

[Mr. Speaker]

of the House. If the Leaders are also associated with that, I have no objection; I shall bring it up before the House and ask the opinion of the hon. Ministers. Otherwise, normally, I shall exercise my discretion to bring it up or not to bring it up.

The whole thing will be thrashed out, and we shall discuss it later on, in about fifteen days' time. Let me have the suggestions first.

12.24 hrs.

LEGAL PRACTITIONERS BILL—
Contd.

Mr. Speaker: We shall now proceed with the further consideration of the motion to refer the Legal Practitioners Bill to a Joint Committee.

Shri Mulchand Dube may continue his speech.

Shri Mulchand Dube (Farrukhabad): The Law Commission has rightly observed that the standards in the Bar have fallen, and that there is some deterioration in the Bar. It has also suggested some remedies; and some remedies have also been provided in the Bill that is before the House. As far as I can see, the remedies that are provided in the Bill are not going to improve the standard of the Bar.

There is no doubt that there has been some improvement in the legal education in recent years. But we have also seen that the education as it was many years ago has produced very eminent members of the Bar and eminent jurists who have been able to hold their own against the best lawyers of the world.

12.24 hrs.

[SHRI C. R. PATTABHI RAMAN in the Chair]

Therefore, it is not the defect in the legal education that is really responsible for the deterioration in the Bar.

The reason has to be looked for elsewhere.

My submission is that a degree either in law or in arts is merely a preparatory degree which enables a man to continue his studies, if he wants to specialise in any particular subject. The same thing applies to law. The mere obtaining of a degree in law is not sufficient to make a lawyer of a man. Law, as it is said, is a jealous mistress and brooks of no rival. What is necessary is an intense study of the law after passing the law examination. It appears to me that this intense study of the law is lacking. The reason seems to me to be that the prizes offered by law are not so attractive as they used to be before.

We find, as I said yesterday, that in many cases, the avenues for the lawyers have been closed and are being closed. The question, therefore, is whether we do or we do not want lawyers in our democracy. If we do want lawyers, something has to be done for them also, and the avenues for them have not to be closed. What happens is that many of the laws that are enacted, and the rules prescribed thereunder, prohibit lawyers from appearing in cases relating to those laws. My submission is that although the Bill provides that lawyers should be allowed to appear and should be entitled to appear in all cases in which they are appearing at present and also before persons or tribunals who have a right to take evidence—this is good so far as it goes—yet, even so I think it is necessary that in order to protect interests of the citizens against the vagaries of the Government or the Government officers, lawyers should be allowed to appear before every officer or court, whether or not he or it is entitled to take evidence, whenever the rights of a citizen are to be determined. Supposing, a Secretary to the Board of Revenue has to determine the rights of a citizen according to certain laws, then the person affected should have

the right to engage a lawyer and have his case presented by him before that officer. My submission is that to confine them merely to the law courts and before persons who are entitled to take evidence is not sufficient. I think every individual should be free to engage a lawyer to present his case, wherever it might be. That is one aspect of the question.

My next point is this. The Bill provides for two classes of advocates, senior advocate and ordinary advocate. Some objection has been raised as to whether there should be two classes of advocates, senior advocate and ordinary advocate. I think the provision is good so far as it goes, because in England also it appears that there are King's Counsels or Queen's counsels and ordinary barristers-at-law. A person who has succeeded at the Bar in getting round him some practice should be enabled to be classed as a senior lawyer. This classification will also help the junior advocates, because the senior advocates, by the mere fact of their being seniors, will be debarred from taking up certain kinds of work, and, therefore, those kinds of work will have to go to the other advocates. To that extent, it also helps in the distribution of the work.

There is also another thing that I want to impress on the hon. Minister. He has prescribed a fee of Rs. 500 for enrolment as an advocate. Of course, this fee goes to the Bar Council, but even so, he has not made any provision for the amendment of the Stamp Act, where a fee of Rs 500 is prescribed for entry as an advocate. It used to be Rs. 500; it may now be Rs. 750 or thereabouts. If any person wants to get himself enrolled as an advocate in a State Bar Council, he will have to pay not only Rs. 500 to the Bar Council, but also about Rs. 500 or Rs. 750 or whatever the figure may be to Government by way of stamp duty. I think that has to be revised. The Stamp Act has to be amended so that the fee of Rs. 500

or Rs. 750 or whatever it may be is abolished, and the fee of Rs. 500 which is to be given to the Bar Council should also be reduced to Rs. 125 as was recommended by the Law Commission.

With these words, I support the Bill, and I do hope that the hon. Minister will take these facts into consideration and do whatever is necessary.

Shri Barman (Cooch-Bihar-Reserved—Sch. Castes): It is a very good measure which has been brought before this House for the implementation of the recommendations of the All India Bar Committee which were made in 1953, and of the recommendations made thereafter by the Law Commission.

The main features of the Bill are enumerated in the Statement of Objects and Reasons, but I shall touch only one of the main features, and that is the establishment of an integrated Bar Council for the whole of India.

In this connection, I have to invite the attention of the hon. Minister to the remarks made by the Law Commission when they suggested this measure. At page 560 of their report, in paragraph 14, the Law Commission has stated:

We would like, at this stage, to make a reference to a practice which we consider to be somewhat inconsistent with the idea of an integrated Bar with a common roll for the whole country."

It has given certain indications also that so far as the Calcutta High Court is concerned, there is an invidious distinction between the two classes of advocates, that is, those who have qualified in the English Bar and those who possess Indian qualifications. They have got separate libraries and also separate rooms. An advocate who is qualified here is not allowed entry into their chamber or even to the library that is maintained

[Shri Barman]

by them. That is not all. We have it on the authority of a very distinguished member of the Calcutta Bar that at the time the lunch takes place if there be any advocate who by chance may be within that chamber, he is asked to get out. On one occasion, a senior advocate of some other High court who was ignorant of this practice was sitting there when it was lunch hour. The doors were at once closed and nobody else was allowed inside. But that gentleman not knowing the practice was still sitting there. Then some of the advocates who were qualified in the English Bar—they are now called Counsels—were saying that there was some advocate who was not qualified to sit with them while they were at lunch. Somehow he got the hint and went out.

This was a practice which obtained while the Britishers were there. There were also English barristers at that time. Now so far as I know, there is no English barrister in the Calcutta High Court, but even now that practice persists. I should say this is a case of untouchability amongst the advocates, and this is an invidious distinction which should go.

There are three or four paragraphs in the Law Commission's Report dealing with this. I need not read them out. At the time the Britishers were here, in the beginning those who were qualified in the English Bar and practising here were called advocates and the others were called vakils. At that time, only advocates were entitled to practice in the Original Side of the High Court, not the vakils. Later on, somehow or other, when eminent luminaries like Rash Behari Ghose were there that distinction was somehow eliminated. Now, of course everyone is allowed also on the Original Side. According to a seniority which determines the precedence amongst advocates. Then everybody was called an advocate. Now the barristers call themselves as

counsels and this division still persists with another Chamber and another library for them, where advocates qualified under Indian conditions are not allowed.

This is evident from the Report itself. So I need not dilate much on that. But how the distinction can be removed is, of course, a matter for the hon. Minister to consider. When an integrated Bar Council is constituted, the question will have to be certainly considered. For the present, I would like the Joint Committee to consider if some amendment cannot be introduced into the Bill itself. To that end, I suggest that in clause 3(2), after line 23, a second proviso to the following effect may be inserted:

"Provided further that there shall be no discrimination in the matter of any privilege, amenity or facility in favour of any advocate or class of advocates on the basis of any qualification acquired in a foreign country".

If an amendment of this nature can be incorporated in the Bill itself, this distinction will automatically go. Otherwise, if we depend on the good sense of these high-caste advocates, I do not know how long it will take to eliminate this distinction. Therefore, I would suggest to the Joint Committee to give some thought to this matter so far as this invidious class or caste distinction goes, and see how it should be removed.

Shri V. P. Nayar (Quilon): I have pleasure in welcoming this Bill. It has been long overdue and it is very good that at least now we have it.

But I was thinking, especially as I used to hear from the hon. Law Minister sometime ago on his impressions about his foreign tour, that he was seriously thinking about bringing in certain provisions by which all the advocates, the entire fraternity.

would be assured of at least a minimum subsistence earning.

12.37 hrs.

[SHRI BARMAN in the Chair]

He gave us a talk the other day when he told us how the system was working in the Eastern European democracies. So I thought that at the time he brought forward a measure of this kind he would include certain provisions whereby it would be possible for all the advocates to get what is called a living wage. But to my regret I do not find any such provision at all in this Bill. I would very much request the Joint Committee and also the hon. Minister to find out how by changing the provisions in this Bill the professional work can be distributed to all the lawyers.

As you know, every lawyer is not fortunate. There are many of our brethren who do not have sufficient income from the profession. Many arguments may be advanced for it. It may be said that the profession is overcrowded and all that. But I feel that if there is a better distribution of the income from the profession, it could easily be seen that almost everyone will get enough to live on. We are thinking, and we are fast moving, as the Government say, towards a socialist pattern of society, but this particular field is left out. Therefore, I would urge upon the hon. Minister and also the Members of the Joint Committee to find out ways and means to distribute the income which accrues from this profession to all the advocates on a more or less equitable basis.

You know today some of the top lawyers get a fee of Rs. 1650 per appearance. I am told that recently when the Bank dispute was in the Supreme Court in what was known as the Bonus Cases, the Attorney-General was engaged on a daily fee of Rs. 8000. Nobody in India requires Rs. 8000. per day, and it could very well have been that some other

arrangement was there. I am not against the Attorney-General receiving that fee at all but it could have been distributed more properly.

As regards the provisions of the Bill, I find that just as doctors when they treat themselves or their near relative get confused, so our Law Minister and his deputy have also become a little confused about the provisions. If you go through the various clauses of the Bill, you will find certain words, for example, the words 'prescribed', 'provided' or 'notwithstanding' being repeated almost in every clause. It is quite natural also because they are in the habit of taking as much safeguards as possible. Barring that, there are certain other important points to be considered.

The Attorney-General and the Solicitor-General as also the various Advocates General have been given certain rights which are not given to the Advocates. I am not against that also. For example, there is the right of pre-audience, the Attorney-General followed by the Solicitor-General, then the Advocates-General, and between the Advocates-General whoever is senior will have the right of pre-audience. I am not against that. But this raises another important question which we must solve here and now.

The Attorney-General or the Solicitor-General or the Advocates-General, all of them, from the moment they are appointed have their practice at the Bar doubled or trebled. It is a fact; nobody can deny that. The Judges are also human and it is possible that even without the Judges or the Presiding Officers knowing about it, the influence is there. It is a felt in effect.

If you take the income-tax returns of any one of them, whether he is an Advocate-General or a Solicitor-General or a Government Pleader, you will find that the income which accrues to him from the profession

[Shri V. P. Nayar]

after he becomes a Law Officer of Government shows an increase. I submit it is time these Law Officers are made to function only exclusively for Government purposes. This is a suggestion I would very much like the Joint Committee to consider. Maybe it may be argued that we may not get the best talent in case we put such restrictions. I do not agree with that proposition at all because right in front of us there are two classic examples. The Law Minister was practising at Calcutta and he has chosen to come here and accept the Minister's job getting probably one-fifth of what he was making there. There is again my hon. friend, Shri Hajarnavis to whom it must have been a sacrifice to accept the post of a Deputy Minister. And, to some of us, it has really meant that by being Members of Parliament we have had to surrender a good portion of our income. That does not detract us from doing our duty. Therefore, to plead that, in case you limit the professional activities of the Solicitor-General, the Attorney-General or the Advocate-General or Government Pleader only to arguing cases on behalf of Government, the right men from the talented section of the lawyers will not accept the job, according to me, is not correct. I do not think very many Advocates at the top will be wanting in patriotism to accept such jobs.

Why I say this is because, as you know, such Law Officers have more private practice than Government practice. If you go to the High Court or the Supreme Court the right of pre-audience is not restricted only because they function as Attorney-General, Solicitor-General or Advocate-General but because of their personality which is created by the appointment. Every Presiding Officer is bound to hear them, at least in practice, with great respect. I presume this will not be contradicted by my hon. friend there. I am strengthened in what I say by an observation made, though not at the relevant

place, in the Report of the All-India Bar Committee. It has stated that as between Advocates on record or Attorneys and lawyers, there is a difference. The Report says:

"A busy advocate cannot possibly bestow the time and attention that are necessary for the efficient preparation of the case."

This is exactly the point. I submit that when the Attorney-General or the Solicitor-General or the Advocate-General is also allowed to take up private cases—whatever be his physical capacity to work—he cannot pay undivided attention to the cases either of the Government or of the private party. It is only for the sake of income that they go about which is not desirable. Therefore, I submit that in the provisions relating to practice of law in the courts there may be some amendment made by the Joint Committee whereby the Law Officers of Government like the Solicitor-General, the Attorney-General or the Advocate-General should be forbidden from taking up any work other than that of Government.

I am agreeable to raising their salary to the salary of the Chief Justice of the Supreme Court or even more. I am not worried about it; but once they are appointed their attention must be undivided for the conduct of Government cases. They should not have divided loyalties between Government work and private work. If it were so I am perfectly agreeable to giving the right of pre-audience in the order in which it is given. Without this, I submit, such rights should not be conferred. In saying so, I have nothing either against the Attorney-General or the Solicitor-General. What I have is only admiration for them and their ability. That apart, the appointment should not be taken advantage of by anybody. If the hon. Minister is eager to know it he can get it from the income-tax returns. I once again urge upon the Joint Committee to consider this.

Then, take the duel system. My friend was talking something about it; and you yourself when you made your observations from over there made some reference to it. What is this duel system? The other day when I was in Calcutta, for the first time I knew that in the Calcutta Bar they practice untouchability, untouchability of the worst kind. People who have had the good fortune to make a trip to U.K. and return as Barristers-at-Law have a separate chamber in the Calcutta High Court, to which admission is denied even to the most eminent person if he is not a barrister. It obtains even today much to our regret. What is it if not untouchability? It exists not merely because the Calcutta Bar has developed in a particular way but it exists there in other forms also. The feudal concept of our judiciary has not changed.

Shri C. R. Pattabhi Raman (Kumbakonam): Not in Madras.

Shri V. P. Nayar: Not in Madras; I will tell you about Madras also because I happen to be closer to Madras than to Calcutta. In every court we have to get up and address. Their Lordships have gone long ago but yet we have to address the Court as 'Your Lordship'. It is rather humiliating for any one of us to go to court and say, 'Your Lordships may be pleased'. What is 'Your Lordship'? These forms exist only because the feudal concept has not changed. I find to my regret that no such provision is made that the Rules of Procedure in the court should always be laid down by the Bar Council.

You will probably know that in the Supreme Court also there is a rule which makes it absolutely necessary that any record filed in the Supreme Court should be in English. Hindi may be the national language; all our friends may agitate for it. But even today in the Supreme Court no document in any other language will be accepted unless it is translated in

English. Why is this practice there? Are the Judges of the Supreme Court above everybody else so that they cannot read or understand any other language? Can they not appoint sufficient translators? It is the duty of the man who files a case to give an English translation. I am submitting this only because such rules have also to be looked into. It must be given to the Council which is proposed to formulate the Rules of Procedure and Conduct.

There is another question. We take disciplinary action against some persons according to some of the provisions of the Bill. I shall make only a few general observations because I have no time and I would not be able to make a reference to the specific provisions. We are supposed to give power to this body to take disciplinary action against certain Advocates. Well and good. Does not my hon. friend Shri Hajarnavis know that very many judges in this country are still impertinent? They do not tolerate one sentence when they come to the Bench in fits of anger even though the case is one of death sentence. They dismiss appeals as if they are not worth the paper on which they are written. A lawyer who has constantly to appear before such a judge will have to forsake his practice if he chooses to say anything. Where is the forum for the lawyer who interprets the law when he wants to keep the judge within the limits of decency and good behaviour when he is presiding? I find that such provisions have not been made in this Bill in order to enable the Advocates to do it.

I can give you suitable provisions that can be made. The scope of the functions of the Bar Council should be enlarged. I do not say that the Council should be given powers to take action against the Judges but it must be in a position to discuss it.

Mr. Chairman: They are certainly entitled to lodge a protest.

Shri V. P. Nayar: But in practice, what do we find? Even a third-class magistrate can chastise a top lawyer in the country and go with immunity. Nobody will care for it just because we do not have in the bar associations that sort of a discussion. It must be encouraged by the Government.

There is again another thing about the dual system. We know that all advocates are not of the same calibre. Draftsmanship is so well for some while for others, they do not find themselves able to write a petition but they perform their advocacy very well. The 1953 report says that the opinion of lawyers in India on the question of merit or demerit of the dual system is sharply divided today as it was in 1924 when the Campion Committee made its report. I submit that it remains so even today. I cannot say one way or the other because I have heard from many people that it must exist and today it is in the Calcutta Bar and also in the Bombay Bar. What is the position in the Supreme Court? I do not find any provision whereby in the Supreme Court also it will continue. In the Supreme Court, they are not called attorneys but advocates on record. When all of them are made advocates, there is no distinction between advocates on record and other advocates. I submit that the advocates on record, functioning as such at present, will suffer because every one of our lawyers will not equally be good at argument. I cannot commit myself to any opinion but I submit that the Joint Committee should go deeply into this question before taking a final decision. If you can allow the system to continue in Calcutta and Bombay, I do not think there is any harm in allowing the system to continue. They make a distinction between senior advocate and junior advocate. Some of my young lawyer friends are as good as senior advocates in the country. I would refer to—Shri Pattabhi Raman knows—Mr. Mohan Kumaramangalam and Mr. A. S. R. Chari of Bombay for inst-

ance. They are in the early forties but they may not be considered to be senior advocates. It does not depend on age alone. It depends upon the number of years' practice and the number of cases. Why should there be a class distinction, as somebody pointed out? Why should there be senior advocates and other advocates? The senior advocate will get this advantage that in his letter head he can print 'senior advocate' with his other qualifications and the other advocates cannot print that. He can only print 'so and so, advocate'. Why should you create that distinction? There are many such small matters in this Bill to which I cannot refer as you have already warned me about the time.

Mr. Chairman: The hon. Members may give their suggestions in writing.

Shri V. P. Nayar: It is a question which affects our day-to-day life also. I would conclude my remarks by saying that the hon. Minister should particularly take note of my suggestion that a collegium of lawyers, as was in the contemplation of the Minister and over which he seems to be more concerned than any one of us should be provided. Secondly, Government's law officers should be strictly forbidden from taking up private briefs in which case alone they need be given these special rights because their attention must be undivided. Thirdly, the distinction among the lawyers and the untouchability which prevails in a very bad way even today must be taken away and the feudal relics which we find in the system must be completely wiped out. All the advocates should be assured, by some way or the other, of earning a livelihood and of distributing the income that accrues from this profession. With these words, I commend the motion.

Shri Supakar (Sambalpur): Mr. Chairman, unfortunately the time at my disposal is very short. I have many points to refer to but I shall confine my remarks to one or two

important aspects of this Bill. I shall first of all try to point out the constitutional aspect of these proposals and draw your attention to clause 19 of the Constitution. It says:

"All citizens shall have the right ... to practice any profession, or to carry on any occupation, trade of business."

Sub-clause 6 of this article puts a restriction on sub-clause 1(g) which reads:

"Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and in particular....."

You will find that a man who is practising, after enrolment, as an advocate, is governed by certain rules. A certain procedure is prescribed for taking disciplinary action against him. Chapter V of this Bill shows how a person may be deprived of his right to practice. Clause 33 of the Bill says:

"Where a State Bar Council has received a complaint or has otherwise reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal to its disciplinary committee."

But it has not defined the words 'professional or other misconduct'. All that clause 45 says is:

"The All-India Bar Council may make rules for discharging its functions under this Act, and, in particular, such rules may prescribe the standards of professional conduct and etiquette to be observed by advocates."

Clause 45 speaks of 'professional conduct' while clause 33 speaks of complaints regarding the 'professional or other misconduct'.

Inasmuch as the law does not clearly specify what is professional misconduct and does not in so many words say under what condition a person may be debarred from practice either temporarily or permanently, I do not know whether this will not be an infringement of article 19 of the Constitution. I think the previous law, the Indian Bar Council Act, Act XXXVIII of 1926, did not in such categorical terms define the words 'professional misconduct' in the case of advocates enrolled in the State Bar Councils but all the same it provided that the final disciplinary action in the case of professional or other misconduct and the debarring of an advocate temporarily or permanently should ultimately rest with the Judges of the High Court, although the Bar Council was empowered to make preliminary investigations and make a report to the High Court Judges. Now that the Constitution under the Fundamental Right given in article 19 has given a better right to the citizens to practise any profession, unless the State makes a law clearly specifying the conditions under which a person would be liable to be debarred either temporarily or permanently from practising in a court, I think, Chapter V of the Bill or at least clause 45 of the Bill which seeks to give a general power or a blanket power, I should submit, to the Bar Council to take disciplinary action against advocates without specific legislation to that effect is rather *ultra vires*.

13 hrs.

The Deputy Minister of Law (Shri Hajarnavis): May I draw the attention of the hon. Member, Sir, to clause 7(b) of the Bill which says:

"The functions of the All-India Bar Council shall be—

(a) to prepare and maintain a common roll of advocates;

[Shri Hajarnavis.]

(b) to lay down standards of professional conduct and etiquette for advocates;"

The whole scheme of the Bill is that the State Government does not legislate for this honourable profession, but what exactly the conduct should be and what standards should be maintained has been left to their representatives. So they will lay down the standards of professional conduct. All that the clause to which the hon. Member has drawn attention lays down is merely the forum which shall decide what action is to be taken. The procedure to be followed is also to be laid down by the All-India Bar Council as mentioned in clause 6. The scheme of the Bill is that the profession will legislate for itself, will control itself, will govern itself.

Shri Supakar: That is exactly what I was submitting. I was expressing my doubts whether the Parliament could delegate its power of having a specific legislation on this point of the liability for misconduct of advocates to the All-India Bar Council. I am afraid, Sir, this may be construed as violating the provisions of the Constitution. I hope that the Select Committee will give due consideration to this aspect of the problem.

Another point which I wish to make is, though the professed aim of the Bill, as is stated in the Statement of Objects and Reasons, is the prescription of a uniform qualification for the admission of persons to be advocates and the establishment of an All-India Bar Council with a common roll of advocates, I submit, still it creates a class distinction in the case of senior and junior advocates. Also, the basis on which these senior and junior advocates are to be categorised is left very vague. I will draw your kind attention to clause 15 of the Bill which says:

"(1) There shall be two classes of advocates, namely, senior advocates and other advocates."

Sub-clause (2) of this clause is important. It says:

"(2) An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability, experience and standing at the Bar he is deserving of such distinction."

I think, Sir, first of all, there should not be any class distinction as senior advocates and junior advocates. If at all the Select Committee thinks that such a class distinction is necessary or unavoidable, it should set up more definite standards of categorising an advocate as a senior advocate and should not leave it to a vague standard of judging from the ability, experience and standing of the advocate by the judges of the Supreme Court or High Court. There may also be a difference of opinion in such a judgment and, therefore, it is necessary that more specific standards should be laid down on this aspect also.

Now, Sir, about the standard of admission of persons entitled to be enrolled both in the State Bar Council and in the All-India Bar Council. You will find that provision has been made in clause 22 of the Bill where it is stated that a person who is to be admitted as an advocate on the roll of the High Court should fulfil certain conditions. It is said that he must be a citizen of India, he must have completed the age of 21 years, he must have a bachelor's degree in arts, science or commerce and also he must have obtained a bachelor's degree in law. After having attained all these qualifications, as is provided in sub-clause (d) of this clause 22, he must have undergone a prescribed course of training in law and passed the prescribed examination after such training. You know, Sir, at present, when a person has the qualifying degree of law he is entitled to be enrolled first

of all as a pleader, and if he has undergone a certain juniorship training, after some time he is entitled to be enrolled as an advocate. But here a more rigorous test is prescribed. After he has passed the degree examination in law he has further to undergo a course of training and pass a certain examination. What happens, I would ask the hon. Deputy Minister of Law, when a person who has passed the degree course in law somehow or other fails in the examination after the training course? In that case, the person is neither here nor there.

The argument may be that a degree course in law by a university does not give a person a sufficiently high standard of knowledge in law in order to entitle him to practice in a court of law. I would submit that the examination after the training course will not *suo moto* be a good qualification for him to entitle him to practice in a court of law because, as you know, it needs a good deal of practice in order to be a successful lawyer. I would rather prefer that the universities raise their standards for the examination rather than ask a person who has already got a bachelor's degree in law to sit for a second examination and take his chance.

Therefore, I would submit that it should be possible to raise the standards, if we set a high standard of examination, at the university level, in respect of law. It is good that the All-India Bar Council is going to set up a high standard, perhaps a uniform standard of university examination in law. So, it should be possible to set up uniform standards by raising the standard of examination for the degree courses in law at the universities. So, it should not be necessary or essential to have any examination after the prescribed course of training. I believe that the Joint Committee will consider the desirability of deleting sub-clause (1) (d) of clause 22.

I had many more points to say but since you have rung the bell I shall stop. I would request the Joint Committee to take into consideration the points that have been made by me.

Shri C. R. Pattabhi Raman: Mr. Chairman, the demand for a unified Bar has been a persistent demand, and this measure will not only fulfil the desires and ambitions of lawyers in India but will also lay the foundation for an independent and autonomous national Bar. It will bring into existence, as the Law Commission has pointed out, "an influential brotherhood of highly educated persons associated together in a common profession with common interests and common ideals".

Chief Justice Venderbilt has stated quite sometime ago that a lawyer had five functions to perform: counselling, advocacy, improving his profession, the courts and the law, leadership in moulding public opinion and the unselfish holding of public office. He further says:

"In a free society every lawyer has a responsibility, that of acting as an intelligent, unselfish leader of public opinion—I accent the qualities "intelligent" and unselfish—within his own particular sphere of influence. Finally, every great lawyer must be prepared, not necessarily to seek public office, but to answer the call for public service when it comes."

Therefore, it is not a day too soon that this very desirable measure has been brought forward here. I dare say that the Joint Select Committee will go through the various provisions and improve on them.

I wish to draw the attention of the House to one or two matters which I think are important at this stage. So far as the classification of advocates into senior and junior advocates is concerned, there seems to be some

[Shri C. R. Pattabhi Raman.]

misapprehension. In fact, it is a very big decision that a young lawyer takes in England when applying for silk and becoming the King's or Queen's counsel. There are very many leading lawyers who do not take silk at all and there are many young lawyers who take silk and who suffer on account of that because it precludes them from doing certain types of work which will normally come to them. Therefore, this dichotomy is very necessary in India, because, we will then have a senior lawyer who would be freed from the architecture of the case; he will be freed from actually dealing with the clients, the office, stamps, affidavits, plaints, correspondence, etc. All these matters will be outside his purview, and I think this division is very necessary. The senior advocates throughout India will perform important functions besides being technicians and they will have to realise that unless they are able to bring up a second line in the Bar they will be failing in their duty. These provisions will enable most of them to bring up deserving juniors to the proper standard to take their place when the seniors make way for them either by retiring or entering public service.

This measure for having a unified Bar will also ensure for Indian citizens, wherever they are, expert advice which will be almost the same throughout India, and expert technical assistance in the courts will be available. Such uniform advice will not be available unless there is a unified Bar and an All-India Bar Council in charge of these matters.

The Law Commission have quite rightly referred in detail to legal education, and it is this aspect which I wish to bring to your notice now. There is a reference to it in the Bill before us. Really legal education today is very poor in India. It is admitted on all hands that it is so. In many places the law colleges have got only part-time professors and the

students who attend the classes are also part-time students. Many of our law colleges have got 300 or 400 students attending the first and second year classes and they are given very perfunctory education. They do not have expert lawyers or jurists for teaching them, except in very rare cases. That is a real tragedy. On the other hand, in England, they have various law schools formed at London, Oxford and Cambridge, and eminent men like Holdsworth, Cheshire and Berridale Keith right up to the north of England have taught the students. In America also, there are so many important and influential law schools at Harvard, Yale and in New York itself, and also at Columbia. Eminent lawyers and jurists preside over those schools. Some of them are not only leading lawyers but have been responsible for great books. They were great writers. That is why the Law Commission has rightly stated the need for higher standards. We here do not have many real treatises or works on jurisprudence or legal subjects. The reason is, either our lawyers are busy practising and get no time for writing books or jurists do not get sufficient emoluments so as to be able to turn our really good books on jurisprudence and other legal subjects. Therefore, it is very necessary that an all-India body should take up the question of legal education. It is a very urgent matter.

Actually, as has been pointed out in the Law Commission's report itself, law seems to be the last resort or refuge for our young men who, after trying other sources of avenue for employment, etc., take up the law course. They just take a law degree for the sake of a degree. Not that there should be any attempt at preventing such things. Let them by all means take degrees, but the people who qualify for the profession of law should have some sort of technical perfection, some sort of equipment. I am glad that there is a provision in this Bill to ensure that apart from

having university degrees, they will have to fulfil certain tests which the All-India Bar Council and the State Bar Councils, as the case may be, will be prescribing for them.

Though it is really not germane to the Bill before us I wish to refer to another aspect, namely, that all the provisions in the Bill, the profession of law, redressing of grievances, agitation for citizenship rights, etc., will become meaningless if the present rate of court-fees and the cost of litigation are maintained. In fact, you will be interested to know that on pages 487 to 490, the Law Commission itself has referred to this aspect of the matter, and I would like to draw the attention, not only of the House but of the whole country and the lawyers as well, to what the Law Commission has said in this connection.

The Law Commission has said:

"Our States provide hospitals which give free treatment to persons who are physically afflicted. But if a person is injured in the matter of his fundamental or other legal rights, we bar his approach to the Courts except on payment of a heavy fee."

It goes on to point out:

"But, if what the Courts administer be justice, is justice a thing which the Government ought to grudge to the people?"

One of the famous sayings in the Magna Carta was, "To no one will we sell justice". That was about 800 years ago in England. That is a just principle. But all over India today adjudication is available at a high price. You will find that in Madras, the rate is the highest. They charge 7½ per cent *ad valorem*. Supposing a person's or an institution's property involves a sum of Rs. 5 lakhs or Rs. 7 lakhs, he will have to pay a sum of Rs. 37,500 or Rs. 52,500 by way of stamps and court-fees. It is equally high in other States. Most of the

States are levelling up and catching up with Madras where we have an exorbitant court-fee. The States do not make any bones about it. They say, "we want revenue". The ministers in the States in charge of judicial administration always say they want revenue. This comes under civil administration and it brings revenue. Of course, let them by all means have some sort of revenue, but then, it is very high. They always club, with the administration of justice, i.e., civil justice, criminal justice, policing the State, etc. They mix all these things with magisterial cases and so on, where wrongs are righted, crimes are detected, security is assured, etc.; and try to show that they are not making so much money. It is really a crying shame that most of the States are making huge sums of money so far as the administration of civil justice is concerned. Though it is not germane to this Bill, I am pointing it out because it is very important.

I am very glad this legislation is coming and this must be the beginning of many more Bills similar to this. There must be one Bill regulating the cost of litigation all over India. Just as you are having a unified Bar and unified system of justice, you must have uniform court fees throughout India. It must bear some sort of proportion to the injury caused or the claim, if it is a civil matter and not what it is, viz., 7½ per cent *ad valorem*, which is outrageous. This is very much outside the scope of many poor people. They cannot go to court and most of them compromise because of the high cost of litigation, apart from paying fees to the lawyer. This is really a crying need and some reform is needed here.

I also feel that we must have a panel of lawyers, especially junior lawyers in each State—there are many brilliant young men—who must be engaged to appear for Central Government cases. Of course, the States have got their own Government Pleaders and Advocates-General. But the fact remains that so far as Central Government and tax cases are

[Shri C. R. Pattabhi Raman.]

concerned, they must not go by patronage. What happens now is that some gentleman secures the advising work for some all-India body and he clings to it for years together, like some sort of patrimony. Instead of that, a panel of young lawyers will be able to deal with most of the Central Government cases in the States.

We are going to do away with the various and diverse types of lawyers. When this is done and a common roll comes into existence, it will also be necessary to give a status—to the statutory lawyers—to the lawyers who will come into being as a result of the unification of the Bar. Once they are recognised as Advocates, naturally from the day on which they started practice, they must have seniority; according to the date on which they got qualified. Even if they are pleaders or if they go by any other name, those people must have a standing according to the date on which they started practice.

So far as the other points raised by some hon. Members are concerned, I may assure them that there has been a strong feeling with regard to the various classifications. A Supreme Court lawyer has got the right to practise everywhere, act and plead. Actually it has been pointed out in the Law Commission's report itself that a Supreme Court lawyer can actually act in Calcutta today. But, he is not so popular and nobody is engaging him to act there. It is a question of time. There are some people who are barristers, but they practise really as advocates. I am very proud of the great traditions of the Bar in India. Sir Tej Bahadur Sapru was not a barrister; he was a giant amongst the leaders of the Bar. There are so many names I can give from South India . . .

Shri Hajarnavis: Sir, C. P. Ramaswami Iyer is one of them.

Shri C. R. Pattabhi Raman: You are entitled to say that. There have been

so many great leaders of the Bar and I am very proud of them. I, for one, will be the last man to think that the education given abroad is superior to the education given here. But at the same time, I have to point out that the legal education given in India today is perfunctory and poor. That must be immediately improved. The law colleges should not be like pinjrapoles—part-time students with printed notes, part-time teachers, shouting to the students, "If you want to go away, you can go away" and all that. That is very wrong. We must have proper legal education. The technique of the lawyer must be improved.

I hope this measure is only the beginning of many more such Bills to come. With these words, I support the Bill.

श्री राम कृष्ण गुप्त (महेन्द्रगढ़) :

मि० चैयारमन, सर, मौजूदा लीगल प्रैक्टिशनर्स बिल के जरिये, जो कि सिलेक्ट कमेटी को रेफर किया गया है, आल इंडिया बार कौंसिल और स्टेट कौंसिल्स सेंट-अप की जा रही हैं। यह बहुत खुशी की बात है। जैसा कि मुझ से पहले बहुत से आनरेबल मेम्बरज ने चर्चा की है, इस की बहुत ज्यादा जरूरत थी। इस के लिए आल इंडिया बार कमेटी भी मुरारर की गई थी। उस ने भी अपनी रिपोर्ट में इस बात के लिए जोर दिया था। पिछले दिनों ला कमीशन ने जो अपनी रिपोर्ट दी, उस में भी इस की जरूरत को महसूस किया गया था। इस बिल के जरिये जो इन कौंसिल्स को सेंट-अप किया जा रहा है, उस के बारे में मैं दो तीन बातें हाउस के सामने रखना चाहता हूँ।

इस बिल को देखने से यह पता लगता है कि आल इंडिया बार कौंसिल और स्टेट कौंसिल्स को सेंट अप करने का सब से बड़ा मकसद यह है कि तत्कम वेक में एडवोकेट्स की एडमिशन के सिस्टम को यूनिफार्म किया

जाय, जिस से कि बार का स्टैंडर्ड ऊंचा हो। यह बहुत खुशी की बात है, लेकिन इस के बारे में मेरी तजवीज यह है कि जब तक हम तमाम देश में लीगल एजुकेशन के स्टैंडर्ड को भी उस के साथ साथ यूनिफार्म और ऊंचा नहीं करेंगे, हम इस में कामयाब नहीं हो सकेंगे। मेरी राय यह है कि उस के लिए लीगल एजुकेशन के स्टैंडर्ड को भी तमाम देश में यूनिफार्म करना निहायत जरूरी है। आज हम क्या देखते हैं कि बहुत से ऐसे ला कालेज हैं, जिन में तीन साल का कोर्स है, और बहुत से ऐसे कालेज हैं, जिन में दो साल का कोर्स है। यही नहीं, कई कालेज ऐसे हैं, जहां कि ईवीनिंग क्लासिज लगती है। इस के साथ साथ बहुत से कालेज ऐसे हैं, जहां एम० ए० के साथ ला की एजुकेशन की भी इजाजत है। मुझे पूरी उम्मीद है कि ज्वॉयंट सिलेक्ट कमेटी इन तमाम बातों की तरफ पूरा ध्यान देगी।

बिल की क्लॉज ६ में कहा गया है कि आल इंडिया बार कौंसिल के फ्रंक्शन में से एक फ्रंक्शन यह भी है—

"to lay down standards of legal education in consultation with the Universities in India imparting such education;"

इस बारे में मेरी अगल यही है कि सब से पहले यह कोशिश करनी चाहिए कि जिस से तमाम देश में लीगल एजुकेशन का एक यूनिफार्म स्टैंडर्ड हो, वना एडवोकेट्स के लिए जो यूनिफार्म मैथड बनाया जा रहा है, वह कामयाब नहीं हो सकेगा—वह फेल हो जायगा।

दूसरी बात जो मैं हाउस के सामने पेश करना चाहता हूँ—और मुझे पूरा विश्वास है कि सिलेक्ट कमेटी इस बात पर भी गौर करेगी—वह यह है कि ला की एजुकेशन के बाद दूसरा सवाल हमारे जजिज वगैरह की एपायंटमेंट का है। ला कमिशन की रिपोर्ट में भी इस बात का जिक्र किया गया है। मैं

यह बात खास तौर पर इस लिए कह रहा हूँ कि बिल में जो फ्रंक्शन दिए गए हैं, उन में इस बात का कोई जिक्र नहीं है। मैं चाहता हूँ कि स्वाह वह किसी भी स्टेट पर हो, किसी भी तरीके से हो, इस बात के लिए कोशिश करना चाहिए। एक जजिज वगैरह के एपायंटमेंट में आल इंडिया बार कौंसिल की राय जरूर ली जाये। यह बहुत जरूरी है, क्योंकि एक देश के इन्साफ को ठीक तरह से चलाने के लिए, वहां की डेपॉजिटिव गवर्नमेंट को कामधार्बी से चलाने के लिए एक मजबूत इंडिपेंडेंट जूडिशल सिस्टम का होना निहायत जरूरी है और कोई जूडिशल सिस्टम मजबूत और इंडिपेंडेंट नहीं हो सकता, जब तक कि उस की बार को कॉन्फिडेंस में नहीं लिया जायगा, खास तौर पर जजिज वगैरह की एपायंटमेंट के लिए। मुझे पूरा विश्वास है कि इस बात की तरफ भी ध्यान दिया जायगा।

हमारे देश में आज जो लीगल सिस्टम है, वह बहुत सड़गा है। गरीब आदमियों को इन्साफ बनने के लिए बहुत ज्यादा कोशिश करना पड़ता है और बहुत ज्यादा पैसा खर्च करना पड़ता है। मुझे पूरा विश्वास है कि बार कौंसिल के सेंट अप होने से इस बारे में भी जरूर मदद मिलेगी और इस तरफ भी ध्यान दिया जायगा, ताकि गरीब लोगों को फ्री लीगल एड मिल सके और उन को अदालतों में इन्साफ मिल सके।

मैं ये तमाम बातें इस लिए कह रहा हूँ कि बार एक अटोनामस बॉडी हो। इस रिपोर्ट में इस का जिक्र किया गया है और कहा गया है कि उस के फ्रंक्शन वाइड होने चाहिए, क्योंकि जैसा कि ला कमिशन की रिपोर्ट में सफा ५८० पर कहा गया है:—

"A uniform Bar of India can be a powerful influence for welding the country together and for combating all sectional, regional and communal trends. It can largely mould public opinion in matters relating to legislation and the administration of justice."

[श्री राय कृष्ण गुप्त]

इस लिए आप खुद अन्दाजा लगा सकते हैं कि बार कौंसिल का कितनी ज्यादा अहमियत है। उस की अहमियत इस लिए है कि वह देश में एक अच्छा मजबूत एडमिनिस्ट्रेशन कायम करने में मदद देती है। उस की इस लिए भी जरूरत है कि वह देश में सैकशनल, रिजनल और कम्पूनल ट्रेडज का मुकाबला करती है और उन को खत्म करने में मदद देती है। लेकिन ये तमाम बातें तब ही हो सकती हैं, जब कि बार कौंसिल को ज्यादा पावर दे दी जायेगी, उन को ज्यादा भ्रूतिवार दिए जायेंगे और उन के फ्रेशन्ज को और ज्यादा बढ़ाया जायगा। यह बात मैंने इस लिए कही है कि इस बिल में बार कौंसिल के जो फ्रेशन्ज बतलाए गए हैं, उन में से बहुत से बने हैं और उन में हम अन्दाजा नहीं लगा सकते कि उन की पावर कितनी होगी। मुझ से पहले मेरे दोस्त श्री सूपकार ने भी ध्यान दिलाया है। मुझे पूरा विश्वास है कि इस तरफ भी पूरा ध्यान दिया जायगा और इन कौंसिल के फ्रेशन्ज और पावर को और ज्यादा बढ़ाया जायगा, ताकि वे इन तमाम कामों में पूरी मदद दे सकें।

इस एकट में जो पांच मी रूपए की फीस रखी गई है, वह बहुत ज्यादा है। मुझ से पहले और भी कई दोस्तों ने इस तरफ ध्यान दिलाया है। मैं समझता हूँ कि इस हाउस की यह यूनिमस राय है कि इस को रेड्यूस-कम-किया जाय। अगर ज्यादा नहीं, तो कम से कम इस को आधा जरूर किया जाय। आज हम देखते हैं कि जितनी डिस्पैरिटी आफ इनकम इस लीगल प्रोफेशन में है, शायद और किसी प्रोफेशन में नहीं है। इस तरफ भी मेरे और दोस्तों से ध्यान दिलाया है। आप को ऐसे बहुत से एडवोकेट्स नजर आयेंगे, जिन की आमदनी तीस, चालीस हजार रूपए से ज्यादा है, लेकिन ज्यादा तादाद ऐसे एडवोकेट्स की है जिन को

बहुत कम काम मिलता है और जो बेकार हैं।

इन तमाम बातों की तरफ हमें ध्यान देना चाहिए। मुझे पूरा विश्वास है कि फीस को भी कम किया जायगा और इस किस्म का इन्तजाम किया जायगा कि जिन जूनियर एडवोकेट्स को काम नहीं मिलता है, उन को ज्यादा से ज्यादा काम मिल सके। इस के बारे में मैं दो तीन तजवीजों हाउस के सामने रखना चाहता हूँ। एक तरीका यह हो सकता है कि, जैसा कि मेरे दोस्त मि० नायर ने कहा है, जो सरकारी वकील किए जाते हैं, उन में उन की सर्विसिज को ज्यादा से ज्यादा यूटिलाइज किया जाय। मुझे पूरा विश्वास है कि इस तरफ पूरी कोशिश की जायगी। आज मीनियर और जूनियर एडवोकेट्स के दरमियान बड़ी डिस्टिंक्शन है। मीनियर एडवोकेट के लिए यह लाजिमी होना चाहिए कि वह कम से कम दो एडवोकेट्स को जरूर अपने साथ रखे, उन को काम दे, ट्रेनिंग दे, जिस से उन को आसानी से काम मिल सके। मैं आशा करता हूँ कि ज्वायंट सिलेक्ट कमेटी इन तमाम तजवीजों पर अच्छी तरह से गौर कर लेगी और जहाँ तक आल-इंडिया बार काउंसिल बनाये जाने का ताल्लुक है, जो कि सेंट-अप की जा रही है, जहाँ तक उसके फंक्शंस का ताल्लुक है, उनको और उसकी पावर्स को और ज्यादा बढ़ाया जाए, जिसकी बहुत ज्यादा जरूरत है।

एक आखिरी बात मैं टाउटिज्म के बारे में कहना चाहता हूँ। इसका ब्रिक ला-कमिशन की रिपोर्ट में भी किया गया है। यह ठीक है और मैं इस बात को महसूस करता हूँ कि यह लीगल प्रोफेशन के अन्दर एक डिविल है और इस डिविल का खत्म किया जाना बहुत जरूरी है। इस रिपोर्ट में कहा गया है:—

“Toutism is an evil which affects the due administration of justice.”

लेकिन मैं यह भी कहना चाहता हूँ कि बहुत से ऐसे केस भी देखने में आते हैं जिन में की एडवोकेट्स को खामखाह बदनाम करने की कोशिश की जाती है। उनके खिलाफ, मैलीशस, मूठी एप्लीकेशंस दी जाती हैं। इस बारे में मेरी यह अपील है कि सी० पी० सी० का जो संशोधन ३५ (ए) है उसके अन्दर यह है कि जो किसी के खिलाफ मैलीशस प्रावेगंडा या कोई इम किस्म का काम करता है, उससे कम्पेंसेटरी एनाउंस लिया जा सकता है, उसी तरह से इम किस्म की बात एडवोकेट्स के बारे में भी होनी चाहिए। अगर एक तरफ हम चाहते हैं कि टाउटिज्म को खत्म करे तो दूसरी तरफ यह देवना भी जरूरी है कि जो बार के खिलाफ, जो एडवोकेट्स के खिलाफ मैलीशस प्रावेगंडा किया जाता है उसको भी रोका जाए। इसका कारण यह भी है, जैसा मैंने पहले कहा है, कि यह जो बार है, यह एक ऐसी मस्य्या है जो कि देश के अन्दर एक अच्छा डेमोक्रेटिक एडमिनिस्ट्रेशन कायम करने में मदद देती है और जब उससे इस बारे में राय मशिवरा किया जाता है और उससे एक्स्पेक्ट किया जाता है कि वह राय दे कि किस तरह से जूडिशरी को इंडिपेंडेंट रखा जाए, तो अगर उसके खिलाफ इस किस्म का मैलीशस प्रावेगंडा करने की इजाजत दे दी जाए, तो आप अंदाजा लगा सकते हैं कि वह अपने काम को किस तरह से पूरा कर सकती है। मुझे पूरी तरह विश्वास है कि सिलेक्ट कमेटी इस पर भी अच्छी तरह से विचार करेगी और इस बिल को इस तरह से एमेंड करेगी जिससे कि एडवोकेट्स के खिलाफ, शकीलों के खिलाफ जो मैलीशस प्रावेगंडा किया जाता है, उसको रोका जा सके।

इन शब्दों के साथ मैं इस बिल की ताईद करता हूँ और चाहता हूँ कि इसको ज्वार्यंट सिलेक्ट कमेटी को रेफर कर दिया जाए।

Shri D. C. Sharma (Gurdaspur): I thank you for giving me, a non-lawyer, a chance to speak on a Bill which concerns mostly our lawyer friends.

I have listened to some of the speeches and some of the quotations which have been read out concerning this Bill, and I have felt as if by enacting the Legal Practitioners Bill we are going to bring into birth a new heaven and a new earth in India. I have no such hopes about this Bill, and I do not want my friends to expect so much from this Bill so that they may not feel disappointed after working it for about a year or two. It is just a legal measure of the normal type, of the ordinary kind, which we are in the habit of enacting in order to regulate certain professions, certain trades.

13.39 hrs.

[PANDIT THAKUR DAS BHARGAVA in the Chair]

Such measures have been brought into being so many times. Therefore, there is nothing extraordinary about it. At the same time, I feel that this measure has not fully utilized, adequately made use of, the various law reports that have been published. It has not benefited by the recommendations that they have made. It has not profited by the suggestions that they have offered. It has not made full use of the conclusions at which they have arrived at in order to make the legal profession more sound than it is today.

I have gone through this Bill and I find that it consists of pious wishes, pious hopes, vague phrases, vague generalisations. Some of the most important things that could be defined, have not been defined. Perhaps, they will be defined by delegation to the Committee that frames rules. I think this is a Bill which has no guts, it cannot stand on its own legs. I am sorry to say, I have read it thrice to find in it something on which a layman like myself can lay hold. But, I have found that it is like a sermon given to the legal profession, given to the general public without coming to brasstacks. I am sorry to say that this Bill suffers from a sense of unpracticality, a sense of divorce from the real conditions of the legal profession, a sense of isolation from what is happening in the judiciary and

[Shri D. C. Sharma.]

in the legal profession all over this country.

A friend of mine was just now saying that this Bill will unify India. I have never seen a more preposterous claim made by any Bill than this that it is going to unify the whole country, that it will put an end to all sectional and parochial feelings. If that is the case, then, it should be hailed as a new messiah, a new prophet of unity. I think there is nothing of the kind in this Bill. What is this Bill going to do? This Bill is going to deprive the legal profession of whatever independence of action they have now, whatever independence of judgment they have now, whatever independent role they are able to play in free India. I am proud of the legal profession of India. They played a noble part in the struggle for freedom of this country. But, I am sorry to say that the legal profession has not kept up its standards in free India. I think by the constitution of this All India Bar Council, they are going to do something to deprive the legal profession of that kind of zest for independence which they used to have before.

Let me see what is going to be the State Bar Council: two Judges of the High Court to be nominated by the Chief Justice of the High Court; then the Advocate General; then some persons elected.

Shri Braj Raj Singh (Firozabad): Not here.

Shri D. C. Sharma: I would say that, when you form a Council to deal with teachers, you do not bring in the Inspectors, you do not bring in the Minister of Education or the Deputy Minister of Education. You want these teachers to function on their own without interference of any authority, official or of any other kind. Here, we are going to have an All India Bar Council which will be working under the shadow of the Judges of the High Court and the Advocate General. We would call it an autonomous body. I

do not know what the word autonomous means. Certainly, I have been taught not to interpret autonomous in this way. I would have very much liked that the All India Bar Council or the State Bar Council should have consisted entirely of members of the legal profession. If other persons can look after themselves, why can not these lawyers look after themselves? We have the trade union movement. We say, you should not have anybody from outside to run your trade union movement. Here, the legal luminaries of my country are being asked to become members of a Council of which the invisible authority will belong to the Judges. I think the word autonomy could not have been more abused than this. I would therefore request the hon. Minister who is a very eminent lawyer to see to it that this All India Bar Council or the State Bar Council should consist entirely of lawyers and those lawyers should be such as enjoy the confidence of their profession. It should be a professional body and not a body which is neither fish, nor fowl, nor flesh, which is partly a judicial body, partly a professional body, partly this and partly that. I would like that this body should be not a poly-coloured or many coloured body, but a one-coloured body. That is what I want it to be.

Shri V. P. Nayyar: It will be a motley crowd.

Shri D. C. Sharma: You want the judicial element in it also. I would respectfully say, if you should have the judicial element, if you should have the professional element, why you do not have the educationists, who are responsible for turning out these graduates of law. My hon. friends here refer to tripartite agreements and tripartite committees. I think, so far as law is concerned, there should be a tripartite committee which consists of educationists who are responsible for legal education, lawyers who practise law and Judges who dispense justice. I would therefore say that, if you are

not going to give autonomy to these lawyers,—perhaps you are not thinking of it—the Bar Councils should be formed in this way.

I judge everything in this world, in free India, whatever it is, by its public usefulness, by its service to the nation, by its service to the poor. In every corporation that we form, in every council that we set up, I think one of the things to be taken into account should be the quantum of public service that this council is going to give.

Shri Hajarnavis: Even speeches of Members of Parliament?

Shri D. C. Sharma: My speeches in Parliament are very good, but one should have a receptive mind. Unfortunately, the draftsman prepares the Bill and you bring the Bill.

Shri Khushwaqt Rai (Kheri): Do you mean to say that the Law Minister is not receptive?

Shri D. C. Sharma: You are a good man and you love to listen to us and you always listen to the suggestions that we are making. I was asking respectfully, have the standards of professional conduct not been laid down here or in no other country in the world? I belong to the teaching profession and I am proud of that. I know the teachers' standards of conduct are to be found in my own country and in other countries also. Why should you not have told us what these standards of professional conduct are going to be. My hon. friend over there was talking about professional etiquette. I do not think it will hurt anybody if you call a Judge "my Lord" or something like that. I do not know by what other form he is going to call them, but I think these things should not have been left vague. They should have been defined more or less so that we know what we are driving at. Now it is going to be left to the Bar Council as if during the last 150 years of legal practitioners in this country; perhaps more or perhaps less, this profession has had no code of conduct or anything of the kind.

Of course I do not want to talk about toutism. People think that toutism is something which is very bad, and I agree with them, but I am afraid to say that toutism is very hard to eradicate like cancer. It is the cancer of the legal profession, and we have not yet been able to find any specific for this cancer. But I would like that legal education should be entrusted to the All-India Bar Council more than anything else. That point has been raised by several friends here. Legal education has different standards in different States, different syllabi in different States; it has different teachers with different qualifications in different States. I wish that legal education in India does not remain as diversified as it is today, and that some kind of uniformity is introduced into it. The Members of the Law Commission asked a gentleman who had passed the LL.B. Examination in the first division as to what books he had read. He had read only guide books, but he had passed in the first division in the examination.

Shri V. P. Nayar: Salmond on jurisprudence and Vincent on torts are certainly prescribed for all.

Shri D. C. Sharma: You are right, but you belong neither to the category of those who are taught, nor the category of those who teach. You are a category by yourself.

I was submitting there should be a commission or a committee to go into the problem of legal education all over the country. We have had commissions to deal with university education and secondary education, and I do not see any reason why there should not be a commission to deal with this very urgent problem, and the sooner it is done the better.

Again I was submitting that this All-India Bar Council should not only be a professional body. It is a good thing it is going to be a professional body, but it should also, as has been suggested by some Members, have as

[Shri D. C. Sharma.]

its function to deal with the problem of free legal aid to the poor. Unfortunately the legal profession is thought to be a profession which is very money-minded. That is wrong I think, and I do not subscribe to that view, but that is the general impression prevailing, and this All-India Bar Council should do something to erase that impression from the public. And that can be done only if it is one of the functions of this Council to devise ways and means of giving free legal aid to the poor.

So far as the standing committees are concerned, I would say that the All-India Bar Council should have a standing committee called the States Standing Committee to deal with problems which come from the States; otherwise, the problems of the States will not be dealt with as effectively as possible. These three standing committees are all right, but I think there should be another standing committee to deal with the problems of the States because they will have to deal with these problems very often.

Of course I agree with friends who have said that this distinction between senior and junior advocates is arbitrary and is not in conformity with the democratic set-up of our country. I do not know how they are going to select these senior advocates. Are they going to select them on the strength of seniority? Our Prime Minister has said that we do not want to have promotion by seniority and that we want merit. Are they going to select them on merit? I think this kind of division is going to perpetuate a kind of legal casteism. While we are trying to eradicate other kinds of casteism, this All-India Bar Council will create a new kind of casteism. It will stratify the legal profession into various kinds of groups which will not be very helpful for the proper functioning of the profession.

As I said in the beginning, I wish we had been given a glimpse of what is meant by all these vague expressions

such as "professional conduct", "disciplinary committee" and all that kind of thing. What are they going to do? Something should have been said about these things to make this Bill really a live thing. Unfortunately that has not been done. But I hope the Joint Committee will not send this Bill back to the House simply crossing the "t's" and dotting the "i's", making only a few verbal changes here and there. I hope it will clarify professional conduct, etiquette, the disciplinary committee's functions etc. If that is done, I think this Bill will be of help in stepping up the standards of our legal practitioners, but if that is not done I think not much will be gained by passing this Bill.

श्री प्र० ना० सिंह (चन्दौली) :

सभापति महोदय, किसी नए लोकतंत्र को पुष्ट करने के लिए, इंटेलिजेंट और कांगस बार की आवश्यकता होती है। हमारे देश में लीगल प्रोफेशन को व्यवस्थित रूप देने के लिए जो बिल सदन के सामने पेश किया गया है और जिसको सिलेक्ट कमेटी को भेजने का प्रस्ताव किया गया है, उसमें से दो बातें निकलती हैं।

पहली बात तो यह है कि बार के यूनिफिकेशन का जो प्रश्न है वह प्रश्न हल हो जाएगा। इसके साथ ही साथ एक मिनमम क्वालिफिकेशन एडवोकेटशिप के रजिस्ट्रेशन के लिए इस बिल के यहां से पास होने के बाद और फिर सिलेक्ट कमेटी से वापस आने के बाद पास होने के बाद तय हो जाएगी। लेकिन मैं महसूस करता हूँ कि इसके साथ साथ लीगल सिस्टम को ठीक तरह से व्यवस्थित करने के लिए जिन बातों की आवश्यकता थी, उनको इस विधेयक में नहीं रखा गया है, उनकी इस विधेयक में कमी दिखाई पड़ रही है और मैं सिलेक्ट कमेटी का ध्यान उनकी ओर दिलाना चाहता हूँ और आशा करता हूँ कि वह इन पर विचार करेगी और इनकी व्यवस्था भी इस बिल में कर देगी।

पहली बात तो मैं एटार्नी जनरल, सालिसिटर जनरल और एडवोकेट जनरल की प्राइवेट प्रैक्टिस के बारे में कहना चाहता हूँ। इस प्राइवेट प्रैक्टिस पर कोई भी किसी भी प्रकार की बन्दिश इस विधेयक द्वारा नहीं लगाई जा रही है। मैं कहना चाहता हूँ कि एटार्नी जनरल, सालिसिटर जनरल और एडवोकेट जनरल की एक खास पोजिशन है और उस खास पोजिशन के होते हुए जब वे प्राइवेट प्रैक्टिस के लिए इनगेज किए जाते हैं तो उससे एक बहुत बड़ी दिक्कत लीगल प्रोफेशन के सामने आ खड़ी हो जाती है। इसका मुझे खुद का तजुर्बा है। उत्तर प्रदेश के बारे में मुझे अच्छी तरह से मालूम है। वहाँ के एडवोकेट जनरल कितने ही परसनल मामलों में चीफ़ मिनिस्टर और होम मिनिस्टर के लिए एपीयर हुए हैं। यही बात दूसरे सूबों में भी होती होगी, ऐसा मैं समझता हूँ। जैसा मैं अपने सूबे में देखता हूँ इलैक्शन पेटिशन से ले करके और इलैक्शन कमिशन में डिसकवालिफिकेशन आफ दी मैम्बरशिप आफ दी होम मिनिस्टर आफ यू० पी० सभी में एडवोकेट जनरल जो हैं, वह एपीयर हो रहे हैं, इस वास्ते जब हम इस लीगल प्रोफेशन को अच्छा बनाने जा रहे हैं, तो फिर जो ला-आफिसर्स हमारे हैं, एटार्नी जनरल, सालिसिटर जनरल और एडवोकेट जनरल, उनको गवर्नमेंट के कार्यों को छोड़ करके प्राइवेट प्रैक्टिस करने की छूट देना किसी तरह से भी उचित नहीं होगा। उनकी जो भी तनक्वाह आप तय करें और उसके लिए जो भी आधार रखें लेकिन यह आप अवश्य कह कि उनको प्राइवेट प्रैक्टिस करने का, प्राइवेट मामलों में एपीयर होने का अधिकार नहीं होगा। इसको करने के दो कारण हैं। एक तो यह है कि वे लोग निजी फायदा उठाते हैं और दूसरा यह कि लीगल प्रोफेशन में उनको आपने बहुत ही एमीनेंस दे रखी है जिसके कारण उनका प्राइवेट केसिस में आना ठीक नहीं है। प्री-आडियंस का हक पहले आपने

एटार्नी-जनरल को, फिर सालिसिटर जनरल को और उसके बाद एडवोकेट जनरल को दिया है, जोकि उनकी पोजिशन को एक सुप्रीम पोजिशन बना देता है और फिर भी जब उनको आप प्राइवेट प्रैक्टिस करने का अधिकार देते हैं तो ऐसी हालत में जो दूसरे प्रैक्टिशनर्स हैं, जो सीनियर एडवोकेट्स हैं, जो अच्छे और ब्रिलियंट एडवोकेट्स हैं उनके सामने आप एक दिक्कत की स्थिति पैदा कर देते हैं। इस वास्ते मैं समझना हूँ कि लीगल प्रोफेशन को ठीक तरह से आगे ले जाने के लिए यह आवश्यक है कि बार के जो ला-आफिसर्स हैं, उनका प्राइवेट प्रैक्टिस पर बँन लगना चाहिए और मैं सिलैक्ट कमेटी से प्रार्थना करता हूँ कि वह इस पर गौर करे और इसमें कोई न कोई इस तरह की प्राविजन जोड़े जिससे इस पर बन्दिश लगाई जा सके। चूँकि उनके लिए प्री-आडियंस की बात इसमें कह दी गई है, इस वास्ते जब यह बिल सिलैक्ट कमेटी के सामने जायेंगा तो उसको इस बात का मौका मिलेगा कि वह देखे कि उन पर किसी तरह की बन्दिश लगाने की जरूरत है या नहीं।

14 hrs.

दूसरी बात मैं सीनियर एडवोकेट्स और जूनियर एडवोकेट्स के बारे में कहना चाहता हूँ। मुझे इसमें कोई एतराज नहीं है कि सीनियर एडवोकेट्स और अदर-एडवोकेट्स हों और उनमें काम का एलोकेशन हो जायें और पता लग जायें कि सीनियर एडवोकेट्स कौन कौन से काम करेंगे और अदर एडवोकेट्स कौन कौन से काम करेंगे। लेकिन अगर आप सीनियर एडवोकेट्स को केवल सिलेक्शन के आधार पर ही रखना चाहते हैं तो, मैं यह मानते हुए भी कि जो न्यायमूर्ति लोग होंगे, जो जज लोग होंगे, जोकि अपनी तरफ से इंटरनली कोई गलती नहीं करेंगे, फिर भी हो सकता है कि उनसे कोई गलती हो जय चूँकि वे भी मनुष्य हैं, कोई देवता नहीं हैं,

[श्री प्रा० ना० सिंह]

एरर आफ जजमेंट हो सकता है, यह ठीक नहीं होगा। सैकशन १५ के सब-सैकशन २ में यह कहा गया है :—

“An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability, experience and standing at the Bar he is deserving of such distinction.”

जब आप यह कहते हैं कि उसकी कंसेंट के बिना उसको सीनियर एडवोकेट नहीं बनाया जायगा और जब आप उसको उसकी कंसेंट के साथ ही सीनियर एडवोकेट बनाना चाहते हैं और एडवोकेट्स के ऊपर ही छोड़ देते हैं कि कौन सीनियर एडवोकेट बनना चाहते हैं और कौन अदर एडवोकेट होना चाहते हैं तो आप क्यों कोई इस तरह की बात करना चाहते हैं जिससे कि बाद में कोई कमी निकले या कोई गलती हो जाय और कुछ लोगों के साथ ज्यादा हो जाय। जब आप उनकी कंसेंट के साथ उनको सीनियर एडवोकेट बनाते हैं तो ऐसी हालत में आप उनके ऊपर ही छोड़ दें कि कौन अपने आप को सीनियर एडवोकेट एनरोल कराना चाहता है और कौन अपने को अदर-एडवोकेट के रूप में रखना चाहता है। जो सीनियर एडवोकेट्स होंगे वे एक टाइप का काम करेंगे और अदर टाइप आफ एडवोकेट्स दूसरी तरह का काम करेंगे। लेकिन आप यह बन्दिश जरूर लगा दें और सेलेक्ट कमेटी इस पर गौर करे, कि दोनों तरह के एडवोकेट्स, सीनियर एडवोकेट्स एंड अदर टाइप आफ एडवोकेट्स, किसी न किसी एडवोकेट्स की तरह से अपने को रजिस्टर जरूर कराये। उनके लिए अपना रजिस्ट्रेशन कराना जरूरी होगा। यदि आप इस को केवल जजेज की कंसेंट के ऊपर छोड़ देते हैं तो इस का महत्व नहीं रह सकता। इस लिये मुझे कहना है कि आप दोनों तरह के एडवोकेट्स को रखें। सीनियर एडवोकेट्स एंड अदर टाइप आफ

एडवोकेट्स दोनों रखें और जो भी जिस तरह से अपना रजिस्ट्रेशन कराना चाहता हो उस में कराने का हक दें। आप सीनियर एडवोकेट्स एंड अदर टाइप आफ एडवोकेट्स दोनों के कामों का आलोकेशन कर दें। इस से सारा मसला हल हो जायेगा।

दूसरी बात मैं जस्टिस के सिलसिले में कहना चाहता हूँ। जस्टिस अर्थात् न्याय का सिलसिला आज हमारे देश में बहुत खर्चीला होता जा रहा है और आप उस न्याय को ठीक तरह से दे सकें और एडवोकेट्स के द्वारा उस के मिलने में सहायता मिल सके, ऐसी कोई व्यवस्था इस में नहीं दिखाई देती है। आज जो लीगल प्रैक्शनर्स हैं उन में से कोई ४ हजार ६० फीस मांगता है कोई ५ हजार और कोई ७ हजार। सुप्रीम कोर्ट में गरीब लोगों का आना मुश्किल हो गया है। मैं कहना चाहता हूँ कि जब हम समाजवादी राज्य की कल्पना रखते हैं, हम ने समाजवादी राज्य का आधार मानने का निर्णय किया है, तो हम सभी को सोशल जस्टिस दे सकें, सामाजिक न्याय दे सकें। इस के लिये आप को ऐसा आधार बनाना पड़ेगा जिस में न्याय का दरवाजा सभी के लिए सुलभ हो सके और अच्छे से अच्छा एडवोकेट सब के लिए मिल सके। जिस तरह से सोशलिस्ट स्टेट में सरकारी नौकरों की सैलरीज पर ध्यान गया उसी तरह से वकीलों की आमदनी के ऊपर भी ध्यान जाना चाहिये, उनकी इनकम पर भी कोई न कोई बन्दिश लगानी होगी। न्याय को सुलभ करने के लिए ५०० रु० या १ हजार ६० की, जो भी मैक्सिमम लिमिट आप उचित समझें, आपको बन्दिश लगानी चाहिये। ज्वाइंट कमेटी को सीनियर एडवोकेट्स और जूनियर एडवोकेट्स के लिए भी यह फिक्स करना चाहिये कि किसी खास केस में क्या मैक्सिमम रेम्यूनरेशन हो सकता है। हम ऐसा देख रहे हैं कि हमारे देश में न्याय दिन-ब-दिन महंगा होता चला जा रहा है। एक तरफ सरकार को रेवेन्यू की जरूरत है

क्योंकि पंचसाला योजनायें बनानी हैं इसलिए इन पंच साला योजनाओं के नाम में धाम चाहे जो कुछ कर दें, हम कुछ नहीं कह सकते, लेकिन दूसरी तरफ धाम अपने कोर्टस के एक्स्पेंस की नहीं देखते। वह दि-ब-दिन बढ़ते चले जा रहे हैं, एडवोकेटस या जो लीगल प्रोफेशन के लोग हैं उन के रेम्यूनरेशन बढ़ते जा रहे हैं। नतीजा यह हो रहा है कि जो साधारण मनुष्य है, जो धाम तौर से एक एक्वरेज धादमी है उसे न्याय मिलना सरल नहीं रह गया है। इस के सम्बन्ध में ज्वॉयंट सिलेक्ट कमेटी को विचार करना चाहिये कि किसी सीनियर एडवोकेट का धीर किसी जूनियर एडवोकेट का मैक्सिमम रेम्यूनरेशन क्या हो सकता है। यह फिक्स हो जाना चाहिये क्योंकि बिना इस के फिक्स किये हुए हम देखते हैं कि धाज मनमाने तरीके से एक रोज की हियरिंग के लिए या एक छोटी सी ऐप्लिकेशन के लिए एक घंटे के लिए बड़े होने के लिये, मामूली से मामूली काम के लिए, ऊंचे से ऊंचे रेम्यूनरेशन चार्ज किये जा रहे हैं।

साथ ही साथ मुझे यह भी कहना है कि जिस वक्त धाम बार कौंसिल पर लीगल प्रोफेशन की दूसरी जिम्मेदारियां डाल रहे हैं धाम को झाल इंडिया बार कौंसिल धीर स्टेट बार कौंसिल पर यह जिम्मेदारी मी डालनी चाहिये कि जिन लोगों के पास साधन नहीं हैं अपने लिये लीगल एड लेने के, धीर उन के लिए लीगल एड लेना जरूरी है, तो उस के लिए उन कौंसिल को कुछ न कुछ प्रबन्ध करना चाहिये। बार कौंसिल के समान इस का कोई न कोई प्राविजन होना चाहिए। इस के लिए चाहे गवर्नमेंट खुद ही अपनी तरफ से कुछ खपया एडवोकेट कर दे या फंड के रूप में दे दे जिस में कि झाल इंडिया बार कौंसिल धीर स्टेट बार कौंसिल इस बात की कौंसिल कर सकें कि जो साधनबिहीन लोग हैं उन को लीगल एड पहुंचाने का कोई रास्ता निकल धामे। मैं ज्वॉयंट कमेटी के सामने धीर मंत्री जी के सामने

इस बात को रखना चाहता हूं कि वह बहुत गम्भीर प्रश्न है क्योंकि देश के हर एक धादमी को जस्टिस मिलनी चाहिए। धाज देश में बहुत से ऐसे लोग हैं जिन को दोनों बक्त भर पेट भोजन नहीं मिलता है। मैं सुप्रीम कोर्ट धीर हाई कोर्ट की बात नहीं कर रहा हूं, मुफ्सिसल कोर्टस की बात कर रहा हूं जहां पर दो दो, चार चार बीघे जमीनों वाले किसानों को जबदस्ती बेदखल किया जा रहा है, उन की अपनी जमीनों से निकाला जा रहा है। जब उन के लिये खाने का ठिकाना नहीं है तो वह कैसे इतना खर्च कर के अपने लिये जस्टिस प्राप्त कर सकते हैं। अगर धाम को हर धादमी तक ठीक तरह से जस्टिस को पहुंचाना है तो कोई न कोई व्यवस्था झाल इंडिया बार कौंसिल के सामने धीर स्टेट बार कौंसिल के सामने होनी चाहिये जिस में कि न्याय के हासिल करने में बार कौंसिल के द्वारा साधनबिहीन लोगों को मदद कराई जा सके।

इसके साथ साथ मैं यह भी कहना चाहता हूं कि इस विषयक में एडवोकेटस के एनरोलमेंट के लिए ५०० रु० फीस रली गई है। यह ५०० रु० की फीस शायद यह समझ कर रली गई है कि सब एडवोकेटस ५०० रु० देने के लायक होंगे। मैं समझता हूं कि अपनी जगह पर यह ठीक बात नहीं है। ज्वॉयंट कमेटी इस बात पर विचार करे कि गवर्नमेंट की तरफ से उन लोगों को कर्ज की व्यवस्था हो। अगर कोई एडवोकेट कर्ज लेना चाहे तो गवर्नमेंट उस को यह खपया दे दे धीर बाद में उन से वसूल कर ले। धाम देखेंगे कि धाज देश में हजारों लोग ऐसे हैं जो किसी तरह से पढ़ रहे हैं, ला मेजुएटस हो रहे हैं, उन की इच्छा है कि वे स्वतंत्र पेशे में लगे, इस देश की राजनीति में, इस देश के सामाजिक आन्दोलन में, धार्मिक आन्दोलन में, इस देश के दूसरे मामलों में भाग ले सकें, लेकिन गरीबी के कारण पिछड़े रहे हैं। धाज बेलोग धामे धाना चाहते हैं। यदि धाम इस के लिये ५०० रु० फीस रखेंगे तो बहुत सम्भव है कि बड़े बरों से धाने वाले लोग इस को दे सकें, लेकिन जो एक

[बी. प्र. ना. सिंह]

हरिजन घर से भाते हैं, पिछड़ी जातियों के घर से भाते हैं, गरीब परिवार से भाते हैं, दो चार या दस बीघा जमीनें रखने वाले किसान के घर से भाते हैं, उन के लिये ५०० रु० देना कठिन होगा। अगर इस के लिये आप २७ या ३७ रु० रखते तो शायद इतना जमा करना उन के लिए सम्भव हो जाता पर ५०० रु० जमा करना उन के लिए मुश्किल है। यहाँ पर मैं आज जो कह रहा हूँ उस पर ज्वारेंट कमेटी को विचार करना चाहिये। आज लीगल प्रोफेशन के लिये आप को ऐसा प्रबन्ध करना चाहिए कि उस में कोई न कोई इस तरह की व्यवस्था हो जिस से इस प्रोफेशन में आने वाले को शुरू में कुछ सहायता हो सके भले ही बाद में वह उस से वसूल कर लिया जाय, जिस में कि वह लाइब्रेरी चादि ठीक कर सकें और एडवोकेट को जो रुपया देना होता है फीस के रूप में उसे भी जमा कर सके और अपने प्रोफेशन में अपने को हर्टग्लिश करने की कोशिश कर सके।

आज देश में ला प्रेजुएटस की जो पढ़ाई लिखाई चल रही है उस में भी दिन ब दिन स्तर गिरता जा रहा है। इसका नतीजा यह हो रहा है कि हमारा लीगल प्रोफेशन उन्नति की तरफ नहीं जा रहा है, जौ लोकतन्त्रात्मक ढांचे में उस की स्थिति होनी चाहिये उस की ओर वह नहीं जा रहा है। ऐसी हालत में जो लीगल प्रोफेशन की पढ़ाई लिखाई है उस की ओर भी ज्वारेंट कमेटी का ध्यान जाना चाहिये। जब हम लीगल प्रैक्टिशनर्स ऐक्ट पास करने जा रहे हैं तो यह बात सामने होनी चाहिये कि हम अपने लीगल प्रोफेशन को अधिक से अधिक ऐसा बानायें जो हमारी नई कंडिशनस को सूट करे। इस लिये लर की पढ़ाई जो है उस के सम्बन्ध में हम इस बात पर गौर करें कि हमारे एडवोकेट्स के अन्दर ऐसी योग्यता आ सके जिस में वह इस प्रोफेशन को ठीक तरह से चला सकें।

अन्त में मैं यह कहना चाहता हूँ कि ज्वारेंट कमेटी को यह चाहिये कि लीगल प्रैक्टिशनर्स बिल के सम्बन्ध में कोई आखिरी फैसला करने से पहले कम से कम जो हमारे देश में लीगल प्रोफेशन में लगे हुए लोग हैं उन को राय ले। अगर उन से राय ली जायेगी तो मैं समझता हूँ कि ज्यादा अच्छी तरह से हम इस कानून को बना सकेंगे। मैं समझता हूँ कि यह जो बिल ज्वारेंट सिलेक्ट कमेटी के सामने जा रहा है यह ध्यान रखना जायेगा और हमें यह आशा करनी चाहिये कि जिस सिलसिले को हमारी ला मिनिस्ट्री ने लीगल प्रोफेशन की उन्नति के लिये शुरू किया है, उस के द्वारा इस देश के अन्दर न्याय को पूरी तरह से प्रतिष्ठित करने के लिये सब लोगों से, विशेषकर इस प्रोफेशन के लोगों से जरूर राय ली जायेगी।

Shri Hajarnavis: I express on behalf of Government deep gratitude to hon. Members for the almost unanimous support which we have received to the Motion to refer this Bill to a Joint Committee, but for one illustrious exception.

The reason why Members of this House who are also members of the profession of law, have welcomed this Bill is that though members of this profession are probably the most numerous in this country, more than in any other profession, we were divided into various Bar Councils, State-wise or even in smaller units, and there was an urge felt all over the country that when we were administering the same system of laws, when the pattern of legal education is the same and when the traditions being followed all over the country are the same, there ought to be a common body to set up common standards and also to safeguard the interests of this profession. It was inevitable under these circumstances that the pattern of the body intended to be set up should be in consonance with the high and noble traditions of this profession. We help the courts

and the society to maintain the laws. If it is so, it was meet and proper that we should ourselves make laws regarding the profession and we also set up our own body which shall administer the rules that we have made for ourselves. Therefore, as in other professions—but much more so in our case—it was necessary that the body that we wanted to set up for the profession should be composed of the representatives of our own profession, to whom shall be committed in the widest amplitude the power to make rules for their own conduct.

I am not quite sure if Professor D. C. Sharma was right in saying that here we have given vague powers. Any limitation of the power to be conferred on this body would, I am quite sure, be regarded with resentment by the profession as a sign that the Government did not regard this profession as capable of governing itself.

The main features of the Bill, as I said, are these: Firstly, we achieve an object which was set before us as an ideal for a long time but which was not possible unless the law itself was amended, namely, the creation of a common Bar, the members of which will have the same rights all over the country, that is to say, they will be able to appear in all courts in India. Then within the limits of the States, there shall be State Bars and State Bar Councils. That has been done. That having been done and the status of the lawyers practising being prescribed, all that we do then is to have the State-wise body and also have a common central body supervising and controlling the profession for all the country. Therefore, most of the matters like professional conduct, professional etiquette, what shall be the qualifications for admission, what shall be the procedure in the case of disciplinary action etc. shall be dealt with by that body itself.

At this stage, I have very little to reply to except one or two points. On these also, I may not make any definite statement because I will not ant-

cipate what the decision of the Joint Committee would be. In this matter, we shall be guided by the advice of the Members of the Committee who are also distinguished members of the profession, as to what changes ought to be made.

But one or two things require explanation. Some Members of the House have welcomed the proposed division of Counsel into Senior Counsel and Junior Counsel. Some have not regarded it with favour. There may be two opinions on this question. But I do not think that the criticism that is made against the proposal was based upon an appreciation of the nature of this distinction.

We take this division from the English Bar, where, as Shri C. R. Pattabhi Raman said, there is the practice of taking 'silk' as it is called. After you become a Queen's Counsel you are debarred from accepting certain work which must be confined to the juniors. It is a risk. This 'taking silk' is one of the most important decisions that a rising barrister can take in his life. He makes an application for silk to the Lord Chancellor and it is within the complete discretion of the Lord Chancellor either to give him silk or to refuse it.

I recall an instance where one of the most distinguished judges of King's Bench, Mr. Justice MacCardie had made an application to the Lord Chancellor. That application was not granted for a long time; its disposal was delayed. He withdrew the application and continued and yet after a short time he was raised to the Bench. The House will see that, in England, it is completely within the discretion of the Lord Chancellor to accept an application for silk or not.

Following that model—and I do not think we can follow any other model—we have provided in the Bill that this power shall be exercised by the Court. I agree, as my hon. friend said, that there is always the theoretical possibility of a wrong decision being made.

[Shri Hajarnavis.]

I understand the word 'wrong' in this context as meaning a decision with which one may not agree. But when we have committed to the judgment of the courts questions of the gravest importance, whether a man shall be punished with the death penalty or not or what does a particular provision of the Constitution mean, and also when important questions involving large properties are finally decided by the courts, I do not think we can have any other authority which shall have the same ability and facility of judging whether a man should or should not be granted that status. They have an intimate knowledge of the lawyer because he appears before them every day. But, in any case, that matter goes before the Joint Committee who will deal with this question.

Then, as I said, a man who becomes a senior counsel deliberately deprives himself of a certain kind of practice which he must leave to the juniors. He cannot undertake drafting. He cannot take instructions directly from the client. He cannot appear without a junior. I agree that if we make a rule that the senior shall not appear without a junior it may be circumvented by having one's own relation as a junior. But probably we can devise safeguards to see that the rule is effective.

Shri V. P. Nayar: Even income-tax is evaded by accepting fees in cash.

The Minister of Law (Shri A. K. Sen): Many have come to difficulty.

Shri Narayanankutty Menon (Mukandapuram): It is the fundamental right to avoid tax.

Shri Hajarnavis: That proposal goes before the Joint Committee. As I said, in this matter as in all other matters we shall be guided by the advice of the Joint Committee.

Nearly all the hon. Members have expressed their concern about the mounting costs of litigation. Here

again the responsibility, probably, lies on the profession itself. And, if that burden lies on the profession may I suggest that one of the first things that the newly set up body may address itself to would be to find means and device methods by which the costs can be reduced. If Government try to do it they would, probably, have not the means to do it unless there is complete cooperation of the profession itself. The matter then had best be left to the profession itself.

Shri Nayar suggested a kind of *Collegium* of lawyers. I think that is a matter which is outside this particular Bill which merely tries to regulate the admission and continuance of members of the Bar and does not deal with the fees that they are to get or with their relations with clients.....

Shri V. P. Nayar: Can't you define the functions?

Shri Hajarnavis: Nor can we in this Bill deal with what the Attorney-General should do or should not do or the Advocate-General should do or should not do. In any case, this is a matter which can be considered at the stage of the Joint Committee. But what the terms of engagement between a lawyer and his client should be—and Government would in this case be in the position of a client—is surely outside the scope of this Bill.

Shri V. P. Nayar: But can we not have a proviso to the relevant clause and say that, just as every Advocate is entitled to practice in any court in India, so and so being a Government Advocate shall not practice.....?

Shri A. K. Sen: If the particular Government allows him to do so, what have we got to do?

Shri V. P. Nayar: That is why we want Central legislation. It is possible. I will give you a suitable draft which will fit in with the scheme provided you have the will to consider it.

Shri A. K. Sen: But where do the Attorney-General or Advocate-General come in private cases.....

Shri V. P. Nayar: I have said that a perusal of the income-tax returns of every Advocate-General or Attorney-General or Solicitor-General would reveal that subsequent to their elevation to these posts they are having much better practice. Can the hon. Minister deny that?

Shri Narayanankutty Menon: We leave it to the hon. Law Minister to guess what difference it makes if the Attorney-General or the Solicitor-General appears for a private client in the High Court or the Supreme Court.

Shri A. K. Sen: I think we are not paying any compliment to the Court. I am inclined to think that it makes not even the slightest difference as to who appears.

Shri Hajarnavis: The question of the high fees charged by some Advocates has been raised. If I may say so, Advocates or even other professional people charge high fees not because they are greedy but they only want to protect themselves against heavy over-work. The same man rendering the same service and having the same intelligence and equipment raises the fee because he is very much in demand. Surely, every member of the profession knows that there is an equally qualified and equally competent junior who would be agreeable to take the fee which is being offered. But if the client insists that he must have a fashionable lawyer, let him pay for it. There is no dearth of adequately competent lawyers. The clients can surely go to the juniors.

It was said that a lawyer must accept a brief at a certain fee. Then we can imagine that some lawyers would be buried under the briefs that are offered to them. They would not be able to handle them. Most of the counsel who make large incomes pay nearly 14 annas in the rupee as income-

tax out of the incomes they have made.

It gives them no pleasure to work. (*Interruptions*).

Shri V. P. Nayar: They do not get it in cheques.

Mr. Chairman: Let that point not be settled here, now.

Shri V. P. Nayar: The hon. Law Minister knows it much better than I do.

Shri A. K. Sen: The hon. Member is enlightening me; I do not know.

Shri V. P. Nayar: You were in active practice.

Shri Hajarnavis: Last but not least, I think it would be discourteous if I do not deal with Professor Sharma's objection.

Shri V. P. Nayar: That, indeed, will be, even in his absence. He is not here.

Shri Hajarnavis: I would content myself by saying at this stage that he should have pondered over the fact that agreement has been reached by lawyers without reference to any party loyalties. Therefore, this is something acceptable to the whole House. Since he is not here, I will not make any further remarks.

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

With these words, I commend my motion to the House.

14.31 hrs.

Mr. Deputy-Speaker: The question is:

"That the Bill to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Council and an All-India Bar, be

[Mr. Deputy-Speaker]

referred to a Joint Committee of the Houses, consisting of 45 members, 30 from this House, namely, Shri C. R. Pattabhi Raman, Shri M. Thirumala Rao, Shri Liladhar Kotoki, Shri Kailash Pati Sinha, Shri Mohammad Tahir, Shri Narendrabhai Nathwani, Shri K. G. Deshmukh, Shri M. Sri Ranga Rao, Shri C. D. Gautam, Shri Radha Charan Sharma, Shri P. Thamulingam Nadar, Shri T. Ganapathy, Shri K. R. Achar, Shri Hem Raj, Pandit Mukat Behari Lal Bhargava, Pandit Munishwar Dutt Upadhyay, Shri Raghurib Sahai, Shri Radha Mohan Singh, Shri Paresb Nath Kayal, Shri Ganpati Ram, Shri R. M. Hajarnavis, Shri S. C. Gupta, Shri T. C. N. Menon, Shri N. Siva Raj, Shri Khushwaqt Rai, Shri D. R. Chavan, Shri Ram Garib, Shri Braj Raj Singh, Dr. A. Krishna-swami, and Shri Asoke Sen.

and 15 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee, the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the end of the first week of the next session;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees will apply with such variations and modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of members to be appointed by Rajya Sabha to the Joint Committee."

The motion was adopted.

14-32 hrs.

DOWRY PROHIBITION BILL

The Deputy Minister of Law (Shri Hajarnavis): Sir, I beg to move:

"That the Bill to prohibit the giving or taking of dowry, as reported by the Joint Committee, be taken into consideration."

Sir, the Bill as it has emerged from the Joint Committee is not significantly changed in the operative part.

Whereas originally the Government had taken power to apply it piecemeal to different States, the Committee suggested that it should be brought into force simultaneously in all the States. That is the change made in clause 1.

With regard to clause 2, we had some discussion whether we had covered all cases or prevented effectively the giving of dowry. The case which some hon. Members had in mind when they introduced this phrase 'whether directly or indirectly' was this. Assuming that the dowry is settled, instead of being paid to the bridegroom or to anyone on his behalf, it may be paid by the bride's party to the bride herself. Would this be covered by the definition or not? The Bill as it originally read: 'any other person on behalf of such party', I thought this expression would include the 'bride herself' as it is said 'any other person'. But in order to leave no room for doubt the Committee felt that these words should be introduced: 'whether directly or indirectly'.

In clause 3, the change that we have made is that we have said that both the punishment of imprisonment and fine may be inflicted. The original Bill proposed that it should be either imprisonment or fine. We have now said that both the punishments are to be inflicted.

There are certain drafting amendments in clause 6 and the amendment