[Shri S. V. Ramaswamy]

aware of these difficulties and the Ministry is doing it utmost to attend to the amenities of passengers and make railway travel as comfortable as possible.

Mr. Speaker: There are no cut motions moved.

The question is:

"That the respective sums not exceeding the amounts shown in the third column of the order paper, be granted to the President, on account, for or towards defraying the charges during the year ending on the 31st day of March 1963, in respect of the heads of demands entered in the second column thereof against Demands Nos. 1 to 11 and 13 to 18".

The motion was adopted.

16.24 hrs.

*APPROPRIATION (RAILWAYS) VOTE ON ACCOUNT BILL, 1962

The Deputy Minister of Railways (Shri Shahnawaz Khan): I be to move for leave to introduce a Bill to provide for the withdrawal of certain sums from and out of the Consolidated Fund of India for the service of a part of the financial year 1962-63 for the purposes of Railways.

Mr. Speaker: The question is:

"That leave be granted to introduce a Bill to provide for the withdrawal of certain sums from and out of the Consolidated Fund of India for the service of a part of the financial year 1962-63, for the purposes of Railways."

The motion was adopted.

Shri Shahnawaz Khan: I introduce† the Bill.

I also beg to move†:

"That the Bill to provide for the withdrawal of certain sums from and out of the Consolidated Fund of India for the service of a part of the financial year 1962-63, for the purposes of Railways be taken into consideration."

Mr. Speaker: The question is:

"That the Bill to provide for the withdrawal of certain sums from and out of the Consolidated Fund of India for the service of a part of the financial year 1962-63, for the purposes of Railways be taken into consideration".

The motion was adopted.

Mr. Speaker: The question is:

"That clause 2, clause 3, the Schedule, clause 1, the Enacting Formula and the Long Title stand part of the Bill".

The motion was adopted.

Clause 2 to Clause 3, the Schedule, Clause 1, Enacting Formula and the Long Title were added to the Bill.

Shri Shahnawaz Khan: I beg to move:

"That the Bill be passed".

Mr. Speaker: The question is:

"That the Bill be passed".

The motion was adopted.

16.27 hrs.

ADVOCATES (AMENDMENT) BILL

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

"That the Bill to amend the Advocated Act, 1961, be taken into consideration".

I might, in brief, explain the objects of the amendment. Under the Advocates Act, 1961, which received the assent of the President on the 19th May 1961, it has been provided under

---

*Published in Gazette of India Extraordinary Part III—Section 2, dt. 27-3-1962.

†Introduced|moved with the recommendation of the President.

Section 1(3) that the Central Government may be notification in the Official gazette appoint a date, and different dates may be appointed for different provisions of the Act. The Act aimed first at creating an All-India Bar-Council as the apex of the legal profession. Then a Bar Council had also to be constituted in each State. Then a common roll of advocates was to be prepared which would entitle them to practise in any Court in India including the Supreme Court. The problem was to do all this without discontinuing the right of the advocates to practise. It was our hope, expressed by the Law Minister and myself, that the All-India Bar Council would come into existence and begin functioning before our term came to an end. But certain difficulties supervened.

Chapters I, and VII were brought into force on 16-8-61. Chapter I deals with definitions, Chapter II with enrolment and Chapter VII with transitional provisions. Chapter III was brought into force on 1-12-61 when certain provisions of certain Acts were repealed.

It was expected that before 1-12-61 all State Bar Councils would come into existence and they would also elect their representatives to the All-India Bar Council so that the All-India Bar Council would also begin functioning. But out of the 15 States Bar Councils to be consitituted, one was constituted in September. That was in Assam. Two were constituted in October, these were in Madras and Orissa; six in November and five in December, and one in West Bengal has yet to be constituted.

Shri Braj Raj Singh (Firozabad): All others have been constituted now except West Bengal?

Shri Hajarnavis: Yes.

Shri V. P. Nayar (Quilon): Have they given any reason?

Shri Hajarnavis: It is for the advocates there and the High Court there to proceed with the elections. The information that we have received is that the elections are to be held in March, 1962 but I cannot vouchsafe for the correctness of the information. In the meantime there are many persons desirous of entering the profession. They had applied for enrolment and the enrolment has to be made in the first instance by the State Bar Council. Under section 28 (3) the rules framed by the State Bar Councils. are to be approved by the All-India Bar Council, and the framing of the rules was a prerequisite before the power, under section 24, of enrolment could be exercised, but, as I said, due to circumstances beyond our control, the All-India Bar Council did not come into existence, and those who intended to enter the profession could not be admitted.

Shri Braj Raj Singh: But you could have anticipated these difficulties, because you say you have no power to intervene in the affairs of the Bar Councils as in the case of West Bengal.

Shri Hajarnavis: After I have made the motion, if the hon. Member asks any question, I will certainly reply to them.

Therefore, we thought it necessary to promulgate an ordinance. Under the ordinance the difficulties were sought to be removed. Section 58 (1)—I will come to Clause 4, which is the main clause—reads:

> "Where a State Bar Council has not been constituted, or where a State Bar Council so constituted is unable to perform its functions by reason of any order of a court or otherwise...."

It so happened that in respect of elections to certain State Bar Councils, an injunction was issued by the courts because of disputes. Those injunctions I am told, have now been dissolved, but at that time when the ordinance was issued, that was the position.

[Shri Hajarnavis]

Therefore, the power of admission was given back to the High Courts, so that persons desirous of entering the profession in the intervening period might not suffer.

Then, as I have pointed out, before the State Bar Councils could admit, it was necessary that the rules had to be approved by the All-India Bar Council. So, in section 58 (2) it was said that even though the rules had not been framed, the State Bar Councils would be able to admit the advocates on the rolls.

One of the most important features of the Advocates Act was that a person who had been enrolled as an advocate would be entitled to practise in all courts, including the Supreme Court, but till the common roll came into existence, this right could not be exercised. Chapter IV has not yet come into force; it cannot till the All-India Bar Council is formed. But in order that that right should be invested as early as possible to members of the profession, clause (3) provides that the moment a person is enrolled as an advocate in any High Court, he would, as of right, be entitled to practise in the Supreme Court until Chapter IV comes into force.

Then we have brought into force section 50 (2) which has repealed the provisions in the Legal Practitioners Act and the Bombay Advocates Act relating to enrolment. The right to enrolment has got to be continued. There is no authority who could continue that. Therefore, for the interim period the right has been continued under clause 4.

We want to add another amendment which would read as section 59. By this, power is being taken to the Central Government to provide for an order published in the Official Gazette to make provisions not inconsistent with the punrposes of the Act as would be necessary and expedient to remove any difficulty.

Clause 2 deals with the members of the Central Legal Service. As the Act reads, it refers to a person who is a member of the Central Legal Service. Persons who are in the Central Legal Service are hardly likely to enrol themselves as Advocates. They are likely to seek admission only after they cease to be officers of the Central Legal Service.

Shri V. P. Nayar: Have you defined the Central Legal Service?

Shri Hajarnavis: It is known.

Shri Braj Raj Singh: Has it been defined in the General Clauses Act?

Shri Hajarnavis: It is known. Not everything need be defined.

Shri V. P. Nayar: Will every member of the Service be included?

Shri Hajarnavis: Therefore, the words, 'has been a member' have to be added, so that it will provide for a person who has ceased to be a member of the Central Legal Service, to apply for admission.

Then, amendment to section 54 provides for a correction of an omission. As the Bill was framed, it provided for nomination of judges to the Bar Council; but since that provision was delected by the Select Committee, there are no longer nominated members. Therefore, the words in section 54 have no application. They are to be delected.

This, in short, is the Bill which I commend to the acceptance of the House.

Mr. Speaker: Motion moved:

> "That the Bill to amend the Advocates Act, 1961, be taken into consideration."

Shri Braj Raj Singh: May I just enquire from the Law Minister whether the rules to be framed under this Act have been framed by the Central Government?

Shri Hajarnavis: We have no power to frame the rules. What we did was, we framed model rules and circulated them to the High Courts so that the State Bar Councils may take them as the basis and frame their own rules.

Shri N. R. Muniswamy (Vellore): Have any rules been framed by the All India Bar Council?

Shri Hajarnavis: No.

Sir, there is one more statement which I might make. I have just now received information that the State Bar Council has been formed in West Bengal under the Act on 28-2-62.

Shri V. P. Nayar: Mr. Speaker, Sir, before I bid farewell to the House and also to the profession to which I have belonged for 15 years, I think, it is in the fitness of things that I speak a few words on this Bill.

Mr. Speaker: What is that profession?

Shri V. P. Nayar: Advocate.

Mr. Speaker: Should he announce it here?

Shri Hajarnavis: I suppose he is not leaving the profession.

Shri V. P. Nayar: I am forced to leave it and for some reasons, I am leaving the profession because I am physically incapacitated from continuing in it. That I did not want to say.

This Bill had been generally welcomed when it was introduced in this House by all sections as also in the other House. I should have thought that the Law Ministry which is fortunately headed by two experts in law, unlike other Ministries, should give a little more thought to the original provisions. And, if they had done so, they would have had no opportunity to bring forward such an amending legislation, when, as they say, we were waddling from the valley like a lame duck.

As I said before, this Ministry is fortunately having the guidance of two experts. And, at the time when Parliament passed this law, they did not for a moment anticipate why it may not be possible for West Bengal to form a Bar Council as it was the intention of this House to form. The hon. Minister just now told us that this had been formed on the 28th of February. If that was formed a little earlier, I think we could have avoided the discussions now and, even the Ordinance itself.

The last sentence of the Statement of Objects and Reasons says that opportunity has been taken to make certain minor drafting changes in the Advocates Act. I ask this very simple question of the hon. Law Minister? If the Law Ministry sets an example of coming back to the House within a few months of passing a legislation and asking for minor changes to be made what would be the attitude of the other Ministries? I want the Law Ministry to set an example in the matter of drafting legislation, to the other Ministries; the other Ministries do not have specialists for drafting. Here, under the guidance of two very eminent lawyers if this happens, it is small wonder that every day some Minister comes before us and says: this Bill has to be amended like this. This is setting a bad precedent and the Law Ministry should take proper care in this regard. It must correctly anticipate and see that no such amendments are necessary in very minor matters so as to take the time of the House.

There is another aspect in this Bill. I am very glad that we have given the same status to all the advocates in India and that we have done away with the distinctions which prevailed between one group of advocates and others. But when I read the Bill as also the amendment of Shri Muniswamy I find that a little change is necessary to the original Act. His amendment says.

[Shri V. P. Nayar]

"Provided that the rules so made shall not apply to the advocates enrolled prior to the 1st day of December 1961 on the roll of the Supreme Court to practise as of right as advocates on record if they so elect."

I understand that the Supreme Court has laid down a rule—in 1939 or 1960—that an examination is necessary for a person to enrol as an advocate on record. I think that is Shri Muniswamy's point. I see no reason why, when we make such an elaborate change in the existing law we should not provide for certain retrospective effect to those persons who have already functioned as advocates. Maybe, for some reason or other, they would not have continued in actual practice. Is it the suggestion that they should again go through the indicated procedure and then get themselves enrolled again? Even among the Members of the House there are some instances. The have chosen to come to this House leaving their profession because there was pressure from the people of the constituency that they should contest elections. As we know by our experience in the last ten years it is absolutely impossible for a lawyer to give equal attention to the profession as also to this House and some of us have chosen to pay more attention to the House. I do not belong to this category at all but I suggest that retrospective effect should be given. There are many persons outside the House who have once enrolled but who had not continued in actual practice nor taken any examination. To such people there should be no hardship. Therefore, I say that this amendment should be welcomed by the Government.

There was a point made by the hon. Minister about the Central Legal Service. Where is it defined? We know the Indian Civil Service; we know the Indian Administrative Service. But what is this central Legal Service? What is its strength? What are the qualifications for entry into it? Without saying anything, the hon. Minister says that it is well known. We know that there is a central law agency. That is well known. We know also...

Shri Hajarnavis: That also is not defined or prescribed.

Shri V. P. Nayar: You do not give the right for anyone of them to appear in a court also. But here, when you give the right to become an advocate to a person who has been in a service which has never been declared, which has never been defined anywhere, I think it is not proper. So, I want an answer from the hon. Minister to that question, before you declare that a member of the Central Legal Service is entitled, on retirement or on leaving the service, and has the right to, enter the bar. I certainly want to know what is the Central Legal Service. If the hon. Minister could give me an answer, to that extent, the argument is not necessary.

Mr. Speaker The hon. Member wants to know whether there is any definition of this service.

Shri Hajarnavis: I am informed that rules are framed, and I am trying to procure the copy of the rules, but before a person enters the Legal Service, he must have at least seven years' practice as an advocate or seven years' experience as a judicial officer. That will allay any apprehension that my learned friend feels, namely, that persons not qualified or who are not advocates or who have no experience as a lawyer are entering the Central Legal Service.

Shri V. P. Nayar: That again is a disqualification and a discrimination. That creates a further difficulty; when you lay down the qualifications which will entitle a person to be an advocate you do not insist on any length of

practice at all. So, far a person who enters the Central Legal Service, seven years' practice becomes absolutely necessary. In order to secure a place in the Central Legal Service, a person should have seven years' experience. That becomes a discrimination against that person, because, in other case, you do not require a qualification in regard to the length of practice. So, in the case of a person who enters the Central Legal Service, such practice becomes compulsory and mandatory.

Shri Hajarnavis: May I remind the hon. Member that a provision about the Central Legal Service is already in the Act passed by this House. All that we are trying to do now is that a person who has retired from the service would also be similarly entitled.

Shri V. P. Nayar: I want to pose this question because there seems to be some confusion. If the hon. Minister gives me a satisfactory answer, I am prepared to withdraw the argument. If a person enters the Central Legal Service and if he functions as a paid employee of the Government, is he entitled to go and argue a case in a court of law? This is exactly what is obtaining at present. I know that as a matter of fact the Government advocate today, who is functioning in the Supreme Court, is a paid employee. Nevertheless, he is appearing in cases in which the Government is a party. Shri C. R. Pattabhi Raman knows that in every case where either the Solicitor-General or the Attorney-General enters appearance, you will find that they are assisted by so and so, so and so. I do not want to discuss names here, because names themselves may suggest something. I leave it. But the point is that in such cases a paid employee of Government is allowed under the rules to appear in the court and function as an advocate. What is the distinction in this case, if you throw it open to the Central Legal Service? I cannot understand. At present, even a person on a monthly remuneration from the Government is entitled to appear because he belongs to the Central Government. Now, you bring forward a rule which says that if a person is in the Central Government, and if he leaves it, he is competent to appear. I have not been able to find any definition as to what the Central Legal Service actually means. That is why I find this difficulty. Supposing a person enters the legal service as an assistant or a clerk or a typist and then qualifies himself in law, is he not competent to go and enrol? That is the reason why I say that even in the constitution of the Central Legal Service you make a distinction. If you enter the Central Legal Service and then become a law graduate, you are forbidden from starting practice, because, if you belong once to the Central Legal Service, it must be strictly the Central Legal Service with seven years' practice behind. Even in the Central Legal Service, you are not treating all people who are basically qualified to function as advocates on the same footing. That is my difficulty. I would request the Minister to consider whether some change is necessary. If he asks me whether I can suggest some amendment, I cannot, because I admit I have not bestowed so much attention to this particular provision. But the fact remains that there is some difficulty, which has to be got rid of, especially because this is a legislation which the experts themselves are making for other experts. When the Law Ministry makes a particular enactment and brings it before the House, it should certainly be a model legislation. So, we should not leave it so pleasantly vague; we should be more categorical about it and see that it is not capable of further interpretation according to one's own requirements.

From the Statement of Objects and Reasons, I find that all the States were written to. I know that in all the States there were some sort of Bar Councils, that all of them are autonomous and the State Governments practically have no control over them. But in this case, the Parliament has passed a law and the Bar Councils

[Shri V. P. Nayar]

have been requested by the Central Government—it may or may not be through the State Governments—but in requesting the Bar Councils of the States, certainly the Law Ministry or the officer who had made the reference, would have indicated that Parliament has passed this law. I would like to know which of the Bar Councils in India can flout an enactment passed by this Parliament. When we passed the law, it was obvious that unless the Bar Councils were formed, there was not a ghost of a chance to form the Central Bar Council. Having known that Parliament has passed a law which made it mandatory, why is it that one particular State did not constitute the Bar Council? It is precisely because of that that we have to go through the extraordinary process of promulgating an ordinance and come before the House at the fag end of the lame duck session with this Bill. My friend, Shri Muniswamy, tells me that there was this lacuna. If there was a lacuna, who was responsible for it? This is not drafted by lay men. The Law Ministry has experts. Further, both the Ministers are very keen that they should bring a model legislation. Otherwise, I have nothing to object to the provisions of the Bill. They are necessary. I hope my hon. friend, who will again be in the House in this position or in a better position, will ensure that such things do not happen under his control.

Shri N. R. Muniswamy: Two important observations were made by the previous speaker, one with regard to the drafting lacuna and the second with regard to the West Bengal Bar Council not having been formed under the Act of Parliament. I submit that unless there had been some lacuna, it would not be possible for us to discuss this Bill. Whenever an amending Bill is brought before the House, we take the opportunity to ventilate some other grievances also, which might have escaped our attention earlier.

It is possible that this Parliament, many Members of which are lawyers, might have omitted to consider some important and salient features, which have been brought in by the amending Bill. We must always welcome amendments; in this evolutionary period, there are bound to be ups and downs. So, if we have to amend an Act, it does not reflect on the ability of the draftsmen and does not mean that they have not got proper vision to cover all possible things. It is not humanly possible to cover against all lapses and failures. So, there is nothing wrong in having an amending Bill to remove those defects and we must all welcome it.

Then I come to the point about West Bengal and the lacuna. When we passed this Act we have said that any law graduate can get himself enrolled as an advocate of any court. Usually, in all Bar Councils what happens is they must undergo certain training for a certain period after which they must pass an examination. After the passing of this Act, many of the law graduates who were fresh from the colleges got themselves enrolled as advocates. As a result of it, the other persons who have gone through one year's extra training felt that they were discriminated against. Now this amendment puts a stop to that discrimination. Because of the lacuna in the existing law so many people have taken advantage of it and got themselves enrolled as advocates, without undergoing this training which was very essential before enrolling themselves as advocates.

Then I come to the Central Legal Service, which consists of advocates. They lend their services to the Government and get emoluments in return from Government. They are not only servants of the Central Government but, at the same time, they are advocates also. They can practise. For example, Sir, you are a lawyer and, as a lawyer, you can practise in the Supreme Court. But it is not allowed.

Why? The Central Legal Service seems to be a privileged class, for they can practise as advocates also. This is not very conducive to having an efficient service. Even otherwise, this is a discrimination shown to those who have enrolled themselves as advocates before entering the Legal Service.

The Central Legal Service is a separate agency intended only to render service to the Central Government in cases where they figure either as plaintiffs and defendants or as appellants or respondents. They can not only plead but they can act. They can plead in the courts and they can assist other advocates. It looks as though a discrimination has been unintentionally brought in. So, it might possibly create some sort of discrimination between them and other servicemen. Therefore, I would suggest that this has to be looked into and at least next time when an amending Bill is brought forward this may be set right.

The other point mentioned by the previous speaker will become relevant when we come to the clause by clause consideration. Even then, I have to bring to your notice one small aspect in connection with the amendment. Anybody who enrols himself as an advocate has got the right to practise, plead and act. That has been provided in all Acts. Any advocate can plead as well as act. Here what happens is they have been cautious enough to have a saving clause whereby the Supreme Court can frame rules, so far as the Act is concerned. When the Letters Patent High Courts were installed in Madras, Bombay and Calcutta in the Original Side no one can practise unless he is assisted by the Solicitor. He has to file all the papers, take the records and then only the advocate can go and plead. That was the position when the Britishers were ruling the country. Now it has been given the go-by and any advocate can himself file papers, receive papers, plead and act. Similarly, on the same basis, when an advocate is enrolled as an advocate of any High Court, when he wants to get himself enrolled as an advocate of the Supreme Court, what happens is he must have at least ten years' standing as an advocate. Unless he has ten years' standing as an advocate, he cannot be enrolled as junior advocate of the Supreme Court. That also has been given the go-by, which is a welcome feature, because there should be no such difficulties as insisting on certain period of time like ten years' practice at the Bar to become a junior advocate of the Supreme Court.

Therefore, these are certain good features of this Act. But what happens so far as the action part is concerned? The pleaders who can act on the same basis as the solicitors in the Original Side, they wanted the same thing in the Supreme Court also.

The Supreme Court wanted to have these rules. These rules are that whoever acts as an advocate on record must go through certain examination and must have a permanent address, a clerk and an establishment. This is quite in consonance with the practice which must obtain in all High Courts, more so in the Supreme ourt. So, I quite agree that they must have these rules. But they are insisting upon an examination for all the advocates. This is creating a hardship for them. It is not possible for an advocate who was enrolled as a junior advocate in 1951 or 1952 to sit for an examination if he wants to be an advocate on record. I quite appreciate the point that he should know something about the procedure because otherwise any Tom, Dick or Harry, people who do not know anything can file papers etc. and create procedural difficulties. All these things are there. But they have given some room also. Those who want to enrol as advocates on record can do so within a certain time if they want to avail of it. Those who had not done it cannot hereafter do it. The rule-making power says that they must enrol themselves as advocates on record if they so elect, otherwise they can be junior advocates also and can simply plead. That is a very welcome

[Shri N. R. Muniswamy]

rule, but why should they insist on their sitting for an examination in the case of those who have already been there as junior advocates before 1959? I can understand if people who are coming now and are asking for enrolment as advocates on record are asked to sit for an examination, but why insist on others to sit for an examination when they were junior advocates much earlier than when the rule-making power came into existence? It looks as though we are taking away the right which was vested in them to plead as well as to act by making certain rules. I quite agree that the Supreme Court have framed the rules and we should not interfere with them. It is a sanctum and we should have a sanctimonius attitude. But they should not cause hardship to a particular advocate or advocates who are already junior advocates by forcing them to sit for an examination. That is the only point which I want to submit. I quite agree that they must have an office, a permanent address, a clerk and all other establishment but why ask them to sit for an examination? Even people who are experienced will find it difficult if they are asked to sit for an examination. We know what the results are. We cannot insist upon them. But when fresh advocates want to practise as advocates on record they must be insisted upon to sit for an examination

When you have given them the right to enrol as advocates on record and they have not done it, what you should do is that you should levy a penalty. You may say, "You have not availed of the facility and now you cannot have an exemption. If you want an exemption, pay Rs. 100 extra". Everybody enrols after paying Rs. 250 in the case of a junior and Rs. 500 in the case of a senior. But asking them to sit for an examination will be creating a great deal of hardship for persons who are already there as advocates. Opportunity was granted to them to avail of the facility but they have not availed of it. There may be many reasons for not availing it. But because they have not availed of it, you now place an onerous liability of sitting for an examination. It is very bad. I know the hon. Minister is very sympathetic in his attitude. He also says that it will create great hardship but he is very reluctant. The judges of the Supreme Court are very touchy. They do not want that their rules should be tampered with.

Shri Hajarnavis: Why should the hon. Member not leave it to me to say what I want to say in this matter?

Shri N. R. Muniswamy: I am very sorry. I had anticipated it. Evidently he is very much against this and not very sympathetic as I thought. It looks like that

Mr. Speaker: How long does he want to speak? Is he concluding?

Shri N. R. Muniswamy: I may continue tomorrow. I want five minutes more.

Mr. Speaker: He may continue tomorrow.

17.05 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Wednesday, March 28, 1962/Chaitra 7, 1884 (Saka).