

COMMITTEE ON SUBORDINATE LEGISLATION

(TENTH LOK SABHA)

FIFTEENTH REPORT

(Rules / Regulations framed under the Advocates Act, 1961)

[Presented on December 16, 1994]



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LOK SABHA SECRETARIAT
NEW DELHI

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LOK SABHA SECRETARIAT

CORRIGENDA
TO

THE FIFTEENTH REPORT OF THE COMMITTEE ON
SUBORDINATE LEGISLATION (TENTH LOK SABHA)

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**COMPOSITION OF THE COMMITTEE ON SUBORDINATE
LEGISLATION
(1993-94)**

- Shri Amal Datta — *Chairman***
2. **Shri Prithviraj D. Chavan**
 3. **Shri Guman Mal Lodha**
 4. **Shri Dharampal Singh Malik**
 5. **Shri Rasheed Masood**
 6. **Shri M.V.V.S. Murthy**
 7. **Shri D. Pandian**
 8. **Dr. A.K. Patel**
 9. **Shri Rajendra Kumar Sharma**
 10. **Shri K.G. Shivappa**
 11. **Shri Mohan Singh (Deoria)**
 12. **Prof. K.V. Thomas**
 13. **Shri Umrao Singh**
 14. **Shri Swarup Upadhyay**
 15. **Shri Ratilal Kalidas Varma**

SECRETARIAT

1. **Shri Murari Lal — *Joint Secretary***
2. **Shri P.D.T. Achary — *Director***
3. **Shri Ram Autar Ram — *Deputy Secretary***

INTRODUCTION

1. the Chairman, Committee on Subordinate Legislation, having been authorised by the Committee to submit the report on their behalf, present this fifteenth Report.

2. The matters covered by this Report were considered by the Committee at their sittings held on 3 June, 25 August and 21 November, 1994.

3. The Committee selected as a subject the examination of rules framed under the Advocates Act, 1961 with a view to ascertaining whether such rules covered all the areas enumerated in the Act and were adequate enough to meet the present day requirements or otherwise needed any modifications. The Committee also decided to go into other important questions such as transparency about fees payable by a client to a lawyer, astronomical cost of litigation; need for renewal of registration by advocates; restraint on seeking adjournments by lawyers on personal grounds; obviating frivolous litigation; need for photo-identity cards for lawyers; obviating strikes by lawyers and; continuing legal education; ensuring commitment to legal profession, refresher courses for the lawyers etc.

4. The Committee took oral evidence of the representatives of the Ministry of Law, Justice and Company Affairs; Bar Council of India; and Supreme Court Bar Association with a view to ascertaining their views on these points. The views expressed by them are dealt with in the following paragraphs.

5. The Committee wish to express their thanks to the representatives of the Bar Council of India, Supreme Court Bar Association and the representatives of the Ministry of Law, Justice and Company Affairs for furnishing the desired information.

6. The Committee adopted this Report at their sitting held on 21 November, 1994.

7. The Minutes of the sittings relevant to this report are appended to it.

8. For facility of reference, recommendations/observations of the Committee have been printed in thick type in the body of the Report and also reproduced in a consolidated form in Appendix I to the Report.

NEW DELHI;
December, 1994

AMAL DATTA,
Chairman,
Committee on Subordinate Legislation.

REPORT

I

TRANSPARENCY OF FEES CHARGED BY LAWYERS

Transparency of fee charged by lawyers engaged serious attention of the Committee. It has been felt that the fee payable by a client to a lawyer should be made known to him in advance and there should be transparency about the fee as well as the services for which such fees are charged. The Committee desired to know how such transparency could be achieved. They also examined high cost of litigation and the exorbitant fees charged by lawyers from the clients with a view to lessening the burden on the litigants. The Committee also wanted to elicit the opinion on the question whether it would be desirable to make available to the public the details of services of lawyers their corresponding fees in a published form in order to enable the clients to make a more informed choice of the lawyers.

1.2 In this regard, the existing provisions contained in Chapter II of Part VI under the head "Standard of Professional Conduct and Etiquette" of the Bar Council of India Rules framed by the Bar Council of India in exercise of its rule making power under the Advocates Act, 1961 reads as under:—

"11. An advocate is bound to accept any brief in the Courts of Tribunals or before any other authority in or before which he proposes to practise at a fee consistent with his standing at the Bar and the nature of the case. Special circumstances may justify his refusal to accept a particular brief.

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20. An Advocate shall not stipulate for a fee contingent on the results of litigation or agree to share the proceeds thereof.

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25. An Advocate should keep accounts of the client's money entrusted to him, and the accounts should show the amounts received from the client or on his behalf, the expenses incurred for him and the debits made on accounts of fees with respective dates and all other necessary particulars.

26. Where moneys are received from or on account of a client, the entries in the accounts should contain a reference as to whether the amounts have been received for fees or expenses, and during the course of the proceedings, no advocate shall, except with the

consent in writing of the client concerned, be at liberty to divert any portion of the expenses towards fees.

27. Where any amount is received or given to him on behalf of his client the fact of such receipt must be intimated to the client as early as possible.

28. After the termination of the proceeding the Advocate shall be at liberty to appropriate towards the settled fee due to him any sum remaining unexpended out of the amount paid or sent to him for expenses, or any amount that has come into his hands in that proceeding.

29. Where the fee has been left unsettled, the Advocate shall be entitled to deduct, out of any moneys of the client remaining in his hands, at the termination of the processing for which he had been engaged, the fee payable under the rules of the Court in force for the time being, or by them settled and the balance, if any, shall be refunded to the client.

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36. An Advocate shall not solicit work or advertise, either directly or indirectly, whether by circulars, advertisements, touts, personal communications, interview not warranted by personal relations, furnishing or inspiring newspaper comments or production his photograph to be published in connection with cases in which he has been engaged or concerned. His sign board or name plate should be of a reasonable size. The sign board or name plate or stationery should not indicate that he is or has been President or Members of a Bar Council or of any Association or that he has been associated with any person or organisation or with any particular cause or matter or that he specialises in any particular type of work or that he has been a Judge or an Advocate General.

37. An Advocate shall not permit his professional services or his name to be used in aid of or to make possible, the unauthorised practise of law by any agency.

38. An advocate shall not accept a fee less than the fee taxable under the rules when the client is able to pay the same."

1.3 To make an indepth study of the matter, the Committee ascertained the views of the representatives of the Ministry of Law, Justice and Company Affairs, Bar Council of India and Supreme Court Bar Association.

1.4 Giving his views on the subject, Dr. P.C. Rao, Law Secretary stated that the Law Commission had gone into these matters in their 128th Report on the Cost of litigation and 131st Report on the role of legal profession where the Commission had drawn attention to the fact that few lawyers have monopolised the legal profession and that they have been charging astronomical fees. The Law Commission had suggested that a floor as well as a ceiling on fees be prescribed and it would be open to the lawyer to negotiate his fees between that floor and ceiling. The matter was

also discussed at the Chief Ministers and Chief Justices conference held in 1993. Paragraph 20 of the Resolution of the Chief Ministers and Chief Justices conference reads as follows:—

“Concentration of work

20. The Chief Ministers and Chief Justices agreed that inordinate concentration of work in the hands of some members of the Bar had contributed to the accumulation of arrears, especially in the Supreme Court and the High Courts. They considered that this led, among other things, to the mounting cost of litigation. They were of the opinion that the Bar Council of India, in consultation with the Bar Councils of various States, should address itself of this problem and make appropriate recommendation. It was felt that the leaders of the Bar should be invited by the Bar Council of India to participate in the enunciation of any recommendation that might be made in this regard.”

1.5 According to the Law Secretary, the Government as well as the Bar Council to whom the recommendations of Law Commission were referred were of the view that it was impracticable to implement the suggestions made by the Law Commission. The Law Secretary referred to a question in Parliament asking whether there was any proposal under Government’s consideration to put ceiling on the fees of lawyers of various High Courts and Supreme Court, the Government’s reply was as follows:

“Government is not considering any specific proposal for putting a ceiling on the fees of lawyers. However, the Committee of petitions, 9th Lok Sabha in its 2nd Report recommended that possibility of setting up an administrative machinery to regulate the fees charged by a lawyer from the clients is there. The views of the agency are awaited in this regard.”

According to him, the above reply was treated as an assurance and they answered the matter as follows:—

“The possibility of setting up of administrative machinery to regulate the fees charged by lawyers was examined in consultation with the Bar Council of India and it was not found feasible to set up such a machinery.”

1.6 The Law Secretary stated that the matter was also discussed at the meeting of Law Ministers of different states and the view emerged was that it would not be practicable to enforce any ceiling in this regard. Stating the reasons as to why such ceiling was impracticable, the Law Secretary stated that if one were to prescribe a ceiling, there must be some machinery or administrative set up to enforce it and the Government is in the dark as to the enforcement of such a ceiling. Even if a ceiling is prescribed, the lawyers may take money outside the ceiling limits. However, the Bar Council of India has been asked to come out with the suggestions in this regard.

1.7 According to Shri V.C. Mishra, President, Bar Council of India, the fees charged by a lawyer are already known to the client because there are two types of fees charged. In lower courts, the fees are charged for the whole case and in High Courts, it is for the whole case or on the basis of daily appearance. So, the question of fees is settled first and then only the client instructs the lawyer.

1.8 To a question as to whether it could be possible that fees charged by lawyer were made known to the client even before he actually approaches the lawyer. Shri V.C. Mishra, President, Bar Council of India was of the view that such thing would be impracticable as the fees depend on the size of the brief. A brief may contain only a few pages or it may contain thousands of pages, Shri R.K. Anand, Member, Bar Council of India, however suggested that a more practical way could be to put some kind of ceiling on the fee so that no lawyer should charge more than that for a day or for the whole case.

1.9 Shri K.K. Venugopal, President, Supreme Court Bar Association, giving his views on the subject stated that fees could be made known in advance in respect of only standard cases like divorce cases, eviction cases, accident cases and so on. In America and England it is done through advertisement in respect of such standard cases, though, prohibited under the rules made by the Bar Council. He was of the view that in standard cases, a stipulation regarding fee can be fixed. Also to inform the clients particularly in the interest of poor litigants, advertisements of standard cases should be permitted. It could prove extremely useful in India for rural litigants and the lower middle class litigants. As far as specialised cases are concerned, the President, Supreme Court Bar Association was of the view that it would be very difficult to assess the fees in advance because sometimes, the brief may be very small containing few pages only or sometimes, the brief may contain 20 to 30 volumes and the lawyer's time is spent accordingly. It is, therefore, very difficult to stipulate the fee in advance.

1.10 Shri K.K. Venugopal, however supported the concept of contingent fee which is originally a matter of contract, but after the trial is over, the court has a control over that fee. He informed that in United States, much of the litigation is conducted through contingent fee, while it has been prohibited in India. According to this system, during the period of entire litigation upto the final verdict, the lawyer does not charge a single pie either towards his expenses or toward the fees. The contract has to be registered before the judge to ensure safety precautions so that the lawyer gets the money due to him. In India, people are deprived of getting access to the courts even in cases where they are entitled to get benefit merely because they are not able to bear the cost of litigation. That is why, the system of contingent fee is very necessary in India.

1.11 Speaking about fixing of fees charged by a lawyer for various types of cases, the President, Supreme Court Bar Association, stated that in a freely available service, there is tremendous competition and the most advantageous thing for a client is to have a lawyer who would not have a frozen figure as a fee, but to agree mutually to something. By having the fees displayed in advance, the client would think that the lawyer's fee is not negotiable and the client would never go to him. According to him, the solution may be that the fees should invariably be settled in advance and it should be put into writing so that it protects the interest of both the lawyer and the client.

1.12 According to Shri Pramod Swarup, Member, Supreme Court Bar Association, the client and advocate should decide in advance the fees to be charged orally also.

1.13 The Committee feel that there should be a certain degree of transparency about the fees charged by a lawyer for various services which he renders to the clients. The client must know in advance what amount a particular lawyer would charge for a particular case or where fees are charged on daily hearing basis, the rate at which fees are to be charged by each lawyer so that he is able to select the lawyer who suits him. The Committee note that the Bar Council of India rules framed under the Advocates Act, 1961 do not contain any provisions in this regard. Thus, at present a client is not able to know about the fees charged by a lawyer for various services he renders unless he actually approaches that lawyer. The client has to approach many lawyers till he is able to find a lawyer whose fees he can afford and at the same time make a choice also as to the suitability of the various lawyers approached by him in terms of his knowledge, experience and competence for conducting a particular case. The Committee find such a situation most unsatisfactory for the client. The Committee feel that the Bar Council of India Rules in respect of lawyer's fee are inadequate in this respect. The Committee are distressed to note that few top lawyers have monopolised the legal profession and are charging astronomical fees from the clients. In this connection, the Committee note that the Law Commission in their 128th Report on the cost of legal profession have recommended that a floor as well as a ceiling on fees be prescribed and it should be open to the lawyer to negotiate his fees between such floor and ceiling. The Committee do not agree with the views that such a legislation would not be enforceable. The Committee desired that the Government should make the Bar Council of India duty bound to prescribe a scale of fee for different categories of lawyers for various types of services rendered to clients by them and that information should be available to the public also. The Committee strongly feel that such transparency should be there and any client who wants to know about the fees of a lawyer should be able to know about it before hand. The Committee desire that any activity on the part of any lawyer charging fees outside the prescribed limits may be brought out as professional

misconduct under the Bar Council of India Rules and the responsibility to detect such activity may be prescribed as a duty cast on other lawyers, Bar Councils and Bar Associations etc.

1.14 The Committee also note that as per the existing provisions of the Bar Council of India Rules, advertisement of the legal profession is prohibited. The Committee are, however, of the view that advertisements by lawyers for imparting information to the public in regard to standard cases like divorce cases, eviction cases, accident cases, and rent control cases etc. may be permitted in the interest of the rural litigants and lower middle class litigants who form the majority of litigants.

II

SEEKING/GRANTING OF UNNECESSARY/DELIBERATE ADJOURNMENTS IN THE LAW COURTS

Frequent adjournment of cases resulting in the prolongation of litigation which in turn causes huge arrears engaged the serious attention of the Committee. With a view to finding ways to put effective restriction on the granting of frequent adjournments, the Committee examined the representatives of Government; the Bar Council of India as well as the Supreme Court Bar Association.

2.2 Dr. P.C. Rao, Law Secretary in his deposition stated that this issue has reached such proportions that it has become very disturbing in the context of mounting arrears of litigation. This issue was discussed at the Chief Ministers and Chief Justices Conference held in 1993. Paragraph 21 of the Resolution of the Chief Ministers and Chief Justices Conference read as under:—

“Handling of judicial work—

21. The Chief Ministers and the Chief Justices noted with concern that granting of unnecessary adjournments have become a widespread phenomenon. They considered that a consensus should be evolved to discourage granting of adjournments except in an exceptional circumstance by recording the reasons for granting of an adjournment.”

2.3 The Law Secretary was of the opinion that what the conference resolved was a goal to be achieved. He admitted that reality is something very different. He also informed the Committee that the Judges who grant such adjournment do not record the reasons for doing so. The Committee, thereafter heard the views of the representatives of the Bar Council of India. Shri V.C. Mishra, President, Bar Council of India stated that the adjournments are always granted by the Courts on personal grounds. According to him, adjournments are not given to a lawyer until and unless he is sick. He further added that sickness may be of several types e.g. physical sickness, mental sickness, social sickness or economic sickness. Under such circumstances it would not be possible for the pleader to fight the case in the court and it would not be in the interest of the client either. Shri R.K. Anand, Member of the Bar Council of India was also of the same opinion and stated that the Civil Procedure Code takes care of the question of adjournment. He was of the opinion that it would be unjust not to take adjournment if the lawyer is sick.

2.4 Shri K.K. Venugopal, President, Supreme Court Bar Association, giving his views on the subject stated that there are two types of adjournments on personal grounds. One is where the reasons are not foreseeable in advance. For example if the lawyer falls ill or somebody in

his family falls ill or some death occurs in the family just a day before hearing and the lawyer is not in a position to appear for the hearing. In this case the client for paucity of time also cannot have another lawyer to be ready with the case straightaway. The second personal ground is where the lawyer is going abroad for a festival and he knew it in advance. Therefore, in case of emergency only the adjournment should be sought for and not in cases where the adjournment is on foreseeable personal grounds. He was in favour of a provision being made in the rule.

2.5 The Committee carefully considered the views expressed by the representative of the Government as well as those of the Bar Council of India and the Supreme Court Bar Association. The Committee agree with the observation of the Law Secretary, namely that granting of unnecessary adjournments has become a regular feature. They also agree that in the context of the mounting arrears of cases in courts this practice has assumed disturbing proportions. The Committee feel that the mere act of passing a resolution in a conference expressing concern about unreasonable adjournment and stating the goal to be achieved, is not enough to remedy the situation. Adjournment is often given on grounds on which no court should give adjournment. It has also been brought to the notice of the Committee that generally the judges do not record the reasons for giving adjournment. The Committee note that a number of lawyers seek adjournment on the ground that they have got another case before another bench or another court, although the Civil Procedure Code (Order 17, rule 1) clearly states that the fact that the pleader of a party is engaged in another court shall not be a ground for adjournment.

2.6 The Committee therefore feel that suitable amendment should be made in the Civil and Criminal Procedure Codes making it obligatory for the Judges to record the reasons for adjournment of a case as well as award of actual and not merely notional cost against the party seeking adjournment in favour of the opposite party.

2.7 The Committee observe that there is a broad agreement among the representatives who appeared before it on the need to restrain the lawyers' from seeking frequent adjournments on personal grounds through a suitable regulation. The Committee endorses this view and recommend that a prohibition in this regard be incorporated in the code of conduct for lawyers, so that they do not resort to the device of adjournment except on very reasonable emergency grounds only.

III STRIKES BY LAWYERS

In the recent years, strikes by lawyers have become a recurring phenomenon. It causes serious disruption in the functioning of the judiciary and throws out of gear the entire process of dispensation of justice. Strike also brings the legal profession into disrepute. Further, the strikes by lawyers lead to accumulation of cases in the courts thus adversely affecting the interests of the clients. The Committee examined this serious issue in depth. In the course of the examination the Committee heard the views of the representatives of the Ministry of Law, Justice and Company Affairs, Bar Council of India and Supreme Court Bar Association on the question whether an institutional framework can be contemplated for obviating such situations.

3.2 Giving his comments on the matter, Dr. P.C. Rao, Law Secretary, informed the Committee that the matter had been gone through by the Law Commission and in para 2.11 of their 131st Report on the Role of the Legal Profession in Administration of Justice, the Commission had observed as under:

“Strikes by lawyers has become a nauseatingly recurring phenomenon. It is of recent origin. Strong views are held on either side whether members of the legal profession can go on strike or not and if they can, what would be the justifying and compelling reasons and for what length of time. In the questionnaire issued by the Law Commission, part of question No. 4 and question No. 5 referred to recent strikes by the members of the legal profession in different parts of the country. Members of the organised Bar with one voice supported the right to strike. On the other hand, a number of voluntary organisations, judges of high courts and individuals expressed the opinion that the lawyers have no right to go on strike.”

3.3 The Law Secretary also stated that the matter was taken up at the Chief Ministers and Chief Justices Conference too where in para 27 of the Resolution adopted by the Chief Ministers and Chief Justices, the following recommendation was made:—

“The Chief Ministers and Chief Justices viewed with deep concern the recurrent phenomenon of lawyers going on strike which affected the administration of justice. They recommended that a Committee should be constituted consisting of lawyers and judges at the appropriate level for finding out the underlying causes for lawyers' strikes and for evolving appropriate guidelines for preventing indiscriminate closure of courts. It was also felt that, in the interests of balanced growth of legal profession, senior lawyers should evince greater interest in moulding the careers of junior lawyers.”

3.4 The Committee was further informed by the Law Secretary that Supreme Court has taken note of the aforesaid recommendation made at the conference of Chief Ministers and Chief Justices during a public interest litigation filed in that court praying that appropriate recommendations be made in the matter of strikes and the lawyers be directed to strictly comply with them.

3.5 Thereafter, the Committee heard the views of Shri V.C. Mishra, President, Bar Council of India who informed the Committee that Bar Council at its special sitting passed a resolution to the effect that nobody should give a call for strike for petty reasons. He suggested that there must be some institutional arrangement such as a Board to listen to and settle the grievances of the members of the Bench and the Bar. This would cut the strikes by atleast 90 percent. According to him, there is a communication gap between Bench and the Bar which leads to many disputes resulting in strikes. According to his suggestion, a Board consisting of the Chief Justice of India, the Chairman of the Bar Council of India and the President of the Supreme Court Bar Association could be set up to settle the disputes of the Supreme Court. Similarly, for a High Court, the Board could consist of Chief Justice of High Court, Chairman of the respective State Bar Council and the President of the High Court Bar Association. For district level courts, he suggested that the Board could consist of the judge, the President of the Bar and a nominee of the State Bar Council to settle the disputes. He was of the view that most of the disputes would be settled by these Boards and then the lawyers would not resort to strikes. He was of the view that prescribing a ban on the strikes is no solution.

3.6 The Committee also heard Shri K.K. Venugopal, President, Supreme Court Bar Association who in his personal capacity was of the view that strikes by lawyers is a professional misconduct. As a result of strike both the lawyer as well as the client suffer and the backlog in court cases increases. He stated that in other countries, the lawyers do not go on strike but in India, this phenomenon is on the increase. Shri Venugopal was emphatic in his opposition to the strikes by lawyers. Instead of going on strikes, he suggested that protest can be made in different ways like wearing a white dress instead of the prescribed one, or not attending the hearing for the first 15 minutes or by passing a resolution and then try to meet the person concerned and try to negotiate the dispute. He considered that most of the strikes unreasonable. Shri P.P. Rao, Member, Supreme Court Bar Association also had similar views and stated that "Strike" is not only a professional misconduct but also a contempt of Court.

3.7 The Committee note with concern that in the recent years, strikes by the lawyers have become a recurring phenomenon resulting in an accumulation of cases in the courts besides having a very adverse effect on the interest of the helpless litigants. Further, the strikes by lawyers, for whatsoever reasons, bring the legal profession into disrepute. The Commit-

tee feel that if a litigant lost the case because his lawyer did not appear at the hearing due to strike, such client should have a right to go to the Consumer Courts to seek damages. Further, the lawyers in their professional capacity have also a bounden duty towards the courts and the clients.

3.8 The Committee also note that the matter has been gone through by the Law Commission in their 131st Report on the Role of Legal Profession and also at the conference of Chief Ministers and Chief Justices where it had been recommended that a Committee should be constituted consisting of lawyers and judges at the appropriate level for finding out the undelying causes for lawyer's strikes and for evolving appropriate guidelines for preventing indiscriminate closure of courts. The Committee agree with the suggestion made by the Bar Council of India that Boards should be set up at the level of Supreme Court, High Courts and district courts consisting of the members of judiciary, Bar Councils and Bar Associations of the respective courts to settle the disputes so that the lawyers may not resort to strikes. The Committee therefore recommend that the Central Government and Bar Council of India should examine the feasibility of setting up of such Committees/Boards and bring appropriate amendment in the Advocates Act, 1961 and frame the rules thereunder at the earliest. The Bar Council of India should also consider making strikes by advocates a misconduct under the rules under the Advocates Act and alter the rules accordingly.

IV OBVIATING FRIVOLOUS LITIGATION

It is a matter of common knowledge that a very large volume of frivolous cases comes to be filed in courts which takes up the valuable time of the courts and causes the arrears to increase phenomenally. The object of providing expeditious justice to the people could not be realised unless the flood of frivolous litigation is checked. Accordingly the Committee elicited the view of representatives of Government, Bar Council of India and Supreme Court Bar Association. The main proposition that was discussed was that before a case is filed, the lawyer should disclose to his client the prospects of his case. If, according to the lawyer there is no merit in a case, the client should be discouraged from filing it.

4.2 Dr. P.C. Rao, Law Secretary, agreed to the proposal that a lawyer should give his opinion to the client about his case. He suggested that a proforma type of opinion can be given to the client about the merit of the case.

4.3 The views of the Bar Association of India were presented by Shri V.C. Mishra, President. Taking a slightly different view on the matter, he put the blame on what he called the British system of Law that we follow for the increase in the frivolous litigation. According to him under the present system which is based on evidence before the court a good case gets rejected and a bad case wins which makes the initial opinion of the lawyer meaningless. However, he said that the lawyers generally inform the clients about the prospects of their cases. Shri R.K. Mehrotra, Member, Bar Council of India told the Committee that in England, a summary hearing is held and a decision is given in the case of frivolous litigation.

4.4 Giving his opinion on the subject, Shri K.K. Venugopal, President, Supreme Court Bar Association said that it is very difficult to tell in advance the prospects of a case as the different judges may have different philosophies which influence their decisions. However he said that the lawyers invariably tell their clients orally the positive as well as negative points in the case. In the case of companies written opinion is also given. The client is apprised of the prospects of the case by the Advocate, on record in the first instance. Shri P.P. Rao, Member, Supreme Court Bar Association was of the opinion that if the lawyer finds that there is no point in the case, he should advise his client not to file the same.

4.5 The Committee also discussed the proposal of about the courts imposing a penalty to restrict frivolous litigation. Shri K.K. Venugopal, agreed with the suggestion and stated that if courts are satisfied that the case is not justified, then some kind of penalty may be imposed.

4.6 The Committee have carefully considered the views expressed by witnesses on the question of checking frivolous litigation. There is unanimity on the need to check frivolous litigation. The Committee, therefore, feel that a lawyer should before filing a case give his opinion in writing to the client about the prospects of the case. This would prevent a large number of frivolous cases from being filed in the courts. The client must know whether he has a chance of winning. Such opinion should contain sufficient details about the chances of his winning the case, and also the risks involved. The Committee suggest that it should be made obligatory on the part of lawyers to give a written opinion to their clients about the prospects of the case before it is filed and the Indian Advocates Act/Bar Council of India Rules should be suitably amended to achieve this purpose.

4.7 The Committee is also of the considered opinion that there is need to prescribe a stiff penalty against frivolous litigation by making the litigant compulsorily to pay for the actual costs incurred by his opponent if any, as well as to fully pay for the cost incurred by the court itself. This will require amendment of the Civil Procedure Code and Criminal Procedure Code.

V
IDENTITY CARDS FOR LAWYERS

The question of photo identity cards for the lawyers was considered by the Committee. The purpose is to identify the lawyer while he is in the court premises and to prevent any person not being an advocate to pass himself off as such. This could be on the pattern of the photo identity cards provided to government servants. The photo identity cards should contain the name of the advocate, his enrolment number and the name of the court where he is practising.

5.2 The matter was taken with the representatives of the Bar Council of India and the Supreme Court Bar Association.

5.3 Shri V.C. Mishra, President, Bar Council of India agreed to the proposal and stated that the display of photo identity cards by the lawyers has become necessary for recognition owing to the increasing numbers of lawyers day by day. Shri R.K. Mehrotra, Member of the Bar Council of India also welcomed the proposal. According to him the identity card could bear name of the lawyer, the enrolment number of the Advocate and his photograph.

5.4 Shri K.K. Venugopal, President of the Supreme Court Bar Association stated that the lawyers practising in the Supreme Court are already in possession of the Identity Cards but the display of the same is not compulsory or made mandatory. He was of the view that the lawyer class would not be happy to display identity card with photographs on his own self.

5.5 The Committee note that their proposal that lawyers should have photo identity card in order to have some kind of identification has been agreed to by the representatives of the Bar Council of India. The Committee also note that though the lawyers practising in the Supreme Court are already in possession of these photo identity cards, yet their display is not compulsory.

5.6 The Committee desire that the Central Government/Bar Council of India might frame the rules in respect of photo identity cards bearing his name and address, the State Bar Council in whose rolls his name appears and enrolment number of the advocate and the name of the Court in which he is practising. The Committee also desire that the displaying of the photo identity card on the chest of the lawyer when in the court should be made compulsory.

VI CONTINUING LEGAL EDUCATION AND RESTRUCTURING OF LAW COURSE

Continuing legal education for practising lawyers is a professional necessity which helps the lawyers to acquaint themselves with the latest developments in the legal profession. The Committee heard the views of the representatives of the Ministry of Law, Justice and Company Affairs and the representatives of the Bar Council of India as well as the Supreme Court Bar Association on this matter. The Committee emphasised mainly on the following aspects.

A. Restructuring of Law Courses ensuring standards of Law Colleges

6.2 One of the important aspects of legal education the Committee discussed was the duration of the law course. The general opinion that emerged in the discussion was that there is an urgent need for restructuring the law course. On behalf of the Bar Council of India the suggestion made was that the law Course should be divided into two categories, viz. (i) a Professional Law course of 5 years; and (ii) an Academic course of 3 years. It was also said that the 5 year course should be under the control of the Bar Council. In this context a mention was made about the National Law School under the Bangalore University set up by the Bar Council which can serve as a model for the five year course.

6.3 The representatives of the Supreme Court Bar Association were also of the opinion that a five-year course is desirable. Shri K.K. Venugopal, President, Supreme Court Bar Association suggested that five years law course should be encouraged which brings in all the subjects for the purpose of making a good lawyer. He also added that there should also be a well qualified library and practising lawyers should give lectures about the Theoretical and practical aspects of law.

B. Bar Council Examination and Apprenticeship and Training after passing LL.B.

6.4 Shri P.P. Rao, Member, Supreme Court Bar Association suggested that in order to maintain the standards of legal profession, there should be an admission test of LL.B. standard to test the fitness of the candidates to be admitted to Bar. After the test, he should undergo an apprenticeship under a lawyer of standing, to familiarise himself with the mode of address, the code of conduct that is expected of him to develop a sense of responsibility. Shri K.K. Venugopal, added that section 24 (1) (d) of the Advocates act had provided for a course of apprenticeship which was repealed in 1974. A lot of changes have taken place in the field of legal education, since then. Hundreds of law colleges have mushroomed which produced a large number of students who do not have the basic knowledge

of law. Therefore, it is necessary to restore the provision of apprenticeship as well as the Bar Council examination in the Advocates Act. According to him, this can be done by the Central Government by making suitable amendment in the Bar Council Rules.

C. Continuing Legal Education

6.5 To the question about refresher courses for practising lawyers, Shri V.C. Mishra, President of the Bar Council of India stated that it was not possible either for the Bar Council of India or the State Bar Councils to arrange refresher courses for want of funds. The funds, he said could be provided directly to the university, but in the absence of funds it is not possible to improve the legal education. The Committee expressed opinion that the Bar Council should make a plea for more funds before the 8th Finance Commission.

6.6. Shri K.K. Venugopal, Chairman Supreme Court Bar Association, was of the view that refresher courses are very desirable. He said every year programmes are conducted for the junior members of the Bar in which judges and senior lawyers participate and give lectures on constitutional topics and other important aspects of law. However, he said, in the States there is no institutional system for imparting continuing legal education. Shri P.P. Rao, Member, Supreme Court Bar Association, was of the opinion that in any institutional arrangement for continuing legal education, the association of judicial element is very essential.

6.7 Dr. P.C. Rao, Law Secretary, stated that workshops are being organised by the Bar Council of India for continuing legal education for the practising lawyers and it is being imparted by faculty members which include eminent lawyers of the Bar. He agreed with a suggestion from the Chairman, Committee on Subordinate Legislation, that a fee should be collected from the lawyers attending such workshops for continuing education and also that such workshops should be made compulsory. In this context the question of modernising the syllabus was raised. The Committee felt that the lawyers are often not conversant with the present day commercial practices. The Law Secretary was of the opinion that there is a dearth of competent Law teachers. There is a proliferation of Law Colleges, but there are not sufficient number of teachers with professional competence.

6.8 The Committee after carefully considering the matters in all its aspects, make the following recommendations:

1. **The proliferation of law colleges without adequate number of teachers with competence has resulted in sharp deterioration in the standards of legal education. This has seriously affected legal profession. The Committee feels that the Bar Council should use the powers given to it under the statute and effectively intervene to stop the proliferation of such sub-standard law colleges.**

- 2. The Committee note that lack of funds has come in the way of improving legal education in the country. The 8th Finance Commission has made funds available for improving courts' infrastructure. The Committee strongly recommend that adequate funds may be made available for bringing about qualitative improvement in the legal education.**
- 3. The Committee feel that the present law course needs to be restructured. The Committee are of the view that part time law course should be discontinued. They agree with the suggestion of the Bar Council and the Supreme Court Bar Association that the professional Law Course should be of 5 years duration on the pattern of the National Law School functioning under the University of Bangalore. However, the Universities can offer a three year academic law course for the benefit of people who want to study law from academic point of view.**
- 4. In order to maintain professional quality and also to ensure that only serious minded persons come into the legal profession, an entrance test of LL.B standard should be conducted for enrolment as advocate. It is also necessary to have apprenticeship under senior advocates. The attention of the Committee has been drawn to the fact that section 24(1)(d) of the Advocates Act had provided for these which was repealed in 1974. The Committee feel that in the interest of quality of legal profession, this provision should be restored in the Act.**
- 5. Syllabus prescribed by the Bar Council should be modernised, so that lawyers get acquainted with modern day commercial practices etc. Bar Council of India should take guidance from the rules prevailing in other countries in this regard.**
- 6. The Committee feel that continuing legal education must be made compulsory. Institutional arrangements should be made so that every practising lawyer can have access to this system. All practising lawyers must attend some courses after every three-four years on which they may be given credit which in turn would be essential for their renewal of registration.**

VII RENEWAL OF REGISTRATION

Rules framed by the Bar Council of India in exercise of the rule making power under Sections 17, 19, 20, 22 and 49 of the Advocates Act, 1961, do not require any renewal of registration by the Advocates with the Bar Council of India or State Bar Councils as the case may be as registration once done will continue indefinitely. As a result, the roll of advocates maintained by the Bar Council of India or State Bar Councils is not up-to-date. Once an advocate is registered he remains on the rolls. Afterwards it is not known whether he is alive or whether he is living in India or abroad and whether he has abandoned the practice and has joined service. No such information is available with the Bar Council of India or State Bar Councils due to the lack of a provision of renewal of registration.

7.2 Shri V.C. Mishra, President, Bar Council of India who appeared before the Committee on 25 August, 1994 appreciated the suggestion of renewal of registration of advocates. He, welcomed the suggestion of incorporating such a provision in the Advocates Act and the rules framed thereunder so that the enrollment of individual advocates are renewed periodically and the rolls of Advocates are also updated periodically.

7.3 Agreeing to the proposal for renewal of rolls of the Advocates, Shri K.K. Venugopal, President, Supreme Court Bar Association stated that at present Bar Councils do not get a feed back for revising the rolls in regard to lawyers who have expired or discontinued practice or who have joined services, and so on. He felt that such a feedback is very essential for updating the rolls. According to him there is no exact figure of practising lawyers in India with the Bar Councils. He was of the opinion that the renewal of registration may be done at least once in every five years by making every lawyer who wants to continue to have his name on the rolls to fill up a form mentioning in which court he is practising.

7.4 The Committee note that the existing rules under the Advocates Act, 1961 do not prescribe or make it compulsory for an Advocate to have periodic renewal of registration with the Bar Council of India or State Bar Councils. As a result once an Advocate is registered, it is difficult to find out whether he is alive or whether he is abroad or whether he has changed his address and so on. Moreover, the registers maintained by the Bar Councils could not be updated.

7.5 The Committee, therefore, desire that the Central Government/Bar Council of India should prescribe for a compulsory renewal of registration by the Advocates after every five years. It should be provided that the Advocates should inform the Bar Council of India/State Bar Council that

they want to continue to have their names on the rolls. If the Council/State Bar Councils do not receive any application for renewal of registration, it should be presumed that the advocate has either died or gone out of India or out of practice and his registration might be deemed to have lapsed/cancelled. There should be provision in the rules under which he can get his registration with the Bar Council revived as and when he returns from abroad and resumes his practice.

7.6 The Committee further desire that most of the funds needed by the Bar Council of India/State Bar Council obtained from registration and renewal of registration. For renewal of registration a specific fee as prescribed by the Central Government/Bar Council of India from time to time will be required to be paid. Further, as recommended in Chapter 7 such renewal of registration should also be subject to obtaining prescribed credit for attending the workshop/refresher courses in continuing legal education.

NEW DELHI;
December, 1994.

AMAL DATTA,
Chairman,
Committee on Subordinate Legislation.

APPENDICES

APPENDIX-I

(Vide Para 8 of the Introduction)

Summary of Recommendations made in the Fifteenth Report of the Committee on Subordinate Legislation

(Tenth Lok Sabha)

| Sl. No. | Reference to para No. in the Report | Summary of Recommendations |
|---------|---|--|
| 1 | 2 | 3 |
| 1 | 1.13 and 1.14 | TRANSPARENCY OF FEES CHARGED BY LAWYERS <p>The Committee feel that there should be a certain degree of transparency about the fees charged by a lawyer for various services which he renders to the clients. The client must know in advance what amount a particular lawyer would charge for a particular case or where fees are charged on daily hearing basis, the rate at which fees are to be charged by each lawyer so that he is able to select the lawyer who suits him. The Committee note that the Bar Council of India rules framed under the Advocates Act, 1961 do not contain any provisions in this regard. Thus, at present a client is not able to know about the fees charged by a lawyer for various services he renders unless he actually approaches that lawyer. The client has to approach many lawyers till he is able to find a lawyer whose fees he can afford and at the same time make a choice also as to the suitability of the various lawyers approached by him in terms of his knowledge, experience and competence for conducting a particular case. The Committee find such a situation most unsatisfactory for the client. The Committee feel that the Bar Council of India Rules in respect of lawyer's fee are inadequate in this respect. The Committee are distressed to note that few top lawyers have monopolised the legal profession and are charging astronomical fees from the clients. In this connection, the Committee note that the Law Commission in their 128th Report on the cost of legal profession have recommended that a floor as well as a ceiling on fees be prescribed and it should be open to the lawyer to</p> |

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negotiate his fees between such floor and ceiling. The Committee do not agree with the view that such a legislation would not be enforceable. The Committee desired that the Government should make the Bar Council of India duty bound to prescribe a scale of fee for different categories of lawyers for various types of services rendered to clients by them and that information should be available to the public also. The Committee strongly feel that such transparency should be there and any client who wants to know about the fees of a lawyer should be able to know about it beforehand. The Committee desire that any activity on the part of any lawyer charging fees outside the prescribed limits may be brought out as professional misconduct under the Bar Council of India Rules and the responsibility to detect such activity may be prescribed as a duty cast on other lawyers, Bar Councils and Bar Associations etc.

The Committee also note that as per the existing provisions of the Bar Council of India Rules, advertisement of the legal profession is prohibited. The Committee are, however, of the view that advertisements by lawyers for imparting information to the public in regard to standard cases like divorce cases, eviction cases, accident cases, and rent control cases etc. may be permitted in the interest of the rural litigants and lower middle class litigants who form the majority of litigants.

2. 2.5 to 2.7 **SEEKING/GRANTING OF UNNECESSARY/DELEBERATE ADJOURNMENTS IN THE LAW COURTS**

The Committee carefully considered the views expressed by the representative of the Government as well as those of the Bar Council of India and the Supreme Court Bar Association. The Committee agree with the observation of the Law Secretary, namely that granting of unnecessary adjournments has become a regular feature. They also agree that in the context of the mounting arrears of cases in courts this practice has assumed disturbing proportions. The Committee feel that the mere act of passing a resolution in a conference expressing concern about

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unreasonable adjournments and stating the goal to be achieved, is not enough to remedy the situation. Adjournment is often given on grounds on which no Court should give adjournment. It has also been brought to the notice of the Committee that generally the judges do not record the reasons for giving adjournment. The Committee note that a number of lawyers seek adjournment on the ground that they have got another case before another bench or another Court, although the Civil Procedure Code (Order 17, rule 1) clearly states that the fact that the pleader of a party is engaged in another Court shall not be a ground for adjournment.

The Committee therefore feel that suitable amendment should be made in the Civil and Criminal Procedure Codes making it obligatory for the Judges to record the reasons for adjournment of a case as well as award of actual and not merely notional cost against the party seeking adjournment in favour of the opposite party.

The Committee observe that there is a broad agreement among the representatives who appeared before it on the need to restrain the lawyers' from seeking frequent adjournments on personal grounds through a suitable regulation. The Committee endorses this view and recommend that a prohibition in this regard be incorporated in the code of conduct for lawyers, so that they do not resort to the device of adjournment except on very reasonable emergency grounds only.

3. 3.7 and 3.8

STRIKES BY LAWYERS

The Committee note with concern that in the recent years, strikes by the lawyers have become a recurring phenomenon resulting in an accumulation of cases in the Courts besides having a very adverse effect on the interest of the helpless litigants. Further, the strikes by lawyers, for whatsoever reasons, bring the legal profession into disrepute. The Committee feel that if a litigant lost the case because his lawyer did not appear at the hearing due to strike, such client should have a right to go to the Consumer Courts to seek damages. Further, the lawyers in their professional capacity have also a

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bounden duty towards the courts and the clients.

The Committee also note that the matter has been gone through by the Law Commission in their 131st Report on the Role of Legal Profession and also at the conference of Chief Ministers and Chief Justices where it had been recommended that a Committee should be constituted consisting of lawyers and judges at the appropriate level for finding out the undelaying causes for lawyer's strikes and for evolving appropriate guidelines for preventing indiscriminate closure of Courts.

The Committee agree with the suggestion made by the Bar Council of India that Boards should be set up at the level of Supreme Court, High Courts and District Courts consisting of the members of judiciary, Bar Councils and Bar Associations of the respective Courts to settle the disputes so that the lawyers may not resort to strikes. The Committee therefore recommend that the Central Government and Bar Council of India should examine the feasibility of setting up of such Committees/Boards and bring appropriate amendment in the Advocates Act, 1961 and frame the rules thereunder at the earliest. The Bar Council of India should also consider making strikes by advocates a misconduct under the rules under the Advocates Act and alter the rules accordingly.

4. 4.6 and 4.7 **OBVIATING FRIVOLOUS LITIGATION**

The Committee have carefully considered the views expressed by witnesses on the question of checking frivolous litigation. There is unanimity on the need to check frivolous litigation. The Committee, therefore, feel that a lawyer should before filing a case give his opinion in writing to the client about the prospects of the case. This would prevent a large number of frivolous cases from being filed in the Courts. The client must know whether he has a chance of winning. Such opinion should contain sufficient details about the chances of his winning the case, and also the risks involved. The Committee suggest that it should be made cogatory on the part of lawyers to

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give a written opinion to their clients about the prospects of the case before it is filed and the Indian Advocates Act/Bar Council of India Rules should be suitably amended to achieve this purpose.

The Committee is also of the considered opinion that there is need to prescribe a stiff penalty against frivolous litigation by making the litigant compulsorily to pay for the actual costs incurred by his opponent, if any, as well as to fully pay for the cost incurred by the Court itself. This will require amendment of the Civil Procedure Code and Criminal Procedure Code.

5. 5.5 and 5.6 **IDENTITY CARDS FOR LAWYERS**

The Committee note that their proposal that lawyers should have photo identity card in order to have some kind of identification has been agreed to by the representatives of the Bar Council of India. The Committee also note that though the lawyers practising in the Supreme Court are already in possession of these photo identity cards, yet their display is not compulsory.

The Committee desire that the Central Government/Bar Council of India might frame the rules in respect of photo identity cards bearing his name and address, the State Bar Council in whose rolls his name appears and enrolment number of the advocate and the name of the Court in which he is practising. The Committee also desire that the displaying of the photo identity card on the chest of the lawyer when in the Court should be made compulsory.

6. 6.8 **CONTINUING LEGAL EDUCATION AND RESTRUCTURING OF LAW COURSE**

The Committee after carefully considering the matters in all its aspects, make the following recommendations:

The proliferation of law colleges without adequate number of teachers with competence has resulted in sharp deterioration in the standards of legal education. This has seriously affected legal profession. The Committee feels that the Bar Council should use the powers given to it under the statute and effectively

intervene to stop the proliferation of such sub-standard law colleges.

The Committee note that lack of funds has come in the way of improving legal education in the country. The 8th Finance Commission has made funds available for improving courts infrastructure. The Committee strongly recommend that adequate funds may be made available for bringing about qualitative improvement in the legal education.

The Committee feel that the present law course needs to be restructured. The Committee are of the view that part time law course should be discontinued. They agree with the suggestion of the Bar Council and the Supreme Court Bar Association that the professional Law Course should be of 5 year duration on the pattern of the National Law School functioning under the University of Bangalore. However, the Universities can offer a three year academic law course for the benefit of people who want to study law from academic point of view.

In order to maintain professional quality and also to ensure that only serious minded persons come into the legal profession, an entrance test of L.L.B standard should be conducted for enrolment as advocate. It is also necessary to have apprenticeship under senior advocates. The attention of the Committee has been drawn to the fact that section 24(1)(d) of the Advocates Act had provided for these which was repealed in 1974. The Committee feel that in the interest of quality of legal profession, this provision should be restored in the Act.

Syllabus prescribed by the Bar Council should be modernised, so that lawyers get acquainted with modern day commercial practices etc. Bar Council of India should take guidance from the rules prevailing in other countries in this regard.

The Committee feel that continuing legal education must be made compulsory. Institutional arrangements should be made so that every practising lawyer can have access to this system. All practising lawyers

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must attend some courses after every three-four years on which they may be given credit which in turn would be essential for their renewal of registration.

7. 7.4. to 7.6

RENEWAL OF REGISTRATION

The Committee note that the existing rules under the Advocate Act, do not prescribe or make it compulsory for an Advocate to have periodic renewal of registration with the Bar Council of India or State bar Councils. As a result once an Advocate is registered, it is difficult to find out whether he is alive or whether he is abroad or whether he has changed his address and so on. Moreover, the registers maintained by the Bar Councils could not be updated.

The Committee, therefore, desire that the Central Government/Bar Council of India should prescribe for a compulsory renewal of registration by the Advocates after every five years. It should be provided that the Advocates should inform the Bar Council of India/State Bar Councils that they want to continue to have their names as the rolls. If the Council/State Bar Councils do not receive any application for renewal of registration it should be presumed that the Advocate has either gone out of India or out of practice and his registration might be deemed to have lapsed/cancelled. There should also be provision in the rules under which he can get his registration with the Bar Council revived as and when he returns from abroad and resumes his practice.

The Committee further desire that most of the funds needed by the Bar Council of India/State Bar Council obtained from registration and renewal of registration. For renewal of registration a specific fee as prescribed by the Central Government/Bar Council of India from time to time will be required to be paid. Further, as recommended in Chapter 7 such renewal of registration should also be subject to obtaining prescribed credit for attending the workshop/refresher courses in continuing legal education.

MINUTES

APPENDIX II

(Vide para 7 of the introduction)

MINUTES OF FORTY, THIRD SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION

The Committee met on Friday, 3 June, 1994 from 11.00 to 13.30 hours.

PRESENT

Shri Amal Datta — *Chairman*

MEMBERS

2. Shri Prithviraj D. Chavan
3. Shri Guman Mal Lodha
4. Dr. A. K. Patel
5. Shri Rajendra Kumar Sharma
6. Shri Mohan Singh (Deoria)
7. Prof. K. V. Thomas
8. Shri Swarup Upadhyay

SECRETARIAT

1. Shri S. C. Gupta — *Joint Secretary*
2. Shri P. K. Chatterjee — *Deputy Secretary*
3. Shri Ram Kumar — *Under Secretary*
4. Shri R. Kothandaraman— *Assistant Director*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Dr. P. C. Rao, Law Secretary
 2. Shri R. L. Meena, Additional Secretary
 3. Shri P. C. Kannan, Additional Legal Advisor
2. The Committee took oral evidence of the representatives of the Ministry of Law, Justice and Company Affairs regarding rules/regulations framed under the Advocates Act, 1961, with a view to ascertain whether such rules covered all the areas enumerated in the Act and were adequate to meet the present day requirement or otherwise needed any modifications.
3. At the outset, the Committee expressed its concern to the Law Secretary regarding the astronomical cost of litigation, inordinate delays in court cases, indiscipline among the lawyers etc. and desired to know whether the Government feel that this sort of mischief could be tackled by changing the rules or even by changing the Act itself so that the clients are not deprived of justice or justice becomes too expensive for the clients.
4. Sharing the concern of the Committee, the Law Secretary stated that Law Commission had gone through these matters in their 28th Report on

the cost of litigation and 131st Report on the Role of legal profession where it had observed that few lawyers have monopolised the legal profession and were charging astronomical fees and it had been suggested that a flooring as also a ceiling on fees be prescribed. Further in a resolution made at Chief Ministers and Chief Justices conference held in 1993, it was agreed that concentration of work in the hands of some members of the Bar contributed to the accumulation of cases especially in Supreme Court and High Courts as a result thereof, the litigations became expensive. It was requested that Bar Council of India in consultation with the Bar Council of various states should take up the matter and made appropriate recommendations. However, the Government as well as the Bar Council to which the recommendations were referred felt that it was impracticable to implement the suggestion made by the Law Commission.

5. The Law Secretary further added that to a question whether there was any proposal under Government's consideration to put ceiling on the fees of lawyers of various High Courts and Supreme Court, and if so, the details thereof, the Government's reply was as follows:

"Government is not considering any specific proposal for putting a ceiling on the fees of lawyers. However, the Committee of petitions, 9th Lok Sabha in its 2nd Report recommended that possibility of setting up an administrative machinery to regulate the fees charged by a lawyer from the clients is there. The views of the agency are awaited in this regard."

6. The Law Secretary stated that the reply was treated as an assurance and they answered the matter as follows:

"The possibility of setting up of administrative machinery to regulate the fees charged by lawyers was examined in consultation with the Bar Council of India and it was not found feasible to set up such a machinery."

6. According to the Law Secretary, the matter was also discussed at the meeting of Law Ministers of different states and the view emerged was that it would not be practicable to enforce any ceiling in this regard.

7. Stating the reasons as to why such ceiling was not practicable, the Law Secretary stated that if one were to prescribe a ceiling, there must be some machinery or administrative set up to enforce it and the Government is in the dark as to the enforcement of such a ceiling. The Government cannot do anything by merely prescribing a ceiling limit as there may be lawyers who might then take money outside the ceiling limits. The Committee however suggested that such an activity could be brought out as misconduct under the rules of advocates Act and the responsibility to detect such activity might be prescribed as a duty on other lawyers, the Bar Councils and the Bar Associations. The Law Secretary stated that the Bar Council of India had already been asked to come out with the suggestions. The Committee also suggested that Bar Council of India

should prescribe that the fee paid to a lawyer should be according to the standing of that lawyer after categorising his standing. The Law Secretary agreed to pass on these suggestions to the Bar Council of India. The Law Secretary however, stated that emphasis should be not merely on having some statute but a statute which is capable of being enforced, and as regards implementing the Law Commissions Reports, the Government is expecting a reply from the Bar Council of India in that regard. The Committee desired that the Government should make the Bar Council duty bound to prescribe a scale of fee or ceiling for different categories of lawyers and it must be known to everybody that this is his fee. So transparency of fee had to be there and any client who wanted to know about the fee should be able to know about it.

8. Coming to the question of seeking adjournments by lawyers, the Law Secretary stated that this issue had reached such proportions that it became very disturbing in the context of mounting arrears of litigation. The issue was taken up at the Chief Ministers and Chief Justices Conference where they made the following recommendation:

“The Chief Ministers and the Chief Justices noted with concern that granting of unnecessary adjournments have become a widespread phenomenon. They considered that a consensus should be evolved to discourage granting of adjournments except in exceptional circumstances by recording the reasons for granting an adjournment.”

9. The Committee were of the view that if at all an adjournment was needed then the concerned lawyer should clearly state in the application, the reasons as to why he wanted an adjournment and before granting adjournment, the judges should record the reasons as to why the case had been adjourned. The Law Secretary stated that one of the agreed recommendations was that oral arguments not only increase the cost of litigation but also the pendency of cases. For expeditious disposal of cases, the court should discourage long arguments.

10. The committee were also of the view that before starting a case, a lawyer must give his opinion about the case to the client so that the interests of the client could adequately be protected. In response, the Law Secretary agreed to look into the matter.

11. Regarding continuing legal education, the Committee pointed out that mere acquiring a degree in law was not sufficient but there should be specialisation also. The continuing legal education, therefore, should not only be encouraged but also be made compulsory and arrangements should be made so that people can have access to the continuing legal education. The Law Secretary responded that Bar Council of India had started organising workshops for continuing legal education and that the Ministry would further take up the issue with the Bar Council to implement the Committee's opinion.

12. On being pointed out that as the part time study of law was not adequate to equip the students with the knowledge required for better professional skills, the same should be discouraged, the Law Secretary agreed with the Committee's opinion stating that matter would be consulted with Bar Council of India to ensure quality education in law colleges.

13. The Committee suggested that it should be ensured that the methodology of teaching in law institutions was enriched to keep abreast with modern developments in the profession and to accommodate the changed perceptions of the Society in relation to legal profession and the syllabus prescribed by the Bar Council of India also needed to be modernised, the Law Secretary agreed that it was a good suggestion and suggested that a fee might be collected from lawyers and it must be made compulsory for them to appear in the seminars or meetings organised for that purpose.

14. On being pointed out that strikes by lawyers, for whatever reasons, belittle the profession in public eye and an institutional framework might be contemplated for obviating such situations, the Law Secretary, stated that the matter had been gone through by the law Commission where in para 2.11 of their 31st Report, it has been observed that:

"Strikes by lawyers had become an increasingly recurring phenomenon. It is of recent origin. Strong views are held on either side, whether members of the legal profession can go on strike or not. The question was referred to the law Commission after the recent strike of the legal professionals in different parts of the country. Some members of the organisations supported the right to strike. On the other hand a number of voluntary organisations, Judges of High Courts and individuals expressed the opinion that the lawyers have no right to go on strike."

15. The Law Secretary further added that the matter was taken up at Chief Justice's Conference where it was recommended that a committee should be constituted consisting of lawyers and judges at the appropriate level for finding out the underlying causes for strikes by lawyers. Apart from that a public interest litigation was filed in the Supreme court praying that appropriate recommendation be made and the lawyers be directed to comply with them by strict observance of those recommendations. And, the Supreme Court itself is concerned about the matter.

The Committee then adjourned

MINUTES OF FORTY-SEVENTH SITTING OF THE COMMITTEE ON SUBORDINATE LEGISLATION

The Committee met on Thursday, 25 August, 1994 from 15.00 to 18.00 hours.

PRESENT

Shri Amal Datta — *Chairman*

MEMBERS

2. Shri Dharpal Singh Malik
3. Dr. A.K. Patel

SECRETARIAT

1. Shri Murari Lal — *Joint Secretary*
2. Shri P.D.T. Achary — *Director*
3. Shri Ram Autar Ram — *Under Secretary*

REPRESENTATIVES OF BAR COUNCIL OF INDIA

1. Shri V.C. Mishra, Chairman
2. Shri O.P. Sharma, Member
3. Shri R.K. Anand, Member
4. Shri R.K. Mehrotra, Member and
5. Shri C.M. Balaraman, Secretary

REPRESENTATIVES OF SUPREME COURT BAR ASSOCIATION

1. Shri K.K. Venugopal, President;
2. Shri K.B. Rohatgi, Vice-President;
3. Shri Parmod Swarup, Hony. Secretary;
4. Shri P.P. Rao, Member;
5. Shri N. Kumar, Member; and
6. Ms. Alka Aggarwal, Assistant Secretary

2. The Committee took oral evidence of the representatives of the Bar Council of India regarding rules/regulations framed under the Advocates Act, 1961, with a view to ascertaining whether such rules covered all the areas enumerated in the Act were adequate enough to meet the present day requirement or otherwise needed any modifications.

3. At the outset the Committee wanted to ascertain the desirability to have a periodic revision of the entries in the roll of advocates, after every three or five years as the names of advocates who has died or left the profession or taken up a job elsewhere, remained on the rolls. Shri V.C. Mishra, President, Bar Council of India stated that at present there was no such provisions in the rules for renewal of roll, but he welcomed the suggestion and stated that the renewal clause for 5 years will be better as it would help in updating the rolls of practising Lawyers.

The Committee expressed its concern about the fact that lawyers charge exorbitant fees from clients and were of the view that there should be

transparency regarding both the fees as well as the services for which the fees has been charged. Shri V.C. Mishra, President, Bar Council of India stated that so far as fees were concerned, it is already known to the client because there are two types of fees charged. In lower courts, the fees are charged for the whole case and in High Courts, it is for the whole case or on daily appearance basis. So, the aspect of fees is settled first and then only the client instructs the lawyer.

5. On being asked whether it was not possible that fees charged were made known to the client before he actually approached the lawyer, Shri V.C. Mishra, President, Bar Council of India, stated that it would be impracticable as the fees depend on the size of the brief. However, it was suggested by a Member, BCI, that a more practicable way could be to put some kind of ceiling so that no lawyer shall charge more than that fee for a day or for a whole case. On being pointed out by the Committee that in other countries, a lawyer has to state in advance to the clients before going to the court as to how much of the case he is going to take up; and the lawyer can charge only for that. The representatives agreed with this suggestion.

6. The Committee also suggested that the lawyer should have with themselves identification cards containing their name, enrolment number and photograph etc. The suggestion was welcomed by the representatives.

7. The Committee further pointed out that for quick justice delivery system, a lawyer should restrain himself from seeking adjournments on personal grounds and desired to know whether a prohibition in that regard could be incorporated in the code of conduct for lawyers. The President, Bar Council of India stated that adjournments are always suggested by the Court. Adjournments are not given to a lawyer until and unless he is sick. The Committee were, however, of the view that the lawyers who take adjournment on personal grounds should do so very rarely and that too with prior notice. Shri R.K. Anand, Member Bar Council of India was of the view that judges are seized of the matter and they give adjournments after considering whether the ground on which adjournment was sought is reasonable or flimsy.

8. As regards avoidance of frivolous litigation, the Committee felt that a lawyer should disclose to his client the true prospects of litigation with a view to obviating frivolous litigation. The client should be told about the points against him and it is the lawyer's duty to do this; and the client should decide what should be done. Shri V.C. Mishra, President, Bar Council of India in reply stated that this was generally done.

9. On the question of refresher courses for lawyers, Shri V.C. Mishra, President, Bar Council of India stated it was not possible either for the BCI or State Bar Councils to arrange refresher courses as no funds are provided for it.

10. On the question of strikes by Lawyers Shri V.C. Mishra, President, Bar Council of India informed the Committee that Bar Council at their special sitting has passed a resolution to the effect that nobody should give a call for strike for petty reasons. He suggested that there should be a Board for ventilating the grievances of the members of the Bench and the Bar and all those grievances should be settled by the Board. He pointed out that there is a communication gap between the Bench and the Bar and as result thereof number of disputes arise and in the absence of such a Board, the strike is the only way out.

In order to do away with the strikes, there could be a Board for Supreme Court, consisting of Chief Justice of India, the Chairman of the Bar Council of India and the President of the Bar Association to settle the disputes of the Supreme Court. Similarly, there should be Boards at level of High Courts which could consist of Chief Justice of that Court, Chairman of the State Bar Council and the President of that High Court Bar Association. In the district Courts, similar Boards should consist of a Judge, the President of the Bar and the nominee of the State Bar Council. These Boards would settle the disputes and therefore there would be no occasion for lawyers to go on strike.

11. Regarding syllabus for legal education, Shri V.C. Mishra, President, Bar Council of India stated that Bar Council of India has opened a University under a Karnataka Government Act, National Law School, University of Bangalore which would serve as model for the five year law course. Shri R.K. Mehrotra, Member, Bar Council of India was of the view that Law course could be divided into two academics to cater to the needs of the people, namely (1) the professional law course of five years under the Control of Bar Council and (2) the academics law course of three years duration under the control of Universities.

12. The Committee also desired the Bar Council of India might take guidance from the rules prevailing in other countries.

The witnesses then withdrew.

13. The Committee then took oral evidence of the representatives of the Supreme Court Bar Association on the same points.

14. At the start, the Committee pointed out that at present under Advocate Act, a person is to be registered as an advocate with the Bar Council, but he does not have to renew his registration and wanted to ascertain the views of representatives in that regard. Shri K.K. Venugopal, President, Supreme Court Bar Associations (S.C.B.A.) stated that at present Bar Council do not get a feedback for revising the rolls in regard to lawyers who have expired, those who have discontinued practice and those who carry on private employment and so on. Such a feedback is very essential for updating the Advocates rolls. He suggested that the renewal of registration may be done at least once in every five years and rolls should be revised by

making every lawyer who wants to continue to have his name on the rolls to fill up a form mentioning that he is practicing in a particular Court.

15. On being asked whether identity cards should be issued to lawyers, which are to be displayed by them while in court premises on the pattern of Government servants so that if there is any doubt about a person as to whether he is a lawyer or not, such identity cards can be proved useful. Shri K.K. Venugopal, President, Supreme Court Bar Association in reply stated that as far as Supreme Court Bar Association is concerned, they are having identity cards but their display is not compulsory or mandatory. He was, however, of the view that lawyer class would not be happy to display card with photographs. Shri P.P. Rao, Member, Supreme Court Bar Association stated that as far as Government servants are concerned, they stand on a different footing from lawyers, as they have to come and work in restricted areas.

16. On being asked how transparency of fees charged by lawyers could be achieved, Shri K.K. Venugopal, President, Supreme Court Bar Association was of the view that fees could be made known in advance in respect of only standard cases like divorce, eviction cases, accident cases and so on, where a stipulation can be fixed. In England, the type of advertisement is such that it indicates the name, qualification, speciality and the fee etc. In India also, the advertisement of standard cases should be permitted. But as far as specialised cases are concerned, it is very difficult to assess the fees in advance as sometimes, the brief may be very small containing few pages only or sometime it may run into 20 to 30 volumes and accordingly, the lawyer concerned is required to sit sometime for one hour only or sometimes for 20 hours to study the case and, therefore, it is very difficult to stipulate the fee in advance. The representatives, however, supported the idea of contingent fee. According to them, in the United States, most of the litigations are conducted through contingent fee. Contingent fee is originally a matter of contract, but after the trial is over, the court has a control over that fee. During the period of the entire litigation upto the final verdict, the lawyer does not charge a single pie either towards his expenses or towards fee. The contract has to be registered before the judge to ensure safety precautions so that the lawyer gets the money due to him. In India, people are denied access to the courts even in cases where they are entitled to get benefit, merely because they cannot afford to pay the fee. So the contingent fee is necessary. About fixing of fees charged by a lawyer for various type of cases, he stated that in a freely available service, there is a tremendous competition and the most advantageous thing for a client is to have a lawyer who would not have a frozen figure as a fee, but to agree mutually to something. By having the fees displayed in advance, the client would think that the lawyer would stick only to that fee and the client would never go to him. According to him, the solution may be that the fees should invariably be settled in advance and it should be put in black and white so that it protects the interest of both the parties.

According to Shri Parmod Swarup, Member, Supreme Court Bar Association, the client and advocate should decide in advance the fees to be charged, not in writing but orally.

17. On being pointed out that lawyers should not seek adjournments on personal grounds and prohibition in this regard should be incorporated in the rules, Shri K.K. Venugopal, President, Supreme Court Bar Association, stated that—

“There are two types of adjournments on personal grounds. One is where the reason is not foreseeable in advance like if the lawyer falls ill or somebody else falls ill or some death occurs in the family just a day before hearing and the lawyer is not in a position to appear for the hearing. Then the client also cannot have another lawyer to be ready with the case straightaway. The second personal ground is where the lawyer is going abroad for a festival and he knew in advance. Therefore, in case of emergency of this nature the adjournment should be sought and allowed. In cases where the adjournment is on foreseeable personal grounds it should not be allowed. Rules should provide for it.”

18. On being asked by the Committee as to what should be done to avoid frivolous litigation and whether the courts should impose fine if it is found that the case is frivolous, Shri K.K. Venugopal, President, Supreme Court Bar Association stated that it is very difficult to tell in advance the prospects of the case as the judges are also human beings and they have their own philosophies. Shri P.P. Rao, Member, Supreme Court Bar Association was of the view that number of frivolous litigation is increasing which should be curbed and if a lawyer sees that there is no point in the case, he should advice his client not to file the case.

19. On being suggested that the client should be told in advance about the negative and positive points of the case, Shri K.K. Venugopal, President, Supreme Court Bar Association stated that it is invariably done.

20. As regards syllabus and standards of legal education, Shri K.K. Venugopal, President, Supreme Court Bar Association suggested that five years law course should be encouraged which brings in all the subjects for the purpose of making good lawyer. Shri N. Kumar, Member, Supreme Court Bar Association was of the view that enrolment fee should also be enhanced to discourage people who are not keen about the profession. Shri P.P. Rao, Member, Supreme Court Bar Association, stated that five years law courses should be of the kind which is there in the National Law School, University of Bangalore. There Should also be of a well quified library and practising lawyers should give lectures about the theoretical and practical laws.

21. Speaking about maintaining the standards of legal profession, Shri P.P. Rao, Member, Supreme Court Bar Association suggested that at the time of enrolment, there has to be an admission test of LL.B standard to test the fitness of the candidate to be admitted to Bar. After the test, he

should undergo an apprenticeship with a lawyer of standing to familiarise himself with the mode of address, the code of conduct that is expected of him to develop a sense of responsibility. It is very necessary to introduce the apprenticeship. Shri K.K. Venugopal, President, Supreme Court Bar Association added that before being repealed in 1974, Section 24(1) (d) of the Advocates Act provided that no person shall be admitted as an advocate unless he underwent a course of apprenticeship. There has been a vast change since then; hundreds of law colleges have mushroomed which produce a large number of students who do not have the basic knowledge of law. Therefore, it is necessary to restore what has been repealed.

22. On being asked about their opinion about refresher courses for continuing legal education for practising lawyers, Shri K.K. Venugopal, stated that this is very essential. According to him, every year programmes are conducted for junior members of the bar where lectures are given by senior lawyers on legal aspects, expertise in drafting, various constitutional topics and so on. On being asked about the legal education under the purview of the States, Shri K.K. Venugopal, President, Supreme Court Bar Association, stated that in States, there is no institutional system for continuing legal education and Bar Council of India, is to be blamed for it. Shri P.P. Rao, Member, Supreme Court Bar Association was of the view that for continuing legal education, association of the judicial element is very important. He suggested that the Parliament may think of bringing in the component of nomination to the Bar so that distinguished lawyers could be nominated to the Bar Council of India.

23. Regarding strikes by the lawyers, Shri K.K. Venugopal, stated that it is a professional misconduct. As a result of strike client as well as junior lawyers suffer. In other countries, there is no such cases of strikes. Instead of going on strike, the Advocates can protest in a different way like wearing a white dress or not attending the hearing for the first 15 minutes or passing a resolution etc. Shri P.P. Rao, Member, Supreme Court Bar Association also agreed with the view and stated that "strike" is not only a professional misconduct but it also amounts to contempt of Court.

24. On being asked about the way to limit the monopoly of lawyers with regard to charging of fees, Shri K.K. Venugopal, was of the view that there is no solution of this problem. Shri Parmod Swarup, Member, Supreme Court Bar Association stated that many clients feel that they would win the case if they engage a particular advocate exactly in the way the patients who approach only those doctors who they think would perform best.

25. On being asked to suggest some ways to avoid income-tax evasion by lawyers, Shri K.K. Venugopal, President, Supreme Court Bar Association stated that at present, we have a fair tax system but even then there

is vast amount of evasion of tax. However, even if a ceiling is fixed for lawyers, then the money would be collected by cash. Hence, there is really no solution.

26. On being asked whether oral arguments could be cut short for quick disposal of cases, Shri K.K. Venugopal, President, Supreme Court Bar Association opined that oral arguments could be cut-short like in the United States where some time-limit is prescribed and they take only 500 cases per year and mercilessly reject all other cases. In India also, the Supreme Court should restrict its examination to important questions of law which affect the entire country as a whole and matters of far reaching consequences. Otherwise the cases would get accumulated and thousands and thousands of cases would pile up in High Courts, lower Courts and even in Supreme Court. He suggested that time limit is a very important thing and it must be enforced very strictly.

The witnesses then withdrew.

The Committee then adjourned.

MINUTES OF THE FIFTY-FIRST SITTING OF THE COMMITTEE
ON SUBORDINATE LEGISLATION (TENTH LOK SABHA)

The Committee met on Monday, 21 November, 1994 from 15.00 to 17.00 hours.

PRESENT

Shri Amal Datta—*Chairman*

MEMBERS

1. Shri Prithviraj D. Chavan
2. Shri Dharampal Singh Malik
3. Shri Rajendra Kumar Sharma
4. Prof. K.V. Thomas
5. Shri Ratilal Kalidas Varma

SECRETARIAT

Shri Murari Lal—*Joint Secretary*

Shri P.D.T. Achary—*Director*

2. ** **
3. The Committee then considered the draft Fifteenth Report on the rules framed under the Advocates Act, 1961 and adopted it.

The Committee then adjourned.

* Omitted portions of the Report are not covered in this Report.