

Mr. Speaker: All people know how long the Parliament sits. During the hours of Parliament, for some other function I cannot adjourn the House. Individual Members can go; I can't prevent them.

Shri D. C. Shirma (Gurdaspur): For us Parliament is the first concern.

Mr. Speaker: There is no disparagement to any of the other functions. They choose their time; we choose our time.

I want to make it clear that there is absolutely no disparagement so far as such ceremonies are concerned. I do not know if all the 500 Members have been invited. I understand only 40 or 50 have been invited. Even without such an invitation, a number of Members are absent from time to time. Therefore, they need not make that an excuse for getting out of the House; they may go independently.

12-17 hrs.

ORISSA APPROPRIATION (No. 2) Bill,* 1961

The Deputy Minister of Finance (Shri B. R. Bhagat): Sir, on behalf of Shri Morarji Desai, I beg to move for leave to introduce a Bill to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State of Orissa for the services of the financial year 1961-62.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill to authorise payment and appropriation of certain sums from and out of the Consolidated Fund of the State of Orissa for the services of the financial year 1961-62."

The motion was adopted.

Shri B. R. Bhagat: Sir, I introduce** the Bill.

12.18 hrs.

LEGAL PRACTITIONERS BILL—
Contd.

Mr. Speaker: The House will now take up further consideration of the following motion moved by Shri R. M. Hajarnavis on the 26th April, 1961, namely:—

"That the Bill to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All India Bar, as reported by the joint Committee, be taken into consideration."

Out of 5 hours allotted for this Bill 3 hours and 35 minutes have already been taken.

Shri Braj Raj Singh (Ferozabad): Sir, the time will have to be extended.

Mr. Speaker: How much time has been allowed?

Shri Narayanankutty Menon (Mukandapuram): Altogether five hours have been allotted.

Mr. Speaker: How long would they require for clause-by-clause consideration?

Shri Narayanankutty Menon: At least two hours.

Mr. Speaker: If you want two hours more, I think I will have to apply guillotine. Only 1 hour and 25 minutes remain.

Shri Narayanankutty Menon: Certain provisions are important, and there are many amendments also.

Mr. Speaker: How long does the hon. Minister propose to take?

The Minister of Law (Shri A. K. Sen): Not more than 30 minutes. It is more or less non-controversial, excepting with regard to particular clauses.

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**Introduced with the recommendation of the President.

Mr. Speaker: That means half an hour for the reply, and then there is clause-by-clause consideration. We will conclude by 3.00 P.M.

Shri A. K. Sen: At what time would you call upon me, Sir, to reply to the consideration stage.

Mr. Speaker: At 1.30 I will call him. The consideration stage must be over by 2.00 P.M. and then we will have one hour for the clause-by-clause consideration.

Shri Braj Raj Singh: Let us extend the time by one hour. We saved some time on another Bill yesterday.

Mr. Speaker: Let us see—Shri Khadilkar. Hon. Members may state their points very briefly. Ten minutes were allotted by the Deputy-Speaker. I will follow it.

Shri Khadilkar (Ahmednagar): I certainly welcome the Bill as it has emerged from the Joint Committee because certain very welcome amendments have been suggested to the existing law. Just as there is a Medical Council, representing the medical profession and regulating its affairs in an autonomous way, there is to be a Bar Council, regulating the legal profession to some extent. Then, the enrolment fee, which was proposed at Rs. 500, has been reduced to Rs. 250. So far as these changes in the Bill are concerned, they are quite welcome, so far as they go. But, in my opinion, they do not go far enough.

Yesterday, one hon. Member suggested that the legal profession is like a traders' profession and the lawyers are trading in their wisdom. Another hon. Member stated that this now autonomous professional body with its own regulations and functions is just like a trade union. I am afraid, both the hon. Members do not know as to really what is the function of a lawyer in our legal system. A lawyer is an officer of the court and he is part and parcel of our legal system.

If we understand that, then we will properly comprehend what vital role he is playing in the dispensation of justice as well. That is more important. The Law Minister is bringing forward measures, making some reforms at the fringes and some tinkering effort is being made. But I would like to know from the Law Minister: has he given thought to the various aspects of our social and economic life? Unfortunately, neither the Law Ministry, nor the Law Commission, has so far given any thought to the fundamental change which is called for at the present juncture. We claim that we are changing our society. Whether we like it or not, the society itself is changing and we are consciously going towards a certain objective of social reconstruction.

But the fundamental question is this. Has our present legal system, the procedural system and the legal apparatus in this country been examined in the light of this change and suitable measures are taken to bring about a fundamental and basic change in the legal apparatus or not? Unfortunately, both the Law Ministry and the Law Commission have shown a good deal of poverty of thought regarding this matter. Men like Sir Alfred Denning, the Lord Chief Justice of the Appellate Court, have a good deal of thought to this matter, considering the legal system obtaining in Britain, how it has been affected by the welfare State and how the legal system has got to adapt itself to the changing social pattern. But, unfortunately, in this country neither the Law Commission, nor the Law Ministry, has taken any initiative of this nature. I say this because that reform is urgently called for in this country.

We claim to have inherited certain teachings of Gandhiji. Gandhiji always said that the legal system that operates in this country is the most oppressive and exploitative system, which aspect even my hon. friends,

the Communist lawyers, yesterday tried to ignore or gloss over while paying tributes to the eminent lawyers of this country.

Have we made any serious effort to improve the system at the lowest level, where the legal system creates a very foul and vicious atmosphere to the litigants? We must understand that thousands of people are involved there and that they have to lose their property or life, as courts commit judicial murders quite often, because there is not enough legal aid available. Therefore, what I want to know from the Law Minister is this. Has he given some thought, or is he going to give some thought, to this aspect of the problem, namely, what is the state of affairs at the lowest level?

My hon. friend, Shri Menon, paid glowing tributes to the legal profession. I know that in our public life the legal profession has certainly made immense contribution of which naturally every member of that profession is bound to be very proud. But at what time did they do that and under what circumstances? When the British legal system was superimposed with a foreign language in the society of ours, the lawyers engaged themselves as interpreters of law and the poor illiterate masses had to depend on their interpretation and pay for it, just as priests interpreted religion because common people never knew what religion was, though no intermediary was called for to interpret religion if a man wanted to have salvation or reach God. Still, all the same, the class of priests was created, and the class of priests demanded its own price. So, under the British system, when the profession was most flourishing, the lawyers in this country did their utmost to serve the new legal system, which was preserving the old order of society, favourable to the foreign system of exploitation. I was surprised to find yesterday that neither Shri Menon, nor another eminent member from the Communist Benches, referred to this aspect. I know that lawyers have

come forward to fight the battle of freedom in this country. On many an occasion they have served that cause. In other spheres of life also they have made their contribution.

But if we ignore this fundamental aspect of our legal system, which has proved very oppressive at the lowest level, I am afraid the little tinkering by introducing some reforms we are proposing will not meet the situation.

What is the position at the district bar? Let me point out that at the district bar today the lawyers, touts, the local magistracy and the police are quite often in collusion. Let us understand that at least. The lawyers come in that collusion because some elements from the intelligentsia aspire to establish good names.

Mr. Speaker: I am afraid, the hon. Member is making a very sweeping remark.

Shri Khadilkar: This is the position.

Mr. Speaker: Some of us are also lawyers.

Shri Khadilkar: I am not saying about everyone. I was referring to the general atmosphere. I do not want to accuse every lawyer, but what is the type of atmosphere prevailing at the lowest level?

Shri A. K. Sen: Is the hon. Member a lawyer himself?

Shri Khadilkar: I was, once upon a time; but I hardly practised. So, I cannot claim to be a practising lawyer.

Mr. Speaker: It is unfortunate that his experience was different.

Shri Khadilkar: If my remarks are perhaps hurting the professional people here, I will withdraw that. I do not want to hurt them. But I am looking at it from the litigant's point of view, from the common man's point of view. You should not expect me to just advocate certain measures to protect the profession,

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Because a profession becomes a monopoly in a State and tries to preserve its own monopoly, as far as possible, with the small reforms on the fringe. That is so in every profession.

Mr. Speaker: I ought not to be understood to be interested in any particular body; not at all. But the statement that the subordinate judiciary, wherever it exists, is in collusion with all the touts and lawyers there is a very sweeping one. There are black sheep here and there and, of course, all steps must be taken to plug all the loopholes so that from top to bottom there is absolutely no whisper of any corruption or malpractice anywhere. But to make a sweeping remark like that is not desirable.

Shri Khadilkar: I have withdrawn that remark.

Mr. Speaker: Very well. Nothing more need be said about that.

Shri Khadilkar: I am sorry in my enthusiasm I might have made a sweeping remark. But the truth of there; that should be taken note of.

Shri Narayanankutty Menon: He is over-enthusiastic.

Shri Khadilkar: I am coming to that. In his over-enthusiasm for his profession he has glossed over the fundamentals of it. That is the worst aspect.

I was referring to one aspect of the the junior lawyer at the lowest level. I was once upon a time there for a few months. I did not find the atmosphere very congenial. Today a junior lawyer has to subsist on prohibition cases only. This is the state of affairs in my State. He has got to look to prohibition cases, because it gives him bread and butter. Even otherwise a normal man takes to law when he has no other avenues of employment open to him. In our days many of us went to law colleges because we were waiting to find some

opportunity for higher education or better employment. In between, the law college was attended for half-an-hour in the evening just for the sake of attendance. After two years we got our degree.

Even today the legal education is more or less at the same level. What I was saying was that it is because of this that we must see how the legal system operates at the lowest level and what role the lawyer plays there. That is very important. When I refer to Mahatma Gandhi I have a certain suggestion to make. If efforts are made to settle disputes at the lowest level, many of the disputes would be settled out of court. Today a litigation atmosphere is created. That is the worst of it. This system itself creates a litigation atmosphere and many people get involved into it and waste their time, money and energy. Therefore, I was talking of this aspect of the matter. I would appeal to the hon. the Law Minister to give serious thought to this. We have extended the health system.

Mr. Speaker: What are the hon. Member's constructive suggestion?

Shri Khadilkar: At the lowest level, as officer of the court, a lawyer should play this role. Another aspect of it is that all and sundry join the profession of law. Where is the necessity? Government should not enrol all people as lawyers. There should be some restrictions so that the efficiency and integrity of the profession may be maintained. If this is done they will be able to maintain some professional discipline and lawyers are not likely to take undue advantage of the ignorance of the litigant public. That is my second suggestion so far as the profession is concerned.

I entirely agree that what little has been done is good. Why have you kept this dual system? There are big prices in this profession because of this system in the big cities of Bombay and Calcutta. In Madras it is no

more there. The Commercial community can mobilise, organise work and run them as if they are joint stock companies and they can afford to engage big and eminent lawyers. I do not want to belittle the merit of lawyers as a class, as a profession, but their services are being taken advantage of by a particular community and ultimately justice becomes a marketable commodity in this society even at the highest level. This is the pernicious aspect of it. Do you expect any socialist or welfare State to make justice a marketable commodity? I would, therefore, appeal to the Law Minister to look at this problem from this angle.

Sir, regarding the legal education I would like to say a few words. I know for understanding of social life or political life a certain legal background is absolutely essential. I know that. I have not practised. Practice is confined only to procedural law. I know law so far as equity, so far as jurisprudence, and so far as constitutional law is concerned, what I would call philosophy of law. For that matter, everybody must study that aspect. It must be a compulsory thing even in the Arts Colleges. I would certainly advocate it. But the present standard of legal education is so miserably poor that unfortunately lawyers enrol themselves with a view to earning their bread and butter. They are most ill-equipped for the job. Some selective method must be adopted at the lowest level, if they are to serve the legal system not simply as appendages, but as a part and parcel of it, because they are officers of the court. If you adopt some measure of this kind, I am sure you will give better justice to the poorer section.

One point more and I will finish. I want that in this country at the lowest level justice must be made very simple and cheap and in a particular surrounding all the social forces that are helpful to bring about justice must be utilised and approached in a constructive way. I know a case in

point. In one of our districts a district magistrate, a young man, had some social outlook. He went to the District Court and appealed to the District Judge; he is going from village to village trying to get some of the disputes which are likely to result in a spell of litigation settled. I do not want executive officers to interfere in the legal processes. Far from it. But they must lend a helping hand to create such an atmosphere so that whatever remedies are available to poor people will be made available to them at their door and in a cheap manner. This is one thing you can do effectively. We are having development blocks. Why not have some machinery at the lowest level to evolve a method of arbitration at the lowest level? That will help a good deal and remove this vicious atmosphere. But this is found wanting.

Another development is that our property relationship is fast changing. In this book—I have no time to quote—the author who has examined every aspect of life in Britain says how it has adapted itself to the changing pattern of society. Not only we but the law courts also have an important part to play in this matter. Whatever we legislate here is to be ultimately interpreted by them and then it becomes a current point. If you look at this problem in this country from this angle you must apply your mind to the interpretation of the changing social relationship and property relationship. I will give one instance.

There are some eminent lawyers and ex-High Court Judges who are appointed to the highest tribunals. My experience after reading their judgments is—I have not practised there—that they do not understand the implications of a problem when they decide them, because they have never applied their mind from the trade union point of view or the employers point of view. They look at it from the point of view that there is some trouble and the employer is being harassed by the workers. There are many good judgments issued by the

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Tribunal Courts—I do not deny that. But this is what generally happens. I would therefore suggest that lawyers who are now occupying a crucial position should not represent the conservatism of law, but the dynamism of society. They must try to inculcate and impart a new outlook to the whole system of justice and then and then alone can we be proud that we are living up to the tradition of Gandhiji. Gandhiji aspired for this type of social justice at the lowest level, which is just, which is cheap and which is quick. Litigation should not create an atmosphere of doubts, a foul atmosphere which is never healthy for any developing society.

The Ministry of Law and the Law Commission have miserably failed to look at this social problem; they have exhibited a poverty of philosophy, poverty of thought, fundamental thought, and they have been tinkering with it here and there. To say, this lower court, that court, this *purshish* and that *purshish*, this kind of pleading and amendment of pleadings, all these things familiar in the practice in the court will not meet the situation.

Shri J. B. S. Bist (Almora): The Legal Practitioners' Bill seeks to bring uniformity and unification in the legal profession and attempts to give better status and respect to lawyers, and I congratulate the Minister of Law on having brought this Bill. Many hon. Members have spoken on the Bill and I will confine myself to one or two points only.

Reading clause 24 dealing with persons who may be admitted as advocates on a State roll, I find that it excludes several thousands of persons including displaced persons who are qualified and have actually practised law before taking up service, whether private or under the Central or State Government.

Under the present law they are entitled to take up legal practice if they are no longer in service. It is not

fair that their existing rights should be taken away by the passing of this Bill. This Bill would then be defeating its own laudable objects. The existing rights of such persons should not be taken away.

I believe that it is an unintentional omission, for in clause 24 of the Bill, on page 11, a proviso runs that clause 24(1) will not apply to any person who has been a member of the judicial service of a State or a member of the Central legal service. No reason exists why similar facilities should not be allowed to others similarly situated in other services. Such discrimination, in my opinion, is not fair or desirable. There can be no difficulty or objection in including these persons in the proviso. An amendment stands in my name, and in the circumstances I request the Minister of Law to kindly give his serious consideration to it and I hope that he will be kind enough to accept the amendment when it comes up.

There is another point on which I am not clear.

Shri A. K. Sen: May I enquire of the hon. Member if he has seen amendment No. 25 in List No. 5, which has been tabled by Shri Keshava, Shri M. L. Dwivedi and Shri Shiva Datt Upadhyaya? I would like to know if that will suit his purpose, because we are going to accept it, with slight amendments. I personally think that amendment No. 25 covers the hon. Member's objection.

Shri J. B. S. Bist: I have not gone through the contents and the implications of that amendment. But my point is this that any person who was practising law and who has joined service should not be debarred. The point is not whether he is in the judiciary or elsewhere. How does it make a difference? Being employed as a clerk in the judiciary does not give a person any special brains. Any person who was practising before is today entitled to practise again when he leaves service.

Shri A. K. Sen: That is why I asked him to read amendment No. 25, particularly (ii) (a), the last sentence which says "or has been an advocate of any High Court in any such area".

Mr. Speaker: "Has been" means down to the present day?

Shri A. K. Sen: Yes.

Shri J. B. S. Bist: Does the word "advocate" include vakil also?

Shri A. K. Sen: No.

Shri J. B. S. Bist: That is the trouble, because there are many vakils. After all, the members of the bar are not, all of them, very rich. Many of them have enrolled themselves for practice in district courts and all that. Why should they be debarred like this, just because they have gone into service to improve their finances to some extent? If they come out of service or after retirement, why should they be debarred? I leave it to the hon. Minister to consider this point. I am sure if he goes into it he will accept it. Because, we will otherwise be increasing unemployment also. On the one hand we are saying that people are unemployed and we cannot provide employment to them; and on the other we want to throw out people like this. Why should it be confined to the judiciary only? It should not be limited to the advocates only. I would like to know how that label of judiciary helps. Everybody in the judiciary is not intelligent—I may be excused for this remark. But the hon. Minister will agree that there are exceptional brains there, and there are also ordinary brains. My point is that there is nothing vague about it. Because, till such time as this Bill is passed, these people are on the rolls of the High Courts if they are advocates and they are on the rolls of the district courts if they are practising there. Why should they be debarred or their rights taken away? Are we going, by this Bill, to smother these people? I would therefore request the hon. Minister to agree to this amendment.

Shri A. K. Sen: We might agree, but I am having it redrafted a little, because I do not agree with the drafting of the hon. Member.

Shri J. B. S. Bist: Drafting is another matter. My only point is that people who are practising today as vakils and all that, High Court Vakils and so on, should not be debarred. Otherwise this Bill when it becomes an Act will be a curse on them. There are thousands of them, including displaced persons from Pakistan. Some people have been forced to leave it because . . .

Shri Moolchand Dube (Farrukhabad): How are they debarred?

Shri J. B. S. Bist: Because they are now in service. And so you debar their rights. When they leave service they can practise: That is the point. Anyhow, when the amendment comes up, it may be looked into.

The other point is this. I am not clear about the advocates on the roll of the High Courts. Because, I find that clause 17 (1) reads thus:

"17(1). Every State Bar Council shall prepare and maintain a roll of advocates in which shall be entered the names and addresses of—

- (a) all persons who were entered as advocates on the roll of any High Court under the Indian Bar Councils Act, 1926, immediately before the appointed day and who within the prescribed time, express an intention in the prescribed manner to practise within the jurisdiction of the Bar Council;"

This means that the advocates on the rolls have to apply within the prescribed time, expressing an intention in the prescribed manner to practise within the jurisdiction of the Bar Council. In my opinion they should have been automatically included in

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the list and allowed to practise without the necessity of applying. But if the point is that this is limited to their own States, and if they want to go to the other States they have to apply, that is another matter.

And then "prescribed manner" is not provided for. I presume it will be under clauses 28(1) and (2) (a)—pages 12 and 13, which means that rules will be framed. One does not know what these rules will be. They should in fact be confined to the fixing of time and a formal form of application. But this is not clear. In any event, I submit that those advocates who are already on the rolls should not be compelled to pay the call money and be penalised in this manner. When they are already on the rolls, why should more money be demanded from them? After all, in this legislation, our object is not to make money. On the one hand, we are trying to bring in uniformity, and we are trying to elevate the status of the legal practitioners, but, on the other hand, we are rejecting these people. I am sure these things must have escaped the notice of the Joint Committee. I do not know how these things escaped their notice. Surely, there must have been lawyers on the Joint Committee who must have noticed it. Whatever it be, I am one of those who wish to draw pointed attention to this namely that if more money is to be realised from them, then it is penalising them.

I would request the hon. Minister to kindly look into these points, and I do hope that he will consider the matter favourably.

श्री बजराम सिंह : अध्यक्ष महोदय, संयुक्त प्रवर समिति ने इस बिल में जैसा कि सदन में पहले पेश किया गया था, उसमें काफी संशोधन कर दिया है और उनका मैं स्वागत करता हूँ। इसमें एक प्रयत्न है कि सारे देश के लिये एक तरह का ढाँचा वकीलों का, हमारे वकालत करने

वालों का जो कि अदालतों में काम करते हैं उनका कायम किया जाय। यह बड़ी प्रसन्नता की बात है। लेकिन जहाँ पर संयुक्त प्रवर समिति ने इसमें कई परिवर्तन ऐसे किये हैं जिनका कि स्वागत किया जाना चाहिये, उसी के साथ साथ कुछ ऐसी बात है जोकि वकीलों के रास्ते में रुकावटें डाल सकती हैं और उनकी तरफ इस सदन का ध्यान जाना चाहिये।

खास तौर से एडवोकेट बनने के लिये जो इस बिल में व्यवस्था की गई है कि नये लोगों को बार कौंसिल को २५० रुपये बतौर एनरोलमेंट फीस देनी पड़ेगी। अब उसके लिये कानून मंत्री महोदय यह कहते हैं कि इसमें कानूनी रुकावट है इसलिए वह इस तरह की कोई व्यवस्था नहीं कर सकते कि स्टाम्प ड्यूटी उन लोगों से न ली जाय जोकि बार कौंसिल में फीस दे चुके होंगे। मैं समझता हूँ कि यह उचित नहीं है। कई माननीय सदस्यों ने सरकार का ध्यान इस ओर खींचा है और बतलाया है कि वास्तव में कानून में कोई इस तरीके की रुकावट नहीं है और यदि कानूनी रुकावट हो भी तो सिर्फ दो दृष्टिकोण रह जाते हैं। अब कानून मंत्री महोदय कहते हैं कि कानूनी रुकावट हो तो भी वह उसके बारे में इस वक्त कोई कदम नहीं उठाना चाहते, कोई कानून में व्यवस्था नहीं करना चाहते। अदालत में दाद में जाकर कोई टैस्ट केस लड़ कर इस बात को तय किया जा सकता है कि राज्यों को यह अधिकार है कि वह एडवोकेट्स से स्टाम्प ड्यूटी ले सकते हैं अथवा नहीं। मेरा कहना यह है कि टैस्ट केस अगर लड़ना है तो वह जरूर लड़ना चाहिये लेकिन यह पार्लियामेंट इस तरीके की व्यवस्था अभी कर दे कि कोई भी राज्य किसी एडवोकेट से स्टाम्प ड्यूटी नहीं ले सकेगा। सिर्फ २५० रुपये की एनरोलमेंट फीस की जो व्यवस्था है वही सिर्फ ले सकेंगे। अब हाईकोर्ट और सुप्रीम कोर्ट किस तरीके पर पहुंचते हैं कि स्टाम्प

ड्यूटी राज्य ले सकता है अथवा नहीं, यह बाद का प्रश्न है जिस पर कि बाद में विचार किया जा सकता है ।

मैं कहना चाहूंगा कि वह इस मुझाव पर पुनर्विचार करें कि क्या यह उचित नहीं होगा कि स्टाम्प ड्यूटी को बन्द करने के लिये इस कानून में व्यवस्था कर दी जाय । कोई भी राज्य स्टाम्प ड्यूटी वसूल न कर सके । अब स्टाम्प ड्यूटी विभिन्न राज्यों में अलग अलग है । कहीं पर वह ५०० रुपये ली जाती है और कहीं कुछ ली जाती है और यदि यह स्टाम्प ड्यूटी देने की व्यवस्था बनी रहती है तो उसके माने यह होंगे कि नये लोगों को इस पेशे में प्रवेश पाने में बहुत दिक्कत होगी । ५०० रुपया तो उसे स्टाम्प ड्यूटी का देना होगा और २५० रुपये जैसी कि इस बिल में व्यवस्था है बार कौंसिल को देना पड़ेंगे । इस तरीके से शुरू में ही जो कोई भी इस पेशे में प्रवेश करेगा उसे ७५० रुपये निश्चित रूप से देने पड़ेंगे । ला कमिशन ने भी इसकी चर्चा की है कि किसी दूसरे राज्य में इस तरह की व्यवस्था नहीं है और इसलिये यह व्यवस्था हटनी चाहिये और यह स्टाम्प ड्यूटी लेने का अधिकार राज्य को नहीं रहना चाहिये । सिर्फ यह एनरोलमेंट फीस वार कौंसिल में ली जानी चाहिये । लेकिन २५० रुपये की जो यह एनरोलमेंट फीस लेने का सवाल है तो मैं समझता हूँ कि हिन्दुस्तान की वर्तमान आर्थिक दशा में यह वार कौंसिल द्वारा २५० रुपये की फीस लेना कुछ उचित नहीं है । अब इस २५० रुपये की फीस लेने के पक्ष में सरकार की ओर से दलील यह दी जाती है कि अगर वार कौंसिल को व्यवस्थित रूप से चलाना है, सुविधाजनक रूप से चलाना है तो वार कौंसिल के पास फंड्स रहने आवश्यक हैं अब अगर आप वार कौंसिल के लिये फंड्स की व्यवस्था चाहते हैं तो मेरा अपना यह ख्याल है कि २५० रुपये के बजाय १२५ रुपये या १०० रुपये अगर आप एनरोलमेंट फीस कर दें तो अधिक लोग इसमें शामिल होंगे और संभवतः आपको जितना २५० रुपया लेकर फंड

मिल सकता है उससे अधिक मिल सकेगा । इस तरह से इस फीस को रखने में सरकार का जो इरादा है और जो उद्देश्य है वह १०० रुपया और १२५ रुपया रख कर अधिक हद तक पूरा हो सकता है और फंड्स की कोई कमी नहीं रहेगी । मैं समझता हूँ कि सरकार इस पर पुनर्विचार करे और यह फीस १०० रुपये या १२५ रुपये रखी जाय । २५० रुपया रख कर बहुत से अन्य लोगों को हम इस पेशे में प्रवेश पाने से वंचित कर देंगे ।

मैं श्री खाडिलकर के इस मुझाव का विरोध करना चाहता हूँ कि कोई इस तरह की व्यवस्था करनी चाहिये जिससे कि कोई सेलेक्टेड टैस्ट हम लागू कर सकें और किन्हीं लोगों को इस पेशे में आने से रोक दें । मैं समझता हूँ कि आज की पृष्ठभूमि में कोई इस तरह का टैस्ट रखना, कोई जांच रखना जिससे कुछ ही लोग इस वकालत के पेशे में आ सकें, यह उचित नहीं होगा । वैसे ही वकालत के पेशे में जो लोग डट नहीं सकते वे कुछ दिन बाद हट कर चले जाते हैं और दूसरे पेशे में चले जाते हैं । यह वकालत का पेशा खुद इस तरह का काम है कि जिसमें एफिशिएंसी न हो, अपना काम करने की शक्ति न हो और इस संगठन की उसे सही जानकारी न हो तो वह इस पेशे में सफल नहीं हो सकेगा । इसलिये मैं समझता हूँ कि इस तरह का कोई भी मुझाव विरोध करने लायक है जिसमें यह कहा जाय कि कोई सेलेक्टेड टैस्ट होना चाहिये और हर एक आदमी को वकालत के पेशे में आने की इजाजत नहीं होनी चाहिये ।

दूसरी बात मैं यह कहना चाहता हूँ । कि जिन लोगों ने १० साल, ५ साल या २ साल तक इस कानून बनने से पहले प्लैडर या बकील की हैसियत से वकालत कर ली है और उन्होंने जितना रुपया लेना चाहिये उतना वह राज्य सरकार को दे चुके हैं तो ऐसी हालत में अब उनको ऐडवोकेट बनाते वक्त कोई १२५ या २५० रुपये की फीस उनके लिये रखना ठीक नहीं है । उनसे अब कोई फीस नहीं लेनी

[श्री ब्रजराज सिंह]

चाहिये। एक इस तरह की व्यवस्था कर देनी चाहिये कि जिस दिन यह बिल ऐक्ट बनेगा उस दिन ऐसे लोग जोकि वकालत कर रहे होंगे जोकि प्लीडर या वकील होंगे उन्हें अपने आप एडवोकेट मान लिया जायगा। उन्हें किसी फीस को देने की आवश्यकता नहीं होगी। जो लोग अब तक वकील या प्लीडर की हैसियत से काम करते रहे हैं उन्होंने १० या २० साल में जबसे कि वह काम कर रहे हैं, उनसे एडवोकेट बनने की फीस लेनी उचित नहीं है क्योंकि वह जितना रुपया एडवोकेट बनने के लिये देते उससे ज्यादा रुपया वह दे चुके हैं। ऐसी सूरत में एडवोकेट होने के लिये और अधिक पैसा मांगना मैं समझता हूँ कि उचित नहीं है। इसलिये जो लोग प्लीडर या वकील की हैसियत से कानून लागू होते समय काम कर रहे हैं उनको तो अपने आप ही बिना किसी फीस को दिये हुये एडवोकेट मान लेना चाहिये।

ज्वायंट सेलेक्ट कमेटी ने भी इम पर खूब विचार किया और अपनी राय प्रकट की है। सदन में भी इस बारे में बहुत गरमागरम चर्चा हुई है। डुएल सिस्टम जो कलकत्ते और बम्बई में चल रहा है वह क्या लोगों के रास्ते में रुकावट नहीं डालता है और क्या कुछ लोगों के निहित स्वार्थ कायम नहीं करता है? सरकार इस सुझाव पर विचार करे कि क्या हम कलकत्ते और बम्बई में जो डुएल सिस्टम है उसको खत्म नहीं कर सकते हैं? कुछ लोगों के निजी स्वार्थ हो गये हैं और उनके कारण ही इस डुएल सिस्टम को कायम रखने की बात की जा रही है। दरअसल अब कोई इस तरह की आवश्यकता नहीं रह गई है कि यह जो बम्बई और कलकत्ते में डुएल सिस्टम है वह वहां पर कायम रहे।

कल सदन में कुछ माननीय सदस्यों ने वकीलों द्वारा ली जाने वाली फीस का जिक्र किया था। अब चूंकि वकीलों की फीस के बारे में कोई निश्चित सीमा नहीं है इसलिये उसमें

बहुत सी गड़बड़ हुआ करती है। अब कमजोर मुव्वकिल ज्यादा फीस होने की वजह से अच्छे वकील अपने लिये नहीं रख सकते हैं। मैं चाहता हूँ कि कोई न कोई इस तरीके की व्यवस्था अवश्य होनी चाहिये, चाहे तो राज्य उसमें बीच में दखल दे या कोई कानून की शकल हो जिससे कि वकीलों की और एडवोकेट्स की फीस को कोई सीमा बांधी जा सके। आज देखने में यह आता है कि बड़े वकीलों को अगर चैंक से पेमेंट किया जाय तो ज्यादा पैसे देने पड़ते हैं लेकिन अगर कैश की सूरत में पे किया जाय तो कम पैसे में ही काम चल जाया करता है। अब यह इस वजह से होता है कि वे कुछ पैसा इन्कमटैक्स देने से बचा सके। मैं समझता हूँ कि इस तरह से एक भ्रष्टाचार उस वर्ग द्वारा किया जाता है जिससे कि आशा की जाती है कि वह देश को नेतृत्व देंगे और देश के नेता उसमें से निकलेंगे। अब आप ही सोचिये कि एडवोकेट्स और वकील लोग ही इस तरह की गड़बड़ी करें और इनकमटैक्स की चोरी करने का प्रयत्न करें तो उनसे कैसे इस बात की आशा की जा सकती है कि वह मुल्क को सही नेतृत्व प्रदान कर सकेंगे और देश का सही मार्गदर्शन कर सकेंगे? इसलिये इम कानून में कोई इस प्रकार की व्यवस्था होनी चाहिये, जिससे इस संबंध में कोई सीमा बांधी जा सके।

13 hrs.

जहां तक कानून की शिक्षा का सवाल है, मैं समझता हूँ कि ज्वायंट सेलेक्ट कमेटी ने इस विषय की ओर काफी ध्यान दिया है, लेकिन फिर भी शिक्षा के बारे में जो व्यवस्था की जाने को है, वह समय के अनुसार काफी नहीं है। मैं चाहूंगा कि इस तरफ सरकार का अधिक ध्यान जाये और इस तरह की व्यवस्था हो कि कानून पढ़ने वाले लोग वास्तव में कानून के पंडित बन सकें और उन्हें न सिर्फ अपने राष्ट्र के कानून का, बल्कि संसार के दूसरे देशों के कानूनों का भी अच्छा ज्ञान हो। कानून की

शिक्षा के इस तरह के कोसिज तैयार हों कि वे बोग आज की पृष्ठभूमि में दुनिया की वर्तमान परिस्थितियों का अध्ययन कर सकें। मुझे ऐसा लगता है कि इस संबंध में जो व्यवस्था की जा रही है, वह सन्तोषजनक नहीं होगी और मैं चाहूंगा कि उसको अधिक सन्तोषजनक बनाये जाने का प्रयत्न किया जाये।

मैं आशा करता हूँ कि सारे हिन्दुस्तान का जो यूनिफाइड बार—सम्मिलित बार—बनाया जा रहा है, उसके रास्ते में कोई रुकावटें नहीं आयेंगी और उसमें ऐसी कोई राजनीति व्याप्त नहीं हो जायगी, जिस की अक्सर लोग आशंका करते हैं। हम देखते हैं कि चुनी हुई संस्थाओं में गुटबन्दी, ग्रुपबन्दी और पार्टीबाजी चला करती है। मैं आशा करता हूँ कि राज्यों में या आल-इंडिया स्तर पर जो बार कौंसिल बनेगी, उसमें इस तरह की गुटबन्दी नहीं होगी और अगर होती है, तो सरकार उस पर निरीक्षण रखेगी और यह देखेगी कि कहीं भी गुटों के आधार पर यह बार कौंसिल न चले, जिससे उस का लक्ष्य कहीं पीछे पड़ जाये और पूरा न हो सके।

एक और बात की तरफ ज्वायंट मिलेक्ट कमेटी ने ध्यान दिलाया है और मैं भी उसको दोहराना चाहता हूँ। वकालत के पेशे में कुछ लोग, कुछ ऐडवोकेट्स, ऐसे होते हैं, जिनको काम नहीं मिलता है, जबकि कुछ को बहुत अधिक काम होता है, जिसको वे सन्तोषजनक रूप से और उस के साथ न्याय करते हुये पूरा नहीं कर सकते हैं। इस तरह की भी व्यवस्था होनी चाहिये—चाहे वह लोगों को इकट्ठा कर के हो, फर्म या ग्रुप बना कर हो, जैसे भी हो—कि जो लोग इस पेशे में प्रवेश पाते हैं, उनको कुछ न कुछ काम मिल सके, ताकि उनकी रोजी का गुजारा हो सके।

बहुत दिन तक इस पेशे में काम करते रहने के बाद जो लोग असमर्थ और अक्षम हो जाते हैं, जिन में काम करने की क्षमता नहीं रह

जाती है, उनके लिये भी कुछ व्यवस्था होनी चाहिये, जिससे ऐसा न हो कि जिन्दगी के आखिरी दिनों में, जबकि वे कोई काम नहीं कर सकते हैं, वे अपना गुजारा न कर सकें। मैं चाहूंगा कि सरकार इस पर विचार करेगी और इस संबंध में कोई फंड कायम करने की कोशिश करेगी।

अगर मोटे तौर से देखें, तो यह बिल स्वागत करने योग्य है, लेकिन अगर कुछ बातों पर, जिनकी तरफ मैंने इस सदन का ध्यान दिलाया है, सरकार पुनर्विचार करके कोई निश्चय करे, तो मैं समझता हूँ कि इसको और भी संशोधित, उपयोगी और अच्छा बनाया जा सकता है। मैं आशा करता हूँ कि सरकार इन बातों पर ध्यान देगी।

Shri Oza (Zalawad): Mr. Speaker, Sir, so far, so many lawyer and non-lawyer friends have participated in this debate. Being of the profession and still not being too much in it nowadays, I think I am in a position to take a more detached view of the thing and, perhaps, a more realistic view also.

Since we are discussing the Legal Practitioners' Bill, I think we should view these provisions from that point of view. We should not take an ostrich-like attitude. I would request my lawyer friends here to see themselves as others see them and not be under any illusion. It is true that this profession is styled as a noble profession. But, we should ask a question to ourselves whether it is practised nobly nowadays. It is no use the lawyers simply taking the satisfaction that they are associated with a very noble profession. Of course, it is a noble profession. But, as I said, can we take the satisfaction that it is being practised nobly nowadays? If we are under any delusion, I think, the time has come for introspection inasmuch as we should try to see ourselves as others see us so that we can arrive at a correct solution so far as this profession is concerned.

[Shri Oza]

As was pointed out, it is also true that after all the society in which we are living is bound to be reflected in this profession also. We cannot expect, as has been said, a moral man in an immoral society. But, at the same time, being associated with what we usually call temples of justice and all very high-sounding words, I think our duty becomes very grave and very enhanced from that point of view. Therefore, we should examine the provisions of this Bill, broadly speaking, from the social point of view and not only from a particular profession's point of view.

It is a profession and not a trade or business. But, have we allowed it to remain as a profession? As has been pointed out by the Law Commission in its report at various places, I think we should deeply examine the question and find out what is the malady that is afflicting this profession which is inherently very sound.

This brings me immediately to the question of discipline. In the name of autonomy we have not associated the Members of Bench, that is, the High Court Judges, with the Bar Councils. The Bar Councils alone will now be taking disciplinary action whenever it is necessary. What has the Law Commission observed in this respect? Referring to the vice of toutism, at page 578 of *the Law Commission's Report*, Volume I, it has been observed:

"Notwithstanding the view expressed by the Bar Committee that the Bar Councils should take steps to eradicate the evil and their hope that the Bar Councils would make the eradication of this evil their principal concern, it does not appear that they have attempted to take any steps in this direction."

No attempt even has been made by Bar Councils, where the High Court Judges are associated, yet to take any step to make eradicate this evil of toutism and other evils afflicting this profession.

Now, after having taken out the Judges from the Bar Councils, do we expect that the members of the Bar Councils themselves would be able to take disciplinary action in the present context? So, I am of the view that we should continue to associate the High Court Judges in these Bar Councils. Unless we do so, I do not think that we would be able to raise the standards in the profession. Today, as matters stand, we should recognise that it is the High Court and the High Court alone which is the hope for raising the standards and for maintaining the standards and for lifting the whole thing out of the quagmire in which the judicial institutions are today.

I do not think that in the name of autonomy we should invest the Bar Councils with so many powers. As I said I belong to the profession; but still I am afraid. The Bar Council at Bombay or here and there may be very powerful; but, speaking largely, I am not in a position to assert that all the Bar Councils would be able to take disciplinary action, when no attempt has been made so far to remove the evils. So, I would humbly suggest that we should continue to associate the High Court Judges with the Bar Councils. They would be able to give a tone to the whole profession and lift the morale which is very necessary today in the present circumstances.

This brings me to the question of enrolment. Much has been said about the conditions of enrolment and all that. Here also the Law Commission has made very nice observations and we should not ignore them. I am not able to lay my hand on the page, but it is said that the main cause of these things is that junior lawyers and many lawyers of long standing also do not find sufficient means of sustenance out of this profession. If we go to the law courts, we find so many young people moving from court to court, absolutely frustrated. When they are young and energetic and enthusiastic, they can do so much work but then they are denied work. For the first

five or ten years after a person has left a university he is denied work. That condition has led to toutism and the other defects observed by the Law Commission. But that persists even after a man becomes a senior advocate; he cannot get out of that evil once he has adopted that; he finds it very difficult to eschew it. Once a man is enrolled as an advocate we should make some provision to see that he is given some amount to keep him going. If you want to tackle this problem definitely and in the correct manner, then the Government should start paying him at least Rs. 150 or so till he starts paying income-tax. Only then, because of the security, he will be able to bring out his best and learn the profession correctly, and not indulge in malpractices. Unless he is provided with some security for a minimum period of, say, five years, we should not blame him for indulging in malpractices. The family has imparted such high education; naturally it is expected that he will start earning. But as we know today, it is difficult to earn immediately when a man starts. Unless we give him some social security for some years or till he starts paying income tax, I do not think we should expect high moral standards of the profession from him. As was pointed out by Shri Khadilkar, it is no use denying all these problems. Unless we go to the root of these problems, I do not think it is possible to eradicate all these evils. The lawyers are to play a very important role in this effort and unless junior lawyers are given some social security in the beginning of their career so that they can devote their time to more useful pursuits, it will be difficult. Government can take work from them while paying them. They can assign some work to them. Unless that facility is given, I am afraid we will not be able to raise the standards of the profession.

Much has been said about the dual system. This system is prevailing in two cities—Calcutta and Bombay. Personally speaking, I am very much against this system; it is a very costly system and it also results in a lot of

delay. There are so many other cities like Bombay and Calcutta where trading and other activities are taking place and in such cities, even though this dual system is not prevalent, the litigation is not suffering. On the contrary, perhaps it is cheaper than in other places like Bombay and Calcutta. Certain persons are accustomed to that way of practice and they are unable to extricate themselves from this line of thinking. Looking to the conditions in the country, what we require is a very simple system. When this system is not prevailing in other commercial and industrial cities of India, I do not think it is necessary to continue these institutions in the cities of Calcutta and Bombay.

I want the explanation of the hon. Minister about one more point. In clause 30 it is said:

“(1) Every advocate whose name is entered in the common roll shall be entitled as of right to practise throughout the territories to which this Act extends,—

- (i) in all courts including the Supreme Court;
 - (ii) before any tribunal or person legally authorised to take evidence; and
 - (iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise.
- (2) The right to practise conferred by sub-section (1) shall be subject to the restrictions imposed by articles 124 and 220 of the Constitution.”

In the previous provision, it is said that an advocate who is enrolled in the State bar council is entitled to practise. In the present circumstances, a High Court pleader or the pleader who is not a graduate is not entitled to practise because by the rules framed under articles 124 and 220 the Supreme Court has debarred them from practising.

The Deputy Minister of Law (Shri Hajarnavis): The rules are not made under article 124.

Mr. Speaker: The hon. Member may conclude now.

Shri Oza: If this provision is removed, advocates who do not hold degrees will also be entitled to practise in the Supreme Courts. If the advocates not having law degrees are not entitled to practise in the Supreme Courts or to continue practise the position may be reviewed.

Shri Shankaraiya (Mysore): Sir, the Bill as it has emerged from the Joint Committee has got many improvements and the Committee is to be congratulated on the improvements made upon the original Bill. The long cherished idea of having a united bar and independent and autonomous bar will become a fact when this becomes an Act. When these bar councils are established and they get into working, they will be discharging a duty, apart from the functions that have been enumerated in clauses 6 and 7. I feel that the powers and functions entrusted to these bar councils cannot be adequate enough to meet the requirements of the present day social changes and administration.

The change that is required in our country is to be in the judicial system itself. The judiciary is no doubt efficient and independent and it has won the respect and it is called the highest temple of justice. We have the greatest regard for our judiciary. But it is a foreign system. Our indigenous system is different. A new system of administration of justice should be devised and the Government should take immediate steps to see that the judiciary is completely modernised to fit in with our circumstances and our social conditions so that it may work out much cheaper and with less delay. This Bill may not improve matters in that regard. But the public and the society are suffering on account of the tardiness and costliness of the judicial system and the delay in judicial decisions. That is delay in judicial decisions. That is

main problem to be dealt with. I hope the Government will pay immediate attention to this aspect of the matter.

The bar councils have been asked to promote and support law reforms and in clause 6(2) they are asked to give assistance to indigent or disabled advocates. This is a good thing. But apart from this the Joint Committee ought to have insisted or made it an obligatory duty on the bar councils to give free legal assistance to the really poor people. There have been legal aid societies. They are independent societies and they are doing this duty. Many of the bar associations are doing this duty. But if that duty had been embodied in the provisions and made compulsory on the part of the Bar Councils, then, in many of the cases where justice could not be had because of the lack of proper assistance, because of the lack of financial assistance and other facilities, those people could get justice. That is the main function of the Bar Councils. If this provision had been added and made compulsory, these Bar Councils would have done a great service. Even now, even though it is out of their own purview, I hope the Bar Councils will pay more attention towards giving assistance to the really needy, poor and disabled persons.

As regards the fee that is levied for enrolling oneself, the Joint Committee has reduced it from Rs. 500 to Rs. 250. According to the Bill, the Joint Committee has insisted on a training course for a particular period that has to be prescribed by the Bar Councils, and then an examination will be held and those who pass the examination should be enrolled as advocates. Now, no other profession in India is asked to pay such a huge sum. Somehow, this practice has come into the legal profession. Many of us have paid Rs. 300 or Rs. 500. The amount differs from State to State, and the practice is different from State to State. But in no other profession including the profession of chartered accountants, or cost accountants is such a fee levied. It is only

in the legal profession that a fee of Rs. 250 or Rs. 500 is levied. In some cases it is Rs. 1,000. This fee of Rs. 250 is too much. It must be reduced to at least Rs. 50. Why I ask for this reduction is because of this; there are two grounds. Firstly, it is very costly; those who take up the legal profession will have to put in some period of training, after getting the law degree, and during the period of training they will not be earning anything. As we know the seniors will not be paying them anything. Then, after the period of training, they have to take an examination. The period of training may be two or three years, which may be prescribed. During the period of training he will not get anything. After having spent so much money in getting a degree and during the period of training, and after maintaining himself in an unemployed position for nearly two or three years, he is asked to pay again a sum of Rs. 250. That will be taxing too much. The parents may or may not be willing to pay it especially when they had exhausted all their resources in getting their boy educated. To pay Rs. 250 at that stage would be too much. Therefore, the amount should be just the absolute minimum, as far as possible.

Mr. Speaker: Further, when they are asked to file a vakalath, the court-fees have to be paid. For each case, wherever the lawyer appears, he has to pay some stamp duty in respect of the vakalath. Why should it be charged? It is an old practice. Many a young man, after having spent all his money, finds it very difficult to pay. And after the Dowry Bill is passed, he cannot ask his father-in-law to pay, say, Rs. 800. Therefore, he is neither here nor there. I think the Government may consider it. After all, of all these learned professions, why make this profession rather mercenary?

Shri Hajarnavis: We have sympathy for them. But, as I said in my opening speech, yesterday, we have no power. The matter falls strictly within the legislative competence of the States.

Shri Ram Krishan Gupta (Mahendragarh): That is doubtful.

Shri Hajarnavis: We join our voice with this request.

Mr. Speaker: Is there any fee charged by the Central Bar Council the all-India Bar?

Shri Hajarnavis: Rs. 250 is the fee and a portion of that will be transferred to the Bar Council of India, Rs. 250 is the all-inclusive fee.

Mr. Speaker: Is it left to the States?

Shri Hajarnavis: The State Bar Councils will have to get Rs. 250, but....

Mr. Speaker: But a sensible Bar Council will not have any objection if it is exempted.

Shri Hajarnavis: If the States do not charge any fees, we shall be glad. After all, what is the revenue that is collected, and how many new lawyers are enrolled every year? I do not think it makes a very impressive contribution to the States exchequer.

Mr. Speaker: The hon. Minister will write to them through his senior Minister. It is the general wish of all hon. Members here, who have taken part in the discussion, that the fee should be reduced or abolished.

Shri Hajarnavis: Certainly; it will be our privilege to carry out your direction.

Shri Shankaraiya: In addition to this sum of Rs. 250, they will have to pay a stamp duty. Many hon. Members have referred to it and I therefore do not want to refer to it again.

Mr. Speaker: What is the stamp duty?

Shri Shankaraiya: In some States it is Rs. 500. It differs from State to State, I think.

Shri Ram Krishan Gupta: Rs. 750 in some States and also Rs. 1,000 in some States.

Mr. Speaker: Is it apart from the fee for enrolment?

Shri Ram Krishan Gupta: Yes; apart from the enrolment fee.

Shri Sinhasan Singh (Gorakhpur): For the Bar Council of India, it is Rs. 250. The States charge differently. The amount ranges from Rs. 500 to even Rs. 1,000.

Shri Ram Krishan Gupta: It goes up to Rs. 1,000 also.

Shri Tyagi (Dehra Dun): Everybody in the profession pays. What is the harm in the Government realising this amount?

Mr. Speaker: Hon. Member is not a lawyer.

Shri Tyagi: My opinion is very dispassionate.

Shri Shankaraiya: I am explaining the hardship that has been caused to the law graduates on this score. There is also another aspect. Even after enrolling himself by paying Rs. 250, to pick up practice and to get into the forum of courts and reach the earning capacity, he must wait for another two, three or four years, according to his luck. Therefore, from all aspects, the levying of this additional sum of Rs. 250 will prove a very great hardship and so the amount should be curtailed.

Another disservice that the Government will be doing by levying this fee is, they will be actually prohibiting people from joining this profession. What the graduates generally do nowadays is, after getting the B.A. or B.Sc. degree they get into a law college, take a law degree and begin to practise. But mere book knowledge by getting a degree is not enough. He will not have enough equipment and he will not have the power of interpretation, the legal mindedness, etc. He will not have any idea of procedural law. It is only when he practises under a particular person and gets into the profession that he

will be able to acquaint himself with procedural law and the method of interpretation of the laws and get a judicial frame of mind. Some of them, while practising, may be having an eye to get into the service, either private service or Government service. When they have got this legal knowledge and this practical training, it will be an advantage to the employer to have such people with mature knowledge. It is common experience as we know, that some of them meet the people in the administration which passes so many laws. Now, so many laws are being delegated to the States. We have got so much of delegated legislation and that is interpreted by the officers, and if experienced people who have the legal frame of mind are drafted to the departments, then there will be an increase in efficiency. But all this will be deprived if a fee of Rs. 250 is levied and thus making it difficult for them to get into practice.

Mr. Speaker: The hon. Member's time is up.

Shri Shankaraiya: Only one more point, Sir. It is insisted that after the period of training under a senior advocate or an advocate, the person has to undergo an examination. Having passed a law examination—when the prescribed minimum qualification for an advocate is a law degree—and when the person has got the practical training for a particular period, there is no necessity of having an examination at all. That will make him unnecessarily dejected and it will create a feeling of aversion to get into the profession, especially when he has gone through all these ordeals. Therefore, I feel that the examination is not necessary. Of course, the insistence on a degree is quite necessary. Otherwise, he will not have that practical knowledge. The period of training is also necessary, but the examination should be done away with.

Mr. Speaker: Is there any fee charged by the senior advocate from the junior who starts as an apprentice?

In my parts, Rs. 3000 or Rs. 4000 is charged.

Shri A. K. Sen: No, Sir; it is only in England that when a student joins somebody's chamber, before he is called to the bar, he has to pay a fee. In decent chambers, the fee is always 100 guineas.

Mr. Speaker: Is there any prohibition against this in the Bill?

Shri A. K. Sen: No.

Mr. Speaker: So, they can charge even now.

Shri A. K. Sen: Usually in this country, I do not think any such fee is being charged anywhere.

Shri Amjad Ali (Dhubri): There is provision in the existing Act that article clerks have to pay Rs. 50 to the senior to whom he is attached before getting the certificate.

Mr. Speaker: I am not talking of article clerks; I am talking of apprentices.

Shri A. K. Sen: In our parts, I do not think there is any such practice in Southern India.

Shri Mulchand Dube: There is a fee, but it is never charged.

Shri A. K. Sen: I do not know if any senior practitioner charges any fees from article clerks.

Shri Nathwani (Sorath): There is no such practice in Bombay.

Shri A. K. Sen: Nor in Calcutta. I know about the High Courts of Patna, Allahabad and Punjab also. I do not think any such fee is being charged. But there is nothing professionally incorrect in charging the fee. It is much better to do so rather than have a bite from the junior's share of the fees. In England it is a regular practice. No decent chamber would take people unless they pay 100 guineas.

Shri J. B. S. Bist: In Almora and Naini Tal they have introduced this system. When one passes and qualifies himself, he as a junior takes training under a senior. There is a fixed fee for it. It is only after the certificate of fitness of the senior that he is allowed to appear in courts.

Mr. Speaker: The hon. Law Minister will watch. If there is any abuse, he will come with an amendment.

Shri A. K. Sen: The Bar Council itself can do so later. We are giving them large powers for autonomous administration. I think this matter should be left to the Bar rather than being dealt with in Parliament.

श्री सिंहासन सिंह : अध्यक्ष महोदय, यह विधेयक जो आज सदन के सामने उपस्थित है उसके लिये काफी साधुवाद दिया गया कि बहुत दिनों का अपेक्षित विधेयक हमारे सामने उपस्थित किया गया। इस सम्बन्ध में मुझे दो चार शब्द कहने हैं। क्या इस विधेयक की उतनी आवश्यकता थी जितनी कि देश के सामने आज और विधेयकों की आवश्यकता है। अभी हाल में हमारे एक हाईकोर्ट के जज ने बड़े सुन्दर शब्दों में हमारे न्याय के सम्बन्ध में अपने विचार प्रकट करते हुए कहा है कि इस देश में न्याय उन्हीं को सुलभ हो सकता है जो अशोका होटल में रह सकते हैं। यानी आज इस देश में गरीबों को न्याय सुलभ नहीं है। तो उचित तो यह था कि सरकार पहले इस पर विचार करती और कांस्टीट्यूशन में भी यह रखा गया है कि न्याय को सुलभ करेंगे और सब के लिये सुगम करेंगे और न्याय के लिये चार्ज नहीं लेंगे, लेकिन आज कदम कदम पर न्याय के लिये खर्चा करना पड़ता है और गरीब तो न्याय के दरवाजे तक पहुंच ही नहीं सकता। सुप्रीम कोर्ट तक जाना तो मुहाल है हाई कोर्ट तक ही जाने में बड़ी दिक्कतें हैं। तो आवश्यकता तो यह थी कि पहले इस पर विचार करते। यह प्रश्न सदन के सामने और ला मिनिस्टर के

[श्री सिंहासन सिंह]

सामने भी यहां लाया गया कि गरीबों को राहत देने के लिये या सही कानूनी सलाह देने के लिये सरकार ने कोई कदम उठाया होता। कुछ राज्यों में इस दिशा में कुछ किया गया है लेकिन फिर भी कोर्टफीस आदि की बड़ी खर्चीली व्यवस्था है और गरीबों को मुफ्त कानूनी सलाह देने के लिये कोई व्यवस्था नहीं है। हम आज यह विधेयक तो पास करेंगे, लेकिन मेरा अनुरोध है कि इस पर भी विचार करें कि हम जनता को न्याय पाने में सहूलियत दें और न्याय को सस्ता बना दें जिसके बिना जनता में त्राहि त्राहि मच रही है। और जब यह खर्चीली व्यवस्था कायम है तब तक उन गरीबों के लिये जो कि पैसा न होने के कारण वकील नहीं कर सकते उनको मुफ्त कानूनी सलाह देने की व्यवस्था की जाये।

इस के बाद मैं आपका ध्यान स्टाम्प ड्यूटी की तरफ आकर्षित करना चाहता हूँ। अभी आपने पूछा कि क्या कोई स्टाम्प ड्यूटी इसके अलावा भी स्टेट्स में ली जाती है। मैं अर्ज करना चाहता हूँ कि प्रवर समिति ने इस पर विचार करते हुए कहा है कि यह जो ड्यूटी ली जाती है यह डाउटफुल है। प्रवर समिति की रिपोर्ट में लिखा है

"While a provision in the Bill in this behalf may be of doubtful validity in view of the distribution in the Constitution of legislative powers relating to stamp duty, the Committee recommend that the State Governments might be persuaded to take such action as may be necessary so that no stamp duty, in addition to the fee payable under this Bill, is levied on the admission of advocates."

मेरा सबमिशन है कि अगर वकीलों के प्रवेश के लिये स्टाम्प ड्यूटी देना डाउटफुल है तो इस डाउट को रिमूव किया जाना चाहिये इस विधेयक को लाने के पहले इस शक को

दूर कर लेना चाहिये था, आपको इसके लिये एडवोकेट जनरल या एटारनी जनरल की सलाह लेनी चाहिये थी ताकि यह शक दूर किया जा सकता। मैं अर्ज करना चाहता हूँ कि इसमें शक कोई नहीं है। यह लीगल प्राफेशन कानकॉट लिस्ट में आता है।

Shri Narayanankutty Menon: The question is about stamp duty.

Shri Amjad Ali: That is a State subject.

श्री सिंहासन सिंह : डाकूमेंट्स पर स्टाम्प ड्यूटी लेने का कुछ अधिकार स्टेट्स को है और कुछ सेंटर को भी है। लेकिन वकीलों को प्रेक्टिस करने के लिये जो सनद मिलती है क्या वह कोई डाकूमेंट है, या सर्टिफिकेट है या लाइसेंस है। डाकूमेंट तो वह नहीं कहा जा सकता क्योंकि उसको और डाकूमेंट्स की तरह अदालत में दाखिल नहीं करना होता। वह तो एक लाइसेंस है। तो इस फी को लाइसेंस फी कहा जा सकता है न कि स्टाम्प ड्यूटी। स्टाम्प ड्यूटी की परिभाषा दी हुई है स्टेट लिस्ट में और सेंटर की लिस्ट में भी। लिस्ट १ की एंट्री नम्बर ६१ में दिया हुआ है :

"Rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts."

और लिस्ट २ की एंट्री नम्बर ६३ में इस प्रकार दिया गया है :

"Rates of stamp duty in respect of documents other than those specified in the provisions of List 1 with regard to rates of stamp duty."

लिस्ट २ की एंट्री नम्बर ६० में दिया हुआ है :

"Taxes on professions, trades, callings and employments."

लेकिन यह कोई टैक्स तो है नहीं। तो फिर यह रुपया किस लिये लिया जाता है। डाकूमेंट यह है नहीं। अगर इसको लाइसेंस माना जाय तो इस पर स्टाम्प ड्यूटी नहीं लग सकती या इस पर ड्यूटी लगनी चाहिये यह तै करना होगा। यूनियन लिस्ट में बिल्स, हुंडीज वगैरह पर स्टाम्प ड्यूटी के लिये प्रावीजन है। लेकिन उसमें यह नहीं आता। तो फिर यह जो स्टाम्प ड्यूटी ली जा रही है यह किस में आती है। लीगल और मैडीकल प्राफेशन स्टेट लिस्ट में भी आता है और कानकरेंट लिस्ट में भी आता है। हम अब कानून बना रहे हैं लीगल प्राफेशन के लिये कि कौन इसमें रहे और कौन न रहे और कैसे रहे। तो मेरा निवेदन है कि जो कानून बनाया जाये वह समुचित रूप से सर्वांगीण होना चाहिये। आपने बार काउंसिल के लिये तो २५० रुपये रखा लेकिन गवर्नमेंट को भी मिलना चाहिये या नहीं इस पर आप डाउटफुल हैं। तो इस शक को दूर करना चाहिये। अब आप कानून बना रहे हैं कि कौन प्रैक्टिस करेगा और कौन नहीं करेगा। हम देखते हैं कि चार्टर्ड एकाउंटेंट भी प्रैक्टिस करते हैं। उन को स्टाम्प ड्यूटी देनी पड़ती है या नहीं यह मुझे नहीं मालूम। और लोग भी दूसरे व्यवसाय करते हैं। इसी तरह यह भी एक व्यवसाय है। अभी कल हमने इमेशियल कमोडिटीज बिल पास किया कि जो परमिट ले उससे सीक्योरिटी डिपाजिट लिया जाये। तो क्या यह हमसे सीक्योरिटी डिपाजिट लिया जाता है मैं चाहता हूँ कि इस पर विचार करके इसको निश्चित किया जाये। जब यह इस हाउस से राज्य सभा में जाये तो इस पर विचार करके इसको कम्प्लीट कानून बनाया जाये। मैं चाहता हूँ कि केन्द्रीय सरकार प्रदेश सरकारों से सिफारिश करे—आपने कहा है कि हम लिखेंगे—आप उनसे इस्तदुआ करें कि इस स्टाम्प ड्यूटी को माफ करो और साथ ही आप देख लें कि आपके अधिकार में यह आती है या नहीं। मेरे खयाल से तो यह आपके अधिकार में आती है।

अब मैं दूसरी बात यह कहना चाहता हूँ कि इस दफा २४ पर मुझे कुछ ऐतराज है। हमारे कानून मंत्री खूद एक बैरिस्टर हैं। कल एक हमारे बैरिस्टर मित्र श्री गुप्ता ने भी इसका विरोध किया और मैं उनका समर्थन करता हूँ। इसमें आपने दिया है कि एडवोकेट के एनरोलमेंट के कौन-कौन अधिकारी हैं।

“Persons who may be admitted as advocates on a State roll.”

इसमें आपने बैरिस्टरों को छूट दी है। ठीक है छूट दीजिए, लेकिन क्या हमारी यूनीवर्सिटियों से जो डिग्री प्राप्त वकील हैं उनको भी इंग्लैंड में इस तरह की छूट है।

आज हम इंग्लैंड की मातहतती में नहीं हैं। किसी समय अलबत्ता हमारा देश इंग्लैंड के अधीन था। उस समय हमारे कुछ भाई इंग्लैंड में जाकर बैरिस्टरी की ट्रेनिंग लेते थे और वहां से बैरिस्टर बन कर लौटते थे। लेकिन आज तो हालात बदल चुके हैं और हम और इंग्लैंड दोनों स्वतंत्र राष्ट्र हैं और एक दूसरे के मातहत नहीं हैं। हम एक दूसरे के मित्र हैं। ऐसी हा त में मेरी यह चीज समझ में नहीं आती कि वहां का बैरिस्टरी पास किया हुआ व्यक्ति यहां तो बैरिस्टरी करने के लिए इनटाइटेल्ड है लेकिन हमारे वहां का ला ग्रेजुएट वहां इंग्लैंड में बैरिस्टरी करने के लिए इनटाइटेल्ड नहीं है....

Shri A. K. Sen: I took up the matter with the authorities in England. I shall be making some announcement in regard to that.

श्री सिंहासन सिंह: अब अगर यह हो गया है तब तो मुझे कोई ऐतराज नहीं है। अब जैसा कि आप कहते हैं अगर ऐसा हो गया है तो मैं अपनी उस आपत्ति को वापिस लेता हूँ लेकिन जब तक वह नहीं होती है तब तक के लिए यह आपत्ति वहां पर मेरी मौजूद है। हमारे में समता

[श्री सिंहासन सिंह]

ही विषमता न हो और इसलिए यह इंग्लैंड जाने या न जाने की विषमता और वहां से पास करने या न करने की विषमता नहीं रहनी चाहिए और इसको हटना चाहिए और समता आनी चाहिए ।

Shri Amjad Ali: What about other countries?

श्री सिंहासन सिंह: दूसरी बात इस सम्बन्ध में एक और है जिसकी कि ओर मैं इशारा करना चाहता हूँ और वह क्लाइ नम्बर २४ का पार्ट डी० है जोकि इस प्रकार है:—

“he has undergone a course of training in law and passed an examination after such training both of which shall be prescribed by the State Bar Council.”

वकालत की सनद हासिल कर लेने के बाद भी उसको ट्रेनिंग लेनी पड़ेगी । अब ट्रेनिंग आज भी है लेकिन कोई ऐग्जामिनेशन नहीं है । अब आप यह प्रैक्टिकल ट्रेनिंग रख रहे हैं जिसका कि इम्तिहान पास करके क बाद वह इन-टाइटिल्ड हो सकेगा लेकिन इसके ब खिलाफ जो इंग्लैंड से बैरिस्टर्स पास कर आये हैं उनके लिए इस प्रैक्टिकल ट्रेनिंग का इम्तिहान पास करने की जरूरत नहीं है . . .

Shri A. K. Sen: Provided that this clause shall not apply to a barrister who has received practical training in England. It is in the Bill itself.

श्री सिंहासन सिंह: प्रैक्टिकल ट्रेनिंग ले ली है तो मुझे इस पर कोई ऐतराज नहीं है । मेरा तो ऐतराज यह है कि इन दोनों के बीच में यह फर्क क्यों किया जा रहा है ?

आजकल कानून की जो शिक्षा मिल रही है वह अधूरी है, और सस्ती सी हो गई है और महंगी भी है । पार्ट टाइम टीचर्स आते हैं और पार्ट टाइम

विद्यार्थी रहते हैं । अध्यापक जो पढ़ाने वाले हैं वे भी पार्ट टाइम होते हैं और जो पढ़ने वाले हैं वह भी पार्ट टाइम होते हैं और जाकर प्रोक्सी से इम्तिहान पास कर लेते हैं । ऐसे आदमियों की संख्या आप बढ़ाते जा रहे हैं और हो रहा है कि जिन्हें और कोई प्रोफेशन में जगह नहीं मिलती एम्प्लायमेंट नहीं मिलता वह इसमें चले आते हैं । टीचरी और वकालत यह दो रास्ते ऐसे लोगों के वास्ते खुले हुए हैं ।

बिल में यह क्लाइ रक्खा गया है कि इस वकालत के पेशे में उन्हीं युनिवर्सिटियों से डिग्री या फुल विद्यार्थियों को ऐडमिट करेंगे जिनको कि बार कौंसिल रेकग्नाइज करेगी । अब बार कौंसिल को रेकग्नाइज करते वक्त यह देखना चाहिए कि युनिवर्सिटियों और कालिजों में लीगल टीचिंग की क्या हालत हो गई है । अब मैं आपको बतलाऊं कि युनिवर्सिटियों और कालिजों में यह लीगल टीचिंग एक विजनैस सा हो गया है, एक व्यवसाय सा हो गया है । दो, तीन प्रोफेसर्स पार्ट टाइम रख लिये जाते हैं और फीस की शकल में काफी रुपया मिल जाता है । काफी लोग फीस देने के लिए मिल जाते हैं और कई कालिजों की यह आमदनी का एक जरिया हो गया है । लड़के भी पार्ट टाइम बेसिस पर आते हैं । दिन भर काम करते हैं और फीस देकर पार्ट टाइम बेसिस पर इसमें भी नाम लिखा लेते हैं । अब मेरा निवेदन यह है कि यह वकालत की पढ़ाई पार्ट टाइम बेसिस पर नहीं चलनी चाहिए । पूरे तरीके से लोग जो आये वे अध्ययन करें । यह जो आनरेबुल प्रोफेशन कहलाता है तो इस बात का ध्यान रखना चाहिए । कि इसमें अध्ययनशील पुरुष आये और कायदे से इसकी पढ़ाई चले । मेरा विचार है कि

आप इसका खयाल रखेंगे। हर एक कालिज की ला डिग्री रेकगनाइज्ड नहीं है...

अध्यक्ष महोदय : क्या माननीय सदस्य गरीबों को वकालत पढ़ने का मौका नहीं देना चाहते हैं ?

श्री सिंहासन सिंह : गरीबों को हम अवश्य अवसर देना चाहते हैं लेकिन वह पढ़ तो सही। हमें चाहिए कि वह गरीब विद्यार्थी जो कि ला पढ़ना चाहते हैं उनकी फीस माफ हो जाय। यह सही बात है कि गरीब विद्यार्थियों के लिए अपना गुजारा चलाना मुश्किल है और मैं चाहता हूँ कि ऐसे गरीब विद्यार्थियों की फीस माफ कर दी जाय। लेकिन आज हम देखते हैं कि बड़ी गड़बड़ी चलती है प्रौक्सी से पास करके आ जाते हैं और ऐसे लोग बड़ी गड़बड़ी कर रहे हैं। आज इसके कारण हमारे पेशे की कोई वृद्धि नहीं रह गई है और आज इतने आदमी पढ़ गये हैं कि आपस में एक होड़ हो गई है और होड़ होने से बड़ी गड़बड़ी होती है...

अध्यक्ष महोदय : बी०ए० पास करने के बाद उनको अपना गुजारा चलाना मुश्किल हो जाता है इसलिए वह पार्ट टाइम काम करते हैं और ला पढ़ते हैं। अब हमारे देश में ६० फीसदी लोग गरीब हैं।

श्री सिंहासन सिंह : मैं उस पर आ रहा हूँ। मैं चाहता हूँ कि गरीबों की फीस माफ कर दी जाय और उनको अन्य सुविधाएं मिलनी चाहिए। अब मेरा तो कहना यह है कि आप यह कानून पास करके गरीबों को इस पेशे में आने से महत्कम कर रहे हैं। अब आप ही देखिये पहले तो लोग २५ रुपया सालाना दे कर वकालत पढ़ लिया करते थे।

पहले स्टाम्प ड्यूटी २५ रुपया थी अब आप स्टाम्प ड्यूटी के लिए २५० रुपये लेंगे और ५०० रुपया राज्य सरकार लेगी। इस तरह से ७५० रुपया देकर उसको ऐडवोकेट बनना पड़ेगा। अब आपके इस कानून के पास होने के बाद कोई आदमी ऐसा नहीं होगा जोकि ऐडवोकेट न हो और ऐडवोकेट होने के लिए उसे ७५० रुपये खर्च करने पड़ेंगे। अब इसको इतना ऐक्सपेंसिव बना कर गरीबों को महत्कम कर रहे हैं और उनका रास्ता आप बंद कर रहे हैं। इसलिए मेरा निवेदन है कि यह २५० रुपये की स्टाम्प ड्यूटी को आप कम करें। इतनी भारी स्टाम्प ड्यूटी रख कर आप गरीबों का एक तरह से रास्ता ही बंद किये दे रहे हैं...

अध्यक्ष महोदय : उसको भी माफ कीजिये।

श्री सिंहासन सिंह : स्टाम्प ड्यूटी माफ हो ताकि गरीबों के लिए इस पेशे में आने का रास्ता बना रहे।

दूसरी बात यह है कि आपने इस बिल में जो यह प्राविजन रक्खा है कि इस कानून के पास होने के दो वर्ष के अन्दर तक प्रैक्टिसिंग प्लीडर्स और मुस्तार को इस बात की छूट दी गई है कि वह दो वर्ष के अन्दर अन्दर स्टाम्प ड्यूटी पे करके ऐडवोकेटस बन जाय, वह हमारे देश की आर्थिक हालत को देखते हुए काफी नहीं है। मैं चाहता हूँ कि मंत्री महोदय इन बातों की तरफ ध्यान दें...

अध्यक्ष महोदय : माननीय सदस्य को बोलते हुए लगभग २० मिनट हो चुके हैं। उन्होंने १३-३० से बोलना शुरू किया था।

श्री सिंहासन सिंह : बस मैं आपकी आज्ञा से केबल एक मिनट और लेकर समाप्त किये देता हूँ।

[श्री सिंहासन सिंह]

वकीलों की फीस के बारे में सदन में जो चर्चा हुई है कि वकील लोग फीस अधिक चार्ज करते हैं मैं भी उससे इतिफाक करता हूँ। लेकिन इस राज्य में अधिक आमदनी पर तो रोक लगी हुई नहीं है, किसी की आमदनी पर रोक नहीं लगी हुई है। अब यह आमदनी पर रोक वकीलों से लगाया जाना शुरू किया जाय। इसके सम्बन्ध में कांस्टीट्यूशन के आर्टिकल २२७ में है कि हाईकोर्ट वकीलों की फीस नियत कर सकते हैं और रूल्स में भी है। दीवानी के मुकदमे में ७ या साढ़े सात फीसदी लेते हैं लेकिन वकील लोग अभी लेते हैं। खैर आप वकीलों की आमदनी पर सीलिंग करें मुझे उसमें कोई ऐतराज नहीं है। लेकिन इसी के साथ मैं यह भी कहना चाहूंगा कि जहां बड़ी आमदनी वालों की सीमा बांधी जाय और हाईकोर्ट को चाहिए कि २२७ आर्टिकल के अन्दर इसको साफ कर दें कि इससे अधिक कोई फीस नहीं लेगा लेकिन जहां मैक्सिमम लिमिट आप बांध रहे हैं वहां मिनिमम भी तय हो जानी चाहिए। अब वकीलों की कोई मिनिमम फिक्स नहीं है। मैक्सिमम और मिनिमम दोनों प्रोवाइड होनी चाहिए। अब जिस वकील को एडवोकेट होने के लिए सर्टिफिकेट दे दें उसके लिए कम से कम डिसेंट लिविंग का तो इतजाम होना ही चाहिए और मैं तो कहूंगा कि सरकार उनको इस के वास्ते अगर जरूरी हो तो सबसिडी दे। उनको १५० या २०० रुपया महीना दें, कर्ज के रूप में सहायता दें ताकि वह अच्छे तरीके से ईमानदारी से अपना धंधा कर सकें और वह छोटेपन से कामन करें। इसलिए जहां आप मैक्सिमम सीमा बांधें वहां मिनिमम भी प्रोवाइड करें ताकि कम से कम जो आमदनी सही तरीके से इस पेज में आने को तैयार हों वह यह तो जान लें कि इतना मिनिमम उनको मिलने वाला है।

जब तक कि लाइयर की डेई स्टैंडिंग न हो उसके पास किताबें न हों और वकालत की दूसरी सामग्री न हो तो मुवकिल उसके पास जाता नहीं है और उसका काम बनता नहीं है। इसलिए यह जरूरी हो जाता है कि गवर्नमेंट इसके वास्ते उसे लोन दे। इस व्यवसाय को भी आवश्यकतानुसार लोन देने की सरकार व्यवस्था करे और जो शख्स इस लीगल प्रोफेशन को अपनाना चाहता है सरकार उसको लोन दे ताकि वह सही तरीके से अपने व्यवसाय को प्रारम्भ कर सके।

Mr. Speaker: I will give an opportunity to Shri Basappa during the discussion on the clauses.

Shri A. K. Sen: Mr. Speaker, Sir, I am very glad to find that this Bill has received almost unanimous support from the House. In fact, the discussion has been very very fruitful and has only helped us to appreciate the nature of the Bill, as also to decide on the nature of the amendments which we are going to accept ultimately. I expected as much because this measure is long overdue. It has always been a matter of extreme regret to all of us that notwithstanding the fact that we achieved our independence about twelve years ago, and notwithstanding the fact that this country had one legal system and one system of courts, yet the legal profession is cut up into fragments, each State having its own bar and each State having, again, separate sets of legal practitioners. I have, therefore, not been surprised at all at the unanimous support which the Bill has received on the floor of this House and also from the Joint Committee. It is, therefore, to a few rather unimportant matters that I want to address myself, and those matters have really been emphasised in order to help us in formulating as perfect a Bill as possible.

May I take up, first of all, the points made by Shri Sinhasan Singh? He made a point which has been more or

less emphasized by a few other speakers, including Shri Khadilkar, who very eloquently supported the plea for the poor litigants. I agree with those who feel sympathy for the litigants who have not the means to avail themselves of the best legal assistance. For that purpose, the legal system that we have is not to blame, because there is no legal system in the world which can afford always the best assistance to the poor litigants free of cost. That is why the remedy has been found in other countries by evolving a system of legal aid to the poor, rather than trying to make the entire legal profession more or less a gratuitous profession. Let us not confound the two issues. There cannot be any noble profession, there cannot be any healthy tradition pertaining to any profession unless that profession has a cadre of able and devoted professionals who are always kept above the level of starvation. No profession can be a band of sanyasis; let us be quite clear about it, because the brotherhood of monks is quite different from a professional body. A professional body, in order to attain the highest professional standard, must necessarily be sustained by the requisite wherewithal necessary to keep the members of the profession above the point of starvation, above the point of temptation and above the point which possibly make it easier for a person to succumb to corrupt practices. That is why nowhere in the world has any profession been sought to be made gratuitous, but the rigour....

Mr. Speaker: Are the lawyers in the Communist countries paid?

Shri A. K. Sen: They are, and their fees are fairly well regulated.

Mr. Speaker: Are they paid by the State or by the litigants?

Shri A. K. Sen: Not by the State but by the litigants. I will tell you what their scheme is. They have a college of advocates in every place. I am talking of the Russian system which I had the opportunity of study-

ing at close hands. They are called colleges of advocates.

Mr. Speaker: In place of our bar associations?

Shri A. K. Sen: Yes, similar to our bar association. Each city has its own college of advocates. So far as the rural areas are concerned, they have also their college of advocates. This college of advocates is more or less an autonomous institution and it runs its affairs by a body elected from the college members themselves. Whoever wants a particular advocate or any advocate, he goes to the college and says "I want legal assistance". If he does not name the advocate, the college takes up the case and allots it to a particular advocate who has the requisite qualification to deal with the case. If an advocate is named, unless he is otherwise engaged, he is made available to the litigant, provided his fees are paid.

Mr. Speaker: But he must go only through the college of advocates?

Shri A. K. Sen: Yes, they can be approached only through the college of advocates.

Mr. Speaker: Irrespective of whether it is a junior or senior?

Shri A. K. Sen: Everyone. And there are advocates who are regarded as more senior and whose fees are more. There are advocates who are regarded as more junior, and their fees are less. But the wide disparity in fees as exists in this country, or in a country like England or America, does not obtain there. The range between the highest and the lowest is much closer than it is here in this country. But that is a different matter.

Mr. Speaker: Are they regulated by law?

Shri A. K. Sen: The maximum and the minimum are regulated by the college itself, not by law. But they see to it that the advocates who belong

[Shri A. K. Sen]

to the colleges, as every one must, are fairly well paid so that they are not a starving set of professionals who just carry on their existence as that is most unhealthy for any profession. The first thing that is necessary for building up a good profession with good tradition is that its members must be kept above want, above the level which makes it easier for persons to succumb to corrupt practices. It is, therefore, a mistake....

Mr. Speaker: Do they have a fund to which a percentage of their income is put so that persons who do not have enough income or do not get the minimum every month are paid out of this fund?

Shri A. K. Sen: There is no such thing, because everyone has got a fairly distributed amount of work. Because, from the stage of the university, the entry into the law faculty is regulated. They know they want so many lawyers per year for the courts and for, what they call, academical work like scholars.

Mr. Speaker: They do not admit more?

Shri A. K. Sen: No, and that is a thing which we ought to achieve ourselves when the bar councils come into existence, because now the entry into the law colleges is more or less unregulated and almost everyone comes in; whether he can later on become either a good practising lawyer or a good research scholar or a good academician, every one can get into the college. But these are wider questions to which we may attend later on. But this basic question must be answered by keeping for ourselves a proper perspective for the profession.

I can understand people outside the profession trying to convert the legal profession into a gratuitous brotherhood of monks, forgetting for the moment that if they succeed in doing so, there would be no members left in the profession and there will be no

fresh entries. Therefore, it has been the endeavour in every country, more so in England whose legal profession I know very intimately—I know that during the centuries the British legal profession has built up such high traditions—to see to it always that the members of the legal profession are guaranteed at least a minimum basic civilised existence which is necessary for a good professional.

The needs of the poor litigant are to be met, not, as I said, by converting this profession into a profession of gratuitous lawyers, but by giving aid through properly devised machinery for those who find it difficult to, if I may say so, get the necessary legal assistance with the means which they have.

14 hrs.

That is why in almost every advanced country which has a legal system like ours, they have a system of legal aid to the poor. Ever since I have taken charge of this Ministry, it has been my personal endeavour to try to introduce a system of legal aid to the poor which will at least make it obvious to the ordinary man that the system of law that we have, exists also for the common man. I agree entirely that the common man does not feel that the system of justice which the country has is also for him. However good such a system may be, it will never be an ideal one, and no legal system is really worth its name unless it sees that everyone of its citizens has the means whether by grants or by aid made available to him to go to the forum of justice in the country and get all the assistance needed by him to get justice from the courts. Hon. Members will appreciate that this is not a question which is very pertinent for the present purpose, but yet it is certainly a system which is closely connected with the legal profession and therefore it will not be really proper for me to avoid it only on the technical ground that this

question is not directly connected with the present one.

Hon. Members will appreciate that no system of legal aid to the poor can be devised or function without proper financial resources to back it. We had, after I had taken charge of this Ministry, formulated a model scheme of legal aid to the poor, whose funds should be partly realised from the State and also by contribution either from the earnings it made from court fees and other sources of income connected with the court. We decided at the last Law Ministers' Conference on my own motion that a part of the fees which a lawyer would pay to the Bar Council and also to the Bar must be set apart for legal aid to the poor. Of course, that would not be enough by itself, but it would certainly give a part of the income necessary for any State to make any scheme of legal aid to the poor; and also help the legal profession to share partially the burden of legal aid to the poor, if a part of what the lawyer pays for entry into the legal profession is kept in reserve for legal aid to the poor.

It is not possible to estimate the exact amount which would be necessary in every State to enable a proper scheme of legal aid to the poor being put into force. Yet, the States have been demanding at least 50 per cent contribution from the Centre to enforce any such scheme which the Ministry of Law at the Centre had formulated and circulated. And in the last Law Ministers' Conference they unanimously resolved—of course, the Centre did not at all take part in the resolution—that the Centre should at least find 50 per cent of the expenses for a scheme of legal aid to the poor.

So far as the Parliament and the Central Government are concerned, today a steel factory appears to have a greater value to us than any matter connected with the question of really improving the system of justice we have. Personally I think that it is

not a very good sign that this country should lose sight of the essential necessity of having a system of justice which not only sustains the Constitution, but also preserves the right of every man to get justice as between man and man, for if we have a system which does not give us justice, if we have a system of Government which is not shared by the common man, if the dispensation of our governmental machinery does not create the feeling in the common man that justice is done as between man and man and without really putting the poor man always at a disadvantage, I do not think any of our steel factories, or any of our big achievements in the industrial sphere is worthwhile having. Not that I am one who is at all trying to minimise the importance of other things in life. It is necessary to give this country an industrial background or to make this country materially a stronger one. But nevertheless I think the values of life, more particularly the values that are basically fundamental in a democratic government can never be allowed to be put into the background excepting at the cost of jeopardising the very basis of our life, which is a free government, a free parliament and a system of independent courts whose doors are always open to the common man and whose charges are such that it is not difficult for the common man to come to its doors, and those who cannot get the advantage of the courts are given that advantage by the State.

These are fundamentals for which we had laboured and which will again sustain our free way of life and no amount of material comfort or material convenience can give us that happy life, that full life, that wholesome life until a proper democratic government with a system of justice which is shared by all and sundry, including the poorest and the richest, is made absolutely secure.

Nevertheless I must say that today the priorities are different. One of the reasons why initially the British

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Government had made itself secure was not because it had a strong army, not because it came with a better military technique, not because we were divided amongst ourselves, but because their system of law was different. Every historian—Indian or European—admits that initially the task of the Britishers would not have been so easy but for the fact that wherever they went a system of law was introduced which was different from the system of law which our rulers at that time were enforcing, which was nothing but the capricious fire of the ruler, which knew no equality as between man and man and who never dispensed justice equally between man and man. That is the one system which is still retained for which the Britishers are rightly proud.

Mr. Speaker: While pleading for the British system, is it necessary to condemn our ancient practice?

Shri A. K. Sen: I am not saying of the ancient practice, but the practice which then prevailed when the Britishers came,—not the ancient one, but the one which prevailed after the break-up of the Moghal Empire when the country was divided into numerous principalities and when the rule of the might was the only law which was known.

Shri Tangamani (Madurai): This looks more like a dissertation.

Shri A. K. Sen: Call it whatever you may, whether it is a rude comment, or a congenial comment, the fact is that, and I think the points which have been made can only be answered by dealing with the fundamentals. These are fundamental questions which Mr. Khadilkar raised.

The question is, if hon. Members think that legal aid to the poor is to have that priority, then a discussion on that cannot be dismissed or cannot be accepted by merely regarding it as

more or less a dissertation on the philosophy of our existence. But on the question as to which priority we shall accept for ourselves, if our finances are limited, then we must prune our finances to suit those things which get top priority. In the scheme of priorities this certainly does not occupy such a high place as it should, if it is to find a place for itself either in the Third Plan or the Fourth Plan. As a man who has been connected with the courts, I personally think it should have top priority. And I think I am entitled to say so, even if it is not accepted by others.

Mr. Speaker: Are there any public defenders in Great Britain?

Shri A. K. Sen: The entire system of legal defence for criminal cases is well chalked out.

Mr. Speaker: That is here also, in sessions cases.

Shri A. K. Sen: Only in sessions cases and in capital cases.

Mr. Speaker: I am talking of civil courts.

Shri A. K. Sen: In England today there is a system of legal aid for the poor, even in divorce cases, because after all, if a man is entitled to divorce and if he has not been . . .

Mr. Speaker: Who appoints the lawyers?

Shri A. K. Sen: There is an entire system chalked out. It is an autonomous body. It will take some time to explain it. But in devising our system which was circulated to the States we have taken note of the British system also and we had drawn from the British system also but suited to our system, suited to our rural areas, our urban areas, and so on. That finishes really the question which has been raised by so many speakers on the objective of the legal profession helping the common man to have the fruits of our legal system.

The next point made was the question of our allowing barristers to get enrolled here. The hon. Member pointed out, and certainly it is a pertinent question, whether we should do it if our advocates were not extended the same reciprocity. In fact, that is a point I made some time back. As soon as we allowed the old practice to continue, namely for barristers who were entitled to practise in England to be enrolled here, as it happens even now, I took up the matter with the authorities in England, and I am happy to read to the House the last communication I received from Lord Evershed. As you know, in England the Judges take a very prominent part in the affairs of the Bar. In the original Bill which was placed before Parliament I tried to follow that system, because I personally think that the Judges are as much a part of the Bar as the lawyers who argue before them, just as the lawyers are as much a part of the system of justice as the Judges; and in fact without a proper Bar no judiciary can function properly. Therefore, in England, in every Inn of Court the Judges are members or benchers. And in the Bar Council too the Judges take a very important part. In fact, Lord Evershed himself is the Treasurer of his own Inn, Lincoln's Inn, and Lord Deverin is the Treasurer of my Inn.

The Judges here, unfortunately, thought that they should not associate themselves with the affairs of the Bar which, I have made it known to the Chief Justice and his colleagues, was an unfortunate decision. Because, I do not think we can develop a proper Bar free from all political influences if the Judges are not members of it.

Shri Tyagi: That is what I also expressed.

Shri A. K. Sen: One of the reasons why Judges have been so prominent in the affairs of the Bar in England is because of the fact that the presence of the Judges prevents the Bar from

engaging itself in so many political activities. Otherwise, the Bar will pass resolutions and if one party has a majority the Bar will pass a resolution condemning the other party's action and *vice versa*. The Bar in England has never dealt with political problems.

14.14 hrs.

[SHRI JAGANATHA RAO *in the Chair*]

In our country the history is different, because the Bar took a leading part in the struggle for freedom. And that is why in olden days the Bar Associations everywhere took the lead in condemning many acts of the British Government and in campaigning against them. In any event I personally think it was . . .

Shri Tyagi: Would the hon. Minister kindly explain to the House whether the Judges are adamant in their attitude that they will have nothing to do with the Bar Councils?

Shri A. K. Sen: They communicated it to the Joint Committee.

Shri Tyagi: Are we to be guided by what they said to the Joint Committee?

Shri A. K. Sen: I will tell my hon. friend. We cannot compel them to go in. When the Joint Committee was deliberating . . .

Shri Tangamani: Could we not now persuade them to come in?

Shri A. K. Sen: I tried to. I was myself anxious.

Shri Tyagi: Particularly when matters about professional and unprofessional conduct of individual lawyers are under consideration, I suggest that the Judges being there must be essential.

Shri A. K. Sen: I will tell my hon. friend what happened. In fact, I was rather surprised when that decision

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was communicated to the Joint Committee without any prior consultation with us. What happened was that the Joint Committee was deliberating on this Bill. Hon. Members who were Members of the Joint Committee, if they are here, will remember how it came. I think Shri Braj Raj Singh was there. It suddenly came without any notice and was read out. It was communicated by the Registrar of the Supreme Court, and the communication was that the Chief Justices, who had met in the Conference of Chief Justices, had resolved that they should not be associated in any manner with the affairs of the Bar Council.

Shri Tyagi: They will regret it in due course.

Shri A. K. Sen: Well, let us not, on our part, use any expression which might be regarded as disrespectful of our judiciary.

Shri Tyagi: It is not a question of disrespect. The real respect of the judiciary depends upon the respect which the lawyers show to it and on account of their intimate relationship; if they are kept apart, there will be the one organisation on the one side and the other on the other side.

Shri A. K. Sen: I have always conceived that the two pillars on which our legal system rests are the Bar and the judiciary. And the system cannot rest soundly or securely if any of the pillars is isolated from the other. That has been our tradition, and I still conceive it to be the basic structure of the system of justice that we have.

In any event, with all respect to the Chief Justices who had assembled in the Conference of Chief Justices, I must say that it has been an unfortunate decision when they decided to dissociate themselves from the affairs of the Bar. Because, after all, the Judges owe a responsibility to the

Bar, as we owe a responsibility for the proper functioning of the judges. That responsibility, I humbly submit with due respect to the Chief Justices, is not to be shirked by the Judges.

I was coming to the letter of Lord Evershed.

Shri Tyagi: What is the cure for it? If Parliament agrees with the hon. Minister's views, if the majority of the Members of Parliament agree with him, have we any cure? Cannot we put in an amendment about this?

Shri A. K. Sen: I do not want to bring in all the discussion I had with them. I had, subsequently, many discussions with them. But I found it difficult to persuade them. The Chief Justice himself—that is my impression—shared my views that the Judges should be associated.

Shri Tyagi: All the more reason why such an amendment should be accepted.

Shri A. K. Sen: I am afraid we cannot force the Judges into the Bar Councils without their consent.

Shri Ram Krishan Gupta: Why not?

Shri A. K. Sen: Parliament cannot put in by force someone who does not want to come in there. We have been brought up in a system which knows how to respect the Judges. And I think no instrument of justice can exist if it does not engender respect for the Judges. We can only persuade them, we cannot compel them even if we have the power. As I said on the floor of the House on an earlier occasion when the demand came from Shri Frank Anthony that some rule of the Supreme Court should be amended, even if we have the power we should not do it unless we get the agreement of the Judges themselves to revise it. That is a different matter.

As I was saying, I took the matter up with Lord Evershed in serious earnestness. Now, I do not want to read out what he wrote to me, but I shall read out what he had written to the Chief Justice and how the rules have been changed now. The letter that he wrote to the Chief Justice is as follows:

"May I trouble you with something else? When I was in Delhi I had, as you may know, two or three talks with your Minister of Law, Mr. Sen, about your Legal Practitioners Bill which was then before your Parliament but which, I gather from Mr. Setalwad, has since become law".

There, His Lordship was not correct, because it had just passed the Select Committee stage only.

"Mr. Sen was very anxious that that there should be reciprocity between our countries as regards admitting members of the Bar of the one to the Bar of the other."

I had said that we have the system of enrolling Barristers here, but we cannot be expected to continue it permanently our advocates are not given the same reciprocity. Then he says:

"I told Mr. Sen that I would get to work at once with a view to changing our existing consolidated regulations.

These regulations as they stand are really out of date and are designed to give privileges only to people coming from countries where two branches of the profession are distinct as they are in England."

That means where the two branches were separate, like solicitors and barristers and so on.

"This is obviously out of keeping with a great many countries of the Commonwealth including India, and I, therefore, set to

work to try to get our own consolidated regulations changed. As I warned Mr. Sen, it inevitably takes a long time because the consent of all the Four Inns of Court..."

—you know that their Inns of Court are again separate—

"... has to be obtained, and I am afraid we are as a profession somewhat conservative."

Just see how the judges are writing. They write that 'We are as a profession somewhat conservative'. That is, a judge still considers himself as part and parcel of the profession.

"... However, I got to work and things have, I think, gone well."

Then, he has enclosed a copy of the regulations which have now been changed, and which read as follows. I owe it as a duty to place before the House how Lord Evershed pleaded before the Joint Council of the Four Inns of Court, because, I think, I am really grateful to His Lordship for having done this service; I say, service, because it does make the friendship between the two countries firmer.

This is the record of the minutes of the meeting where this decision was taken.

"Consolidated rule 43 under reference 31-34 in the light of a memorandum dated March, 1960 written by Lord Evershed, Master of the Rolls, following a visit to India, and (b) a letter dated 23rd February, 1960, written by the Director of Legal Education, Connaught, to the Council of Legal Education:

It is believed that many, if not most of the Commonwealth countries also have a fused profession..."

[Shri A. K. Sen.]

By 'fused profession', they mean one profession, and not varied as between solicitors and counsels.

"Accordingly, consolidated regulation 43 now seems to be largely inoperative.

(3) Lord Evershed in his memorandum pleads for sympathetic and practical consideration for the request he received from India's Law Minister for the establishment of some degree of reciprocity between the Bars of the two countries and refers to section 43 of the Indian Legal Practitioners Bill, 1959, giving the All India Bar Council the right to enroll barristers as advocates.

The committee was impressed with the view expressed by Lord Evershed that one of the strongest links between the two countries is the law and the practice of the law, and consider that this is probably true in respect of other Commonwealth countries as well."

As you know, Sir, Lord Evershed went back and reported extremely gloriously about our courts. When he left India, he told me that one thing which will ever remain in his memory was the picture of the best traditions of the English courts still being followed and better possibly—he said, 'better possibly'—on the Indian soil.

Then he says as follows. I do not want to read the regulations. The effect of the regulation is that any member of the Indian bar, any Indian advocate will now be entitled to be called to the Bar in England provided—they have a system of eating dinners—they eat the minimum number of dinners, which means one or two.....

Shri Tyagi: Introduce it here also.

Shri A. K. Sen:...and they have practised for at least three years in

India. This is the regulation which gives a complete reciprocity between Indian advocates and barristers.

If a person wants to practise there and get enrolled there, he might as well dine there. I can assure the hon. Member that it is cheaper to dine there than outside it is always cheaper in the Inns of Court than outside, and I can tell him that I am not saying this because I was called to the Bar from one of the Inns, but I am saying this that it is well worth having a dinner there.

Shri Sinhansan Singh: But there is one condition to the dinner. We have no condition here.

Shri A. K. Sen: But we have no dinners here whereas they have dinners there.

Shri Khadilkar: Do you propose to introduce that system here at the highest level?

Shri Sinhansan Singh: You might as well as have it here.

Shri A. K. Sen: Why should we?

Shri Khadilkar: If it is so good, then you can have it here also.

Shri A. K. Sen: Our traditions are different, and their traditions are different. However, that is a different matter.

I am happy to say that.....

Shri Sinhansan Singh: They want that the person should have had three years' practice here before he could get enrolled there.

Shri A. K. Sen: I think that is not bad. We do not want to send raw juniors from here.

Shri Sinhansan Singh: We must also have some such provision here that they must have some practice there in England before they can get enrolled on our rolls.

Shri A. K. Sen: We have said that. The clause is there that he must have the training in England.

Shri Sinhansan Singh: It is training only, and does not refer to practice.

Shri A. K. Sen: Let us not mince matters. We ourselves do not want to send raw juniors to England; if they want to practice there, I personally think that three years' practice here at least is necessary. So, let us not mince matters. It is not an equal balancing of the scales. I personally think that the thing has been done very very gracefully and not as a gesture of just some superior person doing it to somebody who is not an equal but with full appreciation of the stature of the Indian Bar and of the Indian courts, and I think that we should be glad that this has happened.

With regard to the question of stamps and enrolment fee, we have had the question examined several times, and I have told the hon. Members that it is our opinion that the question of stamps is a State subject, and unless the States give up their right to levy stamps on advocates being enrolled, it is not for us to dictate to them that they should do so. If it is thought that their levies are illegal, any lawyer may test it in a court of law; it is no use arguing it here; if the levy of stamp duty by the States is illegal, then it can be tested.

Shri Shankaraiya: It is not a question of illegality but it is a question of hardship.

Shri A. K. Sen: We cannot decide it here. But it our considered opinion that we cannot levy a stamp duty or prescribe a stamp duty which will debar the States from levying it. I promised the members of the Joint Committee that I would do what I could. I have brought it up before the last Law Ministers' Conference, and the decision taken there was that

the total fee by way of Bar Council's fee and stamps and other things should never exceed Rs. 500, which, I think, is a reasonable amount. The total amount should not exceed Rs. 500 and out of that, a portion should be set apart for legal aid to the poor.

Shri Braj Singh: Does the hon. Minister mean to say that that has been decided?

Shri Ram Krishan Gupta: May I know whether the States have done that?

Shri A. K. Sen: It was a resolution of the Law Ministers that this should be done. It is now for the respective States to give effect to this resolution, and I am sure that they will do so, having resolved to do so. If they do not, the matter may be taken up in the respective State Assemblies to compel the State Governments to do so.

Shri Ram Krishan Gupta: But some States are increasing the duty, from Rs. 500 to Rs. 755.

Shri A. K. Sen: I was told that that was done before this resolution was adopted.

Shri Ram Krishan Gupta: What is the situation now?

Shri A. K. Sen: I may tell my hon. friend—as I told the Members of the Joint Committee; Shri Braj Raj Singh was there, and he knows it—that I would bring it to the notice of the State Governments, and I did it at the earliest opportunity. I suggested to them that it was really unfortunate that different States should have different scales of levies. I said that if we are having one Bar, it is as well that we have one total amount levied on the practitioners who are enrolled.

Shri P. N. Singh (Chandauli): There should be one uniform pattern.

Shri A. K. Sen: That was what I suggested, and the resolution that was

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accepted unanimously was that the total fee including the Bar Council levy should not exceed Rs. 500. I hope that this resolution will be honoured by the States. If it is not honoured, if there is any particular instance where it is still being continued beyond Rs. 500, I shall be very glad to have information from any hon. Member with regard to that, and I shall take it up again.

These are the two main points over which the discussion has centred. The other point which has been raised is the question of continuing the system of solicitors in Calcutta and in Bombay on the Original Side. One thing must be borne in mind and that is this, that the demand for the abolition of these solicitors has never come from the litigant public of those two cities. The demand has always come from others. If the Chambers of Commerce had resolved that they do not want the solicitors, the question of the continuance of this system would have been absolutely unanswerable. But, not only have they not want the discontinuance; but they have, before so many commissions which have gone into the question expressed their strong insistence upon the continuance of that system. Apart from legal continuance, I have no doubt that even if we abolish it by law the system will continue in practice on the Original Side of these two cities because the nature of the litigation is such and the work is such that the man who pleads in courts cannot do these things which are necessary to prepare the case—take instructions, prepare the briefs, get the witnesses, serve the processes and various other matters. It is impossible. I know that because I have grown in that system myself and until I came to this House I was there. Even if we abolish it legally, the system will, in fact, go on in practice, just as you have the system of what they call Acting Advocates in the Supreme Court. Though the Supreme Court practice is appellate practice, the work of the solicitor is

also important. Which Counsel will take the trouble of judging which witnesses are to be called, where they are—taking processes and getting them and taking their statements?

Shri Aurobindo Ghosal (Uluberia): Junior lawyers.

Shri A. K. Sen: Call them by any other name. We are thinking of assistance. You can call them Junior lawyers or Acting Advocates as they are called in the Supreme Court. We are now considering whether the functions of the two systems can be combined. I have always said . .

Shri Amjad Ali: They are Advocates on Record and not Acting Advocates.

Shri A. K. Sen: They might have come into existence after I left the Bar.

Shri Sadhan Gupta (Calcutta-East): The question is whether the solicitors should be given the right to plead and the advocate should be given the right to act on the Original Side so that both become advocates.

Shri A. K. Sen: We had some of this mixture during a period when somebody has to combine these two functions and we had seen the utter confusion. There have been comments from so many Judges. I remember a particular case where the Advocate was also trying to act as a Solicitor. The advocate is there to attend to the client in the court. But the clients have to be attended to outside the courts also. How can the same man be doing the two things together?

Shri Amjad Ali: That is the demand that the option should be there.

Shri A. K. Sen: The question is the demand come from the litigants.

Shri Aurobindo Ghosal: The litigants have demanded.

Shri A. K. Sen: I know the clitics the Original Side very much.

Shri Aurobindo Ghosal: If any litigant goes to the solicitor he never gets back his estate.

Shri A. K. Sen: It is unfair to say this with regard to the solicitors. I admit that there have been some black-sheep amongst solicitors as there have been amongst non-solicitors. But it is not as if they have no code of conduct. Their business continues not for one year or for two years but for generations.

Shri C. K. Bhattacharya (West Dinajpur): May I make a suggestion to the hon. Minister? The best way would, perhaps, be to abolish the Original Side of the Bombay and Calcutta High Courts and make them merely courts of appeal as all the other High Courts are. That solves the problem radically.

Shri A. K. Sen: I do not think that solves the problem. It is only destroying something which is functioning very successfully for over a century.

Shri C. K. Bhattacharya: It is a British tradition, when they founded the Presidencies the Original Sides were founded. We have no use.

Shri A. K. Sen: Is the Appellate Side not British tradition?

Shri Narayanankutty Menon: That also is British.

Shri C. K. Bhattacharya: But none of the other High Courts have their Original Sides. If the Original Side is useful, why were not the other High Courts invested with this jurisdiction?

Shri C. R. Pattabhi Raman: There are so many company law cases and other things which relate to the Original Side.

Shri C. K. Bhattacharya: They have got the City Civil Courts. They can invest the City Civil Courts with entire civil jurisdiction over Calcutta and Bombay.

Shri A. K. Sen: Unfortunately, I know the City Civil Court in Calcutta. I know how the people somehow or other come to the High Court by inflating their claims and all that. They like to file their claims in the High Court rather than in the City Civil Court. This is a wider question and cannot be answered here; and here this is the question of the abolishing of the solicitors.

Two commissions of experts have gone into the question. Both the commissions, including the Law Commissions, had recommended that there is no justification for abolishing the system of solicitors.

Shri Subbiah Ambalam (Ramana-thapuram): Make it optional.

Shri A. K. Sen: No one can perform two functions. A man cannot act as a doctor and as a nurse. If a man acts as a nurse he cannot act as a surgeon. (*Interruption*) This talk is understandable only by laymen and not by people who have gone further up in the profession itself.

Shri Sadan Gupta: May I interrupt the hon. Minister? Are there not nurses and doctors in our profession?

Shri A. K. Sen: I do not think this is a status which commends itself to the hon. Member.

Shri C. K. Bhattacharya: The Law Minister is not certainly a solicitor. But we may say that the barristers are the creations of solicitors. As the late N. N. Sirkar once commented, inscrutable are the ways of solicitors; as inscrutable are the ways of Providence.

Shri A. K. Sen: I strongly repudiate the suggestion that barristers are the creation of solicitors or even of the Judges. They are their own creation; and they will not exist if they do not live up to the standards. There is nothing special a barrister. In fact, some of our great giants in the pro-

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profession were not barristers. Our present Attorney-General is not a barrister. I am not one of those who feel that simply because a man has gone to England and been called to the Bar he can achieve something which others cannot achieve.

Shri C. K. Bhattacharya: I only suggest, to the hon. Minister to go through the autobiography of Sir N. N. Sirkar which he began to write the Bar he can achieve something in the *Amrita Bazar Patrika*.

Shri A. K. Sen: I may say that all the articles of eminent lawyers are not gospel truths. There are many things found coming from N. N. Sirkar which may not be accepted as gospel truths even though I have the highest respect for the great erudition and ability of that great lawyer who, at one time, was also the Law Member of the Government of India.

Now, we have gone into the whole question repeatedly and the Joint Committee after going into all these arguments for and against have recommended the continuance of this system. Really, people forget that the solicitors are entitled to practice because the High Courts allow them practice as solicitors by rules framed by the High Courts under the rule-making power given to the High Courts under the Charters. Any moment, these High Courts themselves can change the rules. No Act of Parliament is necessary. Why should Parliament take the odium of abolishing a class of professionals whom the respective High Courts are not abolishing? If the Bombay High Court and the Calcutta High Court tomorrow feel that these solicitors are useless and they cannot assist the courts in their administration of justice, they can change the rule by a simple majority of the judges sitting. Why should the Parliament take the odium of doing away with a class of professionals especially when two commissions of experts which had been set up by the Government have recommended against the abolish at this stage?

These, I think, are the relevant points.

Shri Tyagi: The hon. Minister has not thrown any light on the suggestion I had made the other day that there must be a prescribed schedule of fees for advocates so that they cannot charge more.

Shri A. K. Sen: I am coming to that. So far as the High Courts of Bombay, Calcutta and Madras are concerned, they are governed by Rules of Taxation which prescribe what amount can be charged by a solicitor, counsel, advocate and so on.

Shri Tyagi: Charging will be unprofessional. Will it not be declared unprofessional?

Shri A. K. Sen: How can they call it unprofessional? If the client wants to pay, let us say, Rs. 1,700 a day to the Attorney-General how can Government object to it?

Shri Tyagi: The Law Minister will appreciate that those clients who pay high fees pay it from the funds which are allowed as expenditure and is free of income-tax. Therefore, they can pay any amount because fourteen annas out of that comes from the Government treasury.

Shri A. K. Sen: But he says income-tax to the extent of 83 nP.

Shri Tyagi: That is what I say. This is allowed as expenditure and there is no income-tax on it.

Shri A. K. Sen: But the mean who gets it pays income-tax on that amount; it adds to the coffers of the State.... (Interruptions.)

Shri Tyagi: Only when it is given by cheque.

Shri A. K. Sen: Let us hope that they are so. If they want to pay no law can stop it.

Shri Tyagi: What is the objection in enforcing that schedule; if it is prescribed, why not enforce it?

Shri A. K. Sen: It cannot be enforced; we know what will happen. A man now takes a cheque; he will not take the cheque for his fees; he will take it otherwise. The loss will be the Government's.

Shri Nathwani (Sorath): How does the hon. Member suggest in one breath that it is permissible to pay this amount from the companies and in the other breath he says that this fact it not being shown in the books?

Shri Tyagi: I am not saying that it is not being shown. If there is already some scale prescribed, then it will be proper for the bar councils to emphasise this fact that everybody must abide by the prescribed schedule and nobody should be allowed to take more fees. Take, for instance, the Government officers; somebody offers some bribe; he cannot go scot-free by saying: I do not demand it but he offered it.

Shri A. K. Sen: I have told the hon. Members on several occasions. We should remove this evil. The hon. Member has pointed it out. I agree that high fees charged from people who cannot pay is an evil. The remedy is to set up a machinery which will enable people who cannot pay so much to get the same assistance. I had recommended on so many occasions that we can devise a form of machinery by which every lawyer who gets amounts beyond a particular figure has to work for a number of hours for litigants who may come within the legal aid scheme.

Shri Tyagi: It adversely affects the dignity of the profession. If top lawyers are permitted to bargain about their fees....

Shri A. K. Sen: They do not bargain; the top ones do not bargain. The bargain is always below.

I am glad, Sir, that during my tenure the All India Bar—I hope—will come into existence and it will be a great thing for any member of the Bar. We have been looking forward to it. I only wish and I hope the entire House will join me in that fervent wish, that the Bar we shall create will be worthy of this profession and will be worthy of the trust that the Parliament is reposing in it and that it will set up not only a noble profession but a profession which will, even if the Government does not do anything in the matter, set up its own machinery of legal aid to the poor.

Mr. Chairman: The question is:

"That the Bill to amend and consolidate the law relating to legal practitioners and to provide for the constitution of Bar Councils and an All India Bar, as reported by the Joint Committee, be taken into consideration."

The motion was adopted.

Clause 2— (Definitions)

Mr. Chairman: There are no amendments to clause 2. The question is:

"That Clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill

Clause 3— (State Bar Councils)

Shri Hajarnavis: I have two amendments to clause 3 Nos. 3 and 4. These are consequential amendments on the passing of the Bombay Reorganisation Act. I beg to move:

(i) Page 2, lines 33 and 34,—

For "Bombay" substituted "Gujarat"
(3)

(ii) Page 2, line 34,—

after "Madras" insert "Maharashtra".
(4)

Shri N. E. Muniawamy (Vellore): I have amendments to clause 3.

Mr. Chairman: I think the hon. Member gave notice this morning; they are out of order. If the hon. Minister says he accepts them, then of course objection may be waived.

Shri A. K. Sen: I do not know; I have not been able to read them; we have not got copies of it.

Shri N. R. Muniswamy: The Office promised me that they would give the copy.

Shri A. K. Sen: I told the Hon. Member to give me copies.

Shri N. R. Muniswamy: Copies were given; you may please see your files. The Secretariat sent the copies to the hon. Minister.

Shri A. K. Sen: I have not got a copy of any such amendment and without even reading them, how can I accept them?

Shri Aurobindo Ghosal: Sir, I have an amendment, No. 17.

I beg to move:

Page 3, line 19,

after "twenty members" insert "at least one from each district court"
(17)

I wanted a clarification from the hon. Minister as to whether each district shall have a representative in this council because these Bar councils will also decide about the junior status of the advocates. Naturally, therefore, a representative from the districts should be taken.

Shri A. K. Sen: I appreciate the reason why Shri Ghosal has raised it. He may feel that one district may be completely unrepresented. But we have introduced the system of proportional representation and that is why there is no risk of any district being left out.

Mr. Chairman: I put amendments Nos. 3 and 4 to the vote of the House.

The question is:

Page, 2, lines 33 and 34,

For Bomay substituted Gujarat
(3)

The motion was adopted.

Mr. Chairman: The question is:

Page 2, line 34,

after "Madras" insert "Maharashtra".
(4)

The motion was adopted.

Mr. Chairman: I shall now put amendment No. 17 to the vote of the House.

Amendment No. 17 was put and negatived.

Mr. Chairman: The question is:

That Clause 3, as amended, stand part of the Bill.

The motion was adopted.

Clause 3, as amended, was added to the Bill.

Clause 4 and 5 were added to the Bill.

Clause 6— (Functions of State Bar Councils)

Shri Ram Krishan Gupta: Sir, I have two amendments—Nos. 35 and 36—to this clause.

Shri A. K. Sen: I may explain that it is already covered under clause 6(e).

Shri Ram Krishan Gupta: I agree that it is covered under sub-clause (e). But the function of this clause is very limited. I want that some wide power should be given, especially to canalise legal work and remuneration in an equitable way for securing for every member of the profession a minimum decent standard of living. Now a days there is a great disparity in the income of advocates. If my amendments are accepted, this disparity will be reduced to some extent.

So, I beg to move:

- (i) Page 4, line 9,
add at the end—

“and to suggest suitable reforms in the present legal system”.

- (ii) Page 4,

after line 9, insert—

“(ff) to canalise legal work and remuneration in an equitable way for securing for every member of the profession a minimum decent standard of living.” (36).

Shri A. K. Sen: What we have suggested is much wider. It is not necessary to add words such as ‘suitable’ and so on. We have said here: ‘to promote and support law reform’; that is much wider.

The other matter is also covered. We have said: “to safeguard the rights, privileges and interests of advocates on its roll”. What he says is certainly ‘interest’ of the advocate. The advocate should get a minimum for existence. I think it is better not to insist that everyone of its members should get a decent existence.

Mr. Chairman: I shall put the amendments to the vote now.

The amendments Nos. 35 and 36, were put and negatived.

Mr. Chairman: The question is:

“That clause 6 stand part of the Bill.”

The motion was adopted.

Clause 6 was added to the Bill.

Clause 7—(Functions of Bar Council of India).

Shri N. R. Muniswamy: I wish to speak on clause 7. I oppose sub-clauses (h) and (i).

Mr. Chairman: But there are no amendments. So, let there not be any discussion at this stage.

Shri Braj Raj Singh: He can speak on the clause.

Mr. Chairman: We are behind schedule. Anyway, let him be very brief.

Shri N. R. Muniswamy: I can oppose any of the clauses even if there is no amendment. Sir, I oppose sub-clause (h) and (i) for this reason. The sub-clauses read as follows:

“(h) to promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils;

(i) 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;”.

Now, the Government invest too much power on the Bar Council, namely, to go and examine and inspect universities as well as prescribe qualifications for the purpose of law. As the clauses stand now, these two items are too much. The Bar Council is to be guided by the degree that the candidates get from the universities, for this purpose. These sub-clauses go beyond the jurisdiction and the power of the Bar Council. These powers seem to encroach upon the powers and autonomy of the universities. The universities are guided by the University Grants Commission in the matter of recognition and the grant of degrees or diplomas. The powers which seek to vest powers in the Bar Council in respect of recognition of universities and visit and inspection of universities are beyond the scope of the Bar Council and are not desirable. I therefore request that these two sub-clauses should be deleted.

Shri Tyagi: I am also in agreement with Shri N. R. Muniswamy. I think that by these provisions the functioning of the Ministry of Education and the universities will be interfered with by a non-official body like the

[Shri Tyagi]

Bar Council. I oppose these sub-clauses on a matter of principle. The question will arise as to which universities the Bar Council can recognise. The recognition up till now vests in the Government in consultation with the University Grants Commission, and it applies equally to the law degrees conferred by the universities. These powers have remained with the Government at the Centre and in the States, and it is really too much if they are taken over and given to a non-official organisation

Shri Sadhan Gupta: I do not agree with the observations of the two hon. Members. The point is that the Bar Council has the responsibility of enrolling competent advocates and therefore the Bar Council must see to it that the standard of education imparted by the universities is up to the mark. The universities do not know or are not in a position to know what standard should be followed in order to make a person a competent advocate, but the Bar Council knows. Therefore, for the purpose of discovering competent talents, the Bar Council must be able to prescribe the minimum standards and see to it that those standards are adhered to by the universities.

Already complaints have been voiced in this House that the standard of legal education is not up to the mark. Therefore, proper standards must be ensured, and for the purpose of ensuring them, the Bar Council must be able to recognise and inspect the universities with a view to discover whether the standards prescribed are sufficient and the way of teaching and examination is correct and sufficient.

Shri Tyagi: The purpose will be more than served if the Minister were to agree to amend these sub-clauses to the effect that the Bar Council shall have the right to advise the Government in the matter of recognition of universities for the purpose. Let it advise the Government and the Government will have the power of final decision.

Shri A. K. Sen: The reason is obvious. In England, getting a university degree in law does automatically entitle a student for being enrolled as a member of the bar. Under the present law and also under the law that we are now passing, students who pass a law examination would be entitled to be enrolled as advocates. Therefore, if that gives the student the right to enrol as an advocate, it is absolutely necessary that the Bar Council should see that what sort of degree the man has got. Supposing it is such a degree that it is absolutely useless for a practitioner of law, the Bar Council is well within its rights in not recognising the degree.

Shri Tyagi: Let them act as an advisory body.

Shri A. K. Sen: It is not interfering with the universities at all. It is for recognising for its own purpose and to see which degree would entitle the holder to be enrolled as an advocate. I have no doubt that no university will hold examination on a syllabus which is inadequate or which would not commend itself to the Bar Council. In such matters, everywhere, the universities will get into touch with the Bar Council in prescribing the syllabus and that is absolutely necessary.

Mr. Chairman: The question is:

"That clause 7 stand part of the Bill."

The motion was adopted.

Clause 7 was added to the Bill.

Mr. Chairman: Now, there are no amendments to clauses 8 to 14. I shall put them to vote together.

Shri N. R. Muniswamy: Instead of putting them together, may I request you to proceed clause by clause.

Mr. Chairman: Hon. Members have spoken already. We are behind schedule. There is no point in putting

clause after clause. There are no amendments to any of these clauses.

Shri Narayanankutty Menon: They can be put together.

Shri A. K. Sen: This has been the practice throughout.

Mr. Chairman: The question is:

"That clauses 8 to 14 stand part of the Bill".

The motion was adopted.

Clauses 8 to 14 were added to the Bill.

Mr. Chairman: For clause 15, there is one amendment, but the hon. Member, Shri Ajit Singh Sarhadi, is absent.

The question is:

"That clause 15 stand part of the Bill".

The motion was adopted.

Clause 15 was added to the Bill.

Clauses 16 to 23 were then added to the Bill.

Clause 24—(Persons who may be admitted as advocates on a State roll)

Shri Shree Narayan Das (Darbhanga): I beg to move:

(i) Page 11, after line 27, add

"Explanation.—A degree in law obtained from a University in any area which was comprised before the 15th day of August, 1947, within India shall be deemed to be a degree from a University in India." (23).

(ii) Page 11, after line 36, insert—

"(iia) any person who having obtained a degree in law has held judicial office in any area which was comprised before or after the 15th of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area; and". (26).

Shri Ram Krishan Gupta: I beg to move:

Page 12, after line 14, add—

"(3) No stamp duty will be levied on the advocates, and an advocate shall be entitled to be enrolled as such and to practise without payment of any other fee payable to the State Bar Council." (42).

Shri A. K. Sen: We are accepting amendment No. 47 which will cover all these amendments.

Shri C. R. Pattabhi Raman: I beg to move:

Page 11, for lines 25 to 27, substitute—

"(c) he has obtained a degree in law—

(i) before the appointed day, from any University in the territory of India; or

(ii) before the 15th day of August, 1947, from any University in any area which was comprised before that date within India as defined by the Government of India Act, 1935; or

(iii) after the appointed day, from any University in the territory of India or elsewhere, if the degree is recognised for the purposes of this Act by the Bar Council of India; or

he is a barrister". (47).

Shri Braj Raj Singh: Has that amendment been circulated?

Mr. Chairman: This was given notice of this morning and I understand that the hon. Minister accepts this amendment.

Shri Braj Raj Singh: How can we proceed like this, Sir?

Shri Ram Krishan Gupta: That must have been circulated.

Shri A. K. Sen: What was circulated was amendment No. 39. We have really coupled it with amendment No. 47 with a slight variation. Instead of raising this technical point, the hon. Member will appreciate our common desire to do some thing which is free from all defects and difficulties. Amendment No. 39 was circulated and the new amendment is only a slight alteration of it.

Shri C. R. Pattabhi Raman (Kumbakonam): Actually, there is another amendment of mine which was circulated yesterday. Instead of that, I am moving this amendment.

15 hrs.

Shri Nathwani: I beg to move:

Page 11,

for lines 34 to 36, substitute—

“(ii) any person who has for at least two years held a judicial office in the territory of India or is a member of the Central Legal Service;

(iia) any person who has for at least two years held a judicial office in any area which was comprised before the 15th day of August, 1947, within India as defined in the Government of India Act, 1935, or has been an advocate of any High Court in any such area; and” (41).

Shri J. B. S. Bist: I beg to move:

“That in the amendment proposed by Sarvashri Ajit Singh Sarhadi, Nathwani and Jaganatha Rao, printed as No. 41 in List No. 6 of amendments,—

after part (iia), insert—

“(iib) any person who has practised before any High Court and who has discontinued practise by reason of his taking up employment under the Government, a local authority or any other person;” (50).

This is an amendment to Shri Nathwani's amendment No. 41.

Shri Nathwani: My amendment seeks to expand the list of exempted persons by including those who have held judicial posts in Pakistan and elsewhere. That is the substance of my amendment and I hope it will be accepted by the House.

Shri J. B. S. Bist: To that amendment, I have moved my amendment, by means of which I want to ensure that any person who has practised before and who has left practice by reason of his taking up employment under the Government or local authority will be entitled to resume practice after he leaves the service.

Shri A. K. Sen: Government are accepting both the amendments. We have combined them and made it into one amendment.

Mr. Chairman: That is amendment No. 47.

Shri N. R. Muniswamy: I would request the hon. Minister to consider this aspect. In this clause certain conditions have been put to admit a person as an advocate on State roll. There are certain provisos. I want to know what happens to those graduates of law who have been undergoing training and joined the apprentice course, if the Act comes into force tomorrow. They should be given permission to get themselves enrolled, because they have already undergone training. So, I want to add,

“Those graduates in law who are undergoing training or have entered apprenticeship under the existing rules.”

Suppose a particular gentleman has already passed the law examination and is undergoing training. If the Act comes into force in say, August or September, he will have finished his apprenticeship course by that time. He must be allowed to enrol himself.

Shri A. K. Sen: I think we have added a proviso somewhere.

Mr. Chairman: Let him look into it.

Shri Aurobindo Ghosal: I beg to move:

(i) Page 12, line 3,—

for "two hundred and fifty" substitute "one hundred" (18).

(ii) Page 12,—

after line 4, add—

"Provided that no other stamp duty to any State shall be payable for enrolment as an advocate." (19)

(iii) Page 12, line 9,—

after "then in force" insert—

"or a practising law graduate who has suspended practice for the time being." (20)

The hon. Minister has already stated that a resolution has been taken in the Conference of Law Ministers that an advocate for enrolment will have to pay Rs. 500. But that is also too much for persons who are practising in sub-divisional courts. Most of the lawyers in district courts can pay Rs. 500, but not the lawyers in the sub-divisional courts.

Shri A. K. Sen: How can I change something which has been agreed unanimously by all the States?

Shri Aurobindo Ghosal: I am giving the conditions in the sub-divisional courts. He might know the conditions of the lawyers, though he has not visited sub-divisional courts.

Shri A. K. Sen: I have seen the court in Asansol.

Shri Aurobindo Ghosal: Asansol court is a very rich court. But there are poor courts like courts in Uluberia and Amta. Bengal is prolific in producing lawyers, but one thing must be considered, viz., that

the average earning of a lawyer in West Bengal is only Rs. 100 or Rs. 200. The average income is not more than Rs. 100. The lawyers in mofussil courts stay in their houses in the native towns and they can anyhow manage, because there are other sources. It is not possible for them to maintain their whole family with the income from the profession. Naturally, I would request the Minister to reduce the fee that is being imposed. It may be reduced to Rs. 250. Last week, there was a conference of lawyers in Bengal and they have unanimously taken a decision to ask for reducing this fee for enrolment in the Bar Council and also the stamp duty that is being imposed by the State. That is necessary in view of the pitiable condition of the mofussil lawyers. Their condition is so pitiable that they are not getting girls for marriage.

Shri Tyagi: Some of them have no safety razors to shave.

Shri Shree Narayan Das: My amendment No. 23 has been covered by the Government. But there is also another amendment, No. 26 which says:

Page 11, after line 36, insert—

(ia) any person who having obtained a degree in law has held judicial office in any area which was comprised before or after the 15th of August, 1947, within India as defined by the Government of India Act, 1935, or has been an advocate of any High Court in any such area".

What is the attitude of Government to this amendment? That is also necessary in view of the fact that there are many persons who have obtained their degree in law in areas that comprise Pakistan.

Shri A. K. Sen: I can assure the hon. Member that it is covered by a Government amendment.

Shri N. B. Muniswamy: The Minister was pleased to tell me that he will

[Shri N. R. Muniswamy]

accept a suitable amendment. My amendment was that a proviso may be added to clause 24 like this:

“Those graduates of law who are undergoing their training or apprenticeship under the existing rules.”

The hon. Minister says that it will not apply to the persons who have obtained the degrees of law before the coming into operation of this Act. I am agreeable to that.

Shri A. K. Sen: About Shri Aurobindo Ghosal's amendment, I can only give a promise that I shall again bring it to the notice of the States, if they can reduce it. I do not think it is possible to reduce it below Rs. 500.

Shri Braj Raj Singh: The difficulty is genuine. There may be hundreds of lawyers in mofussil courts who may not be able to pay Rs. 500.

Shri A. K. Sen: So far as the Bar Council is concerned, at least Rs. 250 is necessary, as we agreed it in the Select Committee. Otherwise, how is the Bar Council to function? That is for the Bar Council to decide.

I agree with the hon. Member that it might lead to this position that those who are under the present rules entitled to it, if tomorrow the Bar Council prescribes a certain course of training, might be debarred from it. I agree with that with a further amendment that it will not apply to the persons who have obtained the degrees of law before the coming into operation of this Act. That we shall put in.

Mr. Chairman: The hon. Member has not formally moved the amendment.

Shri A. K. Sen: I have accepted this amendment subject to this.

Mr. Chairman: I would request the hon. Minister to draft the amendment so that I may put it to the vote of the House. I shall defer this clause and proceed to other clauses.

Shri Tyagi: Could not the fees be realised in instalments?

Shri A. K. Sen: What I was explaining is this. The hon. Member rightly pointed out in his amendment that there are graduates who have already passed law and are entitled to be enrolled now. But, before they are enrolled, supposing the Bar Council comes with a fresh rule regarding training and so on, then they will be debarred. I think, it is fair to exempt those graduates who have already passed law before the commencement of this Act. I shall put in that provision.

Mr. Chairman: I shall defer this clause.

Shri Tyagi: Besides those who have been recognised as advocates they had also some unrecognised graduates and, therefore, I do not think there will be any effect because the law is prospective and not retrospective.

Shri A. K. Sen: They are all recognised now.

Mr. Chairman: I am not taking his amendment for consideration.

Shri A. K. Sen: Then, I will put it as Government amendment.

Mr. Chairman: We shall now proceed to other clauses. This clause is held over. We will come to it later.

The question is:

“That clauses 25 to 28 stand part of the Bill”.

The motion was adopted.

Clauses 25 to 28 were added to the Bill.

Clause 29—(Advocates to be the only recognised class of legal practitioners).

Shri Nathwani: I beg to move:

Page 13,—

for clause 29, substitute—

“29. Subject to the provisions of this Act and any rules made there-

under, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates."(43)

This amendment is a verbal one. Instead of the expression 'legal practitioners' we have the term 'advocate' in order to bring it in harmony with the language used in clause 33. I think, it will be accepted by the House.

Mr. Chairman: Is the hon. Minister accepting this amendment?

Shri A. K. Sen: Yes, Sir.

Mr. Chairman: The question is:

"Page 13,—

for clause 29, substitute—

"29. Subject to the provisions of this Act and any rules made thereunder, there shall, as from the appointed day, be only one class of persons entitled to practise the profession of law, namely, advocates."(43)

The motion was adopted.

Mr. Chairman: The question is:

"That clause 29, as amended, stands part of the Bill".

The motion was adopted.

Clause 29, as amended, was added to the Bill.

Clause 30.—(Right of advocates to practise.)

Shri C. R. Pattabhi Raman: I beg to move:

Page 13,—

(i) line 24, for "(1)" substitute—

"Subject to the provisions of this Act";

(ii) omit lines 33 to 36." (48)

Shri A. K. Sen: Government accepts this amendment.

Mr. Chairman: The question is:

"Page 13,—

(i) line 24, for "(1)" substitute—

"Subject to the provisions of this Act";

(ii) omit lines 33 to 36." (48)

The motion was adopted.

Mr. Chairman: The question is:

"That clause 30, as amended, stands part of the Bill".

The motion was adopted.

Clause 30, as amended, was added to the Bill.

Shri Braj Raj Singh: Mr. Chairman, why should we be in such a hurry? This amendment which has been moved by Shri Pattabhi Raman and accepted by Government has not been brought to our knowledge.

Shri A. K. Sen: I have no objection to it. The reason is this. Today there are certain types of advocates who are practising in Bombay and other places, who have not been law graduates at that time but whom the Bar Council accepts them as advocates and they have been practising for 30 or 40 years. But, under the Supreme Court rules, now in operation, they are not entitled to practise. Since we are having one set of advocates, any other law, for the time being enforced, may be construed as a rule under article 145 of the Constitution.

Shri Narayanankutty Menon: The amendments should be first understood by all the hon. Members and then put to the vote of the House. It may take a few more minutes.

Shri A. K. Sen: The hon. Member is a lawyer and he will agree with me. The working of the provision of any other law, for the time being enforced, may be regarded as including a law made by the Supreme Court under article 145 of the Constitution. This may prevent advocates of Bombay High Court and other High Court

[Shri A. K. Sen]

who were not law graduates at that time from practising. That is why we have accepted this amendment.

Shri Narayanankutty Menon: I am not saying about this particular amendment; I was saying generally.

Shri A. K. Sen: I shall not accept any amendment without understanding it.

Clause 31.— (*Special provision for attorneys.*)

Shri Aurobindo Ghosal: I had tabled an amendment reading thus:

"Page 14,—

for clause 31, substitute—

"31. The High Court at Calcutta or the High Court at Bombay shall abolish the system of attorneyship."(21)

Hon. Minister has already spoken on this. But, I would like to know whether the solicitorship examination is taken by the High Court. There is the general complaint that this solicitorship examination is not conducted in a fair way. Generally, this solicitorship business has been kept in some families of Calcutta.

Shri A. K. Sen: That certainly was an impression at one time. I had joined the profession and even those under whom I had learnt law had joined the profession. But I can tell you that it is one of the most well-conducted examinations today. It is conducted by the High Court itself and the examiners are also appointed by them. They are not always solicitors. Some of them are eminent barristers, eminent advocates and eminent solicitors. Therefore, there is no question of the examination not being a fair one.

15.20½ hrs.

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

Mr. Deputy-Speaker:

The question is:

"That clauses 31 to 34 stand part of the Bill."

The motion was adopted.

Clauses 31 to 34 were added to the Bill.

Mr. Deputy-Speaker: I will now put clauses 35 to 54 to the vote of the House.

Shri N. R. Muniswamy: I want to speak on clause 52.

Mr. Deputy-Speaker: All right. The question is:

"That clauses 35 to 51 stand part of the Bill."

The motion was adopted.

Clauses 35 to 51 were added to the Bill.

Clause 52.— (*Saving*)

Shri N. R. Muniswamy: Clause 52, as it stands, reads as follows:

"Nothing in that Act shall be deemed to affect the power of the Supreme Court to make rules under article 145 of the Constitution—

(a) for laying down the conditions subject to which a senior advocate shall be entitled to practise in that Court;

(b) for determining the persons who shall be entitled to act in that Court."

There are two types of advocates, juniors and seniors. There are also advocates on record. Those individuals who have enrolled themselves as junior advocates in the Supreme Court in the years 1952, 1953, 1954 and 1955 are now debarred from becoming advocates on record because they have to sit for an examination. If he has already enrolled himself as an advocate in the Supreme Court in the year 1951, he has not to sit for an examination. In 1957 or 1958 they have brought in a rule that unless they sit for an examination and pass it in the Supreme Court, they cannot be enrolled as advocates on record. Those persons who have been enrolled prior to the coming into force of this rule can, if they like,

be enrolled as advocates on record. So, if we add the words "provided the rules do not affect advocates enrolled in the Supreme Court before 1957 to act in that court" it will serve the purpose. I hope the hon. Minister will appreciate that this rule is causing a lot of hardship to those advocates who were enrolled before 1957, if they are asked to sit for an examination. I think they should be exempted from that.

Mr. Deputy-Speaker: Has Government anything to say in the matter?

Shri A. K. Sen: I have not really followed what the hon. Member wants.

Mr. Deputy-Speaker: The hon. Member was also not serious about it. Otherwise, he must have sent in his notice of amendment.

Shri N. R. Muniswamy: Unfortunately, I did not send it earlier.

Mr. Deputy-Speaker: That shows that he was not serious about it.

Shri A. K. Sen: I have myself not seen that amendment.

Shri N. R. Muniswamy: The short point is this. If an advocate is to practise or be on record, he should sit for an examination. Unless he passes the examination conducted by the Supreme Court, he cannot practise. Even those advocates who have enrolled themselves before 1957 have been asked to sit for an examination which will cause them a lot of hardship.

Shri A. K. Sen: How can you prevent the Supreme Court from prescribing what qualifications the advocates on record should have? I think they are entitled to conduct any examination.

Shri N. R. Muniswamy: I have no objection to the examination. But those advocates who have enrolled themselves prior to 1957 should not be asked to sit for that examination. They should be exempted.

Shri A. K. Sen: That is for the Supreme Court to decide. We should not interfere in such matters.

Mr. Deputy-Speaker: In any case, there is no amendment on this subject. Now the question is:

"That clauses 52 to 57 stand part of the Bill".

The motion was adopted.

Clauses 52 to 57 were added to the Bill.

Clause 24— *(Persons who may be admitted as advocates on a State roll)*

Mr. Deputy-Speaker: We will now come back to clause 24.

Mr. Hajarnavis: I want to move my amendment No. 51.

Amendment made:

for lines 32 and 33, substitute—

"(i) a barrister who has received practical training in England or a person who has obtained a degree in law from any University in India before the appointed day." (51)

Shri A. K. Sen: That exempts the existing law graduates from being hit by the subsequent rule.

Shri C. R. Pattabhi Raman: There are amendment Nos. 47 and 50 to this clause.

Mr. Deputy-Speaker: The question is:

"Page 11,—

for lines 25 to 27, substitute—

"(c) he has obtained a degree in law—

(i) before the appointed day, from any University in the territory of India; or

(ii) before the 15th day of August, 1947, from any University in any area which was

[Mr. Deputy-Speaker]

comprised before that date within India as defined by the Government of India, Act, 1935; or

(iii) after the appointed day, from any University in the territory of India or elsewhere, if the degree is recognised for the purposes of this Act by the Bar Council of India; or

he is a barrister." (47)

The motion was adopted.

Mr. Deputy-Speaker: The question is:

"That in the amendment proposed by Sarvashri Ajit Singh Sarhadi Nathwani, and Jagannatha Rao, printed as No. 41 in List No. 6 of amendments,—

after part (iia), insert—

"(iib) any person who has practised before any High Court and who has discontinued practice by reason of his taking up employment under the Government, a local authority or any other person;" (50).

The motion was adopted.

Shri Nathwani: There is amendment No. 41.

Mr. Deputy-Speaker: The question is:

Page 11,—

for lines 34 to 36, substitute—

"(ii) any person who has for at least two years held a judicial office in the territory of India or is a member of the Central Legal Service;

(iia) any person who has for at least two years held a judicial office in any area which was comprised before the

15th day of August, 1947, within India as defined in the Government of India Act, 1935, or has been an advocate of any High Court in any such area; and". (41)

The motion was adopted.

Mr. Deputy-Speaker: I will now put the other amendments, to the vote of the House.

Amendments Nos. 23, 26, 18, 19, 20 and 42 were put and negatived.

Mr. Deputy Speaker: The question is:

"That clause 24, as amended, stands part of the Bill'

The motion was adopted.

Clause 24, as amended, was added to the Bill.

The Schedule

Amendment made:

Page 23,—

after line 10, add

"4. The Bombay Reorganisation Act, 1960 (11) of 1960) — Section 31." (7).
—(Shri Hajarnavis)

Mr. Deputy-Speaker: The question is:

"That the Schedule as amended, stand part of the Bill".

The motion was adopted.

The Schedule, as amended, was added to the Bill.

Clause 1.— (Short title, extent and commencement)

Shri N. R. Muniswamy: Sir, sub-clause (1) of clause 1 reads:

"This Act may be called the Advocates Act, 1961."

Under clause 34 we have allowed other categories of lawyers like attorneys to practise in High Courts. I,

therefore, suggest that we may substitute "Advocates Act" by "Legal Practitioners Act".

Mr. Deputy-Speaker: What is there in a name"? it was once said.

Shri A. K. Sen: With due respect to the hon. Member, I should say that there is hardly anything in the point he has made. This Act does not allow the attorneys to practise. They are allowed by the respective High Courts according to the rules under their Charter. These attorneys though they will continue to practise will not be advocates on the rolls of the State Bar Councils or the Central Bar Council.

Mr. Deputy-Speaker: The question is:

Page 1, line 5,—

for "1960" substitute "1961". (2)

The motion was adopted.

Mr. Deputy-Speaker: The question is:

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

The motion was adopted.

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

Enacting Formula

Shri Hajarnavis: I beg to move:

Page 1, line 1,—

for "Eleventh Year" substitute "Twelfth Year" (1)

Mr. Deputy-Speaker: The question is:

Page 1, line 1,—

for "Eleventh Year" substitute "Twelfth Year" (1)

The motion was adopted.

Mr. Deputy-Speaker: The question is:

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

The motion was adopted.

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

Title

Mr. Deputy-Speaker: The question is:

"That the Long Title stand part of the Bill."

The motion was adopted.

The Long Title was added to the Bill

Shri A. K. Sen: Sir, I beg to move:

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

Some Hon. Members rose—

Mr. Deputy-Speaker: Already we have transgressed into the time that was allotted to the other Bill. I think we have had enough discussion. I shall allow two minutes to each hon. Member. Motion moved:

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

Shri Basappa: I have not spoken during the First Reading.

Mr. Deputy-Speaker: Then he will not be satisfied with two minutes.

Shri Narayanankutty Menon: Sir, it is only to clarify certain points raised by my hon. friend Shri Khadilkar that I rise to speak at this stage. He said that when we from these benches speak on this Bill we naturally forgot certain basic and fundamental requirements of the legal profession. It is entirely wrong to say that as far as we are concerned, we do not recognise the importance of law as an instrument to change the social order, especially when we stand committed to a change in a peaceful manner from one order of society to another.

Therefore, we emphasise that laws are the real instruments of these changes and the lawyers who are to handle these laws have got a responsibility to inculcate in themselves the dynamism of the changing conceptions of the social order and realise the immense responsibilities thrown upon them in the changing times of today.

[Shri Narayanankutty Menon]

Secondly, I wish to clarify one point. The impression has been created that we have been defending lawyers who are taking exorbitant fees. That point has been made. I wish to clarify that from these benches we spoke in a manner that we did not ignore the few lawyers who were taking exorbitant fees and the fact that there is consequently mounting cost of litigation; our only point was....

Mr. Deputy-Speaker: Everything that had been said from this side or that side is on record. Why repeat it?

Shri Narayanankutty Menon: I am only clarifying it. What we said was only this. If there are two sides of a picture, and if there is a brilliant and good side and also a bad side, we said "look also at the brilliant side of the picture and do not look only at the bad side of it". It is just like the old saying which says that two men were asked to walk down an avenue. One side was full of rose flowers and there was a gutter on the other side of the avenue. When they passed through that avenue and came back, one of them was asked "What did you find on the road?" The first man said "I saw beautiful roses smelling pleasantly". When the second man was asked what he saw, he said: "It is all gutters and smelling". So it is a matter of approach.

Mr. Deputy-Speaker: Both used one eye each!

Shri Narayanankutty Menon: Therefore, I say that it is only a matter of approach. My only request to my hon. friends, including Shri Tyagi, is that the better side is the far more important side and the other side should be ignored, and whatever is required could be done and should be done by lawyers themselves to correct all the catalogue of complaints that have been made by hon. Members against the profession generally.

Shri Tyagi: I support the Bill, as amended, and I congratulate the members of the profession. Of course, it is a dignified profession. I think the Minister of Law will go down in history as the one man who has rendered a great service to this profession. This will be an achievement for him because he will be remembered as the man who put the profession on the map.

After all this discussion there is only one point which I want to emphasise even at this stage, and it is this, namely that the High Court Judges should not have been allowed to divorce themselves from the Bar Councils so hurriedly, the Bar Councils which they had nursed, and husbanded for years together in the past. The hon. Minister also has agreed that their association with the Bar Councils will add a lot of dignity and prestige to the Councils, to the profession on the one side and also to the judiciary on the other. This separation might tell on the prestige of both the Bar Councils as well as the High Courts. I would therefore still urge if the Law Minister could go by his own personal views which he has expressed on the floor of the House and see to it that these venerable bodies are brought together. Otherwise in due course there might be clash between the High Courts and the Bar Councils on questions of prestige and so on. It will be a bad day for the nation and both will suffer. Particularly when decisions are taken with regard to professional conduct and such things, where their own members of the Council are involved, a third party should be welcomed by all. I therefore suggest that there might still be some way open to bring them back again and it might be examined.

Shri Raghbir Sahai (Budaun): The Judges themselves are not anxious.

Shri Basappa (Tiptur): I very much wish that I had an opportunity to speak in the First Reading itself. Now in the Third Reading I cannot enter

into any controversy about the dual system of advocates prevailing in some parts of the country.

We are happy to know from the hon. Minister that our legal profession has been held in very high esteem in other countries, particularly England and other places. The legal profession has contributed a great deal in its participation in the freedom movement which is known to all of us very well. Still, in district courts and other places, the profession needs a lot of improvement, and it has been discredited to a great extent also. There are very many reasons for this. One of the reasons is that there is overcrowding. We have to see that there is not much overcrowding in the courts. Secondly, the standards of the lawyers are coming down, and it is a matter of concern for all of us that this is so, and we should take steps to see that the standards are raised.

It is very unfortunate that certain malpractices also take place. All these things are sought to be prevented in this Bill, and to that extent, I welcome the Bill and also the improvements that have been made by the Joint Committee.

The system of a unified Bar is a thing which we should all welcome, and it is a step in the right direction. I think India has given a lead to many parts of the world in this matter.

Of course, there are some people who say that the Bill does not go far enough, because they want that there should be a clear relationship laid down between the client and the counsel, and there should also be a limit to the remuneration so that the ideal that we are having in this country, namely the evolution of a socialistic pattern of society is realised in all its implications.

The question of stamp duty seems to be a vexed question. Now, every

lawyer has to affix a stamp before he can appear in a court. I think this is a great injustice, and I feel that the stamp duty should have been abolished. The hon. Minister has given us a hope that the State Governments will look into this matter and see that something is done.

As regards the constitution of the Bar Councils and their autonomous character, I feel that it is a good thing. If the judges had also been associated with them, it would have been very good. But when they themselves are not willing, it is not possible to compel them to do so. But, anyhow, I hope that the self-governing institution of the lawyers will see to it that justice is not only delivered quickly but it is not also so costly as it is today.

Some of the lawyers who are brilliant lawyers, and who have given their everything for the cause of the country have lost their *sanads*. I do not know why even till today their *sanads* have not been restored. I think in all fairness there must be some move in that direction to see that all those people who sacrificed their everything for the cause of freedom, and whose *sanads* were taken away because of the old heritage, get back their *sanads*.

As regards the qualifications of the lawyers, much has been said already that a degree is enough. Now, the training of the lawyers will also come in, and there will also be an examination at the end of that training. This will benefit the lawyers' profession.

About misconduct, I very much wish that the Law Minister should have considered it at much greater length.....

Mr. Deputy-Speaker: Now, let us wish them well. Why talk about misconduct?

Shri Basappa: I would not say much about it. Anyhow, as to what constitutes misconduct, the disciplinary committee of the Bar Council can

[Shri Basappa]

go into this matter, and they will see to it that a *prima facie* case is made out whenever the conduct of any lawyer is brought into question.

Shri Braj Raj Singh: May I just put one question to the hon. Minister? He has said in his speech that at the last Law Ministers' conference, the Law Ministers had agreed that not more than Rs. 500 would be charged in all from the lawyers. Will the hon. Minister persuade them in the next Law Ministers' Conference that they should not charge any stamp duty and that they should limit the amount only to Rs. 200 or Rs. 250?

Shri A. K. Sen: I may not be the Law Minister here, when the next Law Ministers' Conference takes place. My hon. friend forgets that the next Law Ministers' Conference may take place in 1962. It is in the lap of God, as to who will be where.

Shri Sadhan Gupta: The hon. Minister may commit on behalf of his successor.

Shri A. K. Sen: I have really very few things to say. I entirely agree with my hon. friend Shri Narayanankutty Menon regarding what he has said concerning the profession.

Ours has been a great profession, as I still hold it to be, and I entirely agree with Shri Tyagi, and I think he has done a great service by reminding us of it, that the dissociation of the judges from the future Bar Councils will be a matter of regret for all of us, for the entire country and for the profession. It will be our duty also to convey the regret of Parliament to the Judges.

With these words I commend the Bill for the acceptance of the House.

Mr. Deputy-Speaker: The question is:

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

The motion was adopted.

15.46 hrs.

INCOME-TAX BILL, 1961

The Minister of Finance (Shri Morarji Desai): Sir, I beg to move:

"That the Bill to consolidate and amend the law relating to income-tax and super-tax be referred to a Select Committee consisting of thirty members, namely Shri K. R. Achar, Shri P. Subbiah Ambalam, Shri Amjad Ali, Shri Premji R. Assar, Shri Bahadur Singh, Shri Prafulla Chandra Borooah, Shri D. R. Chavan, Shri Shree Narayan Das, Shri Mulchand Dube, Shri M. L. Dwivedi, Shri D. A. Katti, Shri P. Kunhan, Shri Bhausaheb Raosaheb Mahagaonkar, Shri Mathew Maniyangadan, Shri M. R. Masani, Shri T. C. N. Menon, Shri Radheshyam Ramkumar Morarka, Shri Narendrabhai Nathwani, Shri C. D. Pande, Shri Naval Prabhakar, Shri Ram Shanker Lal, Shri Shivram Rango Rane, Shri Jagannatha Rao, Shri K. V. Ramakrishna Reddy, Shri A. K. Sen, Shri Laisram Achaw Singh, Dr. Ram Subhag Singh, Shrimati Tarkeshwari Sinha, Shri Radhelal Vyas, and the mover with instructions to report by the last day of the first week of the next session.

Sir, this Bill, the full text of which has already been circulated to the hon. Members constitutes a landmark in the history of income-tax legislation in India. May I crave the indulgence of the House while I survey this history in brief?

Income-tax has been with us for over a century. It was in 1860 that it was introduced for the first time. Between 1860 and 1886, as many as 23 Acts were passed. The details regarding the provisions in those days are not of much importance. However, hon. Members might be interested to know that as early as 1886 it had been observed that "owing to the perpetual changes, the people, never certain who was liable or what was the sum due,