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LOK SABHA

The following Bills were introduced in Lok Sabha on the 30th November, 1961:—

BILL No. 66 OF 1961

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Twelfth Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Eleventh Amendment) Act, 1961. Short title.
- 5 2. In article 66 of the Constitution, in clause (1), for the words “members of both Houses of Parliament assembled at a joint meeting”, the words “members of an electoral college consisting of the members of both Houses of Parliament” shall be substituted. Amendment of article 66.
- 10 3. In article 71 of the Constitution, after clause (3), the following clause shall be inserted, namely:— Amendment of article 71.
 - “(4) The election of a person as President or Vice-President shall not be called in question on the ground of the existence of any vacancy for whatever reason among the members of the electoral college electing him.”.

STATEMENT OF OBJECTS AND REASONS

Under article 66(1) of the Constitution, the Vice-President has to be elected by members of both Houses of Parliament assembled at a joint meeting. The requirement that members of the two Houses should assemble at a joint sitting for the election of the Vice-President seems to be totally unnecessary and may also cause practical difficulties. It is, therefore, proposed to amend this article to provide that the Vice-President will be elected by members of an electoral college consisting of members of both Houses of Parliament. Under article 54 of the Constitution, the President is elected by an electoral college consisting of the elected members of both Houses of Parliament and of the Legislative Assemblies of the States. Every effort is made to complete such elections before the date of the Presidential election. It is, however, possible that the elections to the two Houses of Parliament may not be completed before the President or the Vice-President is elected. It is, therefore, proposed to amend article 71 of the Constitution so as to make it clear that the election of the President or the Vice-President cannot be challenged on the ground of any vacancy for any reason in the appropriate electoral college.

2. The Bill seeks to achieve these objects. The notes on clauses appended to the Bill explain the provisions thereof.

A. K. SEN.

NEW DELHI;
The 24th November, 1961.

Notes on clauses

Clause 2.—Under article 66(1) of the Constitution, the Vice-President of India has to be elected by the members of both Houses of Parliament assembled at a joint meeting. Where there is only one duly nominated candidate, the necessity for a joint meeting is not apparent and section 8 of the Presidential and Vice-Presidential Election Act, 1952, states that in such a case the Returning Officer shall forthwith declare the candidate to be duly elected. Even where there is a contest, conformity with article 66 can only be more formal than real in that important proceedings relating to the election, like the receipt of nominations, scrutiny of nominations and withdrawal of candidature, take place before the members of the two Houses of Parliament assemble at a joint meeting, and only the polling and declaration of results take place at that meeting. In practice also, there can be no meeting in the usual sense, but the electors will be coming in as and when they like, casting their votes and going away. The requirement that members should assemble at a joint sitting seems to be totally unnecessary and is also likely to cause practical difficulties. It may be noticed that article 54 contains no such requirement in the case of the Presidential election.

This clause therefore seeks to omit the requirement as to joint meeting and incidentally brings the language of this clause into conformity with the language of article 54.

Clause 3.—In *Narayan Bhaskar Khare vs. the Election Commission of India*, 1957, S.C.R. 1081, a point was made that for a valid election of the President, all elections to the two Houses of Parliament should be completed before the date of the Presidential election, as otherwise some members would have been denied the right to take part in the election. But the Supreme Court expressed no opinion on the point as it was not necessary to do so.

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