[Shri A. K. Gopalan]

stated that if it goes against the Constitution, or the powers of the High Court, it shall be reserved for the consideration of the President. If any such changes are made, we have no objection to their being reserved for the consideration of the President, because nobody can go against the Constitution. If it is not against the Constitution and if the State Assembly is interested in making certain changes in the law to help the labour against the landlord, or debtors against the bankers, the President should give assent to those Bills. He should not withold assent to those Bills. There is no point in now coming and saying that "some emergency may come; give us all the powers so that we can make any change in the laws that we consider necessary". The Planning Commission may make recommendations. But are they binding on the State Legislature?

The State legislature has made certain legislation according to its own desire, in the interests of the people. The Planning Commission may make recommendations, but they may reject them. Now, without knowing whether the State Legislature will accept them or reject, arbitrarily this is being done, and some changes are being made by the President, saying there is an emergency. Even if this Bill is passed and they want certain changes to be made in the Bills, certainly the assent should not be withheld. Let it be sent to the legislature and let the opinion of the State Legislature taken. If that is not done, certainly it is attacking provincial autonomy and provincial autonomy will then become a mockery. When the State Legislature has passed something and you want to change it, you do not ask them whether they will accept the amendment.

So, I oppose this Bill. I have understood from the speeches that the object of this Bill is to make certain changes that the Congress party think the Communist Party in Kerala will not accept. So, in the interim period they want to impose it on the people of Kerala, and also on the Legislature that was functioning there before it was dismissed. I say: if you want to make certain changes, wait for some time; or else, give assent to those Bills immediately, and respect the opinion of the State Assembly. It is for this reason that I oppose this Bill.

Shri Datar: I have already replied to all the points that my hon. friend has raised. Only incidentally he stated that some of the Bills passed by the State Legislature were pending before the President for one year, or a year and a half. That is entirely wrong. May I point out here that only when one Bill was received last year we immediately pointed out to them that that particular Bill has a bearing upon another Bill which they were considering? And we stated that as soon as the latter Bill was received by the President, both the Bills will be duly considered. That is exactly what has happened, and there is no delay, much less inordinate delay, so far as the examination of these Bills by the President is concerned.

Mr. Deputy-Speaker: The question is:

"That the Bill be passed"

The motion was adopted.

Shri A. K. Gopalan: We do not want to take part in the proceedings, because we know that it is an undemocratic procedure which has been adopted. So, we are withdrawing from the House.

(Shri A. K. Gopalan and certain other hon. Members then left the House)

14.57 hrs.

LEGAL PRACTITIONERS BILL

The Minister of Law (Shri A. K. Sen): Mr. Deputy-Speaker, I beg to move that the Bill to amend and consolidate the law relating to legal prac-

titioners and to provide for the constitution of Bar Council and an All-India Bar be referred to a joint Committee of the Houses consisting of 45 members, 30 from this House—the names of members I am submitting in a separate sheet of paper—and 15 from the Rajya Sabha.

Shri Braj Raj Singh: The names are to be read out.

Mr. Deputy-Speaker: Yes, at least once they should be read out.

Shri A. K. Sen: All right. I will read the names also. I move:

"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 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. Thanulingam Nadar, Shri T. Ganapathy, Shri K. R. Achar, Shri Hem Raj, Pandit Mukat Behari Lal Bhargava, Pandit Munishwar Dutt Upadhyay, Shri Raghubir Sahai, Shri Radha Mohan Singh, Shri Paresh Nath Kaval, Shri Ganaoati Ram, Shri R. M. Hajarnavis, Shri S. C. Gupta, Shri T. C. N. Menon, Shri N. Siva Raj, Shri Khushwqt Rai, Shri D. R. Chavan, Shri Ram Garib, Shri Braj Raj Singh, Dr. A. Krishnaswami, and Shri Asoke K. Sen, and 15 members from Rajya Sabha:

that in order to constitute a sitting of the Joint Committe, 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."

This Bill has been framed and introduced principally as a result of the recommendations made by the All India Bar Committee, which was presided over by the late Chief Justice, and whose report was submitted to the Government as late back as 1953. The principal terms of reference for this All India Bar Committee were *inter alia* as follows:

(a) The desirability and feasibility of a completely unified bar for the whole of India;

(b) The continuance or abolition of different processes of legal practitioners like advocates of the Supreme Court, advocates of the various High Courts, district court pleaders, Mukhtiars (who are, as you know, entitled only to practise in the criminal court), revenue judges, income tax practitioners etc.;

(c) The desirability and feasibility of establishing a single Bar Council (i) for the whole of India, and (ii) for each State;

(d) The establishment of a separate Bar Council for the Supreme Court;

(e) The consolidation and revision of the various enactments, Central and States, relating to legal practitioners; and lastly, all other connected matters.

[Shri A. K. Sen]

15 hrs.

The All India Bar Committee recommended that a unified bar for the whole of India was absolutely essential. Before the Constitution, we had, as hon. Members are aware, separate Bar Councils for each State and advocates were enrolled by each State High Court. Apart from the advocates on the roll of the Hough Courts, there used to be different types of legal practitioners known as pleaders, who were not entitled to appear or plead in the High Courts, Mukhtiars who were entitled to practise only in certain criminal matters, before criminal courts only, the Income-tax practitioners and the like. We had also the Supreme Court bar as a result of a separate statute which entitled the Supreme Court to enrol advocates, senior and junior and which also provided that a Supreme Court advocate was entitled to practise in any court in India. Therefore, we had different categories of advocates and legal practioners of whom only the Supreme Court advocates were entitled to practise in every court. An advocate of one State could not practise and could not appear or plead in another High Court except with permission, and naturally, other categories wer enjoying only limited rights of practice.

These different types of legal practitioners were really born as a result of our past history. Hon. Members are aware that originally there were only three High Courts in the three Presidency towns of Calcutta, Bombay and Madras. They are the oldest. Later on, other High Courts were created by special Charter like the Allahabad High Court, Patna High Court, the High Court of Punjab and so on. Even in the original three High Courts of Calcutta, Bombay and Madras, there were two wings, the appellate side and the original side. On the original side of the High Courts, except in Madras which introduced a different system later on,—originally it was the same—only advocates who were enrolled as advocates of the original side, members of the English bar, the Irish bar and the Scottish bar as also the advocates enrolled as original side advocates by special examination were only entitled to plead. They were not entitled to act and the acting part of it was entrusted to solicitors. In Madras, in the last century, the system of solicitors was abolished. But, in Calcutta and Bombay, they continue even today. The appellate side advocates were not entitled to practise on the original side. Later on, both in Bombay as also in Calcutta, an advocate enrolled was entitled simultaneously to practise on the original side as also on the appellate side, though, of course the necessity has been felt for a long time that the advocates who are enrolled in Bombay and Calcutta and who are entitled to practise on both sides should have some basic training in particular branches of commercial law, company law and so on, which form the main core of litigation on the original sides of these High Courts.

Unfortunately, our University curriculum does not provide for any training whatsoever with regard to company law, tax laws and other branches of modern laws with which we are vitally concerned today. From time to time, expert committees and others have opined that the standard of legal education for advocates and their training must be raised so that a good bar is formed everywhere. But, as I am saying, these different categories had been born as a result of our past history. Apart from the appellate side and the original side advocates, we had the District courts in which only ordinary pleaders generally practised, pleaders who were not entitled to practise on the appellate side or the original side of these High Courts. The system of pleaders also obtains in other States where High Courts were created later on. The Mukhtiars were there for a very long time. They rendered very cheap, and in many cases, good service to persons involved in petty criminal cases.

Such a classification and diversification of legal practioners is completely

out of tune with our concept of a unified country, a unified legal system, governed by the same Constitution, dispensing the same laws all over the country, and courts functioning under the same system. As a result of it, there has been a demand not only on behalf of the bar, but also on behalf of the public that there should be one unified bar throughout the country. We had one legal system serving one common system of courts, and governed by the same standards of qualifications and subject to the same standards of professional conduct and discipline. Therefore, the Government of India set up this Expert Committee with the late Chief Justice as its Chairman and that Committee reported that an All India Bar should be created as quickly as possible with one All India Bar Council, with branches in different States, so that we start as quickly as possible with the work of consolidating the entire legal system of the country and also in bringing into existence one roll of advocates all over the country, subject, as I said, to the same standards of conduct and discipline and also enjoying the same qualifications, the same equipment, without these different categories, enjoying different types of qualifications and subject to different standards.

Naturally, the question arises why effect was not given to the All India Bar Committee's recommendation, though the report was submitted as early as 1953. The reason is that the views of the State Governments had to be ascertained and in the mean time, the Law Commission was set up, also charged with more or less making recommendation on more or less identical subjects. It was thought desirable to await the recommendations of the Law Commission before a Bill of this nature was introduced in Parliament. The Law Commission endorsed more or less the recommendations of the All India Bar Committee and recommended that there should be one All India Bar, with the same qualifications and standards and the setting of an All India Bar Council. The report, as hon. Members know, was submitted last October and immediately we engaged ourselves in drafting this legislation which is now before you.

The broad features of this Bill are more or less matters which are not controversial. All sections of this House and the public are agreed upon the creation of an All-India Bar. The mechanics of it may be a question of different views, but we have thought it desirable to set up an All-India Bar Council with two Judges of the Supreme Court, three from the Supreme Court Bar, one from each State Bar, and for each State having a separate Bar Council having two Judges and also representatives of the advocates of that particular State. They will be charged not only with maintaining a common roll of advocates, but also taking disciplinary measures against advocates on the rolls for professional misbehaviour and also laying down the requisite qualifications and standards which would entitle a person to be enrolled as an all-India advocate. We have preferred ourselves not to lay down the qualifications of advocates, for we, think it is best to leave it not in a statutory form, but in a flexible form, in the hands of representatives of the Bar who would be forming the All-India Bar Council. We have no doubt that they will adress themselves immediately to this question of a good qualification which alone would entitle a person to be enrolled as an all-India advocate and also prescribing other conditions which should govern the enrolment, maintenance and discipline of all-India advocates.

We have retained in Bombay and Calcutta the solicitors. Both the All-India Bar Committee and the Law Commission have recommended that they have served a useful purpose, especially in view of the type and pattern of litigation obtaining on the original side in the two High Courts. As the hon. Members are aware, in the original side of these two High Courts, litigation is mostly commercial, company tax and so on. Litigants are principally the big firms, trading concerns, who do not move about in the

[Shri A. K. Sen]

court premises like the ordinary litigants, running after their individual advocates, but prefer to send all their files and work to firms who are expert in the job, who do everything for them and attend to legal matters outside the court also. It is a matter of evidence and also knowledge that the entire commercial community of both these cities expressed their opinion in favour of the retention of the system of solicitors, for even after the passing of the Supreme Court Advocates Act which entitles Supreme Court advocates to practise both as solicitors and also advocates in these two High Courts—the Supreme Court advocates have started practising in both these High Courts—the litigants have preferred to go to the solicitors rather than to the Supreme Court advocates who both plead and act.

The following passage occurs in the report of the Law Commission on this subject:

"It is remarkable testimony to the popularity and efficiency of the system (that means the dual system) that though the door has been open to the litigating public on the Original Sides of the High Courts in Calcutta and Bombay to employ advocates of the Supreme Court who are entitled to appear on the Original Side without being instructed by an attorney under the decision of the Supreme Court in *Aswini Kumar Ghose* v. *Arabinda Bose* (A.I.R. 1952, SC. 369) it has not chosen to employ them to any noticeable extent and has continued to enturst its cases to attorneys and counsel under the dual system. It is difficult to appreciate the reasoning which calls for the abolition of a system proved and admitted to be efficient at a time when the public and those in authority are clamouring for an improved and more efficient system of administration of justice. It may, in this connection, be noted that a considerable section of public opinion in the United States where this system does not prevail has asked for its introduction."

Even in places where this does not obtain, as in the United States, there is virtually a bifurcation of the work because people who do the actual out of court work, preparing briefs, taking instructions, attending to various things, are hardly the people who actually go and plead in court. The two sets are always different.

I have personally grown up as an advocate under the dual system and I have seen it working myself. I have not the least doubt that it is an extremely efficient system. Advocates who have to take instructions from clients, take payment from clients, maintain their own bills, print their own papers, prepare their own briefs, attend to processes, attend to court offices for various matters which have to be gone through before a case comes up actually in a court for being argued, have hardly the time, efficiency or ability to put up a really good pleading when the case is actually argued in court. Even on the appellate side, hon. Members who are lawyers know that the seniors hardly do the work which the juniors do, which is mainly the job which a solicitor does on the original side. It does create a very clean bar and an efficient system of pleading and arguing in the courts.

The common accusation against this system is that it increases the cost of litigation. Actual investigation reveals that with the system of taxation of costs in which the minimum is fixed; for the same type of litigation the costs on the original side under the dual system, unless fancy counsel are briefed, as they can be briefed anywhere, are hardly more expensive.

Apart from this question, the most important question is that we have no right to throw out of their profession people who have been there and who have been practising as solicitors. It is for the High Courts to frame their

rules if they so think that this system should be abolished, so that there would be no more admission of attorneys, because the attorneys practise not under any law but the latest pattern enables the High Courts to frame rules for the enrolment and admission of attorneys. Therefore, they are functioning not under any statute, but under rules framed by these two High Courts, and it will be for them to decide, not for us, at what time, if any, this system would not be regarded as of any further use and should be allowed to be discontinued. Therefore, we have left it to the High Courts and not taken upon ourselves to prohibit the practice of attorneys straightaway, especially when the litigant public in these two High Courts on the original side, the Chambers of Commerce and the other litigants, have consistently and uniformly voiced the feeling that it is best to have a system of attorneys prevailing on the original side of these two High Courts.

This is the main structure of the Bill, and I think it will be a great day for the legal system and the courts in India, and also for the future growth and development of our legal system, that we have a unified Bar for the whole of India. I have no doubt that with the creation of this All-India Bar and the setting up of the All India Bar Council, the standard, efficiency and the serviceability of the legal profession and their utility to the litigant public would be considerably improved and enhanced. It will be a most powerful influence in welding the whole country into one unified legal system, and also a powerful influence in cementing further the bond of unity which must go on increasing every day if this country is to become a great country and help the people in rising over the petty divisions which unfortunately from time to time blind our vision to a greater and unified India. This is a great step forward, a necessary step flowing from the duties cast upon us by the Constitution itself, and it is long overdue, and I have no doubt that hon. Members will welcome it from all sides. Thank you.

Mr. Deputy-Speaker: Motion moved:

"That the Bill to amend and consolidate the law relating to legal practioners and to provide for the constitution of Bar Council and an All-India Bar, be 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. Thanulingam Nadar, Shri T. Ganapathy, Shri K. R. Achar, Shri Hem Raj, Pandit Mukut Behari Lal Bhargava, Pandit Munishwar Dutt Upadhyay, Shri Raghubir Sahai, Shri Radha Mohan Singh, Shri Paresh Nath Kayal, Shri Ganpati Ram, Shri R. M. Hajarnavis, Shri S. C. Gupta, Shri T. C. N. Menon, Shri N. Siva Raj, Shri Khuswaqt Rai, Shri D. R. Chavan, Shri Ram Garib, Shri Braj Raj Singh, Dr. A. Krishnaswami, and Shri Asoke K. 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

[Mr. Deputy-Speaker]

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."

Shri Aurobindo Ghosal (Uluberia): Before I go into the details of this Bill, I should like to give a synopsis of the present conditions of the lawyers who are practising at the lower level. I apprehend that the hon. Law Minister may not be aware of their conditions, for, he built up his practice on the briefs of these poor unfortunate lawyers.

Shri A. K. Sen: I have also appeared at Shri Aurobindo Ghosal's court.

Shri Aurobindo Ghosal: A well-organised, efficient, impartial and strong judicial administration postulates a properly equipped, efficient and independent Bar.

As in the other spheres of life, there has been a fall in the standards at the Bar. There is no doubt about that. And it is also true that a number of persons with inferior intellect have overcrowded the bottom. Those students who have barely graduated themselves from the law colleges, and who find no other alternative avocation rush into these law courts with their immature legal knowledge. If any probe is made, we shall find that there is a large incidence of mal-employment and under-employment existing in this sphere. This influx of ordinary students into the Bar is due to the easy-going law course and also the least financial liability. The students of better calibre generally rush to the lucrative professions like the engineering and medical professions.

At the present moment, the people have neither the time nor the financial resources to fall back upon for the long period of waiting and the strenuous work that are required for the legal profession, or that a lawyer is required to do. Legal education nowadays is considered as a side-study, and as a side-occupation. Also, the studying of law is considered in our country as an off-time study. Naturally, the legal education as it is received nowadays, is not thorough and is also very much defective.

Secondly, the probation period is also equally ineffective. It does not help the new entrants to equip themselves with the practical knowledge that a lawyer should have. Neither does the senior lawyer take any interest in their work nor does the probationer—lawyer takes any interest in getting himself trained. The probationer's duty nowadays is only to sign in the registers maintained in the office of the district judge, and to pass one year to qualify for practice in the court. After a year, when a probationer becomes a full-fledged lawyer with incomplete and immature theoretical and practical knowledge of the legal profession, he not only becomes the victim of the court clerks and touts, but his failure in the professional life also becomes predestined. And that is the present tragedy of the legal profession.

So, my first point is that the Bar Council which is going to be set up should see that law becomes a subject for whole-time study like other sciences. I would request the Joint Committee to see that suitable provisions are made in that regard.

At the time of the British rule, there was invidious distinction between the different categories of lawyers. The main difference was between barristers and non-barristers. Besides, there were other differences also, such as between advocates and pleaders, pleaders and vakils, vakils and *mukhtiars* and so on.

The All-India Bar Committee which was formed about seven years ago recommended that these kinds of distinctions between the different categories of legal practitioners should be

done away with, and that all these different categories should be integrated into one category, namely the category of advocates. They also recommended the stopping of the recruitment of *Mukhtiars* in the legal profession. Both these recommendations have been endorsed later on by the Law Commission also. Yet, in spite of that, *mukhtiars* have been recruited like anything; especially in my State of West Bengal, I know they have been recruited in large numbers; that is also an indication of the diversion of the unemployed youth to a so-called employment.

In this Bill, after amalgamating the legal practitioners of all categories into one, they have been divided again into two categories, namely senior advocates and junior advocates. I find some inherent difficulties in this division.

Firstly, what will be the criterion for ascertaining the seniority? Will it be age, period of practice or ability? It may be that a legal practitioner of very young age may be very promising, whereas a legal practioner who is older may be lagging behind. Moreover, what would be the criterion for ascertaining ability at the Bar? We know that besides legal knowledge and erudition . . .

Shri D. C. Sharma (Gurdaspur): There are only two divisions of lawyers, the lucky lawyers and the unlucky lawyers.

Shri Aurobindo Ghosal: We know that besides legal knowledge and education, other qualities are also necessary before a person can become a successful lawyer. There are many lawyers found in many courts with brilliant academic career and legal acumen who are not successful in their career at the Bar, because they are lacking in the other qualities which are required to make them successful lawyers. What would be the consideration in their case?

Secondly, this division into two groups may be possible in the Supreme Court and also in the High Courts. But I doubt whether it would be at all possible in the district courts and in the mofussil courts. Who will be there to categories them? I would request the Joint Committee to look into this matter.

Now, I come to the dual system as it exists in the Calcutta and Bombay High Courts, on the original and the appellate sides. The Law Minister has just made a plea for retaining it by saying that the barristers have acquired a better knowledge of these commercial cases. But I should like to remind him that there are eminent advocates like Shri Atul Gupta and Dr. Radha Binod Pal, who are no less famous legal practitioners than many barristers. So, the plea is not tenable, that is, the plea for retaining this division between the original and appellate sides.

Previously, the original side was mainly preserved for the barristers. Now, they are allowing some of the advocates also to practice on that side. This is a very obnoxious system which should be immediately abolished. The Chaminer Committee considered it in 1923, but could not come to any decision, because they were divided. But I do not know why both the All India Bar Committee and the Law Commission had a very soft corner for retaining this system. This is nothing but the superiority complex of the practitioners on the original side. This sort colour bar is so intense that even now, the Chamber of the Barristers of the Calcutta High Court is banned for the other advocates or lawyers; they cannot enter the chamber. This kind of thing does not exist in any other High Court in India. Even advocates like Shri M. C. Setalvad have no power to enter the Chamber of the Barristers of the Calcutta High Court after 1.30 P.M. I will cite an example. The Advocate General of Madhya Pradesh was sitting in the Bar Chamber of the Barristers of the Calcutta High Court at 1.30 P.M. when the doors were to be closed for the lunch of the Barristers.

[Shri Aurobindo Ghosal]

Then they shouted saying that an advocate was sitting there; naturally, they could not take their lunch. Therefore, he had to come away from there.

I do not know if our Law Minister, being a member of that self-same Bar, will denounce it. I think it should be made clear to the Calcutta Barristers that this pernicious system will not be tolerated, that this South African co'our bar will not be tolerated in free India. This is nothing but disgraceful. I would like the Joint Committee to look into this matter and do the needful.

So long as the Original Side is retained, its vicious and exploiting attorney-ship system shall also continue. I do not understand why the Government are maintaining this system. This is nothing but a system of exploitation of the poor litigants, because the Solicitor's charges are too high. Government have got to forgo on the Original Side the court fees for the benefit of these solicitors. There solicitors charge for cases on minutes even when intimating the dates of the cases. In our State, there is a proverb that if a dove favours anybody and flies to his house, he is sure to be doomed. The attorneys are the doves in our State. If they favour anybody, he is sure to be ruined, as these attorneys never allow their clients to compromise any case till their clients are financially finished. I would like to draw the attention of the Joint Committee to this problem and this pernicious system.

Lastly, I will deal with the question of enrolment fee. In the Bill, it has been made Rs. 500. The All India Bar Committee suggested that it should be Rs. 500 which may be paid at a time in lump sum or in instalments of Rs. 50 per year. The Law Commission has also considered this matter. The Commission thought that this fee was excessive and said that it should be fixed at Rs. 125. The enrolment fee is demanded neither in any other State in India nor in any other country. This has been very elaborately discussed in the 14th Report of the Law Commission, Vol. I, page 578. Moreover, there is a practical difficulty. I can tell you that this stipulation will cause hardship to rural lawyers of the lower Bar, because Rs. 500 means their income for five months. I know the appalling condition of the lawyers who are working there. Nowadays, they accept a *vakalath* even for four annas. Such is the extent of poverty of mofussil lawyers of the lower strata.

So my suggestion is that all the existing lawyers should be allowed to be enrolled as advocates without any fee automatically by operation of the law, as the pleaders have already paid their annual licence fee, or a fixed amount of Rs. 125, as suggested by the Law Commission, may be fixed, or at least the system of paying by instalments of Rs. 50 per year, if the enrolment fee is fixed at Rs. 500, may be adopted. I would request the Joint Committee to consider this matter very seriously and not to put a burden on the slender shoulders of these poor lawyers of the mofussil area.

I want to refer to the question of the Bar library. The hon. Law Minister has visited many libraries and he would have seen how these libraries are poorly equipped with books. Naturally some help should be given from the All India Bar Council so that the Bar libraries can be well equipped with the books and the necessary law journals and necessary accommodation.

Regarding the fixation of maximum and minimum fees, at present suspicion and distrust exist between the senior lawyer and the junior lawyer. A senior lawyer does not engage a junior lawyer suspecting that his clients may be taken away by the junior. The junior lawyer hesitates to take his clients to the senior lawyers thinking that they will not come back to him for a second time. This sort of suspicion and distrust now exists at the lower levels. The juniors are exploited by the seniors. So, I think an

attempt should be made to fix the minimum and the maximum fees.

Of course, our Law Minister tried it in the Calcutta High Court to fix the maximum fee of lawyers and they also agreed. But, what is the result of that now? The fee of the lawyers has not bee reduced. If they are charging Rs. 800 they are taking only Rs. 200 in cheque and the rest Rs. 600 in cash. That has been the change. The fee has not been reduced. So, I would request the hon. Minister to see that maximum and minimum are fixed so that conditions may be improved.

I would request the Joint Committee to take into consideration all these things and try to give serious thought to them for the development of the condition and for forging a link between the two categories of lawyers, those in the mofussil courts and those in the Supreme Court. If that attempt is made then this Act will be effective; otherwise, in spite of the Act, the conditions which exist now will continue.

Shri Ajit Singh Sarhadi (Ludhiana): Mr. Deputy-Speaker, Sir, I congratulate the hon. Minister for sponsoring this Bill which meets a long standing demand for having a unified and integrated All-India Bar Council with a common role of Advocates with the right to practice in every court. He has done signal service not only to the legal profession but to the people of the country also, for an All-India Bar Council would not only contribute to some extent to the welding of the country but also contribute a great deal to the emotional integration which is so much necessary.

I also feel that the formation of the All-India Bar Council would also contribute to increase the influence of the lawyers in public life which is so essential and which was so high at one time and which, unfortunately, has waned to a very great extent. I feel that an All-India Bar Council would also be very helpful in increasing the efficiency and integrity of the legal profession.

But I particularly welcome one thing in this Bill which is very good. That pertains to the functions of the All India Bar Council. It is provided therein that the All India Bar Council would lay down the standards of legal education in the country in consultation with the universities of India, imparting such education. As has already been pointed out by the hon. speaker who preceded me, the standard of legal education in the country has been rather low. In fact, I would put it that there has been no education in the sense of a study of law as a science or any other branch of learning. In fact till now, what has been done is the teaching of elementary principles of law to the students, making them understand some provisions which would enable him to enter the legal profession. In every country, with the present day international relations and with it the necessity of having profound knowledge of law, there has got to be jurists and experts in the different branches of law. Therefore, I particularly welcome the provision giving power to the All India Bar Council to lay down the standard of education.

Of course the Bill is going to the Joint Committee and ours are only suggestions for its consideration. While it decides these things, it must have a far sighted view of this issue. I agree with the provision for the constitution of a legal education committee consisting of 12 members, wherein two shall be Judges of the Supreme Court, five shall be persons elected by the Council from among the members and five co-opted by the members referred to in sub-clauses (1) and (2). I am sure the All India Bar Council will in co-operation with the universities, be able to lay down a certain standard for all the universities. But it would be very difficult unless something more is done. I do not want to recapitulate what has been said by the Law Commission in relation to the educational standards in the country. But I must say this.

[Shri Ajit Singh Sarhadi]

Unless this legal education committee takes unto itself definitely the conducting of the examinations in all the universities and also the appointment of the examiners as such, it would be very difficult to raise the standard of legal education. I would draw the attention of the House to what the Law Commission has said about the examinations in law. It is an unfortunate commentry. But the House is aware that it has strongly condemned the standard of the examinations and the nepotism that prevails there. Therefore, when it is provided in clause 7 that the All India Bar Council shall lay down the standards of legal education in consultation with the universities which impart such education, there it also should be provided, that Bar Council alone should appoint the examiners in all the universities and only those law graduates who pass such examinations should be enrolled as members of the integrated bar. Unless it is done, it would be very difficult.

Secondly, the standard of legal education would not be raised in the country unless we have whole-time colleges and whole-time professors. I agree that in the matter of legal education, you will have to seek the help of the professional lawyers also, who are experts in certain branches of law for giving certain lectures in the colleges and universities on certain legal subjects. It would certainly be part-time service of the lawyers to teach law in certain classes where they are experts. But, Sir, it would also be necessary, as has been recommended by the Law Commission, if we want to have a proper and sound foundation or basis of the legal education, that there should be whole-time teachers and whole-time colleges for the study of legal subjects. Sir, I have had the privilege of being a lecturer in evening law college for some time for many years, therefore, I am speaking from experience. My respectful submission is that it is very necessary that there should be whole-time teachers.

If you want to have whole-time teachers and if you want to enlarge the ambit of legal education by having research there, then also you must seek the co-operation of those teachers of law and their advice in the Bar Council. I am glad that there is a provision here that the Legal Education Committee shall consist of 12 members of which two shall be judges, five shall be persons elected by the Council and five persons shall be co-opted. I would say that this clause of having co-option is a very healthy clause. I would only here, suggest to the Joint Committee for its consideration that it should be laid down in the Bill that some of the members co-opted will be from the teaching profession in order to have a proper advice in the matter of legal education. If the co-operation of the teaching profession is taken in this Legal Education Committee it would go a great way in not only raising the prestige of teachers, which we need very much nowadays, but it would also be helpful in having a proper committee which will be in charge of the legal education. This part of the Bill, therefore, I submit, under which the All India Bar Council is taking up the legal education in hand, is particularly welcome.

The second point to which I would like to draw the attention of the House is about the constitution of the All India Bar Council. I have got nothing much to say so far as the constitution of the All India Bar Council is concerned, but I have certainly to say something about the State Bar Council. I am very glad that an amendment has been brought to the original Bar Council Act of 1926 whereby now the High Court Advocates who would be in the State Bar Council would be judges who had been advocates. That is very welcome. That was what the Bar

Committee, I believe, had recommended and what the Law Commission has emphasised. But, in this connection I have to make one submission. I have got the greatest respect for the judges. I am sure the judges do co-operate and their advice is always sought. There is one thing that you have to take into consideration in this connection, and that is the advice of the Law Commission. The Law Commission has laid emphasis on the autonomy of the Bar Council.

I am coming to the State Bar Councils. The Bill provides that there shall be two judges who will be nominated. We have had the experience of the Bar Councils and the Law Commission also observed at page 576 of the Fourteenth Report thus:

> "It may be pointed out that, notwithstanding the provision in section 4(1) (b) of the Bar Councils Act, in some of the States, the High Court has not chosen to nominate Judges as members of the Bar Council. In spite of the absence of Judges on these Councils, so fa ras we are aware, there has been no complaint about the satisfactory functioning of these Bar Council."

> "It would, therefore, appear that the time has arrived for making these professional bodies entirely autonomous. If, however, Judges have to form part of the composition of these bodies, they should be Advocate-Judges".

So far as the question of having advocate-judges is concerned, the Bill has gone to some extent in making a provision that henceforth the nominees of the high court shall be advocate-judges. That is good. But I beg of the Joint Committee to consider this recommendation of the Law Commission and see whether with the presence of two judges, the Council will remain autonomous. It is possible it may, but I think that is a very important matter to consider. In this matter, I consider that the Joint Committee would be well-advised to take the evidence of the leading members of the Bar in the different high courts, freely and frankly, and take their opinions, and then come to the conclusion. It is possible that after taking the evidence, after hearing them and after consulting them, freely and frankly, it may come to the conclusion that the autonomy of the State Bar Councils can be better maintained in the absence of any nominee from the Bench. In respect of this point, I feel that the Joint Committee will be well advised to devote its attention.

There is another aspect to which I would like to draw the attention of the House. That pertains to toutism, an evil which has been prevalent for long and which unfortunately is a thing which must be eliminated at any cost.

Shri D. C. Sharma: You cannot eradicate it.

Shri Braj Raj Singh (Firozabad): Shri D. C. Sharma seems to be very much aware of it!

Shri Ajit Singh Sarhadi: Unfortunately, Punjab has come very much into the picture in the Law Commission's report, and this practice, in the opinion of the Law Commission, seems to be very much prevalent in Punjab. Speaking as a representative from Punjab I am really sorry about it. Therefore, I certainly emphasise that no effort should be spared to eradicate this practice. Of course, in Punjab, as the hon. House is aware, steps are being taken to eliminate this evil. The Chief Justice of the Punjab High Court who took up office only recently, in his address to the members of the Bar and the Bench, was pleased to remark that he would take all necessary steps to see that this practice is eliminated, because it is a slur on the Bar. I

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concede that it is the Bar alone that can eliminate it. It is the Bar that is responsible for it, and the burden of removing it lies on the Bar. I do say that if we can have any legislation to this effect—and this is the most opportune time when legislatures can take up this question on hand—why not take it, particularly when the Law Commission itself has recommended this. I will draw your attention to what the Law Commission has stated at page 580:

> " 'Touting' is an evil which affects the due administration of justice. This view has been accepted by the law regarding it as a crime [section 36(6) of the Legal Practitioners Act]. There is no reason, therefore, why both the persons participating in the commission of the crime, *viz.*, the proclaimed tout as well as the concerned legal practitioner should not be punishable under the law."

Of course, misconduct is one of the points. I would say that this is the best opportune moment to take it up. I think the Joint Committee would take it up. It is a matter for the Joint Committee to consider whether it should not be made an offence so that it should have a deterrent effect. This is another suggestion by me, and I hope the Joint Committee will give consideration to this.

There are one or two other points to which I would like to draw the attention of the House, and through the House to the Joint Committee. You will find that the State Bar Councils may make rules to carry out the purposes of this chapter. Now, one of the functions of the State Bar Council is the management and investment of the funds of the Bar Council. That is item (o) of clause 14(2). This clause, in the same shape, appears when there is reference to the State Bar Council. This line has been bodily taken from the State Bar Councils Act of 1926. Many of the State Bar Councils—I know that is so in Punjab—feel handicapped because they are not sure whether the term "management and investment" also includes "expenditure". Many of the State Bar Councils have got a lot of accumulated funds which they could not spend for libraries and that sort of thing, because they feel that the term "management and investment" does not include "expenditure". Of course, I know in Bombay the State Bar Council is spending it for facilities pertaining to legal education. So, this clause needs clarification, authorising the State Bar Council to expand the fund in their hands for matters pertaining to legal education.

Another matter is legal aid to the poor. It should be the function of the All India Bar Council and the State Bar Councils to give legal aid to the poor. So, that has also to be brought in.

Then, I will certainly support the hon. Member who preceded me that the fee that they have fixed, Rs. 500, is far too high. I wonder what can be the reasons in overriding the recommendations of the Law Commission which definitely recommended that the fee should be Rs. 125, of which Rs. 100 should go to the State Bar Council and Rs. 25 to the Central Council. The fee of Rs. 500, with the present unemployment that prevails among the juniors in the bar, with the conditions that they are in, is rather on the high side. I am sure this will be looked into and the fee will be reduced to the level recommended by the Law Commission.

With these words, I certainly support the Bill and its reference to the Joint Committee.

16 hrs.

Shri Shankaraiya (Mysore): Mr. Deputy-Speaker, I support this Bill. This Bill which is trying to bring a unified, integrated Bar Council not only for the whole of India, but also

for the different States, is a welcome measure. This ought to have been done very long ago. The Law Commission has made its report and on the reports of the Law Committee and the Law Commission, this Bill has been brought.

Of course, it is a healthy feature. It empowers the Bar Councils to discharge their duties more efficiently and it brings a sense of unity and also strength to the members of the bar. But, in certain provisions, I find that this object cannot be fully achieved unless some more provisions are put in and some amendments are introduced, as the clauses that have now been provided will not be helpful or go a long way to achieve the objective. For example, Bar councils have been established and the present Bar councils have also been functioning and zealously guarding the rights of the members of the bar. In clauses 6 and 7, the functions of the Bar Council have been enunciated to prepare and maintain a common roll of advocates; to lay down standards of professional conduct and etiquette for advocates, and so on. I would like to say at this juncture that the main function of the Bar Council, apart from these things, is to safeguard the rights of the bar. I shall give one instance; I do not want to go into details. Generally, the members of the bar will come into conflict with the Bench. Sometimes I wish to make it clear that I am not casting any aspersion against any particular Judge or Judges or judiciary. I have the greatest regard for our judiciary. They have been discharging their duties very efficiently and independently also. But, there have been instances where the Bar association as a whole has differed from the Bench and the Bar members have been treated in a discourteous manner. in a manner that has been not befitting for a member to continue in that profession. If the local Bar Associations are vigilant, enough, they will safeguard the rights. But, there are members of the bar who will not be able to assert themselves. In such cases, the Bar Council or the Bar Associations will have to come and safeguard their interests. The local Bar associations have several times taken this matter and referred the matter to the High Courts about the misbehaviour of some of the Judges. In this Bill no provision has been made particularly with regard to this aspect as to how the Bar Council should maintain this dignity, and prevent members of the bar from being ill-treated or being treated in a discriminatory or discourteons manner. That is my point. Unless a specific provision is made both in clauses 6 an 7, the functions of the Bar Council will not be complete. It must be specifically stated there. It may be argued that the duty of the Bar Council is that. Unless it is specifically mentioned, it will not be possible for the Bar Councils to feel that they are armed with this right and that they can safeguard their own interests. Particularly when Judges of the High Court and the Supreme Court are nominated *ex-officio* members of this All India Bar Council and the State Councils, naturally, there will be. whatever it might be, a tendency that the members will not be able to express their views freely. There are members who express themselves freely and independently also and get into the bad books of some of the presiding Judges, but the general tendency is to have an easy go-over, to nod to the wishes of the presiding Judges or High Court Judges and thereby the interests of the members of the Bar and the profession will have not been properly safeguarded.

When two Judges of the Supreme Court and two Judges of the High Court who have been advocates are members of this Bar Council, naturally there will be this defect.

There is another defect also. The matter of electing the Chairman and Vice-Chairman is left to the rules to be framed. What happens is, the Supreme Court and High Courts Judges will have some inclination and

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they will naturally become the Chairman and Vice-President. There is this tendency. That is why I suggest that instead of leaving it as is done in clause 3(3) and giving scope for them to be Chairman and Vice-Chairman, there should be a specific prohibition of these people becoming the Chairman and Vice-Chairman. I have no objection to their continuing in the Bar Councils and, trying to bring about a balance between the Bench and the Bar, to help in bringing about a healthy atmosphere between the Bench and the Bar, but they should not be Chairman and Vice-Chairman, because it will not have a salutary effect and the members will not be able to express themselves freely, however much they may be independent.

Similarly, the Advocate-General of the State and the Advocate-General and the Solicitor-General of India should also be barred from standing for election as Chairman and Vice-Chairman, and a specific provision should be made in clauses 6 and 7 to say that the main function of the Bar Council should be to safeguard the interests of the members of the Bar and their rights and privileges as against the Bench.

I agree with my hon. friend Shri Sarhadi that a uniform standard, higher standard of education in the legal profession is necessary. This can be done by enhancing the standdard of education and the method of imparting education and tuition. No doubt the duty is cast on the Bar Councils, but there are different universities each having its own standard. Some have a two years course, some have a three years course, and in some post-graduates and intermediate students are also admitted for the law course within the three years course. There is this difference.

As regards enrolment, it has now been prescribed that only advocates are going to be allowed to practise, that non-law graduates will be prohibited from becoming practitioners. There is another clause according to which those who are practising now to enrol themselves as advocates within one year. I am going to state subsquently what discrimination there will be in this connection.

Now, my point is that in order to achieve a higher standard of advocacy and legal efficiency for the advantage of the clients, the standard must be uniform. In the case of every university the standard and the curriculum should be uniform. Now there are universities and colleges where this is treated as a post-graduate course with only one or two hours of tuition. There are other colleges which are considered residential courses where full course of training is given as full time instruction or tuition. There are also deficiencies in the system of legal education that prevails in the various States, which turns out these law graduates. These anomalies and differences should be removed, and a uniform education of a high standard should be imparted in all the States. This could be done only by introducing a common curriculum of study and holding a common examination throughout India, with the examination papers being set by one particular institution for all the colleges in India, and the results being declared on an all-India basis. At present, the percentage of candidates declared to have passed in the examinations varies from State to State and from university to university. There is considerable divergence between the results declared by the different universities; some declare about fifty to seventy per cent of the candidates as having passed, whereas some others, where the efficiency is greater and also the standard of examination and testing is very rigorous, declare only about 30 to 35 per cent of the candidates as having passed in the examination. This kind of discrimination will ultimately be to the disadvantage of the clients, for, they may go and have the services of those

who have not had the sufficient amount of training.

This could be avoided by having a common standard and a common curriculum of study throughout the whole country for all the universities, and a common examination by the Bar Council, and also by insisting on a common standard of tuition and efficiency for all the members of the Bar.

My next point is in regard to recognition of universities, which has been provided for in clause 7(g). It reads thus:

> "to recognise Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities;".

I submit that mere inspection of universities will not be enough. In order to ensure a high standard of education, it is necessary that the staff must be of a superior calibre; the library facilities must be enhanced; the standard of examination must be common throughout the whole of India, and the results of the examination should also be declared on an all-India basis instead of on a university basis. Though the candidates may be declared as bachelors of a particular university yet, the examination should be conducted on an all-India basis in a uniform manner.

I now come to the question of senior and junior advocates, which is dealt with in clause 15. This is a very controversial question. I feel that we are going a step backward in this respect. Under the present system, this kind of division between senior and junior advocates exists only in the Supreme Court. In order that a person may become a senior advocate, he has to pay Rs. 500; in order that a person may become a junior advocate, he has to pay Rs. 250. The senior advocate is prohibited or restricted in his practice, according to certain rules, that is, from putting affidavits and other things. That is the common practice now. Now, this system is sought to be introduced in the High Courts also. While the bigger cases are to be dealt with by the senior advocates, the others are to be dealt with by the junior advocates.

As regards the method of selection for enrolment as a senior advocate, the provision in this Bill seems to me to be most unfair. It is left to the whims and fancies of the High Courts and the Supreme Court to classify one as a senior and not to classify another as a senior.

Now, in a particular State, there are persons who are practising in the different district courts or session courts. The High Court will not be able to have first-hand knowledge about them. So, they will be at a disadvantage, as compared with those who have been practising at the High Court frequently, who will consequently have been an additional advantage. Of course, the persons who are practising in the mufussil courts come rarely to the High Courts for just one or two cases, but by hearing them in just one or two cases, the judges will not be able to form an opinion. Therefore this would give room for a sort of discrimination. Instead of allowing this sort of discrimination by the High Court or Supreme Court Judges classifying them as senior and junior, I would rather insist on retention of the present provision of having some amount of money being collected or someother devise provided. If a junior is willing to become a senior advocate, let him be asked to pay something more and let him be allowed to enrol as a senior advocate. Let him by all means be allowed to have the advantage or disadvantage of being treated as a senior.

As regards the relationship between the senior and the junior, my hon. friend has already touched on it and I do not want to say anything more. There may be very few cases of friction between the two; generally the ralationship between the senior and the junior will be very cordial, and they get on very well. Of course, there may be some instances.

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There is that fear also that generally a senior will take a junior only when he has got confidence in him and in particular cases. Therefore, instead of allowing the Judges to classify them as seniors and juniors, a fixed amount, say of Rs. 500 or whatever it is, may be asked to be paid, and the discrimination removed.

Then I come to clause 22, whereby the present non-graduate members might be asked to enrol themselves as advocates within one year from the commencement of the Act. If they happen to do so, the additional liability that has been put on them while enrolling themselves as advocates is the payment of Rs. 500. Hitherto, they were not subjected to this restriction. Now in order to continue in the profession, they must within one year of the commencement of the Act enrol themselves as advocates and pay Rs. 500. If they do not, they will be debarred from practising. This is a very unhealthy or unwelcome provision. True, they may have the chance of going to the High Court for practising, but in the Division or District, they have got every right to practise. They have worked there for a number of years, and taking into consideration the proportion of advocates and non-advocates who have not paid this amount of Rs. 500 and enrolled themselves as advocates, the number of the latter is greater. Unnecessarily we are asking them to pay Rs. 500, and if they do not enrol themselves within one year, they will be out of the profession. By this we will be removing their means of livelihood.

When I heard the Law Minister regarding solicitors, he was saying that theirs was a good institution and he did not know why it should be abolished. I ask: why should these people be thrown out of the profession? Why not apply the same analogy to these people? I do not want this concession to be extended to persons who come hereafter. But at least for those who have been working as pleaders, this concession should be given. They should be allowed to continue to practise in the respective districts without enrolling themselves as advocates and without paying Rs 500. Otherwise, I think this discrimination will offend the provisions of the Constitution because they will be thrown out of their profession and means of living. Such an eventuality will work very hard on these people.

The Deputy Minister of Law (Shri Hajarnavis): Will the hon. Member refer to clause 49?

Shri Narayanankutty Menon: Under the Bill, they are allowed to practise.

Shri Shankaraiya: But with the consent of the court. Otherwise, they cannot.

Shri Narayanankutty Menon (Mukandapuram): It is only formal.

Shri Shankaraiya: Unless they enrol themselves as advocates within one year, they will not be allowed to practise. They will be thrown out of work and the profession.

Clause 49 is subject to clause 22. I have studied it carefully.

So I say that they should not be thrown out. Whatever rights they have got, they should be allowed to enjoy them during the period of their lifetime. I agree that no more new entrants may be allowed to come in enrolling themselves as pleaders. But the present members who have been working and practising for 15, 20 and 30 years should not be thrown out or asked within one year to pay Rs. 500 for nothing at all at this juncture.

Shri Hajarnavis: Why does the hon. Member think that clause 49 is subject to clause 22?

Mr. Deputy-Speaker: Has the hon. Member concluded?

Shri Shankaraiya: Yes, Sir. I would suggest one more thing.

Mr. Deputy-Speaker: After telling me that he has concluded he is going on.

Shri Shankaraiya: Only a few sentences, Sir.

Now, contempt proceedings are being held by the court itself. The Bar Council has absolutely no powers. Of course, the presiding judge will be conducting the proceedings and sometimes the High Court also. Though this is a matter pertaining to contempt of court, I think the Bar Council should have a say in the matter. Irrespective of the person that is being proceeded against, the Bar Council should also be heard and then the court should come to a decision.

With this suggestion I bring my remarks to a close.

Shri P. R. Patel (Mehsana): Mr. Deputy-Speaker, Sir, I welcome the Bill and congratulate the hon. Minister for bringing it. I would like to offer some suggestions.

My first suggestion is this. We have accepted socialism and we have said that our march is towards socialism. Whatever Acts we pass must be in tune with our ideals. So, I would desire that in this Bill there must be a provision that no Advocate shall charge more than Rs. 100 as fees per day. I think, looking to the poverty of the country, Rs. 100 is not low. If you put in a clause in the Bill I think we shall be able to give the service of the best lawyers to the litigants at a cheap cost.

What is happening today? Because a man has to come to the Supreme Court, when he goes to a senior Advocate the fees that is demanded is not less than Rs. 1,500 a day. Is it in tune with our ideal of socialism, I ask? So, I would suggest that in this Bill there must be a provision that if an Advocate charges more than Rs. 100 a day he shall be debarred or struck off from the rolls of Advocates. I think there must be some check to it.

Shri Narayanankutty Menon: Supposing an Advocate does not get even one rupee who is to be checked off?

Shri P. R. Patel: I know of some cases where, in order to save income-tax, they give receipts for Rs. 200 and charge more. After all, so many things do happen. There must be a check for it. For a whole brief the maximum should be Rs. 500. It is not less. I hope the hon. Minister in charge of the Bill will consider this matter.

My second point is this. Whatever legislation we pass, we must bear in mind that in this country more than 80 per cent of the population live from hand to mouth. Most of them, for one reason or the other, have to go to courts to get redress for their grievances. When they go they must feel that they shall get impartial justice; they must feel that they shall get fair justice; and, at the same time, they must also feel that they will get justice at reasonable cost.

Mr. Deputy-Speaker: If those 80 per cent want redress, do the other 20 per cent create grievances?

Shri P. R. Patel: I am submitting that on the one hand our State Governments are increasing the court fees. I know the Bombay Government has increased the court fees in this year by more than 33 per cent and in some cases even 100 per cent.

Shri C. R. Pattabhi Raman (Kumbakonam): It is *ad valorem* in many cases.

Shri P. R. Patel: I will tell you of one instance. Till now, an eight annas stamp was required for *vakalatnama*. Now, they have changed that and they have said that it must be Rs. 2. There are so many other cases. I think the Law Minister should consider this when we desire that justice should be given at a reasonable cost.

[Shri P. R. Patel]

Thirdly, I would suggest that toutism is a great disease in this profession. Touts sometimes do more harm than good to the clients. I know some persons have been attending the court every day. They s t before the eyes of the Court, pres.ding judge or the magistrate. Anyhow, they collect some money and they also get some part of the fees paid to an their advocate. Even though there s legislation to check this, we have failed to check this and some drastic action is necessary. In this Bill, .f a provision is made that a pleader who pays anything to a tout or to any person for getting a case, he should be disqualified to work as an advocate, it would be better. I think some drastic action is necessary. Otherwise, this disease will not disappear.

Fourthly, I come to the language. Clients generally attend the courts and they do not understand what the advocates do or how they put their case. They are not able to follow the advocates because they have to address the Court in English. I can understand this so far as the Supreme Court or the High Court is concerned.

Mr. Deputy-Speaker: That would not be w.thin the province of this Bill.

Shri P. R. Patel: It is not in the province. I am subm tting that so far as the district courts are concerned, it would be good if the client understands whatever the advocate says on his behalf.

Fifthly, I want to say this about the fees for enrolment. I do not know whether the idea is to collect more money. But if our idea is that there must be a Bar Council which should have some control over the m sdeeds of the advocate, then naturally money is not the criterion. Rs. 500 even in these days, for a person coming out from the college and joining the profession is a rather b g amount. I would submit that the hon. Minister may consider this. The fees may be put at Rs. 100 or Rs. 125. I think our a.m is to get all advocates enrolled. Our aim is not to collect more amount. I think if the fee is lessened and put at Rs. 125 it would be a proper th ng.

I would suggest one thing more. Today we have got different types of pleaders. We have got the Mukhtars we have got District Court pleaders, High Court pleaders and advocates or pleaders who have got some university degrees. All these people practice in d.fierent courts. Some lawyers who have got the LL.B. Degree or even a h gher degree practice in the District Court. And, today's practice is that if a lawyer is confined to a District Court then he has got to pay only Rs. 50 for his sanad. If after he has put so many years he is at all to be enrolled, say, on the Bar Council of the High Court, I do not understand why he should be asked to pay more. I think whatever he has paid is all right. The only quest.on should be whether he is qualified to be on the Bar of the High Court and whether he has got sufficient qualifications. If he is not able to pay or he does not pay should not be a disqualification; otherw.se money will be the qualification and not education or ab.lity.

Regardisg the question of sen'or and junior advocates, I would submit that it should not be left to the discretion of the H gh Court or the Supreme Court. Let us say that if an advocate has put in ten years or fifteen years, and, if he desires he may be put on the roll of the senior advocates because there will be certain obligations and certain benefits. If you leave the matter to the discretion of the High Court, it rather gives chances to so many other things. I am of the opinion that it should not be left to the discretion of the High Court.

There is one other small point. These Bar Councils have the privilege to recognise certain universities. I think this is too much. Charters are given by

the State Government or by the Central Government. After a un.versity is g ven a charter to give education in law, I think there should be no other authority which would say that it would not recognise the degrees conferred by that university; otherw se there is no sense is allowing univers.ties to impart law education. I think, therefore, that that clause a.so requires some consideration.

Lastly, under this law there would be a Bar Counc l for Bombay. Very shortly we are going to have bifurcat on of Bombay, and again we shall have to come w.th an amendment. I would suggest that this matter also may be thought out and the clause may be amended in such a way that if there be bifurcation of any State, in that case, if the High Court is given to any State then there will be a Bar Counc l, so that we may not have to come back to this House and automatically there will be a High Court, a Bar Counc.l and other things.

Shri Satyendra Narayan Sinha (Aurangabad-Bihar): Mr. Deputy-Speaker, Sir, the Law M.nister rightly observed that this is a measure which w ll receive welcome from every sect on of the House. The demand for a unified Bar is an old one. You might recollect that as far back as 1923 a comm ttee was appointed under the chairmanship of Shri Edward Chamier, ex-Chief Justice of Patna High Court to go into this quest on. At that moment, the committee d d not consider it feasible to have a un fied Bar, but as a result of its recommendation, the Indian Bar Councils Act was put on the Statute-Book in 1926. But the question of pleaders, vakils, revenue agents and Mukhtars, was left out of consideration and the unification was not brought about. But the demand persisted. Formerly, it arose as a result of resentment aga nst the artific.al distinction between barristers and non-barristers. Later on, with the advent of Independence, it acquired a new significance and a new orientation, and in 1953 the All-India Bar Committee was appointed to go into the question. It recommended the constitution of an All-India Bar Council and State Bar Councils. The Law Minister explained to us that the delay in giving effect to the recommendations made by that committee lay in the fact that the Law Commission which had been subsequently appointed was also given a term of reference on this subject. The Government were awaiting the report of the Law Commission and the Law Commission has also recommended the same now. So, the measure which is before the House is in effect going to give effect to the recommendations of the All-India Bar Committee as well as to the recommendations of the Law Commission. It is going to achieve a long-cherished ideal of a unified Bar. The Law Minister has rightly said that it is going to bring about not only the unification of the Bar but will also go a long way in promoting the integration the country as a whole, and will bring about a unified legal system.

Apart from that, I feel that if we are going to have one unified Bar, it is going to strengthen the Bar, enhance the prestige of the Bar and, as has been said, it will go a long way in making for efficiency of the Bar and therefore, for strengthening the Bench also. We have often heard that the quality, both of the Bar and the Bench, has lately deteriorated, and rightly, emphasis has been laid in this measure on the need for laying down uniform standards of education, and the Bar Councils have been entrusted with the task of laying down uniform syllabi for the entire country in respect of law graduates.

I welcome the unification of the Bar from another point of view also. So far, the recruitment of judges has been confined to the State Bars only. Now, it is going to open a larger field. The field is now being opened to the advocates who are practising in the Supreme Court. If there is a unified Bar, the choice before the Government and the Chief Justice of

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the Supreme Court will be much wider, and those advocates who are practising in the Supreme Court will also have a chance of being considered for appointment to the Bench of the High Courts as well as that of the Supreme Court. From that point of view also I welcome this measure, and I do hope that the advocates of the Supreme Court also will be recruited to the Bench of High courts and that of the Supreme Court, and that there will be no parochial considerations standing in the way of such recruitment.

Since many hon. Members have already made their observations and as the Bill is going to the Joint Committee, I do not have much to say. But I wish to make a few observations or submissions underlining the remarks made by some of the previous speakers. Firstly, I would like to take up the question of the division of advocates as senior and junior advocates. I welcome this division particularly because it will give greater scope to the junior lawyers who are struggling at the Bar and do not have enough scope to make a living and get enough work. This has been welcomed by the Law Commission also. Even a small item of work intended for the juniors is also being done by the seniors. No stigma is attached to this practice of the seniors. So, if a rigid division is made, and certain obligations and disabilities are attached to the seniors that they cannot appear in court without being briefed by juniors and that they cannot do any work of a minor nature like drafting, pleading and doing other junior work, then it will give larger scope to the juniors to make their living and learn work as well.

But I have not been able to find myself in agreement with the provision in the Bill whereby the seniority is to be conferred as distinction by the High Court or the Supreme Court. I agree with my friend, Shri Patel, that this power, or right, to confer a distinction of seniority, should not be given to the High Court or the Supreme Court, particularly because I feel that this will, in the ultimate analysis, sap the independence of the Bar, and the members of the Bar would try to please the judges of the High Court, or the Supreme Court, for this distinction. I would like that the option should remain with the lawyers themselves to choose to be enrolled as senior advocates or not. Because, we all know that if a lawyer becomes a senior and if he does not possess the necessary ability and has not acquired the necessary reputation and status, he would be practically starving if he is appointed a senior, because no client will engage him with a junior and pay the heavy fee which he does not deserve. Therefore, in the ultimate analysis, it will be the best thing to leave this option to the lawyers themselves. The only argument that has been advanced, or perhaps has weighed with the Government in incorporating this provision is to be found in the Report of the All India Bar Committee where the Committee has stated at page 26—I would like to quote two or three sentences:

> "This division of the Supreme Court Advocates based only on a specified number of years' standing at the Bar has only resulted in the conferment of a title which is frequently reproduced ostentatiously on name plates and letterheads enabling some of the senior Advocates to demand a higher fee in the mofussil courts. The spectacle of a senior Advocate being under the aforesaid disabilities when he is in the Supreme Court but throwing them off as soon as he gets out of the precincts of the Court and competing with Pleaders in drafting and other junior work in the mofussil Courts cannot be ennobling."

But this can be removed by attaching this disability to the senior even if he goes out of the precincts of the

Supreme Court. That is not a strong reason.

This particular right should not be given to the High Court, or the Supreme Court, to call upon a senior lawyer to place himself on the roll of the senior advocates. It should be left to the option of the lawyers themselves to decide whether to become seniors or not. If they have certain years of standing in the Bar, they should either choose to be enrolled as senior lawyers, or they may continue to be junior lawyers. This should be left to their option. I strongly plead with the Government, and with the Joint Committee, that they should remove this provision altogether and leave this option to the senior lawyers.

Then I will come to the question of the evil of toutism. My hon. friends, Shri Sarhadi and Shri Patel have also referred to this question. The Law Commission has also stated that the evil of toutism has been recognized as a crime under section 36 of the Legal Practitioners Act. I plead with the Joint Committee, as well as with the Government, that they should incorporate a specific provision in the Bill itself whereby they should provide for punishment both to the lawyer as well as to the tout participating in the crime, when it is a crime. It should not be left to the rule-making power of the State Councils. Because, this is an evil which requires prominent attention of all concerned. Unless we make a special provision in the Bill, it will just get lost. As has been remarked by many hon. Members here, this evil is widely rampant except in the State of Kerala where the percentage of literacy is very high and perhaps, there is greater decentralisation of courts. Not until the day we have greater decentralisation of courts and panchayat courts are functioning all over the country, this evil is going to disappear. Therefore, stringent measures have to be taken in the meantime and a specific provision should be incorporated in this Bill itself.

Then, I will come to the question of the dual system. I heard the learned Law Minister who defended the retention of the dual system in Calcutta and Bombay High Courts. He said that it has worked very well. It is true that the Law Commission as well as the All India Bar Committee have found that this system has worked very well and that it is very popular with the clients. But, my feeling is that this is against our policy of providing cheaper justice and speedier justice to the litigant public. I have remained unconvinced with the arguments of the Law Commission as well as the report of the All India Bar Committee that this does not involve a heavier cost. Actually, the comparative cost of a case in the appellate side as well as the original side cannot be taken for determining the relative degree of expenditure. The Law Commission should have taken the figures of a case which is conducted in the mofussil courts on the original side and of a case which is fought in the High Court on the Original side. Then, we could have a clear idea of the relative cost. I think that both the All India Bar Committee as well as the Law Commission have gone wrong. But, as my hon. friend the Law Minister said, we cannot altogether abolish all of a sudden this system and ask these solicitors who have been doing this job for such a long time, to go out of employment. As we are going to place a date by which all the lawyers, even mukhtars practising in the mofussil courts have to be enrolled as advocates, likewise, we can set forth a date, 2 years or 3 years in advance and call upon all solicitors to get themselves enrolled as advocates. There is a good and strong reason for abolishing it and adopting the practice which is prevalent in the Supreme Court. In the Supreme Court, we are going to adopt a system by which the advocates on record are permitted to act and they are virtually functioning as solicitors. For minor matters, they can put in appearance before the court. Likewise, we can adopt a system in the Calcutta and Bombay High Courts or elsewhere, because I was attracted by one observation of the Law Minister

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that this system has worked for the cleanliness of the profession. If that is so, we might adopt this system and introduce it in other High Courts where there will be advocates on record who will act and in minor matters, they can also put in appearance. Perhaps that would work for a cheaper cost to the litigant public.

That is all I have to submit and I hope the Joint Committee will take into consideration all these things.

Shri T. Subrahmanyam (Bellary): Mr. Deputy-Speaker, a strong and healthy Bar would be a very helpful factor in the proper governance of the country. Government consists of three functions, namely, executive, legislative and judicial. A proper equilibrium has to be worked out between these three divisions. A lawyer or an advocate can play a very helpful role in achieving this sort of equilibrium. Our Constitution enjoins fundamental rights which are also justiciable. Every citizen has got certain fundamental rights. Therefore, in this play of forces between the three functions of Government, and the rights of the citizen as against the Government, a good, strong Bar would be a very helpful factor, and in the present context of our country when we are trying to achieve national unity, this will be an additional powerful factor. Now each State has its own Bar and we have been divided by so many factors hitherto. Now, we are trying to achieve national unity and strengthen and reinforce it. I am strongly of opinion that this Bill is going to play a very significant role, and the establishment of an All-India Bar Council with a common roll of advocates who can practise in any court in India in any place will be a very good factor also. This integration of the Bar into a single class is going to help the advocates and also remove all the various complexes. This All-India Bar Council will determine the standards of professional conduct and etiquette for advocates. This is a very significant thing. Formerly, the profession of advocates was playing a very important role in the public life of our country and our national life. Now, unfortunately it is not so, but I am confident that it will again play the same role in future. The establishment of the standards of professional conduct and etiquette of advocates by the All-India Bar Council prescribing these things, and at the same time the laying down of standards of legal education in consultation with the universities will also help us a great deal.

It is now proposed that the advocates should have a Bachelor's degree and also a degree in Law. With regard to the recognition of a university, the Bar Council will have the right to visit and inspect the universities. They must not only inspect the universities and lay down the standards, but I also suggest that at various levels they should give good equipment to the Bar associations in the mofussil. They must have good libraries, good literature and they must be otherwise equipped also.

It is proposed to have a division of advocates into senior and junior advocates. Opinion has been frankly expressed that this should not be dependant upon the will of the High Court or the Supreme Court, that it is not healthy. I share these fears, and I feel that it should be a self-regulatory process by which advocates automatically divide into seniors and juniors. It may depend, for instance, on their income which may be determined from their income-tax returns for the last five or six years. It should not be left to the High Courts or the Supreme Court. It must be a self-regulatory process, and the Bar Councils can be given instructions, or certain conventions can be established by which advocates can be classified into seniors and juniors.

I know the juniors are suffering quite a lot. There are some seniors who are very jealous, who would not give any work to the juniors. There are good, bad and indifferent people

in every kind of profession, and similarly in this profession also. Therefore, to safeguard the interests of the juniors I think there should be a convention and not a rigid pattern of a division into seniors and juniors dependant on the pleasure or the whims of the presiding Judges.

Opinion was expressed that the fee should not be Rs. 500 and that it should be Rs. 125. I share this view because we have advocates coming from various parts of the country, and to ask people who begin their life to pay Rs. 500 would be rather unkind, to say the least. Therefore, Rs. 125 may be fixed.

I do not want to make any more remarks. I am sure that this Bill, when enacted, is going to play a very significant part and that the lawyers will again play a more prominent part in our national life.

I support the Bill.

Shri Mulchand Dube (Farrukhabad): I congratulate the hon. Minister for bringing forward this Bill. It meets a long-felt demand on the part of the Bar for the establishment of a homogeneous and independent Bar, because an independent Bar is a *sine qua non* for a democracy. A democracy cannot go on unless there is an independent Bar. The Bar is the only body which can protect the rights of the citizens against the vagaries of the executive or the Government. And with the large volume of laws that we are enacting in Parliament as well as the large number of laws that are being enacted in the States, it becomes necessary that there should be some body which would be able to keep abreast of the laws as they are framed; and in the absence of an independent and competent Bar, there would be no such body which will be able to keep pace with the legislation that is being enacted.

I do not agree with Government in this matter that under many of the laws, the lawyers should be debarred from appearing before not only tribunals but also public officers who are in charge and who deal with the rights of the citizens in various ways. My submission is that wherever the rights of a citizen are to be considered by an executive or a Government body, the lawyer should have the right to present the case of his client before the officer. That is one of the things that is necessary.

To take the last thing first, a great deal has been said about toutism. That thing is there today. I submit that it is only lawyers who can prevent this toutism; there is no other body which can do it. I am not quite sure whether the All India Bar Council or even the State Bar Councils will be able to deal with this evil of toutism. I do not know whether it is correct, but my hon. friend, the Law Minister, will be able to find it out, that in days gone by, say, about sixty years ago, there was a practice in our country, according to which, whenever a person wanted to file a suit, he had to deposit not only the court fees but also the lawyer's fees, so that whenever he engaged a lawyer, the lawyer would be entitled to draw his fees from the court. There would be no difficulty if this system is adopted; if the plaintiff or the defendant, whenever a lawyer is engaged by him, deposits the lawyer's fees in the court, then the evil of toutism could be diminished to a very considerable extent, if not altogether abolished. That is one of the ways of doing away with the evil of toutism.

Mr. Deputy-Speaker: Who would choose the lawyer, the party or the Government?

Shri Mulchand Dube: The party. The party chooses the lawyer; the fee is deposited in the court. As soon as the case is adjudicated upon, and the lawyer has done his work, at the end of the case, the lawyer draws his fees from the court.

Mr. Deputy-Speaker: The lawyer has no choice to fix the amount?

Shri Mulchand Dube: No. The fee that was taxable against the other side had to be deposited. If the lawyer could take any extra fee, apart from what was taxable against the other party, that was a different matter. I do not know whether that was done or not, because in those days, the question of charging high fees was an exception. Very high fees were not charged in those days, and people were satisfied with the fees that were taxable against the other side.

Shri Narayanankutty Menon: The taxable fee is only quite nominal, compared to the regular fees.

Shri Mulchand Dube: That is true. But that was one of the ways. I do not quite know, but I do expect that the hon. Law Minister will take that into consideration, and by some method prevent this evil of toutism which is prevalent everywhere in some form or other. Then there is another point on which I want to dwell....

Mr. Deputy-Speaker: Is he going to finish within a minute or two?

Shri Mulchand Dube: I will take ten minutes more.

Mr. Deputy-Speaker: Then he might continue tomorrow.

17 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Thursday, December 3, 1959/Agrahayana 12, 1881 (Saka).