

Clause 1—(Short title and commencement).

Amendment made:

Page 1, line 4,—

for "1972" substitute "1973" (2).

(Shri F. H. Mohsin).

MR. DEPUTY-SPEAKER: The question is:

"That clause 1, as amended, stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

Enacting Formula

Amendment made:

Page 1, line 1,—

for "Twenty-third" substitute—

"Twenty-fourth" (1)

(Shri F. H. Mohsin).

MR. DEPUTY-SPEAKER: The question is:

"That the Enacting Formula, as amended, stand part of the Bill."

The motion was adopted.

The Enacting Formula, as amended, was added to the Bill.

The Title was added to the Bill.

SHRI F. H. MOHSIN: I beg to move:

"That the Bill, as amended, be passed."

SHRI S. M. BANERJEE: After the Title Mr. Mohsin should also be accepted by the House.

MR. DEPUTY-SPEAKER: He has already been accepted and he is always acceptable.

Now, the question is:

"That the Bill, as amended, be passed."

The motion was adopted.

16.22 hrs.

ADVOCATES (AMENDMENT) BILL

THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI NITIRAJ SINGH CHAUDHARY): Sir, I beg to move:

"That the Bill further to amend the Advocates Act, 1961, as passed by Rajya Sabha, be taken into consideration."

The All India Bar Committee and the Law Commission in its Fourteenth Report had recommended that there should be a unified Bar. After these recommendations came the Government considered the matter and brought forward a bill which was passed in this House and the other House and this was known as the Advocates Act of 1961. After the Act was in force for quite some time certain difficulties arose and therefore a Bill to amend the Advocates Act was moved in the year 1965 as Bill No. 14 of 1965 in this House. This 1965 Bill was withdrawn and the whole matter thereafter was referred to a Committee of eminent jurists the Chairman of which is the present Chairman of the Rajya Sabha and the other Members were, Mr. C. R. Pattabhiraman, Mr. C. K. Daphtary, Mr. N. C. Chatterjee, Mr. Frank Anthony and others. This Committee was known as the Advocates Act Review Committee. They submitted their report on the 5th of September, 1966. They made quite a few recommendations and Government, after considering those recommendations,

[Shri Nitiraj Singh Chaudhary]

moved a Bill in the other House in the year 1968, that is, Bill, No. 33 of 1968. It was passed by the Rajya Sabha with certain amendments. While this Bill was being considered in this House it was referred to a Select Committee of the House and the Select Committee suggested certain provisions like legal aid, etc. After consideration, it was again thought proper to have a more comprehensive legislation. Therefore, this 1968 Bill was also withdrawn with an assurance that a comprehensive bill would be introduced later. On this assurance both the Houses gave leave for the withdrawal of this Bill.

As a consequence of this assurance a revised Bill was introduced in the Rajya Sabha in the year 1970. This is Bill No. 40 of 1970. This was taken up on 26th May, 1971 and was again referred to a Joint Committee and the Committee submitted its report on the 12th of December, 1972. The Rajya Sabha has passed the Bill with some modifications and now this Bill is before this House.

Originally the Act did not extend to Jammu and Kashmir but now the Bill would cover Jammu and Kashmir, Goa Daman and Diu and this Bill will extend to the whole length and breadth of India.

Then it was found that the Disciplinary Committees of the various Bar Councils were taking too much time, they were not taking action in time etc. and there were long delays. Therefore the Joint Committee has recommended that all the proceedings should be finished within one year and for that purpose a provision has been suggested.

Then, about teaching, there has been a view held that after the student comes out from the Faculty of Law he should have a practical training and instead of three years two years teaching should be provided. The Joint Committee was of the view that

3 years should be introduced and that should be enough and after 3 years no further period of training is necessary.

Then, about the function of the Bar Councils, also, it has been thought that they can have seminars, issue law journals and other books. They are also authorised to organise legal aid and have other organisations for the welfare of the legal profession, etc.

Provision has also been made to enable the advocates who have moved from Bangla Desh to this country to be enrolled in this country as advocates.

The enrolment fee of the Scheduled Castes and Scheduled Tribes has been reduced.

The matter of legal aid was discussed *in extenso* by this Committee and it was found that since the administration of law and justice was a State subject, this Bill was not the proper place where provisions about extensive legal aid should be put in.

Therefore, Government appointed a Committee for considering what form legal aid should have and what its ambit should be and how it should be provided. That committee has submitted its report to Government and it is under examination. I think the examination will be completed very soon and thereafter action would be taken.

16 23½ hrs.

[SHRI S A KADER in the Chair]

There is one special feature to be mentioned. Though the advocates of this country were not entitled on a reciprocal basis to be enrolled as advocates in British courts, the barristers coming from England were enrolled here. That disparity has been removed. After a particular date hereafter, the barristers would not be

entitled to be enrolled as advocates here as of right. But we find that certain student from this country have already joined the Inns of Court for being called to the Bar. Therefore, an amendment would be moved to enable these students who have already taken admission there, some of whom are in the first term, some in the second term and some in the third term, to complete their course and come. Thereafter, none would be enabled to go and join there.

Then, a strange situation arose under the Advocates Act, it was the Bar Councils who could enrol advocates, but accidentally, in UP, the Allahabad High Court enrolled 163 persons, as advocates between 2nd January, 1962 to 25th May, 1962. This mistake was noticed in January, 1973, when this Bill was under consideration. Previously, 174 persons were similarly admitted by the Mysore High Court. Their enrolment was validated by an amending Bill in 1968. These 163 persons had been enrolled by the Allahabad High Court without having any powers, and they have been practising in various courts and in the High Court of UP. The amendment that we have proposed in this Bill would validate these enrolments.

With these words, I commend the Bill for consideration of the House, and I am sure that it will receive the wholehearted support of this House.

MR. CHAIRMAN: Motion moved:

"That the Bill further to amend the Advocates Act, 1961, as passed by Rajya Sabha, be taken into consideration".

श्री राजाचतार झास्त्री (पटना)

मैं इस विधेयक का मोटे तौर पर समर्थन करता हूँ। जो कि मैं वकील नहीं हूँ और मैंने वकालत भी नहीं पढ़ी है फिर भी एक आम नागरिक इस क्विल के बारे में क्या सोच सकता है,

उसी नुकते से मैं कुछ निवेदन करना चाहता हूँ। विधेयक में गरीबों को कानूनी सहायता दिलाने की बात कही है। इसका मैं पुरजोर समर्थन करता हूँ। यह बात केवल कानून के पत्रों में सीमित नहीं रह जानी चाहिए, इसे व्यवहार में भी लाया जाए, यह मेरा निवेदन है और इसकी व्यवस्था भी होनी चाहिए। इसका कारण यह है कि आज मजबूत से ज्यादा ग्राहक गरीब लोग हैं जिन्हें न्याय नहीं मिलता। उनके पास पैसा नहीं है। उनका पक्ष अक्सर न्याय का होता है। लेकिन वकील की वे फीस नहीं दे सकते इसलिए वे मुकदमें हार जाते हैं या वे अछूता वकील पैसे के अभाव की वजह से नहीं कर पाते और मुकदमे हार जाते हैं और पैसे वाले जिन का पक्ष न्याय का नहीं अन्याय का होता है, जीत जाते हैं। सही मानों में इस बाबत इसको अमल में लाने की व्यवस्था आप करें ताकि यहां के गरीब समझें कि सचमुच में गरीबों को राहत देने की कुछ बात की गई है।

न्यायालयों में बहुत केवल वकील ही कर सकते हैं। अगर मेरे जैसे लोग कभी मुकदमे में फंस जाते हैं—और हम लोग अक्सर मुकदमों में फंसते हैं—, तो वे अपने मुकदमों की बहुत नहीं कर सकते। हम यहां कानून बना सकते हैं, लेकिन अगर हम स्वयं मुजरिम बन जायें, तो बहुत नहीं कर सकते इसलिए मैं चाहता हूँ कि अगर इस बात की व्यवस्था की जाए कि जिस पर मुकदमा चलता है, जिन को हम मुजरिम कहते हैं, अगर वह स्वयं बहम करना चाहे, तो उस को हम की इजाजत दी जानी चाहिए।

सुप्रीम कोर्ट के पैमाने पर या राज्यों में जो बार कौमिले बनेंगी, उन की अवधि चार साल से बढ़ा कर पांच की जानी चाहिए। जब हम लोक सभा और विधान सभाओं के चुनाव पांच साल के बाद

[श्री रामावतार शास्त्री]

कर सकते हैं, तो बार कौंसिलों की भ्रष्टाचार भी प्रणाली वइने में क्या कठिनाई है ? हम से वकीलों को भी आसानी होगी और उन का खर्चा बचेगा । ज्वॉयंट सिलेक्ट कमेटी में कुछ सदस्यों ने यह मांग की थी । मैं इस का समर्थन करता हूँ ।

इस बिल में अममर्थ वकीलों को सहायता देने की बात कही गई है । हम देश में बहुत सी श्रेणियों के लिए प्राविडेंट फंड की व्यवस्था कर रहे हैं, ताकि प्राविडेंट फंड की राशि का इस्तेमाल बुझपे में, या शादी-विवाह जैसे आवश्यक कामों के लिए, किया जाये । इसी तरह बार कौंसिलों में भी प्राविडेंट फंड की व्यवस्था की जानी चाहिए, ताकि समय पर वकीलों की मदद की जा सके । इस के लिए धारा 6(2) में संशोधन कर के प्राविडेंट फंड की व्यवस्था कर दी जाये ।

आज-कल जो भी चाहता है, वह वकील बन जाता है । चूकि गरीबों के पास पैसा नहीं होता है, इसलिए वे कम पैसा खर्च कर के अनुभवहीन लोगों को वकील रख लेते हैं और इस कारण मुकदमे में हार जाते हैं । इसलिए यह आवश्यक है कि ट्रेनिंग की उचित व्यवस्था की जाये, ताकि सही मानों में कानून के जानकार ही वकील बन सकें । कानून की तीन साल की पढ़ाई के कॉर्स में ढाई साल पढ़ाई हो और छः महीने ट्रेनिंग के लिए रखे जायें, ताकि लोग ठीक तरह से ट्रेन्ड हो कर हाई कोर्ट में दाखिल हों ।

ट्रेनिंग की देख-रेख बार कौंसिल के हाथ में होनी चाहिए, यूनिवर्सिटी के हाथ में नहीं । आप जानते हैं कि आज-कल यूनिवर्सिटियों का क्या हाल है । बार कौंसिल के अनुभवहीन लोग इस ट्रेनिंग की देख-रेख करें और यह तय करें कि प्रशिक्षण की क्या

व्यवस्था हो । इस तरह सही पाठ्यक्रम निश्चित किया जायगा और सभी दृष्टियों से योग्य वकील तैयार हो सकेंगे । जब विद्यार्थी डाक्टर की परीक्षा पास करते हैं, तो उन को छः महीने के लिए हाउस सर्जन बनाते हैं । इसी तरह वकीलों को भी ट्रेनिंग दी जाये, लेकिन उस के लिए अलग समय न रखा जाये, बल्कि तीन साल की पढ़ाई में ही उस को शामिल किया जाये ।

इस विधेयक में कहा गया है कि एन-रोलमेंट के लिए स्टैम्प ड्यूटी देनी होगी । ऐसा क्यों है ? वह तो अन्याय है । जब कोई डाक्टर परीक्षा पास कर के प्रैक्टिस करने लगता है, तो क्या उस से कोई फीस ली जाती है ? इस तरह का प्रकार का व्यवहार करना उचित नहीं है । इस विधेयक में स्टैम्प-ड्यूटी की व्यवस्था को निबाल देना चाहिए ।

इस विधेयक में सदस्यता शुल्क 250 रुपये रखा गया है । मैं चाहता हूँ कि वह 350 रुपए होना चाहिए । मैंने इस बारे में पिछले अधिवेशन में एमेंडमेंट दिया था, लेकिन इस बार मैं उसको देना भूल गया । इसलिए वह नहीं आ सका । सदस्यता शुल्क 350 रख कर उस में से 250 रुपया तो भ्राल-इंडिया बार कौंसिल और स्टेट बार कौंसिल में वितरित कर दिया जाये और 100 रुपया एक अलग कोष में रखा जाये, जिस से असमर्थ और जरूरतमन्द वकीलों की मदद की जा सके ।

एडवोकेट जो ब्लर्क रखते हैं, उन की बहाली में बार कौंसिल का दखल होना चाहिए । ब्लर्क का काम बहुत महत्वपूर्ण होता है । वे अनुभव से आधे वकील बन जाते हैं और कई बार तो वकीलों से भी ज्यादा जानने लगते हैं । यह नहीं होना चाहिए कि वकील जिस को चाहे, उस को ब्लर्क रख ले, बल्कि बार-कौंसिल को यह अधिकार

होना चाहिए, ताकि क्लर्कों की ट्रेनिंग और योग्यता का निश्चित किया जा सके और क्लर्कों की बहाली हो सके ।

शायद पुराने कानून में यह व्यवस्था है कि बार कौन्सिल में इनकम टैक्स लिया जायेगा । ऐसा क्यों है ? क्या वह कोई प्राकट्ट-मेकिंग बाडी है ? बार कौंसिलें तो वकीलों के पेशों को और ज्यादा उन्नत बनाने का गारंटीजिक काम करती हैं । उन को जो आमदनी होगी, वह इस काम में खर्च की जायेगी । उन से इनकम टैक्स क्यों लिया जाये ? क्लिन्की में चार्टर्ड एकाउंटेंट्स को तो इतनी आजादी दी गई है कि वे रिटर्न भी दाखिल नहीं करते हैं । अगर बार कौंसिलों से इनकम टैक्स लिया जायेगा, तो अपने धन्धे को विकसित करने और अन्वयर्थ और जहरतमन्द वकीलों की मदद करने के लिए उन के कोश में कपी हो जायेगी । इस लिए मैं चाहता हूँ कि उन को आयकर और दूसरे करों से मुक्त रखा जाये ।

मंत्री महोदय को इस बात का ध्यान रखना चाहिए कि आज देश में बड़े पैमाने पर गरीबों की ज़रियों की लूट हो रही है । वे लोग तो एन्डो-ओ० के यहां पैरवी नहीं कर सकते हैं, वे हाई कोर्ट या सुप्रीम कोर्ट में कैसे जायेंगे ? ऐसी व्यवस्था की जाये कि गरीबों का सम्पत्ति की हिकाजत हो सके और उन को जमान छीने जानें पर उन को बढ़िया से बढ़िया कानूनी सहायता दी जाये । ऐसा करने पर ही हमारे देश के लोगों, और इस पेशे में लगे हुए लोगों को फायदा होगा ।

इन शब्दों के साथ मैं इस विधेयक का मोटे तौर पर समर्थन करता हूँ ।

SHRI B. R. SHUKLA (Bahraich):
Mr. Chairman, Sir, an independent, efficient and incorruptible judiciary is necessary for the successful functioning of democracy. And this can

be ensured and sustained only when the fountain-source namely legal profession itself is efficient and incorruptible. The legal profession is a body from which the members of the judiciary are recruited. Unfortunately after the passing of the Advocates Act in the year 1961, there has been a lot of inefficiency and corruption and lowering down of the ethical standards of the members of this profession which has been always designated as a noble and learned profession. The Ministry of Law and Justice is manned by two very distinguished lawyers one of whom adorned the Chair of a High Court Judge. I expected a better deal under the amending Bill, but I am sorry to note that careful attention has not been bestowed while framing the amending clauses of this Bill. I will particularly draw the attention of the hon. Minister to clause 19 which seeks to insert a new clause 24A, which lays down that no person shall be admitted as an advocate on a State roll if he is convicted of an offence involving moral turpitude and sentenced to imprisonment. It means that if a person who has been convicted of an offence of theft under section 379 IPC and instead of being sentenced to imprisonment is sentenced to a fine, the disqualification would not attach to such an entrant, because he has been only fined, though the offence involves moral turpitude. So it means that we are permitting even thieves and cheats who have fortunately escaped the punishment of imprisonment to enter the profession. What an anomaly? Is there any sense in enacting such a provision which does not attach any disqualification to a person whose offence is almost on par with another man but simply because he escaped punishment of jail: he is going to have the double advantage. Firstly he has a lighter punishment by way of fine and secondly he can go on practising.

The offence of contempt is very serious affair if it is committed by a

[Shri B. R. Shukla]

person who is an aspirant to be enrolled as a member of the Bar. It is the fashion of the day that Untouchability Offences Act should be looked with grave anxiety. Therefore a provision has been made that if any person has been convicted of an offence under the Untouchability Offences Act and sentenced to imprisonment he shall be disqualified for a certain number of years. What about those persons who have committed gross contempt of court. They would be persons more undesirable than the person who because of past custom and practice prevailing for centuries in this country has refused for instance to take water from a person considered to be an underdog in this country. I am not defending the concept or practice of untouchability, but the conviction of a person for an offence under the Untouchability Act, would entail disqualification while a person who commits contempt of court would not be disqualified. This is something irrational. It also says that nothing contained in sub-section shall apply to a person who having been found guilty is dealt with under the provisions of the Probation of Offenders Act, 1958. That is the provision in this Bill. There are a number of provisions which deal with probationers for example section 562 of the Criminal Procedure Code also provides for the release of the first offender. Then there is the U.P. Act of 1938. There are other analogous provisions passed by other State legislatures also. But according to section 24A(2), only those persons who have got benefits under the Central Act would not come within the benefit clause and all others would not. I have tabled certain elaborate amendments last session. This time also I gave a list but due to certain confusion, my list of amendments was given to the office only in the morning. But my amendments are exactly the same as those tabled by Mr. Daga. I would appeal to the minister to consider these

amendments and accept them without any hitch and not take the stand that because this Bill has come prepared by the department and it has gone through the process of legislation in the Rajya Sabha and it has also been well considered by the members of the Joint Committee therefore no amendment should be accepted.

As regards the point raised by Shri Shastri, a person who has obtained the degree of M.B.B.S after having studied for five years in a medical college night and day, attending classes and laboratories, is required not to touch a human body till he undergoes practical training for 6 months or 1 year in the same medical institution. Here we know that the law students mostly attend their lectures by proxy and are non-serious because everybody is expected to pass this examination very lightly. After having studied for 3 years, they do not know how to behave in court, where to smoke or chew betel and they are straightway entrusted with case work. The result is falling standards of the Bar and the Bench alike. Therefore, more academic training for three or four years or even 12 years would not be a valid and proper substitute for the practical training in the chamber of a senior advocate. The mere passing through the corridors of the court imbues the new entrant with a sense of discipline and norm of ethical standard. Therefore, I appeal to the minister to make a provision that no person shall be eligible to be enrolled as an advocate unless he, after having obtained his degree of law, further under goes apprentice training for at least 6 months.

Though Mr. Shastri is not a lawyer, he appears to have been a victim of unscrupulous people. He has got very minute insight into the working of the lawyers' clerks. Most of us who have been practising lawyers know how unscrupulous clerks pollute the atmosphere and precincts of law

courts. There should be a provision regulating the enrolment and functioning of advocates clerks. There should be a proper registration and qualifications should be prescribed for them. There should be provision for their suspension and removal from the precincts of the courts. This Bill is lacking in that essential aspect.

The date upto which a person shall be entitled to be an advocate has been changing and I do not know the rationale behind it. In clause 18 it is provided the date "28th day of February 1963" should be substituted by "12th day of March 1967". So far as northern India is concerned, the academic year for the universities and colleges starts in July and ends in June. So, any person who passes during the academic year should be entitled to be an advocate. What is the significance of the 12th day of March 1967. I do not know whether some particular class of persons are to be benefited by putting this arbitrary date. Otherwise, I fail to understand the rationale behind this.

It is also said that a person who is a barrister and called to the bar on the 31st December 1973 or has obtained such other qualifications in law, recognised by the Bar Council of India for the purpose of admission as an advocate will be an advocate under this Act. The law institutions in Great Britain are recognised by the Bar Council of India. If there is a law graduate from a German University, he will be eligible for enrolment on the basis of reciprocity. Therefore, this revision is meaningless. There should be no time-limit for admission of a barrister on the rolls of Advocates in India.

Then, any person who has been convicted for a moral offence or under the Contempt of Court Act should incur disqualification for being enrolled as an advocate for certain period. If he has been sentenced with fine, it should be from the date of conviction. So far as persons who are released on the execution of personal bonds with or without surety are concerned,

they are dealt with either under the Probationers Act of 1958 or any law which prevails on the subject. They shall be eligible for enrolment only after the expiry of the period of probation. For instance, a person has been committed for forgery and he has been let off under the Probationers Act, for two years on probation. Within that period of two years if he again commits an offence he shall *ipso facto* be sent to jail.

So, I would say that no prestige should come in here and it would be better if the Bill is withdrawn. If there is any urgency about any particular clause, let it be passed. So far as the other clauses are concerned, let them be kept in abeyance. Let another Select Committee be formed by which the matter should be thrashed out thoroughly and let that comprehensive Bill include provision even for legal aid.

श्री आर. बी. बडे (खरगोन) :

माननीय सभापति महोदय, शुक्ला जी ने अभी इतना क्रिटिसिज्म किया है, मैं उस से सहमत नहीं हूँ। इस का कारण एक तो यह है कि मैं उस कमेटी का मेम्बर था, इस लिये कमिटेड था, लेकिन मैं समझता हूँ कि इन्होंने इस के प्रावीजन को नहीं देखा है। बार-कौन्सिल में एक डिमिप्सिनरी कमेटी होती है, वहाँ उस की एन्क्वायरी होती है, उस के बाद डिमक्वालिफाई किया जाता है। वहाँ पर जो बार कौन्सिल बैठी हुई है, उस के बारे में इन्होंने विचार नहीं किया। उन्होंने प्रोबेशन का उल्लेख किया, हमने भी उस पर विचार किया था—लेकिन जब डिमिप्सिनरी कमेटी वहाँ है, बार-कौन्सिल वहाँ है और वह उस की तरफ देखती है और इस के बारे में प्रावीजन है—

convicted for moral turpitude. If he is sentenced for moral turpitude, there also there is a section for disqualification

उस के आधार पर उस का डिमक्वालिफिकेशन हो जाएगा। जब पेंसी वान है तो इस में

[श्री आर० वी० बड़े]

शंका का कोई चीज नहीं है। मेरा ख्याल है कि शुक्ला जी का ध्यान इस का तरफ नहीं गया है।

आप ने कहा कि जो कारकुन होते हैं, काम करनेवाले, उन की परीक्षा होनी चाहिये। मेरा ख्याल है कि आप केवल शहर की तरफ देखते हैं, आप गांव-गांव में जा कर देखिये। वहाँ जो कारकुन होते हैं वे मैट्रिक पास भी नहीं होते, हैं, लेकिन उन को कोर्ट काम करते करते इतना अनुभव हो जाता कि वे सब काम ठीक से चला लेते हैं—और उनके लिये आप कहते हैं कि उन की ट्रेनिंग होनी चाहिये, यह बात कुछ समझ में नहीं आती है। जहाँ तक टाउट्म का प्रश्न है, जब कोर्ट्स का शासन ठीक चलेगा और बार कौन्सिल भी होगी तो टाउट्म भी अपने आप निकल जायेगा। लेकिन उस के बाद भी टाउट्म रहते हैं तो उन को न शुक्ला साहब कम कर सकते हैं न हमारे वकील लोग कम कर सकते हैं। टाउट्म कोर्ट्स में नहीं होंगे तो कहां होंगे। उन के लिये अलग से कानून बनायेगा तो ठीक है इसलिये तो मैं उस की ओर नहीं जाऊंगा।

जहाँ तक सोलिसिटर की मं का सम्बन्ध है, हम ने वहाँ भी कहा था कि सोलिसिटर्स का डबल खर्च पड़ता है। दोनों जगह—यम्बई और कलकत्ता में—सोलिसिटर्स रखने पड़ते हैं—वह ड्युबल सिस्टम बन्द करना चाहिये। हमारे शासन की तरफ से लिखा गया है कि हम उस को बन्द करने वाले हैं, उस पर विचार कर रहे हैं श्री स्टेटों को भी लिखने वाले हैं। इस के वास्ते शासन ने अपना विचार आप के सामने रखा है, इसी लिये इस में प्रावीजन नहीं किय गया है।

शास्त्री जी ने कहा कि 3 रुपया फीस रखनी चाहिये। यह सवाल भी वहाँ आया था—250 रुपया फीस और 100 रुपया जो गरीब होंगे उन के लिये रखना

चाहिये,। हमने ऐसा कहा कि जो असमर्थ होंगे उनके लिये यह टैक्स नहीं होना चाहिये। इस के लिये बार कौन्सिल अपना कोई फण्ड खोले और अपनी तरफ से चन्दा दे, इस लिये फीस केवल 250 रुपये रखी जाए। जो शड-यूड कास्ट्स और ट्राइब्स के लोग हैं उनके लिये आधी फीस रखी गई है—शायद यह आपने नहीं देखा है। हमने शेडयूल्ड कार्ट्स और ट्राइब्स के लिये भी विचार किया था।

मैंने इसमें एक डिसेन्टिंग नोट भी दिया था कि जो बाल इण्डिया बार कान्सिल है उस का रजिस्टर अलग बनना होना चाहिये—ऐसा कहा गया था। मैंने अपने डिसेन्टिंग नोट में कहा है—

“The above clauses are meant to abolish the Common Roll. This would be against the objects of the enrolment of the Advocates because the Act has been enacted to have All India Unified Bar and the Common Roll will help in the maintenance as such.”

मेरे शब्दों में:—

“I am not in favour of deleting the provisions of Common Roll. I am fortified by the experts, like the Law Commission of India. In their Report XIV, Volume-I at para 559 the Commission has suggested that this is important function of the All India Bar Council. The very object of unification of Bar will evaporate and an advocate will not consider himself to be a member of the family of the Bar of India. To have a statewide Roll will create according to the Law Commission, a feeling of provincial and disintegration. Therefore, I strongly object to the deletion of the original Section mentioned in the above Clauses.”

17 hrs.

क्लाज 5 को डिलीट कर दिया है। इसलिये इसमें मेरा आब्जेक्शन है। बार कौन्सिल आफ इंडिया के लिए इसमें लिखा है कि

डीनेशन दिया जाता है उसपर विचार करना चाहिए और मैंने लिखा है कि 50 परसेन्ट कम करना चाहिए :

"In clause 35, which seeks to amend Section 46, I want the Section 46 of the original Act needs revision. The continuation of the present percentage as the share of the Bar Council of India in the enrolment fees received by the State Bar Council is highly unjust as its functions are being reduced by this new amendment Bill. Therefore, the share of the Bar Council of India in the enrolment fees received by the State Bar Council is halved or considerably reduced."

ला कमिशन का कहना था कि तीन से पांच साल के बाद रिवाइज करना चाहिए लेकिन रिवाइज नहीं किया गया है इसलिए मेरा कहना है कि बार कौंसिल आफ इंडिया को जो पैसा मिला जाता है उसमें 50 परसेन्ट कट करना चाहिए । हमारे यहां बार कौंसिल जो हैं—जबलपुर, इन्दौर, ग्वालियर, तीनों जगहों पर खर्चा पूरा हो नहीं पड़ता और जो नये सेमिनार उनको करने चाहिए वह नहीं कर सकते हैं इसलिए मैंने कहा था कि फंड्स कम करने चाहिए ।

एक और डिसेन्ट मैंने दो है । इन्होंने लिखा है कि बार कौंसिल को मीटिंग हेडक्वार्टर पर होनी चाहिए और मैं कहता हूँ जबलपुर हेडक्वार्टर है तो वहां होनी चाहिए, ग्वालियर या इन्दौर में नहीं । जहां जहां पर परमानेन्ट बेंच है वहां पर होनी चाहिए । मैंने बताया है कि मेडिकल कौंसिल के बारे में कोई रेस्ट्रिक्शन नहीं है :

"No such restriction is placed on the powers of the Medical Council of India or other statutory bodies. On the other hand, it has been mentioned in Section 8 of the Indian Medical Council Act that the Council shall meet at such time and place as may be appointed by the Council."

बार कौंसिल निश्चित करेगी कि यहां पर मीटिंग होनी चाहिए । यह मैंने एक डिसेन्ट दिया है ।

शुक्लजी ने यहां पर कहा कि जिम तरह से डाक्टर 6 महीने एपरेंटिस रहते हैं, हाउस जाब करते हैं, उसी तरह से वकीलों के लिए भी पहले कोर्ट जाब रखनी चाहिए । मैं कहना हूँ वकील साहब ने देखा नहीं है कि कोई ग्रादमी जब वकालत पास करता है तो उसके बाद तीन साल तक उसका स्टार्वेशन पीरियड रहता है । वे रोज 11 से पांच बजे तक कचहरी में बैठे रहते हैं लेकिन कोई भी मुअ्विकल उनके पास नहीं आता है । जो क्लाइन्ट्स होते हैं वह बड़े उस्ताद होते हैं वे कहते हैं कि हम तो किसी होशियार वकील के पास ही जायेंगे । जब मैं एक के साथ जूनियर वकील की तरह काम करता था तो जहाँ मुअ्विकल आते थे वे कहते थे कि छोटे वकील से हमारा काम नहीं चलेगा । मैंने उनसे कहा कि मेरा नाम तो बड़ा है, मैं छोटा कैसे हो गया, तब भी वे नहीं रुकते थे । तो इस तरह से एक वकील को तीन तीन साल तक वह काम करना पड़ता है, तीन तीन साल तक सीनियर वकीलों के साथ में जूनियर वकीलों को काम करना पड़ता है, कमेटी में इसपर विचार हुआ है कि वकील को कुछ ट्रेनिंग देनी चाहिए या नहीं । इन्दौर में वह जो तीन साल की ट्रेनिंग होती है उसमें ग्राखिरी 6 महीने वकील के ग्राफिस को अटेंड करना चाहिए और वह कहता है कि 6 महीने काम किया । उसके बाद अगर यह कहा जाये कि उसको डाक्टर की हाउस जाब की तरह से कोर्ट जाब करनी चाहिए तो फिर उसका एक तरह से स्टार्वेशन ही हो जायेगा वहां पर तो सरकार डाक्टर को 200 रुपए देती है और उससे काम भी लेती है लेकिन वहां पर इनसे क्या काम लिया जायेगा । इस तरह से फोकट में ही उनको दो सौ रुपए देने होंगे । मैं समझता हूँ उनको

Bill

Bill

[श्री आर० वी० बड़े]

इसमें जो प्रविकल्प डिफिकल्टी है वह समझ में नहीं आई है। दूसरी बात यह है कि वह पैसा कौन देगा ?

लीगल एड की जहां तक बात है, हमने मीटिंग में भी कहा था और यह बड़े आश्चर्य की बात है कि जानन ने कहा था कि कुछ दिनों के बाद में हम लोगल एड के बारे में दूसरे प्राविजनस ला रहे हैं इसलिए यहां से इसको अलग कर दीजिए, उसके लिए प्रतीक्षा करने की जरूरत नहीं है, मैं समझता था कमेटी की स्थापना करके उसकी रिपोर्ट जल्दी आ जायेगी लेकिन वह अभी नहीं आई है प्रो. ... जल्दी करनी चाहिए।

श्री नीतराज सिंह चौधरी : रिपोर्ट आ चुकी है।

श्री आर० वी० बड़े : लेकिन अभी विचार चल रहा है और विचार करते करते कई साल लग जायेंगे और मालूम नहीं फिर बिल आयेगा या नहीं, वह आयेगा भी तो उसपर डिक्लेशन होगा, सेलेक्ट कमेटी में जायेगा और फिर वहां से वापिस आयेगा जिसमें बहुत समय लगेगा। और अभी साधारण जनता में यह जो एडवोकेट्स बिल आ गया उससे उनको आशा बंधी है कि उनको लीगल एड मिलने वाली है और कमेटी में हम सोच रहे थे सो माननीय मन्त्री जी ने कहा कि दूसरा बिल ला रहे हैं इसलिए इसको निकाल दिया जाये या तो इसपर भी जल्दी करनी चाहिए।

इसके बाकी प्राविजनस का मैं समर्थन करता हूँ। शुक्ला जी ने कहा कि अनटचे-बिलिटी के बारे में अगर कन्विकशन होगा तो डिमक्वालीफाई करेंगे मेरा कहना है कि इस प्रकार के कोई कुसूर होने वाले नहीं हैं। इन शब्दों के साथ मैं, जो मैंने आट्रजेक्शनस किए हैं उनके अनट्रिक्शन, इस विषय का समर्थन करता हूँ।

SHRI A. K. M. ISHAQUE (Basirhat): I rise to support the Bill. I thank the Law Minister in that he has introduced the Bill at long last. The Bill is already very much overdue. After passing through rough seas it has ultimately come. I was very much encouraged in that some provision for legal aid to the poor is made in the Bill but when I went through the provision I found that the legal aid that is proposed to be given to poor is really imaginary, fictitious and unreal. This is the burning topic of the day, that legal aid should be given to the poor.

According to our Constitution every citizen of the country is equal. They have got equal rights and they are all equal before the law. In practice it is difficult to get justice equally. Unless one provides for the peripheries of courts, it is very difficult for one to get justice. There are people being exploited by rich sections of society. They may have a just claim to property or a certain right but because of the poverty of the poor they can not get the justice which is their due. This is the position. Therefore it has been felt everywhere and it has been a burning topic in every village that these poorer sections of society should be given legal aid.

How this is to be given? As we know, Sir, the major expenses are the court fees. The court fees are payable to the Government and the amount can be distributed by the Government.

Then, if it is a civil suit, the question of service of copies of summons is there. There may be cases in which there can be a hundred defendants. The law enjoins that the copy of the plaint be served upon all the defendants. It involved a very high cost, and it is not possible for the poor people to serve summons and copies of plaint. But that job can be done

by Government very easily. If legal aid is really meant, then this aspect has to be looked into.

Another major expense is lawyers' fees. Another item of expense is supplying copies of orders, decrees and evidences etc. There are the necessities to get real justice from a court of law. Unless provision for these is made for the poor people, their case will very much go by default. That has been our experience in courts.

Whatever provision has been made is merely illusory. No real legal aid has been proposed to be given to the poor people through this measure. Therefore, I would suggest that if we really mean to render some help to the poorer sections of the people, the Court Fees Act requires to be amended.

The question is who will decide whether a person is poor or not. The indication in the Bill is that the Bar Council will be authorised to determine whether a person is poor or not. That is a question which may be again reconsidered by the Law Minister, namely whether Government are going to vest the Bar Council with this authority or they will ask the court to decide it. As the Law stands today, the court has power to decide whether a person is a pauper or not. In case a person is found to be a pauper, the court has authority to exempt him from paying any court fees. Therefore, I would ask the Law Minister to consider which authority would serve the purpose better.

Service of copies of summons can be managed very easily, but Government will have to incur some additional expenses in the shape of appointment of some new persons to do the job. They will not have to do this in the case of every suit or every petition, but only in the case of persons who are poor, this type of legal help is required to be rendered.

Copies of orders, decrees and evidences can also be arranged through amendment of some of the High Court orders. If legal aid to the poor is really meant, these things have to be done.

Then come lawyers' fees. The hon. Law Minister himself had graced this profession for some time. He is one of the legal luminaries of the country and he knows what a profession of contradiction the lawyers' profession is. There are lawyers earning the greatest amount that one can possibly conceive of in the country and there are also lawyers who do not earn even their bare livelihood. One is paying lakhs of rupees by way of income-tax, while the other who is a beginner cannot earn even Rs. 50 a month. After graduating, one has to pass through the law course for three years and he is regarded as the highest educated person in the country. If he cannot earn his livelihood, he gets frustrated and demoralised. If he cannot choose a nice senior, he suffers from frustration. Both ends can be met by making provision for legal aid to the poor and also helping these persons in the profession by making appointment of lawyers in the courts for rendering help to the poor. If one lawyer is appointed in a subdivisional court for every five lakh population, if one lawyer is appointed in the district court for every ten lakh population and if one lawyer is appointed in a High Court for every fifty lakh population, enough lawyers can be appointed. These persons can be expected to render help to the poor and the problem that is haunting this profession can also be solved. Therefore, if the Government propose to make the scheme of legal aid to the poor meaningful, I would ask the Minister to reconsider this and bring forward an appropriate amendment.

I am very happy that this Bill is going to do away with barristers. It is nothing but a hangover of imperialism and the very term smacks of

[Shri A. K. M. Ishaque]

master-servant relationship. But then Government are hesitating. They are not saying very definitely that they are doing away with this imperialist hangover for good. They have fixed a time giving allowance to persons taking this legal training in a foreign country. I would only request that no further extension of time be given and our own legal training must be given as much respect and recognition as is due to it.

I congratulate Government on the Bill that has come, but reiterate that legal and to the poor must be made meaningful so that the poor people who have their expectations in this regard may see them fulfilled.

SHRI G. VISWANATHAN (Wandiwash): I am glad that this Bill has come to this House after a long time. Whenever we have discussed in this House about the profession of advocates, which is fastly becoming a much-maligned profession, people think either of the top advocates who earn in lakhs or of the very bad characters among the advocates about whom they hear a lot. In the course of this, they forget the normal lawyer who is practising his profession.

Once this profession or those who were practising it were dominating the national scene. Most of our national leaders belonged to this honourable profession. But that condition no longer obtains. Most of our leading advocates somehow or other shun politics; they do not come forward to lead the people. This is one of the reasons why the profession is losing its significance and importance.

AN HON. MEMBER: He is also one of them.

SHRI G. VISWANATHAN: Yes, but I am not defending my profession. I pointed out that normally people think only about the top advocates. But in reality it is not so. This is no more an attractive profession as far as youngsters are concerned. As was

pointed out by previous speakers, I know of hundreds of thousands of young advocates who just pass out from the college, are enrolled in the Bar but cannot earn their livelihood at least for three or four years. They go about with their seniors and in the evening they have to come on their own; most of the seniors do not pay also. I think the senior advocates who are placed in a better position must come forward and pay to the juniors so that they also take enough interest in the profession and learn and practise law. Most of these juniors have to live either on the income from their parents or from their in-laws. That is the situation which is now prevailing in our country.

As far as the Bill is concerned, I welcome this measure in that they are going to have one system throughout the country as one roll, but, at the same time, still the Government has not come forward to abolish this dual system which is obtaining in the high courts of Calcutta and Bombay, where the client cannot go and engage a counsel by himself. There also a middleman is required. He has to go to a solicitor who ultimately will brief the counsel. As you know, coming from the great city of Bombay, this definitely goes against, and is diametrically opposed to, the spirit of the law as far as the lawyers are concerned, and as far as the client is concerned, it has become a costly affair. The Committee itself has taken a strong view on this. I would like to quote from the report of the Committee:

"The dual system militates against the basic idea of unification of the bar in our country. It also creates some monopoly for a section of the bar to practise in a particular court. The Committee strongly feels that this system should be abolished as early as possible."

But strangely enough, the Committee could not do anything in this because

the Government did not take a particular stand when the Bill was considered in the Joint Committee. That is why the Committee has left it to the Government. I request the Minister that he should take immediate steps to see that the dual system which is nothing but a hang-over of the British discrimination should be immediately abolished.

Again, regarding the legal aid to the poor, I must agree with the Joint Committee's opinion that this important measure cannot be handled by the Bar Councils. This requires a lot of resources which the Bar Councils cannot afford. It must be rightly given to the Government. I think Justice Krishna Iyer was heading the Committee, and as the Law Minister has just now said his report was submitted. I would like the Government to take immediate steps so that the weaker section of society can be given some legal aid.

For example, in my State, there is provision for legal aid to the poor Scheduled Castes and Scheduled Tribes. No doubt it is a good measure, but it is not enough. Throughout the country it must be available. Not only to the Scheduled Castes and Scheduled Tribes but to all the poorer sections, to whatever community they belong, this legal aid should be given. It is not only a question of giving the court-fees. There is a lot of amount spent. There are ways of paying legal or illegal fees, lawful fee or unlawful fee. Apart from court-fees and advocate fees, the client is expected to tip so many officers in the courts, especially in the lower courts. I think the Minister must be aware of it. We are now living in an age where judgments can be purchased by people who can afford. In these conditions, we must definitely see that aid is given to the poor people who go to the courts.

As far as apprenticeship period is concerned, my previous speakers differed in their opinion. Previously, it was only a two-year course. As far

as Madras is concerned, we had to undergo a two-year period in the college attached to the university, and afterwards we were expected to have an apprenticeship for a year. Now, they have increased it to three years. I do not think that when there is a three-year law course, any apprenticeship is necessary. If they have a one-year course, then I think you can have a six-month or a one-year period of training which may be called apprenticeship.

Another suggestion was made by Mr. Shukla, that the advocate clerks should be registered and qualifications fixed. I think his main arguments must have been the menace of touts in courts. We are unable to distinguish between a tout and a clerk. Many touts call themselves advocate clerks, and it creates confusion among the litigants and the parties. Whenever somebody enters the town, he will be surrounded by so many people who say that they are vakil clerks when ultimately it turns out that they are only touts, who are given a percentage. I do not know whether the Government can fix a qualification for these vakil clerks, but they can definitely get them registered under each and every bar. I think the Government can easily do it.

Finally, there are a number of provisions in this Advocates (Amendment) Bill which should be welcome, like the abolition of the practice of addressing a judge as "My Lord" and so on. This is definitely an improvement and it will go according to the times. With these suggestions, I request the Minister again to take immediate steps to give legal aid to the poor and again to abolish the dual system which is obtaining in the Calcutta and Bombay high courts.

श्री मूलचन्द्र झागा (पायी) : ज्वायंट कमेटी एक चीज पुरेनिमामली कहती है और उसके बारे में राय देनी है उसको भी आप हगनोर कर देते हैं तो फिर ज्वायंट

[श्री मूलचन्द डागा]

सिनेट कमेटी का मतलब ही क्या रह जाता है। इसने यह कहा है :

"There is a consensus among the members of the committee as well as eminent jurists who appeared before the Committee that the statutory provisions should be made for rendering legal aid to the poor and the provisions made under the clauses were in the right direction"

आपने इसको इग्नोर कर दिया है। हिन्दुस्तान में गरीबों को सस्ता और सुगम न्याय नहीं मिलता। ज्वायंट कमेटी स्ट्रांगली रिक्मैण्ड करती है लेकिन फिर भी आप बार काउंसिल की और एडवोकेट की बात करते हैं। जितने भी एडवोकेट हैं वे गरीबों की वकालत नहीं करना चाहते। अगर सेशन जज उनको डिस्पूट करता है :

Please conduct the case on behalf of the accused, he will avoid and say I am busy with this or that.

तो वे कहेंगे कि हम इस केस में विजयी हैं। क्या कहीं मैजिस्ट्रेटरी प्राविविजन इस प्रकार का है ला के अन्दर कि उनको इतने समय के लिए साल में इम तरह के केस हेंडल करने पड़ेंगे ? कोई भी अच्छा वकील गरीब जो मुलजिम होता है, जेल में होता है उसका वकील बनना नहीं चाहता, हाईली ही लाइक्स टू टेक दैट केस। जो निकम्मे या किसी काम के वकील नहीं होते हैं उनको ही मुकर्रर किया जाता है। आप कहते हैं कि आप एक प्रोग्रेसिव लेजिस्लेशन बनाने जा रहे हैं। मैं चाहता हूँ कि आप वकीलों के ऊपर जिम्मेदारी डालिए कि आप इतने केसिस साल में लड़ेंगे गरीबों के वास्ते, यह टर्म होगी। ऐसा कोई प्राविविजन आपने नहीं रखा है। लीगल एड कंस मिलेगी। आप कहते हैं कि आप लीगल एड देना चाहते हैं। लेकिन इस तरह से उनसे लीगल एड मिल नहीं सकती है। जो लीगल एड आप की ओर की से जा रही थी

के किमी केस के अन्दर देने भी है उम्मे वही वकील खड़े होते हैं जिन के पास कोई मुकदमें नहीं होते हैं लड़ने के लिए।

आप बड़ी एथिक्स की बातें करते हैं, ऊंचे आदर्शों की बात करते हैं। इतना अच्छा प्राविविजन करने के बाद मारल टरमिटेड के बारे में कैसा प्राविविजन किया है ? मैंने एक एमेंडमेंट मूव किया है मुझे पता नहीं आप उनको मानेंगे या नहीं क्योंकि यहां ऐसी पद्धति है कि कोई भी एमेंडमेंट मूव की जाए रूटीन के तौर पर उसको माना नहीं जाता है। यह एक रूटीन बन गया है। जो एमेंडमेंट मैंने दो है उन में क्या कहा है मैंने ?

उमके पीछे ओर दिया है :

If he is convicted of an offence involving moral turpitude and sentenced to imprisonment....

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): We are accepting your amendment.

श्री मूल चन्द डागा : एमेंडमेंट एक्सप्ट होना एक बहुत बड़ी बात है। बड़ी कसरत वाली बात है। बड़ी मुश्किल से यह मानी जाती है। मैं धन्यवाद देता कि मिनिस्टर साहब ने इसको मान लिया है। ला मिनिस्टर साहब बड़े अच्छे जज रहे हैं और खुशी की बात है कि उन्होंने इसको मान लिया है।

फिर आपने कहा है :

"Nothing contained in this section shall apply to a person who is guilty of an offence under the Probationary Offenders Act."

किसी वकील को आपने कहा कि छः महीने या एक साल के लिए प्रोबेशनरी एक्ट के नीचे बांड एक्सीक्यूट करो। एक साल या छः महीने तक क्या वह वकालत कर सकेगा। यह देने के बाद इन्हें ही एलाउड टू प्रैक्टिस ?

में कहता हूँ कि प्राबेशन के पीरियड में तो एक्सक्लूड करना चाहिए, लेकिन इस बिल में कहा गया है :

“Nothing contained in sub-section (1) shall apply to a person who having been found guilty is dealt with under the provisions of the Probation of Offenders Act, 1958”.

एक आदमी को कहा गया कि वह दो साल के लिए शोर्टी दे और वह शोर्टी देता है। वह पीरियड में तो एक्सक्लूड करना चाहिए। छः महीने या एक साल का जो प्राबेशन पीरियड हो, उस में एक्सक्लूड करना चाहिए। हम कैंक्टर की बहुत बात करते हैं। वकीलों पर तो बड़ी जिम्मेदारी है। अगर प्राबेशन पीरियड में एक्सक्लूड करें तो अच्छा है। इस बिल में कहा गया है

“The Bar Council of India or any of its committees, other than its disciplinary committee, may of its own motion or otherwise review any order, within sixty days of the date of that order”.

पहले यह था :

“The Bar Council of India may at any time call for the record of the proceeding under this Act which has been disposed of by the State Bar Council and from which no appeal lies, for the purpose of satisfying the legality and propriety of any disposal and may pass any such orders in relation thereto as it thinks fit.”

60 दिन का समय बहुत थोड़ा है। हर जगह 90 दिन दिये जाते हैं। अगर कोई प्रोवायटी और लीगलिटी के मामले में सुनो मोटो रीव्यू करना चाहे, तो मौका देना चाहिए। यह लिमिटेशन नहीं रखना चाहिए।

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सारे रूल सेंट्रल गवर्नमेंट क्यों बनायेगी? जो रूल बार कौंसिल बनाती है, उस में सरकार का हस्तक्षेप क्यों हो?

पहले यह व्यवस्था थी :

“The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act including rules with respect to any matters for which the Bar Council of India or State Bar Council has power to make rules.”

इस में कहा गया है कि बार कौंसिल आफ इंडिया या स्टेट्स की बार कौंसिल रूल नहीं बना सकती, सेंट्रल गवर्नमेंट रूल बनायेगी। यह बात मेरी समझ में नहीं आती है।

क्लाज 39 में “एग्री रूल मेड अग्रंड दिस सर्वेशन” की बात कही गई है। ये रूल कौन बनायेगा? यह पावर बार कौंसिल आफ इंडिया और स्टेट्स की बार कौंसिल को देनी चाहिए। लेकिन सरकार ने यह पावर अपने हाथ में ले ली है। यह ठीक नहीं है।

जहां तक ट्रेनिंग का ताल्लुक है, उस के साथ साथ प्रैक्टिकल ट्रेनिंग क्यों न हो? अगर कोई लड़का तीन चार घंटे के लिए कालेज जाता है, तो वह बाकी छः सात घंटे किसी वकील के साथ काम कर के सर्टिफिकेट क्यों न ले ले? वह कियो का भी सर्टिफिकेट लाये कि इस ने मेरे साथ इतने महीने तक काम किया है। इस पर मंत्री महोदय को क्या एनराज है? कोर्ट में जाने से कुछ न कुछ नालेज होता है। उस को कोर्ट एंटेड करनी चाहिए, लाइपज की कम्पनी में रहना चाहिए। यह तय कर दिया जाये कि वह उनी पीरियड में प्रैक्टिकल ट्रेनिंग हासिल कर के सर्टिफिकेट लाये, तब वह एनरोलमेंट के लिए एनटाइटल्ड होगा।

श्री स्वामी बहुमानन्द जी (हमीरपुर) : सभापति महोदय, नब्बी और से कहा गया है कि गरीबों को न्याय मिले। लेकिन जब तक वर्तमान अदालतें रहेंगी, तब तक न्याय नहीं मिल सकता है। मैं चाहता हूँ कि गांव पंचायतों को अदालतों के अस्सी फी-सदी मुकदमों में करने के अधिकार दिये जायें। जिनकी अपील न हो, शेष कुछ मुकदमों जिला परिषदों को दिये जायें। इसी तरह विधान सभाओं को भी अधिकार दिये जायें। कुछ मामले पालियामेंट के मेम्बर करें, जो यहाँ बैठें चाय पीते रहते हैं। तब अदालतों की क्या जरूरत रहेगी? अदालतों में काम करने वाले वकील आदि खेती का काम करें, दूसरे धंधे करें।

आज अदालतों में स्थित खोरी और भ्रष्टाचार फैला हुआ है। अदालतों में वकील काले कोट पहन कर भूतों की तरह घूमते फिरते हैं। सरकार गांव पंचायतों और जिला परिषदों को अदालत के अधिकार दें और उन को इस काम के लिए भत्ता दिया जाये। विधान सभाओं और पालियामेंट के मेम्बरों को ता' वतन मिदता ही है। उन की बच बतवाई जाये और सुप्रीम कोर्ट तथा हाई कोर्टों को खत्म किया जाये, जजों को खत्म किया जाये। सरकार दो तरफ खर्च कर रही है। एक तरफ वह हम को 51 रुपये प्रति-दिन देती है और दूसरी तरफ अदालतों पर खर्च करती है। मेरी राय है कि अदालतों को खत्म कर के गांधी जी की कल्पना की गांव पंचायतों और जिला पंचायतों की स्थापना की जाये। अगर वर्तमान अदालतों को रहने दिया जायेगा, तो गरीबों को कभी न्याय नहीं मिलेगा। गरीबी तो बढ़ती चली जा रही है। इस स्थिति में सरकार गरीबों के लिए मुफ्त वकील कहाँ से लायेगी? इस लिए सभ्यता का राष्ट्रीयकरण कर दिया जाये। न रहे बांस न बजे बांसुरी। व्ययितगत सभ्यता इस प्रकार न रहे।

SHRI NITIRA SINGH CHAUDHARY: Mr Chairman, various points have been raised by the hon. Members who have spoken, and they have generally supported this Bill. Almost everyone has referred to the provisions on legal aid. Therefore, before replying to the other points, I will deal with this point first.

As I said in my opening speech, it was thought that in this Bill comprehensive provision about legal aid should be made. But when it came before the Joint Committee the matter was considered and the opinion was divided. It was felt that if the entire legal aid affairs is left to the Bar Councils and to the members of the bar, the whole purpose might be frustrated. Then there was one view that since the administration of law and justice is a State subject, we cannot legislate on that matter. After considering all these matters it was decided that a Committee should be appointed to prepare a comprehensive scheme regarding legal aid. Accordingly, a committee with Justice Krishna Iyer, who is now a Judge of the Supreme Court, as Chairman, and jurists, law teachers and public workers as members was appointed. That Committee sat almost every day for over two months and submitted a 400-page report. That report is being examined and I think the examination would end soon. In short, the Committee is of the view that legal aid should be split up into two parts; one is education in which the students and the people should be involved; the second is advice. The effect of this will be that the workload on courts would be minimised because advice would be given on matters which could go to a court of law. They have suggested a certain procedure. And that is being examined. I can assure the House that as soon as a decision is taken a comprehensive scheme would be laid before the House and suitable steps taken. Where the Central Government is to take action, the Central Government shall take, and where

the State Governments are to take action, they would be requested to take action accordingly.

Then Shri Ramavatar Shastri asked why a provision for provident fund has not been made for members of the Bar. For his information, there is already an Act known as the Public Provident Fund Act of 1968. That is in force, and anybody who wants to join and take benefit of the provident fund provision can study that Act and subscribe according to the provisions of that Act. The Members of the Bar can certainly do it. Now the provisions of the Advocates Act have been amended by which the Bar Councils have been empowered to undertake such things which may be of benefit to the members of the Bar.

Shri Ramavatar Shastri and other friends referred to practical training to students who pass from the law faculties and before they are enrolled. The matter has been examined more than once, and after a close scrutiny the period of two years has been raised to three years. If my hon. friends look into section 49A (d), they will find that the Bar Council of India has to frame rules for education. They have a committee known as the Education Committee. They decide as to the type the education of students studying law should be; it is for them to decide as to how this training should be, what sort of training it should be, how much period the students should spend in the University and how much in practical training, and with coming of legal aid, I think, the students will have more opportunities for having this sort of training.

The next point made by Shri Ramavatar Shastri was about raising of the enrolment fee. This matter was provided originally in the original draft. But the Joint Committee considered it, and after considering everything, it was decided that it should be Rs. 250 for all, and for members of Scheduled Castes and Scheduled Tribes it should be half of it, i.e., Rs. 125.

Shri B. R. Shukla has raised various points. They are covered by the three amendments moved by Shri Daga to which I will reply when the amendments are put before the House. The senior Minister has already said that we would be accepting two amendments about conviction. Where only conviction is provided, that part would be deleted, and if a person is found guilty of moral turpitude or if he is found guilty of an offence under the Untouchability Act, then whether the conviction is jail or fine, the conviction is there and he would be debarred.

Shri Shukla referred to enrolment of clerks, etc. I think, much has been said of this point by the other friends. Therefore, I need not take the time of the House on this.

Shri Bade referred to the Common Roll. Since he was a member of the Joint Committee, he is aware that the Common Roll, although it was prescribed, was never maintained because the Bar Council of India had no means to check whether the Roll that was there was upto date. It is the States' Bar Councils which maintain the Roll upto date. And when a provision is made that all the Rolls of the State Bars shall be kept upto date and that everybody enrolled in any State shall be entitled to practise anywhere throughout the length and breadth of India, all the States' Rolls combined shall be the Common Roll of the country. Therefore, the present provision serves the purpose of a Common Roll.

Then Mr. Bade referred to the point that the Bar Council should be permitted to sit at other places also and specially where there are Benches. This point was also discussed in detail by the Committee and it was found that, if the sittings were held at places other than the headquarters, then much money would be spent. It was said, after all, when the Members come, they are paid T.A. etc. But

[Shri Nitiraj Singh Chaudhary]

those who make that suggestion forget that, it is not only the members who have to move but the entire staff also has to move. Whenever they may sit, the members' expenses are to be paid, but if the sittings are held at places other than the headquarters of the Bar Council, the staff expenditure would be added which is an avoidable expenditure. Therefore, the Joint Committee took decision that the sittings of the Bar Council should be held at places where they have their headquarters.

My D.M.K. friend who has left the house made a suggestion that seniors should pay the juniors. If he was here, I would have asked him to work out a procedure as to how this can be enforced. We feel that this is not practicable. This is just an idealistic proposition.

He also made a reference to the dual system. That system is there and it is engaging the Government's attention and for your information, I may state that some steps have already been taken in this matter.

SHRI R. V. BADE: What about the revision of the share of fees to be paid by the State Bar Council to the Central Bar Council? The Law Commission has said that every five years it should be revised. You have said nothing about it.

SHRI NITIRAJ SINGH CHAUDHARY: That is a matter for the State Bar Councils to take up with the Bar Council of India. If there is really some difficulty, certainly it may be necessary for some intervention but so far as we are concerned, there is no such difficulty.

Dagaji made certain remarks about legal aid. I think Dagaji replied to his own argument when he said, 'Gribonki Vakalat Vakil Nahi Karte'. When things are that way, how can a

provision in this Bill help? We have some provisions, but they are only enabling provisions. We know the limitations of the Bar Councils and how far they can go. They cannot go much. They can go just a little. A specific and separate provisions must be there. We felt that it cannot be said that the Members of the Bar were not permitted to provide legal aid. Therefore, this provision has been made by the Joint Select Committee.

That is, I think, all that I have to say for the present and I am sure the House will accept the Bill unanimously.

MR. CHAIRMAN: The question is:

"That the Bill further to amend the Advocates Act, 1961, as passed by Raja Sabha, be taken into consideration."

The motion was adopted.

MR. CHAIRMAN: Now, there are no amendments to clauses 2 to 17.

So, the question is:

"That clauses 2 to 17 stand part of the Bill."

The motion was adopted.

Clauses 2 to 17 were added to the Bill.

Clause 18—(Amendment of section 24)

Amendment made:

Page 7, line 37,—

for "1973" substitute "1976" (13)

(Shri H. R. Gokhale)

MR. CHAIRMAN: Now, the question is:

"That clause 18, as amended, stand part of the Bill."

The motion was adopted.

Clause 18, as amended, was added to the Bill.

Clause 18—(Insertion of new section 24A)

SHRI M. C. DAGA: I move:

Page 8, line 20,—

omit "and sentenced to imprisonment" (6)

Page 8, line 22,—

after "1955" insert—

"or under the provisions of any law for having committed an offence of contempt of courts" (7)

Page 8, lines 22 and 23,—

omit "and sentenced to imprisonment" (8)

Page 8, line 26,—

add at the end—

"and in case of sentence of fine, from the date of conviction and in case a person has been dealt with under the provisions of the Probation of Offenders Act, 1958 or similar law of any State Legislature, a person shall be eligible for admission after the expiry of the period of probation" (9)

Page 8, lines 28 and 29,—

for "is dealt with under the provisions of the Probation of Offenders Act, 1958"

substitute—

"is let off with an admonition under any law relating to probation of offenders by whatever name described". (10)

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI I. R. GOKHALE): I hope after the two amendments my colleague is accepting, Mr. Daga would withdraw his other amendments.

SHRI B. R. SHUKLA: What would happen in case a person who has been convicted for theft or forgery but he has been given the benefit of first offender and he goes to get a certificate before his enrolment. What

would be the type of certificate? "I know such and such gentleman. He bears a good moral character."

SHRI H. R. GOKHALE: The whole question is: we know that even in the case of first offenders there is an element of stigma attached when the court decides that he has done it. But the very object of making provisions like the Probation of Offenders Act is that in cases where the offence is a first offence and where the man requires a lenient treatment, he is given a special treatment under that Act and what the Joint Committee felt was that the conviction, and according to the amendments which I am accepting, only conviction, and not sentence of imprisonment or fine, should be enough for certain offences of moral turpitude, etc. In these cases where the court of law itself regards them as comparatively minor offences, at this stage, I think, we should not put the young men out of job merely because the court has attached a stigma.

SHRI NITIRAJ SINGH CHAUDHARY: Sir, I am accepting No. 6 and No. 8 of the Amendments moved by Shri Daga.

I would request him to withdraw amendments Nos. 7, 9 and 10 moved by him.

SHRI M. C. DAGA: I seek leave of the House to withdraw my amendments Nos. 7, 9 and 10.

MR. CHAIRMAN: Does the hon. Member have the leave of the House to withdraw his amendments?

SOME HON MEMBERS: Yes.

MR. CHAIRMAN: Amendments Nos. 7, 9 and 10 are withdrawn by leave of the House.

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

MR. CHAIRMAN: Now I will put amendments No. 6 and No. 8 to the vote of the House.

[Mr. Chairman]

The question is:

Page 8, line 20,—

omit "and sentenced to imprisonment" (6)

The motion was adopted.

MR. CHAIRMAN: I will put amendment No. 8 to the vote of the House.

The question is:

Page 8, lines 22 and 23,—

omit "and sentenced to imprisonment" (8)

The motion was adopted.

MR. CHAIRMAN: I will now put Clause 19 to the vote of the House, as amended by amendments Nos. 6 and 8 already carried by the House.

The question is:

"That Clause 19 as amended, stand part of the Bill."

The motion was adopted.

Clause 19, as amended, was added to the Bill.

Clause 20 was added to the Bill.

MR. CHAIRMAN: Now clause 21. Are you moving your amendment, Mr. Daga?

SHRI M. C. DAGA: No, Sir. I am not moving.

MR. CHAIRMAN: All right. I will put Clause 21 to the vote of the House. The question is:

"That Clause 21 stand part of the Bill."

The motion was adopted.

Clause 21 was added to the Bill.

MR. CHAIRMAN: Mr. Daga is not moving amendment to Clause 22. The question is:

"That Clause 22 stand part of the Bill."

The motion was adopted.

Clause 22 was added to the Bill.

Clauses 23 to 39 were added to the Bill.

Clause 40—(Insertion of new sections 58AC, 58AD and 58 AE.)

Amendment made:

Pages 13 and 14,—

Re-number the proposed new sections "58AC, 58AD and 58AE" as "58AD, 58AE and 58AF" respectively, and before the new section 58AD as so re-numbered, insert—

"Special provisions with respect to certain persons enrolled by Uttar Pradesh State Bar Council.

58AC. Notwithstanding anything contained in this Act or any judgment, decree or order of any court, every person who was enrolled as an advocate by the High Court during the period beginning with the 2nd day of January, 1962 and ending on the 25th day of May, 1962 and was subsequently admitted as an advocate on the State roll by the State Bar Council of Uttar Pradesh shall be deemed to have been validly admitted as an advocate on that State roll from the date of his enrolment by the High Court and accordingly entitled to practise the profession of Law (whether by way of pleading or acting or both)." (14)

(Shri H. R. Gokhale).

MR. CHAIRMAN: Now the question is:

"That Clause 40, as amended, stand part of the Bill."

The motion was adopted.

Clause 40, as amended, was added to the Bill.

MR. CHAIRMAN: Now the question is:

"That Clause 1 stand part of the Bill."

The motion was adopted.

Clause 1 was added to the Bill.

The Enacting Formula and the Title were added to the Bill.

SHRI NITIRAJ SINGH CHAUDHARY: Sir, I beg to move:

"That the Bill, as amended, be passed."

MR. CHAIRMAN: Motion moved:

"That the Bill, as amended, be passed."

Now, Shri Sarjoo Pandey.

श्री सूरज पांडेय (गजीपुर) : सभापति महोदय, मैं इस मौके पर खास तौर से कुछ जनरल बातों के संबंध में कहना चाहता हूँ। हमारी सबसे पहली आलोचना तो यह है कि सरकार की न्याय के बारे में कोई नीति नहीं है। नीति तय करने के लिये जरूरी था कि इस कानून में जो एडवोकेट्स के कर्तव्यों को रैग्युलराइज करने के लिये आया है उसको पीछा सादा और ठीक ठाक बनाना चाहिये था। लेकिन आप जानते हैं कि सरकार की जैसी धादत है—खुद ही कानून बनाती है और खुद ही उसको नहीं समझती है कि हम क्या बना रहे हैं। उसका अर्थ लगाने के लिये एक दूसरी एजेन्सी तय होती है जो कानून का अर्थ लगाया करती है जिसका नतीजा यह होता है कि हमारे देश के गरीब लोगों को जो कानून का भिंकार होते हैं, जिनके पास पैसा नहीं है, जैसा कि एक माननीय सदस्य ने कहा कि न्याय खरीदा जाता है, इस देश में गरीब क्लास लेस सोसाइटी बनाये कानून ही मर्यादा का पाबन नहीं किया जाता, इस

लिये मैं चाहता हूँ कि कानून को साफ साफ भाषा में बनाया जाय।

इसमें वकीलों के लिये जो व्यवस्था की गई है, डिस्प्लिनरी एक्शन के लिये एक कमेटी है, उसका फैसला साल भर में होगा। मैं जानना चाहता हूँ कि इसके लिये इतने बड़े पीरियड की क्या जरूरत है। इसका मतलब है कि एक साल तक वह लटका रहेगा। जैसे दूसरे कानून बनते हैं, वैसी ही हालत इसकी है कम से कम इस बात की व्यवस्था कीजिये कि भ्रामदमी को जल्दी से जल्दी न्याय मिल सके, एक साल तक लटकाने का समय बहुत ज्यादा है।

जहां तक गरीबों को कानूनी सहायता देने की बात कही गई है, माननीय मंत्री जी ने कहा—कोई बड़ा वकील गरीब की बकालत करने के लिये नहीं जाता। मैं कहना चाहता हूँ कि जिस तरह से ग्राम डाक्टरों के लिये कानून बनाते हैं कि जो डाक्टरी पाम करता है उनको ऐसे एरियाज में भी काम करना पड़ेगा जो पिछड़े हुये हों, उमी तरह का प्रावीजन इसमें भी होना चाहिये। इन वकीलों को भी उनके काम करना होगा, दरना गरीबों के लिये बहुत मूसीबत हो जायेगी। हमारे देश की जो जुडीशियरी है, वह किस तरह की है, आप जानते हैं। ऐसी स्थिति में यदि हम अपने देश के गरीबों को सहायता पहुंचाना चाहते हैं तो बजाय 26 साम के, आपने एक कमेटी बना ली, उसने 400 पन्ने की रिपोर्टें ली, फिर उस पर चार साल और लगेंगे—इस बीच में तो हिन्दुस्तान के प्राधे भ्रामदमी मर जायेंगे, क्योंकि कानून का सबसे बड़ा भिंकार गरीब भ्रामदमी होते हैं। हमारे यहां तो एक ऊब तोड़नेवाले को डकैती की सजा होती है और लाखों करोड़ों का डाका डालने वाले साफ बच जाते हैं। ऐसी स्थिति में गरीबों के लिये इसमें कोई खास प्रावीजन करना चाहिये था, जो आप ने इस में नहीं किया है।

इन कानूनों के जरिये आप अर्थ लगाने की पावर देते हैं—मैं आपको एक उदाहरण देता हूँ—एक भ्रामदत में एक मुकदमा चला—चरार्ड

[श्री सुरज पांडेय]

का। फ.जां अदालती का मवेशी फसल चर रहा था। उसने पूछा—गाय कहां चर रही थी। जवाब दिया कि खेत में चर रही थी। तब फिरेन्स के वकील ने कहा—वेन में चर रही थी। यह पूछा ही नहीं गया कि फ.जल चर रही थी या नहीं बस इतने पर ही मामला खत्म हो गया कि गाय चर रही थी। इस तरह से आप का न्याय होता है।

इसलिये मैं माननीय मंत्री जी से कहना चाहता हूँ—आप इस पर विचार कीजिये और सारी चीजों को बदल कर लाइये, जब देश की गरीब जनता का कुछ भला हो सकेगा।

हमारे वकीलों के बारे में क्या कहूँ—फोस की कोई लिमिट ही नहीं है—न कोई कानून है न कायदा है आठ हजार रुपये रोज की फोस है। गरीब अदालती कैसे मुकदमा लड़ सकता है? इसलिये आप सबसे पहले कोई नीति निर्धारित कीजिये, फिर उसी फ्रेम-वर्क में कानून बनाइये, तब ही आप देश के लोगों की सहायता कर सकते हैं।

श्री हुकम चन्द कछवाय (मुरेना) :
सभापति महोदय, कमेटी की रिपोर्ट जल्दी लाइये, ताकि उस पर विचार हो सके ताकि गरीबों को राहत मिल सके, उनको न्याय मस्ता मिल सके। इस बात को सारा देश जानता है, कि हमारे देश में न्याय मंहगा होता जा रहा है। कोई भी व्यक्ति मजदूर हो या किसान—सभी अदालत में नहीं जा सकते। आप जो सहायता देना चाहते हैं, उसके लिये कोई ऐसा नियम बनाइये कि फौजदारी के केस में कितनी फोस होगी, बीवानी के केस में कितनी फोस होगी। आज नाना प्रकार की धूसखोरी चलती है, वकील लोग इस प्रकार से हैरान करते हैं—उसका तजुर्बा आपको भी, सभापति महोदय होगा। कितने चक्कर लगाने पड़ते हैं, 4-5 साल केस में नग्न जाते हैं। बेवारा किसान 40-50- मील दूर से पैसा खर्च कर के अदालत में आता है, लेकिन तारीख पक्की

जाती है। मुझे इसका तजुर्बा है—मेरा भी एक केस है—मेरे बच्चे का एक्सोडेंट हो गया था—उसके ब्लेम का आज तक फैसला नहीं हुआ। इसलिये जल्दी न्याय मिले, सस्ता न्याय मिले—ऐसा व्यवस्था की जानी चाहिये। आप जो समिति की रिपोर्ट लाने वाले हैं वह इसी सेशन में लायें ताकि हम लोगों को जल्दी से जल्दी राहत दे सकें। आपने कहा है कि आप गरीबी को हटाना चाहते हैं, लेकिन गरीबी तभी हट सकती है जब लोगों को सस्ता और उचित न्याय मिले—यही मेरी प्रार्थना है।

18 hrs.

SHRI P. G. MAVALANKAR (Ahmedabad): I just want to say a few sentences with regard to the urgent necessity of making legal aid available to the citizens of this country. As is rightly pointed out by some other colleagues here, the tragedy today is that not only is the legal assistance required very expensive, but the laws themselves are becoming too many. Therefore, not only the poor men, but even the ordinary citizens is also lost on two counts, first because the fees are very exorbitant and second there are too many laws.

I was very glad when the Minister assured us that Government are already going into the 400-page Report of Justice Krishna Iyer. The Minister said that a committee went over it for nearly two months. I am sure it is a studied and useful report. I would like Government to go into it not only carefully but as early as possible so that the necessary additional amending Bill, additional to the present Bill, can be brought forward, if possible, during this session itself.

One thing more. I understand there was a Committee in Gujarat headed by the Chief Justice of the Gujarat High Court. Their report has already been out and certain measures have already been taken. I do not know whether Government are aware of it.

SHRI H. R. GOKHALE: We have taken note of it.

SHRI P. G. MAVALANKAR: I am very glad to hear it. Therefore, although some states have gone further ahead than others, it is better if in this regard a general all-India approach is adopted and if Government themselves come forward with a good and neat free legal aid to the poor scheme.

SHRI NITIRAJ SINGH CHAUDHARY: I am thankful to the members for the suggestions they have made.

About Mr. Justice Bhagavati's report, we got the report. Mr. Bhagawati appeared before the Committee

appointed by Government and on his advice steps have been taken and they have been incorporated.

A Committee of three Secretaries of the Ministry are sitting on it everyday and scrutinising it so that the work may be finished early.

MR. CHAIRMAN: The question is:

"That the Bill, as amended, be passed".

The motion was adopted.

18.02 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Friday, November, 16, 1973/Kartika 25, 1895 (Saka).