Sher Singh, Prof.
Sikander Bakht, Shri
Singh, Dr. B. N.
Sinha, Shri Purna
Sinha, Shri Satyendra Narayan
Somani, Shri S. S.
Surendra Bikram, Shri
Swamy, Dr. Subramaniam
Talwandi, Shri Jagdev Singh
Tej Pratap Singh, Shri
Tiwari, Shri Brij Bhushan
Tohra, Shri G. S.
Ugrasen, Shri
Vajpayee, Shri Atal Bihari
Varma, Shri Ravindra
Verma, Shri Chandradeo Prasad
Verma, Shri Hargovind
Verma, Shri Mritunjay Prasad
Verma, Shri Sukhdeo Prasad
Yadav, Shri Jagdambi Prasad
Yadav, Shri Narsingh
Yadav, Shri Ram Naresh
Yadava, Shri Roop Nath Singh
Yadvender, Shri
Yuvraj, Shri
Zulfiquarulla, Shri

MR. SPEAKER: The result* of the divisions: Ayes 73; Noes 111.

The motion was negatived

MR. SPEAKER: Since there are no other amendments, I will put all the clauses together.

The question is:

"That clauses 3, 4 and 1, the Enacting Formula and the Title stand part of the Bill.".

The motion was adopted

Clauses 3, 4 and 1, the Enacting Formula and the Title were added to the Bill.

SHRI H. M. PATEL: I beg to move:

"That the Bill be passed"

MR. SPEAKER: The question is:

"That the Bill be passed."

The motion was adopted.

3:38 hrs.

PRESIDENTIAL AND VICE-PRESIDENTIAL ELECTIONS (AMENDMENT) BILL

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): I beg to move:

"That the Bill further amend the Presidential and Vice-Presidential Election Act, 1952, be taken into consideration."

[MR. DEPUTY-SPEAKER *in the Chair*]

This is non-controversial Bill. If I may recall briefly the background, the Constitution originally provided that if there was a dispute in regard to the validity of the Presidential or Vice-Presidential election, it has to be decided by the Supreme Court, because article 71 mentioned the Supreme Court as the authority to decide the disputes about the election of the President or Vice-President. Thereafter, the Constitution was amended in 1975 by the previous Government, and by the Constitution (Thirtyninth Amendment) Act, 1975 the provisions of article 71, which required the Supreme Court to decide those disputes, was altered, amended, and this power was given to Parliament to specify the authority which would have the right to decide disputed questions relating to the election of the President and Vice-President. Thereafter, in February, 1977 an Ordinance was issued by the previous government, providing for an authority consisting of nine members, three representatives each of Lok Sabha and Rajya Sabha and three persons to be nominated by the Speaker. The present Government allowed that Ordinance to lapse, because it was of the view that there was no justification to replace the power of the Supreme Court by a committee consisting

*The following Members also recorded their votes:
AYES: Sarvshri A. Sunna Sahit, T. S. Shrangara and B. Devarajan;
NOES: Sarvshri Basant Singh Khalsa, Madhav Prasad Tripathi, K. N. Dasgupta, Kachrulal Hemraj Jain, Ram and Ram Sewak Hazari.

[Shri Shanti Bhushan]

of 9 members, namely, three representatives each of both Houses and three nominees of the Speaker.

This Bill has been moved broadly for the purpose of restoring the jurisdiction of the Supreme Court to decide this dispute. The provisions are of a very simple character, the object is of a non-controversial nature, and all that is being done is that Part III of the Presidential and Vice-Presidential Elections Act, 1952, is being replaced by a new Part III in which Parliament would be designating again the Supreme Court as the authority to decide any dispute about the validity of an election of the President or the Vice-President. As the House would recall, earlier in the case of the Prime Minister and the Speaker also, the same kind of proposal had been made. The decision of the Supreme Court would be final.

With these words, I commend the Bill for the consideration of the House.

MR. DEPUTY-SPEAKER: Motion moved:

"That the Bill further to amend the Presidential and Vice-Presidential Elections Act, 1952, be taken into consideration".

DR. V. A. SEYID MUHAMMED (Calicut): I support the Bill. I think it was in connection with the Forty-third Constitution Amendment Bill that the Leader of the Opposition made the position of our party very clear, that we would support this. This was a clause in that amendment. Now it has come as a Bill.

While supporting the Bill, I want to make a certain position absolutely clear. When the Thirty-ninth Amendment was brought before the House, it was not the intention to deprive the Supreme Court of its authority and jurisdiction. I want to emphasize with all the force at my command that we are behind none in our respect, regard and support for the independence of the judiciary, the integrity and dignity of the judiciary in this country, particularly of the highest court of this land. Any propaganda to the contrary we deny to be true.

The only reason or the main reason for us at that time to introduce the Thirty-ninth Amendment transferring the jurisdiction of the Supreme Court to a tribunal was this. Examining the various constitutions and constitutional practices and conventions in most of the democratic countries in the world, we came to the conclusion on facts that by and large the disputes about election of the representatives to the various legislatures as well as the heads of States were in majority of cases determined by a tribunal of the concerned legislature or by an agency appointed or nominated by the concerned legislature. It is because of our anxiety to conform to the practice of the majority of the democratic nations that we brought the Thirty-ninth amendment. Any propaganda, any assertion to the contrary that it was done with an intention deliberately to deprive the Supreme Court of its jurisdiction, has no foundation whatsoever, and I stress that point with all the emphasis here.

Having said that, I again say that I support the Bill. There is only one minor point on which I want a clarification from the hon. Minister. Clause 13(a) reads:

"'candidate" means a person who has been or claims to have been duly nominated as a candidate at an election;'

May I invite your attention to the corresponding provision in the 1952 Act?

"Section 13 In this Part, unless the context otherwise requires—

(a) "candidate" means a person who has been or claims to have been duly nominated as a candidate

at an election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate."

Now, in the proposed Bill, the words starting from 'and any such' upto the last word 'candidate' are sought to be omitted. As is well known and as you are aware too, these omitted words were included to cover situations regarding mal-practices and corrupt practices in the election. You may recall and the Members of the hon. House will recall that in Mrs. Indira Gandhi's election the present Law Minister made a point and succeeded in the Allahabad High Court about holding out as a candidate. I also recall that in the Supreme Court he expounded that doctrine of holding out and the necessary of such a doctrine being accepted in the interest of, what he called, fair electoral practices. I do not want to raise a controversy on this matter. I want only a clarification from the Minister why he has now dropped the doctrine of holding out which he thought, at one time, was necessary. He made a point and succeeded in the High Court and proclaimed to the whole world that a certain corrupt practice had been committed. He further elaborated the point in the Supreme Court that such a doctrine of holding out was necessary in the interest of, what he called, fair electoral practices. I certainly will not oppose this clause nor will I bring an amendment for the amendment of the clause, but I feel justified in requesting the hon. Law Minister to give a clarification why within such a short period, he thinks proper and desirable to use the words in the Statement of Objects and Reasons of the proposed Bill 'that it is not only appropriate but also desirable'.

With that request, I support the Bill.

SHRI SAMAR MUKHERJEE (Howrah): Mr. Deputy-Speaker, Sir, I only stand to welcome this measure and record my support. I am not going into the arguments. This measure is undoing the wrongs committed by the Congress Government. The tendency of totalitarianism is, one by one, being fought by these measures. That is why I welcome this measure.

The arguments given by my hon. friend, the Congress Member, is that they have not the slightest desire to curb the right of judiciary. Nobody will believe it. It has been demonstrated by the massive vote of the people. Still my appeal to them is that they try to understand the reality. Nobody will take them by their words.

This is a welcome move and, on behalf of my party, I support it.

MR. DEPUTY-SPEAKER: Is there anybody who wants to oppose this Bill? I find nobody wants to speak. The hon. Minister.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): Mr. Deputy-Speaker, Sir, I am very happy to hear from the hon. Member, Dr. Seyid Muhammed, that he supports the Bill. I am even happier to hear him say that he had no desire or his party had no desire, when they enacted or brought forward the 39th Constitution Amendment, to erode the authority of the Supreme Court. I am very happy to hear that. But I find it almost impossible to accept the assertion contained in that statement.

If I may just request the hon. Members of this House, through you, Sir, to take their mind to the provisions contained in the 39th Constitution Amendment, one of the provisions introduced by the 39th Amendment was that in spite of the High Court having set aside the election of Mrs. Gandhi on a finding that the charges of corrupt practices had been established, the very 39th Constitution Amendment said that the election shall be deemed to be valid and that no court shall have the power to declare that election to be invalid.

[Shri Shanti Bhushan]

The Supreme Court was confronted with the 39th Constitution Amendment and it was solemnly argued before the Supreme Court that the 39th Constitution Amendment came in the way of the Supreme Court to go into the merits of the questions arising in the election petition and to go into the charges of corrupt practices and to come to the conclusion that the High Court judgment was right and to maintain the judgment of the High Court which had set aside the election of the then Prime Minister. It was solemnly argued that this was the object and purpose of the 39th Constitution Amendment. I am happy to say, however, that the Supreme Court did not see its way in upholding that part of the 39th Constitution Amendment. The Supreme Court, by a unanimous judgment, came to a conclusion that such a constitutional amendment which intended to take away the power of even the highest court in the land, namely, the Supreme Court, to pronounce upon the validity of an election or otherwise, could not be enacted even by a two-thirds majority of the Members of Parliament because it interfered with what were the basic features of the Constitution, namely, the rule of law, the purity of democratic process, etc. I am very happy to say that that part of the 39th Constitution Amendment was struck down.

So far as this particular part of the 39th Constitution Amendment is concerned, I again find it extremely difficult to subscribe to the view that the idea was not to take away the power of the Supreme Court. After all, if I may just refer to the relevant provision of the 39th Constitution Amendment, it is clearly stated in clause 2:

> "....all doubts and disputes arising out of or in connection with the election of the President or the Vice-President shall be enquired into and decided by such authority or body and in each manner as may be provided for by this law or any other law referred to in clause 1."

While the provision in the Constitution earlier gave this power to the Supreme Court, the power of the Supreme Court was sought to be taken away and to be substituted by the power of another authority or body to be set up by the Parliament.

Then, clause 3 provided:

> "The decision of such authority or body shall not be called in question in any court."

Even the power of the Supreme Court under Article 136 of the Constitution to grant a special leave for appeal to the Supreme Court and thereafter to see as to whether the decision is in accordance with the law or not was taken away, because it was declared by this Constitutional provision that the decision of the authority shall be final. Dr. Seyid Muhammad had attempted to say, "well, this is in accordance with the practice and this was the proper thing which was attempted to be done." In that connection, I would like to draw the attention of the Members of this House to a passage which is there in "Erskine May's Parliamentary Practice." to which I have referred on an earlier occasion also. But, with your permission, Mr. Deputy-Speaker, May I read out that passage once again?

SHRI M. SATYANARAYAN RAO (Karimnagar): When we are supporting it, he has clearly made it....

SHRI SHANTI BHUSHAN: That is right. But certain points have been raised and therefore it is my duty to clarify them. I am reading from page 29. It says:

> "Before the year 1770, controverted elections were tried and determined by the whole House of Commons, as mere party questions, upon which the strength of contending factions might be tested.

In order to prevent so notorious a perversion of justice, the House consented to submit the exercise of its privilege to a tribunal constituted by law, which, though composed of its own Members, should be appointed so as to secure impartiality and the administration of justice according to the laws of the land and under the sanction of oaths. The principle of the Grenville Act, and of others which were passed at different times since 1770, was the selection by lot of committees for the trial of election petitions. Partiality and incompetence were, however, generally complained of in the constitution of committees appointed in this manner, and, in 1839, an Act was passed establishing a new system, upon different principles, increasing the responsibility of individual. Members, and leaving but little to the operation of chance. This principle was maintained, with partial alterations of the means by which it was carried out, until 1868, when the jurisdiction of the House in the trial of controverted elections was transferred by statute to the courts of law."

So, we had the benefit of the experience in England prior to 1868, and undoubtedly at that time, the House of the Committee of the House had the power to decide upon the validity of this dispute in regard to the validity of election. But it was realised that the British practice was not fair and therefore, it was not a proper way of resolving the dispute to the satisfaction of the people; and they about a century back decided that the power must be transferred to the court.

When we became independent, we established our Constitution. We realised that this was the proper thing to do and it was the proper and impartial court, an independent court which would be the proper forum and which will create confidence in the general public to decide these very important disputes on which the functioning of democracy rests. And that was the reason the power had been given to the Supreme Court and the High Court. But this was attempted to be taken away. Now, it is not for me to say as to why this was attempted to be taken away. But, as I said, I do not find it possible to subscribe to the proposition that the intention was not to take away the power of these independent courts, namely, the Supreme Court and the High Court.

Now, so far as other points raised by the hon. Member Dr. Seyid Muhammad in regard to 'holding out' are concerned, he had been kind enough to refer to what I argued in the Supreme Court when I stressed as to the importance of 'holding out' with considerable emphasis. I am happy that at least now he has started subscribing to that proposition. But, may I assure him that this omission in regard to 'holding out' is not from the point of view which probably he has in mind as if we had lost faith in those things which we used to say then.

The real reason is when they abolished the system of 'holding out' in 1975 by amending the Representation of People Act, the Congress Party then somehow thought that the system of 'holding out' should not exist and therefore in the definition of 'candidates', the principle of 'holding out' should be eliminated. Well, this was the position in which we found ourselves at this stage. Now, we wanted to make this particular Act a most non-controversial Act so that no controversy may arise between the Ruling Party today and the Opposition Party of to day. Having known that they subscribe to the proposition of opposing the principle of 'holding out', we thought that we would be introducing a principle again by drafting a Bill in such a manner as again to try to restore the principle of 'holding out'.

[Shri Shanti Bhushan]

14 hrs.

But may I assure the hon. Member that we are quite seized of those matters. In fact, we have a programme of making electoral reforms not merely in this direction but in other directions also, and at that time when we bring a Bill for comprehensive electoral reforms, we shall certainly consider this aspect of the matter to which I personally attach considerable importance still, namely, that corrupt practices are not only those which are committed after the nomination of the person but also those that are committed by a person who is going to be a candidate, even before he has formally become a candidate by the filing of a nomination paper. All these are corrupt practices which should be taken into consideration and attempt should be made to eliminate them by accepting the principle of 'holding out'. We thought that we would consider that while bringing a comprehensive measure after discussion with the friends on the other side also. Of course, this Bill was important and had to be brought straightaway, immediately, without any risk of raising any controversy. That is why, this Bill has been brought in a non-controversial form. But when we consider the electoral reforms in a comprehensive way, certainly this matter, to which I would be very happy to refer and on which I would like to solicit the cooperation of the present Opposition also, would be considered.

MR. DEPUTY-SPEAKER: The question is:

"That the Bill further to amend the Presidential and Vice-Presidential Elections Act, 1952, be taken into consideration."

The motion was adopted.

MR. DEPUTY-SPEAKER: Now, we take up clause-by-clause consideration. There are no amendments.

The question is:

"That Clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

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

SHRI SHANTI BHUSHAN: I beg to move:

"That the Bill be passed."

MR. DEPUTY-SPEAKER: The question is:

"That the Bill be passed."

The motion was adopted.

MR. DEPUTY-SPEAKER: The House stands adjourned till 11.00 a.m. on Monday, the 20th June, 1977.

14.03 hrs.

The Lok Sabha then adjourned till Eleven of the Clock of Monday, June 20, 1977/Jyaistha 30, 1899 (Saka).

G.M.G.I.P.M.R.N.D.—P.M.R.—703 L.S.—J.C.—1143—11-7-77—998