

Bill

12.15 hrs.

OIL AND NATURAL GAS COMMISSION (AMENDMENT) BILL*

The Minister of Petroleum and Chemicals (Shri Humayun Kabir): I move for leave to introduce a Bill further to amend the Oil and Natural Gas Commission Act, 1959.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Oil and Natural Gas Commission Act, 1959."

The motion was adopted.

Shri Humayun Kabir: I introduce the Bill.

12:15½ hrs.

INDIAN MEDICAL COUNCIL (AMENDMENT) BILL*

The Deputy Minister in the Ministry of Health (Dr. D. S. Raju): On behalf of Dr. Sushila Nayar, I beg to move for leave to introduce a Bill further to amend the Indian Medical Council Act 1956.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill further to amend the Indian Medical Council Act 1956."

The motion was adopted.

Dr. D. S. Raju: I introduce the Bill.

RE. HALF-AN-HOUR DISCUSSION

Mr. Speaker: Now what is it that Mr. Hem Barua wants?

Shri Hem Barua: There is a Half-An-Hour Discussion mentioned on the Order Paper standing in by name regarding Indian Ambassador in Cairo. The time is not indicated. Will it be taken at 5 O'clock or 5.30 p.m. of 6 O'clock? I should know it.

Mr. Speaker: I thought it was very clear that it will be taken at 5 O'clock. There is no other time. Unless the business that is put down on the list is finished earlier, it will be at 5 O'clock.

12.17 hrs.

ADVOCATES (AMENDMENT) BILL, 1964—Contd.

Clause 13—(Amendment of section 24)—Contd.

Mr. Speaker: Shrimati Renu Chakravartty may continue her speech.

Shrimati Renu Chakravartty (Barackpore): Mr. Speaker, Sir, I was speaking about clause 13 of the amending Bill. Here I shall quote the statement of Sir Trevors Harris under whose chairmanship there was the Judicial Reforms Committee of 1952. There he has said regarding Muktears that:

"It appears to us that possession of law degree is not absolutely necessary for the work Muktear is ordinarily called upon to perform. At present we are satisfied that the Muktears fulfil a very needful function and we think that there can be no doubt that what a Muktear does at present adequately fulfil the function of the poor men's lawyers."

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This is exactly the role which they have been playing in the subordinate courts right upto the High Courts. Actually, in our State, they were not originally permitted to practise in the courts of Presidency Magistrate and Income-Tax Offices. Now they are permitted to practise in both these courts and they are also permitted to practise in any Revenue Court and Office before the Board of Revenue. As a matter of fact, these eminent people who were not law graduates became some of the leading luminaries of the judicial world. We remember the famous case of Shri Motilal Nehru himself who was not a law graduate at all. We also remember the case of Shri T. R. Venkatarama Sastri who was only a vakil but he had to be enrolled as an advocate. It is a very good thing that at least in the amending Bill this clause has been amended and the Muktears have been included. There is adequate reason for it. I do not know why they should have been left out being a substantial part of the judicial world in the parts of the eastern region of the country. Further more, the Muktears' Examination has been made much stiffer now. After matriculation, one can take it and they have to obtain 60 per cent marks for all the courses which they have. They are now being included and I say it is a good step taken.

There are certain other points which I should like to mention. Since the passing of the Advocates Act, 1961, all the L.Bs were exempted for 1½ years training which was stipulated, after the examination, in our courts. They were given an opportunity to be enrolled as advocates immediately after passing the L. B. examination and this was necessary because the Bar Council had not been able to make the arrangements for the framing of the rules and regulations and for providing training and all that. No syllabus for examination has even now been made. Even the rules framed are incomplete and conflicting. Under this clause 13, sub-section (b) in clause (d) it is stated:

“(i) the words ‘after such training’ shall be omitted.”

I want to know whether this actually means that those who have passed the L. B. examination will be permitted to get exemption from the purview of this intervening period before they can be actually enrolled as advocates and whether this will also be permitted to those who have passed the examination last year. The position is that the same conditions prevail as they prevailed earlier. The Bar Councils have not been able to make arrangements for their training and this period of 1½ years will be a waste for them and it is necessary that this amending Bill should cover this class of people who have become L.L.B. and whose period of 1½ years training has not been provided for adequately by the Bar Council. This exemption should also be given to those who passed the law examination last year.

Now, I would also like to join my voice with those of my hon. friends have spoken earlier, that relief should be given for the law students who pass in 1964, so that they may also be included within the scope of this amending Bill. Most of the examinations are held in April, and the results are not out before June or July. There are no curricula for the examinations as yet set out under this Act. I think that that will be done under the rules. I would submit that those who are actually sitting for the examination or are studying now should not be penalised because of this amending Bill. Generally, they are the children of middle class or lower middle class families, those who are struggling, and who want to be able to start earning as soon as possible so that they may carry the burden alongside with their parents, and it would be difficult for them to wait for one and a half years to start earning their livelihood. Therefore, at the most, I would request the hon. Minister to allow those who have passed the

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examination last year to get this exemption, and also, if possible, reduce this period, because, I am told by most law graduates, and I am sure that my hon. friend Shri N. C. Chatterjee will bear me out on this point, that this long period of one and a half years' training may not be quite absolutely necessary at the moment because of the lack of arrangements and also because of the fact that the standards are good enough for them to be able to start earning their livelihood earlier.

Under the present rules of the Bar Council, I am afraid, the training, according to most of the law graduates in the judicial world, cannot be considered to be usefully utilised, and it is because of this that we would like the period to be reduced, and the exemption should be there for those who had passed the examination last year, that is, in 1963.

With these words, I welcome the proposed amendment.

Shri N. C. Chatterjee (Burdwan): I ought to tell the House that the Attorney-General who is the president of the Bar Council of India and the Additional Solicitor-General of India, who is the chairman of the Delhi State Bar Council have requested me to inform you and the House and it is absolutely essential to pass this Bill as it has been drawn up, because it is vital for ending the deadlock which has been created, and especially it has worked great hardship on some people. I think that that deadlock has been created through no fault of anybody but because the Bar Councils could not be constituted in proper time and they could not frame the curricula, they could not frame proper rules for training, and they could not make arrangements for examinations and so on. The result has been very peculiar. Possibly, many Members of the House do not know that hundreds of boys went from Delhi and from other States to Ban-

galore for the purpose of getting enrolment there. It was very peculiar that in Bangalore, one who has passed the law examination and got a law degree could enrol himself as a pleader, and immediately, the next day, on payment of Rs. 500, he could be enrolled as an advocate of that court, and thereafter he could practise in any court in India.

The result has been that 750 people have applied, and 250 have already been enrolled in Bangalore, and the Bangalore Bar Council has got Rs. 1.25 lakhs from people from Delhi and from other parts of India. Out of that, half has gone to the Mysore State, and the other half has gone into the Bar Council's pocket. It is very peculiar. This has arisen only because of this peculiar thing that in Delhi unless a person gets his training and passes some examination, he cannot be on the rolls. Therefore, the boys from here had to go to Bangalore. Fortunately, that onrush has been stopped. Over 500 applications have been pending, but they are now mostly being withdrawn, having regard to this Bill.

It is a very unfair situation. And the Attorney-General asked me to inform the House that this kind of deadlock should not be permitted and this kind of unfair arrangement should not be tolerated that people will have to migrate hundreds of miles for the purpose of getting only a *sanad* as a pleader and the next day a *sanad* as an advocate and then come back to their respective States.

Therefore, I am supporting this clause 13. I think that on both points, it is good. The first thing is that there has been an unfortunate omission of making some people qualified to be enrolled as advocates, and that has been remedied by the new sub-section (3). Sub-section (3) (a) reads:

“(a) before the 31st day of March, 1964, has, for at least

three years, been a vakil or a pleader or a mukhtar, or was entitled at any time to be enrolled under any law then in force as an advocate of a High Court (including a High Court of a former Part B State) or of a Court of Judicial Commissioner in any Union Territory.”

I think that this is a fair provision, and we should allow these mukhtars and pleaders of three years' standing to come in on the roll of advocates.

Shrimati Renu Chakravarty referred to some big names, to some persons who had become legal luminaries without having a law degree. I may remind this House—and possibly you might remember that name—of the great Chandra Madhav Ghose who became the Chief Justice of the Calcutta High Court, who had no law degree. He had only passed his first arts examination which was then in vogue.

I was a member of the Trevor Harris Committee, and Dr. B. C. Roy had requested me to serve on that committee. I was satisfied as a member of that committee that it would be very unfair to exclude these persons. Particularly, I remember that in East Bengal, whenever I travelled in that part of the country, the biggest criminal practice was not in the hands of pleaders or advocates, but the biggest practice in the criminal courts was actually monopolised by the mukhtars. If you had gone to Dacca or Mymensingh you would have found that the mukhtars' Bar was more prosperous than the advocates' or the pleaders' bar. They were very capable men who actually did their work well and maintained the standards of professional integrity, and who were very capable men. It was very unfair that you had stopped the mukhtars' examination and you were not allowing them to come on the rolls. I think that the hon. Minister is perfectly

justified in saying that every pleader or mukhtar of three years' standing should come in on the rolls.

Then, sub-section (3) (b) provides that any one who before the 15th day of August, 1947, has been an advocate of any High Court in any area which was comprised within India as defined in the Government of India Act, 1935—I take it that this reference is to the Chief Court of Sind—would be entitled to be enrolled as an advocate. Again, sub-section (3) (c) provides that any person who before the 1st day of April, 1937 has been an advocate of any High Court in any area which was comprised within Burma as defined in the Government of India Act, 1935.—this refers to the advocates of the Rangoon High Court—would also be entitled to be enrolled as an advocate. I think that we should allow them also.

The most important thing is the proposed clause (d) of sub-section (1) of section 24 of the principal Act. It has been provided in the Bill:

“(ii) in the proviso, for paragraph (i), the following paragraph shall be substituted, namely:—

“(i) a person who has obtained a degree in law from any University in India on the results of an examination held before the 31st day of March, 1964 or such other later date as may be prescribed, or a barrister who was called to the Bar before such date, or a barrister who, having qualified after that date, has received such practical training in law as may be recognised in this behalf by the Bar Council of India;”.

The Advocates Act was passed in 1961, and it has been twice amended after that; it was once amended in 1962, and again it was amended in 1962. This is the third amendment which we are making, and this is the

[Shri N. C. Chatterjee]

fourth time that this measure has come up before the House. First of all, 31st March, 1962 was the ultimate date. Then, that date was changed to 31st March, 1963. Now, we are changing it to 31st March, 1964, and we are doing that on a proper ground, because it is very unfair and hard on many people who have qualified but who could not be enrolled because there is no arrangement made for training. You can take it from me that in the Union Territory of Delhi, as yet, no arrangement has been made for training, and no arrangement has been made for examination, and therefore, they cannot be qualified by training and examination, and they will waste a couple of years of their life, which is not fair. I think the hon. Minister is perfectly justified in saying that that date should be extended to 31st March, 1964.

I think my hon. friend Shrimati Renu Chakravartty is also right on this point. I was an examiner of the Delhi University for some years, and I have ascertained today from some students and from some lecturers of the Delhi University that so far as the University of Delhi is concerned, the examination will be held in the month of April, and so also in the Allahabad University, the Madras University, the Agra University and the Lucknow University. Therefore, it will not be fair to extend the date to 31st March, 1964 and to stop there, because that will not be doing justice to all the examinees of these five or six universities. I have not got a complete catalogue with me, but I know that the examinees of the Delhi, Allahabad, Lucknow, Madras and Agra universities will not come within the scope of this Bill.

Shri Daji (Indore): There are many other universities also where such is the case.

Shri N. C. Chatterjee: Therefore, the Minister is justified in putting 'or such other date as may be prescribed.'

The Attorney General was telling me that if you put in such a clause, it may create difficulties because there will be an incentive not to undergo training, not to under go examination. I do not think the Bar Council would be so insensible to their obligations. I take it they will frame rules and they will fit in with the main objective of this clause.

I therefore think that on both grounds we should support it. We should support the inclusion of the advocates of the Rangoon High Court, advocates of the Chief Courts and also the vakils, pleaders and attorneys for which provision has been made; at the same time, extend this ultimate date from 31st March 1963 to 31st March 1964. At the same time, I am satisfied that provision should be made also by rule-making powers to extend the date further so that no unfair discrimination should be made between the students of different universities. Otherwise, they will suffer for no fault of their own. I only hope that the training and examination system should be completed and that the Bar Council should make it their business to do that, instead of fighting elections. I am sorry in these Bar Councils there has been a lot of undesirable things coming in. I am very sorry to say that even senior members of the Bar Council are fighting cases under article 226 in the High Courts and threatening to come up before the Supreme Court also. Instead of dissipating their energies over these election cases in connection with the Bar Councils, it will be much better that they should concentrate their attention and devote their time to framing proper rules, prescribing the curriculum, have proper standards for examinations and also make arrangements for training and for proper gui-

dance to be given to the junior members of the Bar.

Now that we have taken away completely the power of the High Court with regard to disciplinary matters and tried to make a self-contained autonomous Bar, it is important that the Bar Council should behave and realise their responsibilities and perform their duties having regard to the obligations which we have placed on them through this Act.

श्री द्वारका दास मंत्री (भीर) : अध्यक्ष महोदय, क्लॉज १३ का स्वागत करते हुए, इस में कुछ चीजों में अपनी ओर से रखना चाहता हूँ ।

अध्यक्ष महोदय : क्या आप अपने संशोधन मूव कर रहे हैं ?

श्री द्वारका दास मंत्री : मैं मूव कर रहा हूँ :

(i) Page 5,—

omit lines 13 to 16 (1).

(ii) Page 5, lines 28 and 29,—

after "mukhtar", insert—

"(whether he may be a law graduate of any recognised University or otherwise)" (2)

इसमें प्लीडर, मुक्तार और वकील को सम्मिलित कर लिया गया है । लेकिन पार्ट बी० स्टेट्स में ऐसे भी कई लोग आप को मिलेंगे जो ला ग्रेजुएट्स नहीं थे लेकिन फिर भी जो प्रैक्टिस कर रहे थे । उनको इस सुविधा से वंचित रखना ठीक नहीं है । ला ग्रेजुएट्स हों या न हों, जिस हद तक मुक्तार, प्लीडर और वकील एलीजीबल रहेंगे एडवोकेट बनने के लिए, उस हद तक इनके बारे में भी कुछ बड्स एड करने की आवश्यकता है ।

दूसरी बात यह है कि ३१ मार्च, १९६४ तक जो परीक्षा में बैठेगा उस को एग्जैम्पेशन दे दी गई है । जैसा कि हमारे वक्ताओं ने कहा है यह तारीख कोई उचित मालूम नहीं देती है क्योंकि और यूनिवर्सिटीज में इसके बाद भी परीक्षाएँ होती हैं । इस वास्ते इस तारीख को कुछ आगे बढ़ाने की आवश्यकता है ।

तीसरी बात यह है कि बैरिस्टर और ला ग्रेजुएट्स में कुछ फर्क किया जा रहा है । इस में मैंने चाहा है कि पेज ५ पर १३ से १६ लाइनों ओमिट कर दी जायें । ये लाइनें हैं :

—has received such practical training in law as may be recognised in this behalf by the Bar Council of India";

यह कहा गया है कि ला ग्रेजुएट्स के लिए रूज्ज अलग बनाने का अधिकार स्टेट काउंसिलज को दिया गया है । किन्तु बैरिस्टरज को इस में इनक्ल्यूड नहीं किया जा रहा है और इस तरह से बैरिस्टर और ला ग्रेजुएट में फर्क किया जा रहा है । यह नहीं होना चाहिए । दोनों के साथ एक सा सलूक होना चाहिये । इस वास्ते तीन चार लाइनें जो बैरिस्टर और ला ग्रेजुएट में फर्क कर रही हैं, इनको निकाल दिया जाना चाहिये ।

Shri G. N. Dixit (Etawah): I have a very limited point to make relating to (A) (b) (ii) (i) which reads:

"a person who has obtained a degree in law from any University in India on the results of an examination held before the 31st day of March 1964 or such other date as may be prescribed."

I have not been able to follow how this date '31st day of March 1964' has been arrived at because many universities which I know of conduct their law examinations in April or the early part of May. In all UP universities that is so. I am told in Maharashtra

[Shri G. N. Dixit]

and Mysore Universities,—and the Deputy Minister has himself said that in Orissa the same is the position,—this position obtains. It may be the same in other universities also. Examinations are held after 31st March 1964. Therefore, it would have been better if provision could have been made to cover that circumstance because that would have been universal and there would have been equal opportunities to everybody.

There is an alternative. Either it could be put as the term 1963-64 or the auspicious date of 15th August 1964 could have been put, 31st March 1964, may relate to the financial year, but it has nothing to do so far as the examination is concerned. I do not agree with Shri Chatterjee that the other clause 'or such other later date as may be prescribed' is sufficient, because after delegated legislation or the rule-making power is given for future contingencies. But the Law Ministry should take cognisance of facts as they are today. We are passing a law which will represent the collective knowledge and wisdom of this House. If the House knows beforehand that in so many universities, examinations take place after the 31st March—Members represent those constituencies; the House knows that the examinations take place after the 31st March, that half of the students in the country sit in examination after that date—if we enact a law simply on a theoretical basis and afterwards pass a rule saying that the last date will be such and such, there will be representations from several universities. I think that will not be a proper enactment of law.

Therefore, I appeal to you and through you to the House and the Government. Let Government bring in an amendment saying that instead of 31st March 1964, it shall be 15th August 1964 or the term 1963-64. Otherwise, article 14 is offended, be-

cause you are giving benefit to half the students in the country and denying it to the other half. You expect those students to waste money, run to Delhi and approach you for the rule-making power to be exercised giving the facility to Lucknow University, Allahabad University, Agra University—in UP no student is going to benefit by this clause—and so on. That is not proper. So let my suggestion be accepted.

Shri S. S. More (Poona): I want to make a few observations. In my State, both in Bombay University and in Maharashtra University, examinations are held in March or April and the degree is not obtained till June or July. According to the present provision, all these students will be debarred and they will have to undergo a course of training which has not yet been prescribed. Of course, I do recognise that there is power given to Government to fix such other later date as may be prescribed. Till then, the presumption should be that the young students will have to undergo a period of suspense. In such matters suspense will be more than torture.

So I would join my voice with that of my hon. friend who preceded me and say that we should fix a later date, so that all those students who are affected will feel that their interests will be safeguarded.

There is another thing.

On page 7 of the Bill, it says:

"Where a State Bar Council is unable to perform its functions for any reason whatsoever, the Bar Council of India may, without prejudice to the generality of the foregoing power, give such directions to the *ex officio* member thereof as may appear to it to be

necessary, and such directions shall have effect, notwithstanding anything contained in the rules made by the State Bar Council."

My submission is that in such a contingency the proper course would be to reconstitute the whole bar council. Why should there be this kind of a provision here? In our Constitution if there is a failure of Constitution in any State, the President takes charge of the particular State. The same principle should be applied here. The whole bar council should be reconstituted. This is an indivisible distinction which ought to be removed as early as possible.

The Deputy Minister in the Ministry of Law (Shri Bibudhendra Misra): Mr. Speaker, most of the speakers expressed concern about the students passing after March 1963. They urge that the date should be extended beyond March 1963. To what date? There is no concrete suggestion. There has been a misapprehension on this point. When the Advocates Act was passed, Parliament in its wisdom decided that an advocate must have practical training to be decided by the Bar Council of India in order to be able to properly discharge his duties—(Interruptions.) You can ask the Bar Council of India. If a deadline was fixed and if some persons who pass law examinations were allowed to be enrolled as advocates without that training, it is only because the Bar council would take sometime to be constituted and to frame rules. Till the rules are framed what would happen to the law graduates who come out of the university? That is why a deadline was fixed and from time to time this date has been extended, I think, three times for the simple reason that bar council could not frame the rules. It is not based on any examination conducted in any part of India that a date was fixed. Some universities may have their examination in April. If you extend the date to cover their cases, what is to happen to those who

come from universities which hold their examination in May or June or in August? This process would go on and the policy that we have accepted in Parliament, namely, advocates should have some training, would be set at naught. Once you extend the time, there may be a representation from some other university. It is not on the basis of any examination being conducted in any particular month in any university that this deadline has been fixed. It has been fixed to enable the bar councils to frame necessary rules to impart proper training. Whatever the deadline fixed, some people will be affected. Besides, if some law graduates come out of the universities in April or May or June and if by that time the rules are not ready in some state bar councils, there is the power given to cover their cases also. Mr. Chatterjee has answered this point. He said he would also suggest extension of the date because the power is there. There is hardly any forum where his voice is not heard. If the rules are not framed by May or June or July and if law graduates come out of university in the meanwhile, I am sure he will pull his weight and see that something is done and the date is extended. Mrs. Chakravartty spoke of those who passed in 1962 or 1963. That point hardly arises because all those people who had passed before March 1963 need not have any training. They are exempted; they can get themselves enrolled automatically without any special exemption, Mr. Banerjee—he is not here now—said yesterday: we do not know what the rules are and the Deputy Minister should give us an idea. It is unfair to me. Rules have not been made; the rule making power has been given. If the rules are not yet framed it is not possible for me to give any idea.

About amendment No. 2 "whether he may be a law graduate of any recognised University or otherwise", it is not necessary at all. If you look at section 24 (c) there is a provision that

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he must have obtained a degree in law. If you look at the amending Bill on page 6, it reads: "fulfils the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1)". So, (c) is not mentioned here. Therefore, he need not be a law graduate; this amendment is unnecessary.

It is said that the barristers are put in a different category other than the law graduates who pass out of Indian universities. I would only say this. If you look at the Act itself, barristers were put in a different category. Formerly, the position was that the barrister must have a practical training for one year in England. That was the distinction in the original Act. Now, it has been found difficult because of the foreign exchange position and other difficulties. The Indian students who go out find it very difficult to be in England or one year after the completion of the course. To bring them to the same level, they can have some training after they come back to India. That is the provision that is made. There is no case of discrimination. An attempt has been made to bring the two classes as close to each other as possible:

Shri D. D. Mantri: Sir, I beg to withdraw my amendments.

Mr. Deputy-Speaker: Has the hon. Member leave of the House to withdraw his amendments?

Amendments No. 1 and 2 were, by leave, withdrawn.

Mr. Deputy-Speaker: The question is:

"That Clause 13 stand part of the Bill."

The motion was adopted.

*Clause 13 was added to the Bill.
Clauses 14 to 25, Clause 1, Enacting Formula and Title were added to the Bill.*

Shri Bibudhendra Misra: Sir, I move:

"That the Bill be passed."

Mr. Deputy-Speaker: The question is:

"That the Bill be passed".

The motion was adopted.

12.50 hrs.

GOA, DAMAN AND DIU JUDICIAL COMMISSIONER'S COURT (DECLARATION AS HIGH COURT) BILL

The Minister of State in the Ministry of External Affairs (Shrimati Lakshmi Menon): Mr. Speaker, Sir, I beg to move:

"That the Bill to declare the Judicial Commissioner's Court for Goa, Daman and Diu to be a High Court for certain purposes of the Constitution, be taken into consideration."

The House is aware that a provision was made under section 7 of the Goa Daman and Diu (Administration) Act, 1962 for the extension of the jurisdiction of the High Court at Bombay over the courts of the Union territory from such date as the Central Government may by a notification specify. But before a date for this purpose could be notified, a court of Judicial Commissioner was constituted on 18th December, 1963 for the Union territory of Goa, Daman and Diu, under the Goa, Daman and Diu (Judicial Commissioner's Court) Regulation, 1963. This court is the highest Court of Appeal replacing the then existing Court of Appeal (Tribunal de Relacao) in that territory.

Article 241 (1) of the Constitution provides that Parliament may by law declare any court in a Union territory to be a High Court for all or any of the purposes of the Constitution. In