोजेक्टर और एक सैकेन्डर की आवश्यकता होती थी लेकिन अब यह संख्या बढ़ा कर 40 कर दी गई है। भारत जैसे विशाल देश में अगर पार्लियामेंट या एसेम्बलीज सेशन में नहीं तो क्या आप यह समझते हैं कि किसी आदमी के लिये यह पासिविल हो सकेगा कि वह सात दिन में 40 प्रोजेक्ट और 40 सैकेन्डर्स के दस्तखत करा सके ?

SHRI S. M. SIKRI: The point is that the people do not get even seven days.

श्री जगदम्बी प्रसाद यादव : जो बिल है उस में तो यही दिया है कि 7 दिन में 40 प्रोपोजर्स और 40 सैकण्डर्स द्वारा नामीनेशन पेपर्स दाखिल हों ।

SHRI S. M. SIKRI: If a candidate knows that he has a case, naturally, he should get the time.

श्री जगदम्बी प्रसाद यादव : एकट में तो यही दिया गया है । हम यह कैसे प्रिज्यूम कर लें कि नोटिफिकेशन होने से पहले उस को जानकारी होगी । पार्टी इन पावर की इस संबंध में जानकारी पहले से हो सकती है लेकिन जो पार्टी पावर में नहीं होगी और खास तौर से जो इन्डिविजुअल है, उस को कैसे जानकारी हो सकती है । जो हमारे वर्तमान प्रेसिडेंट हैं, वे इन्डिपेंडेंट हैं और किसी पार्टी से नहीं हैं । किसी इन्डिविजुअल को तो नोटिफिकेशन होने के बाद ही जानकारी होगी और वह कम्मे 7 दिन में इनने लोगों से नामीनेशन पेपर्स दाखिल करवा मकेगा ।

SHRI S. M. SIKRI: I think the objection should be that a person cannot have 40 persons to propose and second him. When he will have no real chance whatsoever of becoming President, then why have so many candidates for the nomination of his name?

श्री जगदम्बी प्रसाद यादव : इसीलिये मैंने अपने वर्तमान प्रेसिडेंट का नाम लिया कि कोई नहीं जानता था कि एक इन्डिपेंडेंट होने के नाते वे 40 मत भी प्राप्त कर सकेंगे । इस को कोई गारन्टी नहीं थी लेकिन उन्होंने कांग्रेस पार्टी, जो कि पार्टी इन पावर थी, के आफिशियल केन्डीडेट को हरा कर दिखा दिया । इसीलिये मैं ने आप से यह प्रश्न पूछा है कि पहले से ही 40 प्रोपोजर्स और 40 सैकण्डर्स का होना क्या जरूरी है ?

SHRI S. M. SIKRI: I understand your point. I am sure that Shri Giri

would have secured forty votes for his nomination from the proposers and seconders

श्री जगदम्बी प्रसाद यादव : इसी तरह से दूसरा सवाल यह है कि अगर कोई आदमी इलैक्शन को चैलज करना चाहें तो उस के लिये भी उतने ही लोगों की आवश्यकता है । यह भी सचमुच जस्टिस के लिये कोई सही बात नहीं है । अगर किसी आदमी को पता है कि सचमुच इलैक्शन में कोई गलती हुई है, तो वह उस गलती को साबित नहीं कर सकता है क्योंकि उतने आदमियों का जुटाना उस के लिये मुश्किल है ।

SHRI S. M. SIKRI: But the Act allows each candidate to challenge that. And I think the candidate knows his case.

श्री जगदम्बी प्रसाद यादव : मान लीजिये कि एक वोटर है और वह जानता है कि यह फँकटर्स है, जिन के कारण यह गड़बड़ हुई है, तो वह इलैक्शन चैलेंज करने से रुक जाएगा ?

SHRI S. M. SIKRI: It may happen. The idea of having so many Parliamentarians to support the case would only be a wastage of time.

श्री जगदम्बी प्रसाद यादव : एक प्रश्न और है । अभी तक जो चुनाव हुए हैं प्रेसिडेंट के और जो बहुत से लोगों ने लड़े हैं, इससे क्या देश को कोई हानि हुई है या ज्यादा लोगों के चुनाव में खड़े होने से क्या प्रजातन्त्र की प्रगति में कोई बाधा पहुंचती है । अगर कोई हानि नहीं हुई है, तो फिर ये रेस्ट्रिक्शन्स लगाने के क्या कारण हैं ?

SHRI S. M. SIKRI: It is not normally a question of cost. I was almost going to suggest that in future the Government should bear the costs of the election of President and Vice-President because the cost involved here is enormous and one candidate may not have Rs. 3 lakhs to spend. Even one party man not have so much of money to spend.

श्री जगदम्बी प्रसाद यादव : मैं यह नहीं पूछ रहा हूँ। मेरा प्रश्न तो यह है कि अभी तक जो प्रेसीडेंट के चुनाव हुए और उस में बहुत से लोग खड़े हुए और उन में से कुछ ने बहुत कम वोट पाए, तो क्या उन के वोट से कम पाने से और चुनाव में खड़े होने से डेमोक्रेसी की कोई हानि हुई है। जो कानून बना हुआ है, जब तक उस का टेस्ट नहीं तो उस कानून की प्रगति नहीं हो सकती है। इस लिये दोनों बातों को मद्देनजर रखते हुए मैं जाना चाहता हूँ कि अभी तक जो प्रेसीडेंट के चुनाव हुए हैं और उन में जो कुछ लोगों का बहुत कम वोट प्राप्त हुए, उस से क्या देश और डेमोक्रेसी को हानि हुई है।

SHRI S. M. SIKRI: There is no danger to democracy or nation. It is only a question of time and cost.

श्री जगदम्बी प्रसाद यादव : अगर ज्यादा लोग इलेक्शन में खड़े होंगे, तो डेमोक्रेसी को क्या नुकसान है ?

Shri S. M. SIKRI: One danger is that if this sort of people stand then some may get bribes and withdraw.

श्री जगदम्बी प्रसाद यादव : आप का कहना यह है कि जो सिविक राइट सिटी-जन्म को दिया गया है कि वे कुछ क्वालिफिकेशनस फुलफिल करने के बाद प्रेसीडेंटशिप के लिये खड़े हो सकते हैं, उन में और क्वालिफिकेशनस एड कर दी जायें कि खड़े होने से पहले यह देखना होगा कि उन के वोट भी इतने होंगे या नहीं और वे इतने रुपये की सेक्युरिटी जमा करने के बाद ही इलेक्शन में खड़े हो सकते हैं ? क्या आप चाहते हैं कि इलेक्शन में खड़े होने के लिये ये दो तीन क्वालिफिकेशनस और होने चाहियें।

SHRI S. M. SIKRI: One has not to be a Member of Parliament to stand for the election of President and Vice President. As long as you

are on the electoral rolls you can stand.

श्री जगदम्बी प्रसाद यादव : अगर आप यह समझते हैं कि प्रेसीडेंट के इलेक्शन के लिये 40 प्रोपोजर्स और 40 सैकेडर्स होने चाहियें तो इसी हिसाब से क्या आप यह प्रिफर करेंगे कि मेम्बर आफ पार्लियामेंट होने के लिये या एसेम्बली का चुनाव लड़ने के लिये भी प्रोपोजर्स और सैकेडर्स की संख्या बढ़ाई जाये ताकि कोई बेगाबोट इलेक्शन में खड़ा न हो सके और क्या इसी तरह से और नीचे के लेवल पर भी इलेक्शन में खड़े होने के लिये प्रोपोजर्स और सैकेडर्स की संख्या बढ़ाई जाए ? इस बारे में आप की क्या राय है ?

SHRI S. M. SIKRI: No harm. You can have.

SHRI T. N. SINGH: There are two objectives which seem to guide the proposed amendments. One is that there have been a number of frivolous nominations in the past which tendency should be curtailed. Secondly, there is an exhibition of unseemly behaviour of various person in political life when an election petition of this kind is discussed.

Referring to the first point I want to know—it is true that in the past some persons have field nominations who had no chance to get a single vote—supposing there is an eminent scholar and people are able to persuade him to seek election he may not have initially much of support but he may get the support. Why should we deprive such a citizen of having a chance? Further, the notification for election will be issued seven days prior to the nomination. India is a vast country. Forty Members will not be found at one place. Even if one had the prior agreement it will take some time to go round to two or three places. Why should we put such a brake which deprives an eminent citizen from seeking election?

SHRI S. M. SIKRI: If this is a real practical difficulty—but you know more about it—then the notification can be a fortnight earlier.

SHRI T. N. SINGH: One of the witnesses who has appeared before the Committee earlier has made a point that the sorting period is inadequate. Secondly, in case of as many as 40 proposers and seconders if someone wants to create trouble—because we have assumed that people are bent upon creating trouble on such occasions—and challenges the authenticity of every signature how can a returning officer decide in a day or two.

SHRI S. M. SIKRI: He should be able to decide. He has to give a summary decision.

SHRI T. N. SINGH: It is not possible to apply a judicious mind. As such, the existence of such a large number of proposers and seconders preclude the scrutiny of the returning officer from applying his mind to legitimate objections raised. There have been cases where genuineness of the signatures had been questioned. Therefore, if such questions are raised how a candidate who is, no doubt, probably an eminent person but does not know politics is to survive? Why should we have it at all?

SHRI S. M. SIKRI: You have to weigh both the advantages and disadvantages and make a balance as to which is better. There is no doubt, it may be possible to create trouble in some cases.

SHRI T. N. SINGH: May I put it in another way. A man has to secure all these nominations. Apart from running from various places he has to face unnecessary objections. Assuming we had contended ourselves with the hope that these so-called frivolous applications are a transitory phase for a democracy and these will disappear with maturity should we not give a chance and avoid such a legislation?

SHRI S. M. SIKRI: I have never been in politics. If you think there is

a possibility of some scholar or somebody else ultimately being elected then reduce the number from 40 to 20.

SHRI T. N. SINGH: So, you will not object to the number being reduced. You are appreciating the difficulty in the way. Why should it not be possible to suggest that there should be three judges instead of five. The Chief Justice and two other judges shall take less time and probably it may be possible to dispose of cases early.

SHRI S. M. SIKRI: According to our Constitution three judges cannot dispose of Constitutional question. That is why the number is five.

SHRI T. N. SINGH: The general impression in the mind of the people is that bribery and corruption is legitimate. Suppose some Sections insist on the deletion of the clause, how far will it help?

SHRI S. M. SIKRI: Bribery is an offence under the Indian Penal Code and the President being elected, it looks odd, will not commit offence under the Indian Penal Code.

SHRI T. N. SINGH: In regard to Election Petition also the number of persons has been increased. If we want an expeditious decisions, there should be as few petitioners as possible. The purpose is served if there is one Petitioner even.

SHRI S. M. SIKRI: The only object of having so many Petitioners is this that it supports the view of its being a responsible petition. Otherwise, there being so many Petitioners, it creates complications—petitions to be got verified, affidavit, etc. We felt a great deal of difficulty in President Giri's case.

SHRI T. N. SINGH: As you say there are practical difficulties with the increase in number of the Peti-

tioners, do you attach any importance to the increase in number?

SHRI S. M. SIKRI: I think the number already laid down in Section 14(2) is 10. Even that has created some problems.

SHRI K. P. UNNIKRISHNAN: Would you support the view that one of the basic requirements for Parliamentary democracy in the entire frame work in this country is to evolve a healthy party system—multiple or two party system. If that is so and if it permeates the whole system, it obviously follows that it should permeate the Presidential Election without infringing upon the Constitutional right that Constitution has bestowed upon the individual.

SHRI S. M. SIKRI: It is a very large political question. United States are thinking that this system of nomination by the parties is producing the candidates who are not the best.

SHRI K. P. UNNIKRISHNAN: You have to take a chance. If that is so, would you not say that this provision which has been incorporated in this Amending Act would produce a different kind of frame work which the party system can evolve?

SHRI S. M. SIKRI: I do not think it effects party system much.

SHRI K. P. UNNIKRISHNAN: About the undue influence, you said we could have a stricter view. Have you any suggestions to make in this regard?

SHRI S. M. SIKRI: You will have to go through the case law and find out which is the hard core. Some judges have taken a wide view and some less. As long as the man is able to vote without threat—family, religious, etc. it is all right. In President Giri's case we had to deal with a 'pamphlet'. A pamphlet of that kind may not influence Members of Parliament. That can be restricted.

SHRI GANESHLAL MALI: It has been suggested by one of the witnesses who appeared before this Committee

that keeping in view the principle of secrecy of vote, if the number of proposers and seconders is increased from 2 to 14, it would automatically let loose the secrecy and that would make it un-constitutional and ultra vires. Do you hold the same opinion?

SHRI S. M. SIKRI: There is no guarantee that the proposers and seconders should vote for the candidate nominated by them.

SHRI GANESHLAL MALI: In regard to the disposal of Petition or appeal, would it be under the Constitution to go to the Tribunal? What sort of people would you like to come up for the purpose?

SHRI S. M. SIKRI: One Judge from the Supreme Court, one Judge from the High Court and one Member of Parliament who happened to be in the Election.

SHRI NAWAL KISHORE SINHA: Parliament has got powers to regulate under Article 70(3) of the Constitution. It has got only this power that it can regulate the election under the Article of the Constitution and subject to the provisions of the Constitution. If 14 days period as it exists at present for the election to be held after the Notification, is reduced to 7 days, will amount to be a sort of unreasonable regulation. Do you agree?

SHRI S. M. SIKRI: But the Court is not entitled to go into the question of un-reasonableness as such as long as it does not infringe any Article of the Constitution. Regulation is for the Parliament to do. The elections are free—that is all the Court would perhaps be able to consider.

SHRI NAWAL KISHORE SINHA: A question was asked by one of our friends here earlier with regard to the provision of forty Members. Will it come within the jurisdiction of the courts to determine, whether this is reasonable or not?

SHRI S. M. SIKRI: There is one decision of the Supreme Court, which has held that Parliament has got very wide powers to regulate such things.

SHRI NAWAL KISHORE SINHA: Don't you think, that as the highest office of the country is involved, we may have a Parliamentary Committee to investigate into the charges of undue influence etc?

SHRI S. M. SIKRI: What I am suggesting was, that the body should consist of Chief Justice, Judges and the Parliament Members. You can have a Parliamentary Committee. If both the Houses constitute a Tribunal, it can be done. Previously in England, all the election petitions used to be decided by the House.

SHRI NITIRAJ SINGH CHAUDHARY: In the opening remarks, you observed that if the provisions of Section 18 on page 12 are deleted, there might be some trouble because of Article 14. In the Representation of the People Act, a candidate is liable for corrupt practices, if the corrupt practice is committed by the returned candidate, or his election agent or by any other person with the consent of the returned candidate or his election agent, or by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent. The definition of agent includes, an agent, polling agent or any person in connection with the election with the consent of the candidate. In Section 18 of the Act, the provision is that the election of a returned candidate can be declared as void, if the result of the election has been materi-

ally affected by reason that the offence of bribery or undue influence at the election has been committed by any person who is neither the returned candidate nor a person acting with his connivance.

SHRI S. M. SIKRI: The provision is slightly different. This may be justified under Article 14. We felt that it is an all-India election; the candidate cannot possibly be responsible for everything that happens all through India. Unless that bribery or undue influence affected the election, it should not be held void.

SHRI NITIRAJ SINGH CHAUDHARY: The first provision is that the offence of bribery or undue influence has been committed by the returned candidate or by any person with the connivance of the returned candidate. This is as in the Representation of The People Act but the other provision is not there. Would you like the first one to remain?

SHRI S. M. SIKRI: I like the old Section 18 to remain except that undue influence should be defined differently, a little more strictly, keeping in view that all the voters are Members of Parliament. It should be in that context.

MR. CHAIRMAN: Thank you very much, Mr. Sikri.

(The Committee then adjourned).

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PUBLISHED UNDER RULE 382 OF THE RULES OF PROCEDURE AND
BUSINESS IN LOK SABHA (FIFTH EDITION) AND PRINTED BY THE
GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI
