

14. 35 hrs.

**Title:** Consideration and passing of the Advocates' Welfare Fund Bill, 2001.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS AND MINISTER OF SHIPPING (SHRI ARUN JAITLEY): Mr. Speaker, Sir, I am extremely grateful for the opportunity that you have provided.

I beg to move:

"That the Bill to provide for the constitution of a welfare fund for the benefit of advocates and for matters connected therewith or incidental thereto, be taken into consideration."

In the Concurrent List of the Constitution, Entry 23 provides for social security and social insurance. Entry 26 covers the legal profession. This hon. House, therefore, has the legislative competence to enact this Bill. There have been similar legislations that have been approved in some of the States in the country. We had an opportunity to examine all of them and various bodies at the level of the Bars – the Bar Association of India, the Bar Council of India – have been repeatedly representing to the Government of India that a comprehensive legislation which covers the whole country should be proposed to this hon. House. Since there are already some legislations in some of the States, this Bill makes a specific provision that those legislations will continue to hold the field unless the State Legislatures in their wisdom decide to accept the national law rather than the State legislation.

I may explain the scheme of this legislation. We have taken guidance from a large number of State legislations that hold the field. The scheme of this legislation is that it provides for the creation of a Fund, called, the Advocates' Welfare Fund. In this Fund, the principal donations come from the Bar Council of India. There is a provision making it mandatory for every advocate to fix a welfare stamp out of his own pocket rather than passing on the burden to the client. The advocates will fix this welfare stamp over a period of time for every case or every *waqalatnama* that they file and the entire corpus will be collected by the Bar Council of the State.

In every State, there is a provision for creation of an Advocates' Welfare Fund Trustee Committee. The Advocate-General of that State will head that Trustee Committee. It will have representation of the State Bar Council. The Secretary of the State Bar Council will be its Secretary. There will be nominees of the Bar Council to this Committee. The Secretary of the Department of Law of a State will be a Member of this Fund. The amounts which are collected in this Welfare Fund will, therefore, be amounts which are substantially collected from the advocates themselves though there is an enabling power for the Fund to collect revenues and resources from other sources also. But the principal funds will themselves come from the Bar itself.

The Act, in fact, is a facility. It is a legislation that makes the affixation of the welfare stamp mandatory and then enables the Bar Councils to collect those moneys. These moneys are intended to be used for several welfare measures. They are used, even in the absence of any social security for families of deceased advocates, for advocates upon cessation of practice and for creation of certain common facilities. There is a provision that 10 per cent of the amounts which are collected for this Fund would also be used at the level of the District Bars where the common amenities are indeed not of the best quality for improving the infrastructural facilities of these Funds. A lot of discretion has been left to these Committees that are going to be constituted in every State. These comprise of the Advocate-General of the State, the Law Secretary of the State, the Members of the Bar Council of that State who are administering the Fund. Section 24 provides for various purposes for which this Fund will actually be put to use. There could be group insurance. The money could even be provided for common facilities, such as, libraries, Bar rooms, etc. The Fund makes one exception. The very categorical points that have been stated are like this. There is a certain amount which even senior advocates are expected to pay into this Fund every year. But because they belong to a more affluent class in the Bar, they are not entitled to the benefits as far as the Fund is concerned. So, this will be for the community that the Fund has been suggested.

The fund has a categorical provision in clause 27(2) that the value of the stamp which is to be affixed will be by the advocate himself and not by the client.

There are two Annexures, scheduled to this legislation. The first schedule provides for the amount which is to be paid to an advocate upon cessation of practice. I may mention that this is illustrative and each State Government has been given the power that the schedule, being a subordinate legislation annexed to this Act, can be amended by every State government adding or improving up by every State Government, depending on the amount of fund that is available in that particular State.

There is also schedule two which provides for different States, where the Act already exists, with a provision in the Act that those States are at liberty to continue with their own State legislations or can switch over to the Central legislation if they find it to be of utility to the members of the Bar. The amount of stamp which has been provided for in the Act, in the first instance, is five rupees in the case of subordinate courts and ten rupees in the case of

tribunals, high courts and above.

This is one of the first cases, where for a professional group where there is otherwise no social security available and there is a very large section even amongst them who are not so affluent, which seeks to create for them a social security mechanism. Some States have done it, some have implemented it, in some places it is implemented in somewhat marginal manner. Therefore, at the national level this is one of the first occasions where an effort has been made to create a social security fund of this kind.

I propose to this hon. House to support and approve this Bill.

MR. SPEAKER: Motion moved:

"That the Bill to provide for the constitution of a welfare fund for the benefit of advocates and for matters connected therewith or incidental thereto, be taken into consideration. "

**श्री राजो सिंह (बेगूसराय) :** अध्यक्ष महोदय, मैं आपके माध्यम से मंत्री जी से एक स्पटीकरण चाहता हूँ।

अभी जो बिल आया है, यहां जितने बिल आते हैं, उसमें उद्देश्यों और कारणों का कथन होता है और मंत्री जी के हस्ताक्षर होते हैं लेकिन यह कानून मंत्री हैं और इन्होंने जो उद्देश्य की प्रस्तावना की है, उसमें इनके हस्ताक्षर भी नहीं हैं और किस उद्देश्य से यह बिल लाया गया है उसका भी स्पटीकरण इसमें नहीं है। **â€œ( व्रवधान)**

**श्री विजय कुमार खंडेलवाल (बेतूल) :** इसमें उद्देश्य दिया है, आप ठीक से देखें। आपके पास कागज पूरे नहीं हैं तो हम क्या करें। **â€œ( व्रवधान)**

**श्री विजय कुमार खंडेलवाल :** अध्यक्ष महोदय, कानून मंत्री ने पहली बार देश में इस बात पर भी विचार किया कि समाज में जो लोग आज कानून और व्यवस्था के पक्ष में न्यायालयों में खड़े होते हैं, कानून और व्यवस्था को सहयोग देते हैं, उनके भी वेलफेयर के लिए किसी फंड का निर्माण किया जाए। आज तक वकीलों के लिए जो देश में सालों से इस प्रोफेशन से जुड़े हुए हैं, सामाजिक सुरक्षा का कोई एक्ट नहीं था, कोई प्रावधान नहीं था। यदि किसी वकील की डैथ हो जाए तो उसका परिवार भूखा मर जाता था। आज हम देखते हैं कि किसी व्यवसायी की डैथ हो जाती है तो उसका लड़का वह व्यवसाय संभाल लेता है, कृषक की मृत्यु होने पर उसका बेटा कृषि संभाल लेता है, लेकिन किसी वकील की डैथ हो जाती है तो दूसरे दिन यदि उसके घर में कोई प्रोफेशन को संभालने वाला नहीं है तो सारी फाइलें वापस चली जाती हैं और घर भूख के कगार पर आ जाता है और इस प्रकार आर्थिक दृष्टि से मजबूत करने के लिए ऐसे व्यक्तियों के लिए जो देश में कानून-व्यवस्था बनाने में मदद करते हैं, उनके लिए एक सामाजिक सुरक्षा का जो एक्ट लाए हैं, इसके लिए मैं कानून मंत्री और सरकार को बधाई देता हूँ।

अध्यक्ष महोदय, इस एक्ट के माध्यम से जो भी नियम बनाने और प्रावधान करने की कोशिश की गई है उसमें और सुधार करने की आवश्यकता है। मंत्री महोदय ने बताया है कि और निधि दी जाएगी और जो शेड्यूल्ड फंड्स हैं उनमें और बढ़ोतरी होगी। उनमें स्टेट्स अमेंडमेंट कर सकेंगी, लेकिन मैं कहना चाहता हूँ कि इन सब बातों के अलावा आर्थिक मदद की और जरूरत है और जितने प्रावधान बताए गए हैं कि स्टेट बार काउंसिल कंट्रीब्यूट करेंगी, जो उनकी फीस आएगी, उसका 20 ٪ तिश्त कंट्रीब्यूट किया जाएगा, सेंट्रल एडवोकेट बार काउंसिल भी धन देगी, स्टेट्स फंडिंग करेंगी, कुछ धन डोनेशन्स से आएगा। यह सब ठीक है, लेकिन सबसे अहम मुद्दा यह है कि जैसा सैक्शन 27 में बताया गया है वह यह है कि वकालतनामे पर स्टाम्प लगाकर जो वेलफेयर फंड में राशि जमा की जाएगी। उसका दायरा और बढ़ाया जाए। मैं यह बताना चाहता हूँ कि वकालतनामा सिर्फ सिविल, क्रिमिनल और ट्रिब्यूनल में ही पेश नहीं करते, बल्कि ए.डी.एम., एस.डी.एम., कलेक्टर और नायब तहसीलदार के कार्यालयों में भी वकालतनामा पेश किए जाते हैं। इसलिए इसका स्कोप बढ़ाकर यह होना चाहिए कि जहां भी वकालतनामा पेश होता है, चाहे वह कोर्ट हो या कोई और जगह हो, वकील पावर आफ एटार्नी देकर क्लाइंट की तरफ से जहां भी पेश हो, जहां भी वकालतनामा पर स्टाम्प फी लगे, उन सबको इसमें शामिल करना चाहिए जिससे इसमें ज्यादा पैसा आ सके और वेलफेयर फंड में जमा हो सकेगा।

उपाध्यक्ष महोदय, दूसरी बात मैं यह कहना चाहता हूँ कि जिस चीज का हमेशा झगड़ा होता है वह क्लॉज 27 है। उसके अंदर कहा गया है कि-

"The value of the stamp shall neither be the cost in a case nor be collected in any event from the client. "

और अगर इसका कोई वायलेशन होगा-

"Any contravention of the provisions of sub-section (1) or sub-section (2) by any advocate shall disentitle him either in whole or in part to the benefits of the Fund and the Trustee Committee shall report such contravention to the State Bar Council for appropriate action. "

पांच रुपए की कोर्ट फीस, कोई ज्यादा नहीं होती है। यदि ऐसा होगा तो कोई भी शिकायत कर देगा और ट्रस्टी कमेटी इन्हीं झगड़ों को निपटाने में लगी रहेगी। क्योंकि पांच रुपए के लिए कोई भी कह देगा कि हमसे पैसे ले लिये और वापस नहीं किए। इसलिए मैं कह रहा हूँ कि इसको निकाला जाए। यह जरूरी नहीं होना चाहिए। जो फीस लगी है, वह रिकवर नहीं होनी चाहिए, अन्यथा तो लिटिगेशन बढ़ेंगे। फिर पांच रुपए कोई बहुत बड़ी रकम भी नहीं है जिससे किसी को तकलीफ हो सके।

अध्यक्ष महोदय, मैं दो बातों की ओर ध्यान दिलाता हूँ। एक तो इसका स्कोप बढ़ाकर सारी कोर्ट शामिल कर दी जाएं, केवल सिविल और क्रिमिनल कोर्ट ही न रखा जाए। जहां भी वकालतनामा पेश होगा वहां यह वेलफेयर स्टाम्प लगेगा। दूसरा जो रिकवरी का क्लॉज है, वह डिलीट होना चाहिए। इन दो बातों के साथ कानून मंत्री महोदय जो बिल लाए हैं जिससे वकीलों को आर्थिक सहायता मिलेगी, उसके लिए बधाई देता हूँ और इसे सपोर्ट करता हूँ।

SHRI PAWAN KUMAR BANSAL (CHANDIGARH): Mr. Speaker, Sir, though any measure, legislative or administrative, intended for the welfare of the people ought to be supported, yet I am constrained to say that the Advocates' Welfare Fund Bill, 2001 gives too little too late.

Sir, a young law graduate who takes to the profession steps into a world full of uncertainties. Despite his having had a brilliant career to his credit and also the ability to articulate his views successfully, the life that lies ahead of

him may not be really that certain and promising. This situation is all the more difficult for a young man who may have come from a family of modest means. Those belonging to the weaker sections of society may not even be able to afford a course at law and in no case can such a person aspire for a career as an advocate.

The Statement of Objects and Reasons appended to this Bill appropriately underlines the need to provide for social security in the form of financial assistance to junior lawyers, but the provisions contained in the Bill miss out on this important aspect. I must also hasten to add that whatever has been provided is welcome.

The most important measure that needs to be introduced is to assure a new young entrant to the profession of some regular income in the first few years of his career. There has been a provision in the Bill to provide some assistance to buy books, but a good library is much more than just having some books. He got to have good premises and a well-stocked library to start off in the profession. This Bill misses out on these important aspects. A scheme needs to be formulated to associate new entrants to the profession with Legal Aid Scheme and there is need to give them an opportunity to appear for the Government in various courts and tribunals. To begin with, it may be to assist the senior counsel.

The young lawyers do not need charity but an opportunity to work and contribute their labour to the cause of justice. It was in late 1980s that the Behrul Islam Committee made some recommendations in this regard but with the new Government taking over, the priorities shifted and we heard nothing thereof. After a gap of over 10 years, the hon. Minister has come forward with these suggestions. I certainly welcome them. But it is only a few things that I referred to, which I would like him to take care of. The most important aspect that I have referred to is the need to provide some sort of an assured income to the new entrants so that they can stick on to the profession with hope and expectation, and do not soon become a frustrated lot in this world of cut-throat competition.

The hon. Member speaking before me has referred to one provision in the Bill which I also must really say is an important provision, that is, the introduction of the affixation of stamp on the *Waqalatnama* etc by the lawyers to generate income to serve as the corpus of this fund. I would also admit that well if it is just Rs.5, you cannot really keep an account of it. When the client comes to you and pays you the fee, he would not really ask you as to what is the break up of the expenditure thereon in filing a case. Therefore, to incorporate a provision to the effect that if the lawyer charges those five rupees from the client he would be liable to certain penal action, I suppose, is not really necessary and it could only lead to some difficulty. There is also a good provision that the Bar Council will contribute 20 per cent of their earnings from the enrolment of new members towards the corpus of this Fund.

One provision which I could not really understand is this. The Trust Committee has been made all powerful under this Act and it is not the Chairman of the Bar Council but the Advocate-General who is supposed to be the *ex-officio* Chairman of the Trust Committee. I have no objection to that. The Committee has also been declared to be as a body corporate.

I do not know how it has been provided that the printing of the stamps shall be done at the behest of the Bar Council and that the Bar Council shall maintain the accounts thereof. If the money vests in the Trust Committee, if the Committee has to utilise that money and hear the applications from different people seeking assistance. I do not really find any rationale in bringing in the Bar Council in this aspect. The stamps to be affixed should be printed at the instance of this Trust Committee itself by the Government and handed over to this Committee for the Committee to distribute it through the various Bar Associations for ultimately affixing on the *vakalatnamas* and memorandum of appearance, etc. The hon. Minister may kindly look into this.

There are one or two aspects that I would briefly like to refer to. Amongst the sources of income for the fund, it has been mentioned in clause 3 (2) (g):

"All sums received from the Life Insurance Corporation of India or any other insurer on the death of any member of the fund under any insurance policy â€"

On the face of it, it is all right but I think what should have been added here is that this 'insurance policy' should have been qualified by the words 'obtained by the Trust Committee'. I know of cases in my own High Court, in the High Court of Punjab and Haryana. The Bar Association there is running an Advocates' Benevolent Fund. On the one side they have their own set of rules and on the other hand advocates have got together at the instance of the Bar Association itself to obtain another group insurance policy. Therefore, if you were to just extend this law as such, the income accruing under these schemes, under the policy taken or obtained by the Bar Association would also have to be perforce added to this Fund. So, you have got to make a provision under clause 3 (2) (g) and (h), to 'apply it only to income from the insurance policies, which are obtained by the Trust Committee, and not to others. All other schemes could work independently to the exclusion of the schemes stipulated under this Act. I suppose, this is one small amendment that needs to be made.

It is good that we have provided for certain exigencies like hospitalisation of an advocate, his having had to undergo

major surgical operation or suffer from scourges like tuberculosis, leprosy, cancer or unsoundness of mind and to extend some assistance during such times. But the amount has not been specified for this assistance. I do not know what would be the guidelines regarding the extent of the benefit. This would be covered under the rule. But under Schedule II, which deals with the grant of benefit on the member of the fund ceasing to be a lawyer because of any eventuality – maybe, death or voluntarily giving up practice – this is too small an amount. If an advocate, after ten years of practice or membership gets just Rs.10,000, what for are we preparing these schemes? It is only to provide some tangible benefits to the people. It is good that we have schemes like this but these schemes should also work. Actually, if you look into any aspect of Governments activities, you would find extravagance all over, wasteful expenditure incurred by the Government on the smallest of occasions. When you celebrate some occasions, you spend crores of rupees. There is a provision in this Bill that the Governments, both at the Centre and in the States, would contribute to the Fund. But kindly provide for a mandatory contribution, because then only you would earn the goodwill of the people that you have really done something worthwhile for them. You have to provide that each State Government out of their respective funds would contribute at least a crore of rupees and the Government of India would provide at least Rs.5 crore to start the corpus .

#### **15.00 hrs.**

The Hon. Minister says that he is leaving it to the Governments. Sir, I think that this clause has been drafted in just a routine bureaucratic manner and it may not really serve the purpose. If a lawyer dies - I will not like to use that word 'indigent' which has been used - after 30 years of his having slogged in the profession, he is going to get such a meagre sum. In situations and circumstances which call for some compassionate consideration of his circumstances, to extend him the benefit of just Rs. 30,000 would not be enough. I would urge the hon. Minister to take care of this.

Also, I would like to take this opportunity to express another viewpoint. Hon. Minister has provided for a provision of common facilities. It is very fine. But the hon. Minister himself knows in what pitiable conditions you have the premises of the courts, the places from where the lawyers work, in the mofussils, tehsils and district headquarters. What are we going to do about it? What are we going to provide for them? In one of the earlier legislations, he had provided for deployment of electronic gadgets and modern means of communications, but how can he do it with the resources that he himself is asking for? I can understand if he makes a demand and the Ministry of Finance does not agree to it, but I would request him to please make a beginning and ask for something by which we can start off well.

Finally, I would like to raise a small matter about the form of the Bill. We have Schedule II which enumerates 16 State legislations which, in fact, recognises the right of the State Governments to formulate their own laws and this Bill gives them power, apart from the Union Government, to amend Schedule-I from time to time, meaning thereby that if the States wish to have their own legislation, it is good, and if they do not, the Centre will, through this piece of legislation, come to the aid and assistance of advocates during that critical period of their career when they need some help. What I find is that reference to amendment in Schedule-II is provided first and the reference to this Schedule as such is the last clause of this Bill. Clause 38 says:

"The provisions of this Act shall not apply to the States in which the enactments specified in Schedule II are applicable. "

This provision should have been somewhere earlier, to say that this Act shall extend to such and such States and in such and such matters. Thereafter, the power of amendment should have come.

With these words, I once again appreciate that at least an effort has been made. We did not really want this matter to be delayed by taking the usual course of sending the Bill to the Standing Committee. We want this Bill to be passed immediately so that something gets going and a mechanism is put in place for lawyers' benefit. At the same time, I would request the hon. Minister to give a serious thought to it. Maybe, after the Bill is passed, he may refer it to the Committee, have a meeting with advocates and with representatives of lawyers because I find that there is a provision to confer certain powers on the Bar Council to nominate advocates to the Trust Committee. But there is no such authority with or occasion for the President of the High Court Bar Association or President of a District Bar Association to be represented thereon. These are matters which need to be considered and I am sure that the hon. Minister would take care of those matters. With these words, I support this Bill.

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Sir, in principle, I support this Bill, but the scheme is not acceptable. Now, the legal profession, as we know, is facing crisis and we will have to maintain professional integrity also. There have been erosions in the recent past and they are there now-a-days also. All those things are there but, at any rate, I have to speak from my own experience. The Advocates' Welfare Fund Act, the first of its kind in India, was passed in the Kerala Legislature as early as in 1980. I was a Member of the Assembly at that

time. I took pain and initiative of getting the Bill passed.

The Bill was finally passed and given effect to. Now, the scheme provided in the Kerala Act and the scheme of the Central Government in this Bill are entirely different. In the first place, the approach itself is different. Whenever a social legislation is passed, the Government also will have to play a role. In the Kerala Act, the State Government is also contributing to the Welfare Fund. They have decided to contribute and that provision is there in the statute itself. We all know that the Government is getting revenue collections from the Stamp Act and so many other things. The legal fraternity or the legal profession is a part and parcel of our legal system. You cannot think of eliminating the professionals or the lawyers. So, the Government is duty-bound to make a contribution towards the Fund. That salient feature, the most important and the vital factor is absent in this scheme.

We are definitely discussing a State legislation as well as a 'concurrent legislation' if I may put it. I am happy that the States have been given the choice of continuing their own scheme. I do agree with it, but the stand taken by the Central Government, by the hon. Law Minister, is ridiculous. Think of a lawyer who is practising for 30 years and the fund that is provided to him is only Rs. 30,000. A *beedi* worker gets Rs. 50,000 and the Tailors Act provides for one lakh of rupees. In the lawyers' case, a lawyer practising for 30 years will only get Rs. 30,000.

MR. SPEAKER: Shri Bansal had already mentioned that point.

SHRI VARKALA RADHAKRISHNAN : This amount of Rs. 30,000 is not even sufficient for his funeral rites. After 30 years, he will have to say goodbye to the world. Then, this amount of Rs. 30,000 will not be enough for meeting his funeral expenses. I wonder how Shri Arun Jaitley forgot it! ...*(Interruptions)*

MR. SPEAKER: Those with advocate background can speak on this subject.

SHRI VARKALA RADHAKRISHNAN : At this stage, one gets Rs. 30,000. After 30 years, what will be the value of Rs. 30,000? It will be less than Rs. 3,000. At the market value or the value of the rupee at that stage, it will be less than Rs. 2,000 or Rs. 3,000. As per this provision, in future, after the lapse of 30 years of service in the profession, what he will get is Rs. 30,000, that is, Rs. 1,000 per year. It is ridiculous, fantastic, and I cannot agree with him. In the Kerala Act which was passed 21 years ago ...*(Interruptions)*

SHRI SOMNATH CHATTERJEE (BOLPUR): Are you a senior advocate?

SHRI A.C. JOS (TRICHUR): No, he is not.

SHRI VARKALA RADHAKRISHNAN : In the Kerala Act, a lawyer who has put in 30 years of practice will get one lakh of rupees. Now, this amount was raised to three lakhs of rupees. At the time when it was passed 21 years back, it was one lakh of rupees. When I took the initiative, when I participated in the legislative process or in the discussion of the Bill, we arrived at a consensus that the amount that was awardable to a lawyer after 30 years of practice would be one lakh of rupees. That was 21 years back. Last time, we had raised it to three lakh rupees for a lawyer. Therefore, it is very ridiculous that the Central Government, without contributing a pie to the Lawyers' Fund, fixed this amount at Rs. 30,000 for a lawyer who has been practising for 30 years. I am extremely sorry about this.

Another factor is that we have not excluded anybody in the Kerala Act. Irrespective of a lawyer being senior or junior, those who contribute to the Fund can get it. It is left to them. The choice is with the lawyer. The lawyer can opt out. There is no compulsion for the lawyer to become a member of the Fund.

The senior lawyers need not compulsorily become members of the Fund. The choice should be left to them. If they want to become, then they can become members of the Fund by paying the prescribed contribution. Nobody should be left out. The choice should be left to the lawyers as to whether they would like to remain outside the purview of the Fund or not. All the lawyers who contribute to this Fund would be eligible for this amount whenever he requires that amount for the purpose of his practice.

Sir, I am not personally worried about this Act. It is because the Kerala Act will prevail in my case. But this is ridiculous in the context that in an All India legislation, the hon. Minister is proposing a sum of only Rs. 30,000 for the lawyers whereas the Kerala Act has provided for a sum of rupees three lakhs. Irrespective of a lawyer being senior or junior, he can become a member of the Fund. Such a provision should also be introduced here in this legislation. Why should we leave out the senior lawyers if they are interested to become Members of the Fund? Now, they have been asked to contribute a sum of rupees one thousand for this. How could they be asked for this amount? Is it for the simple reason that they are senior lawyers? The senior lawyers are now being asked to compulsorily pay a sum of rupees one thousand. What is the purpose? You cannot compel a person to contribute a sum of rupees one thousand when he is not a member of the Fund. That is why, this proposal is not acceptable to that extent. The Government would have to change the scheme in such a way that anybody who is desirable of becoming a member may be given a chance to become a member of that Fund. The choice to keep out of the fund should rest with the lawyers. So, my suggestion is that, firstly the Government should increase the amount of Rs.

30,000 and

secondly, the choice to remain out of the Fund should lie with the lawyers themselves. The Government cannot compel a senior member to contribute a sum of rupees one thousand for nothing.

Sir, what is the role of the Central Government in this? The Government has put in the Secretary, Ministry of Law and the Secretary, Ministry of Home Affairs and all other important officials in the Board of Trustees but the Government is not contributing anything. Who are the members of the Board of Trustees? This law provides that the members of the Board of Trustees would be the Secretary, appropriate Government, in the Ministry of Law; Secretary, appropriate Government, in the Ministry of Home Affairs. These two Secretaries are there.

SHRI ARUN JAITLEY: They are the Secretaries of the State Governments.

SHRI VARKALA RADHAKRISHNAN : If it is for the Union, then the Law Secretary of the Union Government would be there. The Secretaries of the Union Government would be represented in the Board of Trustees but the Central Government would not contribute a pie. What is the contribution of the Central Government? The Central Government collects the Stamp duty and all such things in various ways.

SHRI SOMNATH CHATTERJEE : Some State Governments will get.

SHRI VARKALA RADHAKRISHNAN : The Central Government is not contributing a pie to this Fund. But there is the Supreme Court of India. There are the High Courts functioning in this country. The persons working in the legal profession are getting money but when the Government thinks of making a Fund for the welfare of the lawyers, the Central Government does not contribute a pie to it. I did not expect such a treatment to be meted out to the lawyers from the hon. Minister. There must be a contribution from the Central Government to this Fund. Why does the Government refrain from contributing to this Fund? Some of the State Governments are prepared to contribute to this Welfare Fund. The State Governments will contribute in all social security measures and in welfare schemes.

There is no other welfare fund wherein the State Government have a role to play. This is the only legislation in India where the Government of India is not contributing even a pie to the scheme. Is it proper? Is it just? Are advocates second-class citizens? Does the Government consider them second-class citizens? They are also making their contributions. They are not collecting it from their clients. They are making the contributions from their own pockets. The Government will have to recognise the profession of lawyers as a noble profession. The Minister is also bound to contribute to the fund.

The Government has nominated the Law Secretary and the Home Secretary to govern the fund. What is the *locus standi* of the Government as far as this fund is concerned? When it is not contributing anything to the fund, why should the Government depute the Secretaries of the concerned Ministries? Sufficient representation is not given to the lawyer community. The Bar Associations are not duly represented in the Committee. Two members of the respective Bar Associations in the States as well as in the Union Government, either of the Supreme Court or the High Courts, must be nominated as members. Without that type of a representation, it cannot be said that the scheme is entirely meant for the lawyers' benefit. The scheme will have to be altered with that in view.

I have given amendments for increasing the amount and also for giving representation to the Bar Associations on the welfare fund. After all it is only a trusteeship. They can do it. So, I request the hon. Law Minister to accept my amendments and make suitable changes in the scheme of the Bill making it a true welfare fund for advocates. I think the Law Minister will consider all these aspects and the scheme will be altered in such a way that the legal profession is given its rightful place in the scheme.

I support the legislation in principle, but request the Law Minister to make changes in the scheme.

With these words, I conclude.

**श्री धर्म राज सिंह पटेल (फूलपुर) :** अध्यक्ष महोदय, मैं कानून मंत्री जी द्वारा प्रस्तुत अधिवक्ता कल्याण निधि विधेयक, 2001 का स्वागत करता हूँ। मैं इसके साथ कुछ बातें भी कहना चाहूँगा।

**अध्यक्ष महोदय:** क्या आप भी लॉयर हैं?

**श्री धर्म राज सिंह पटेल :** जी हाँ।

MR. SPEAKER: Only advocates are speaking on this Bill.

**श्री धर्म राज सिंह पटेल :** अध्यक्ष जी, चूंकि मैं इलाहाबाद विश्वविद्यालय कालेज में था, वहां से लॉ भी किया है और समाज में, गांव में, जिले में अधिवक्ताओं के साथ रहने का मौका भी मिला है, इसलिए इस बारे में अच्छा अनुभव है। उन्हें बहुत दिक्कतों का सामना करना पड़ता है। इस समय जो नए लड़के कानून की पढ़ाई

करके निकल रहे हैं, उन्हें सबसे अधिक दिक्कत हो रही है। ऐसे लड़के जो तहसील और जिले में आते हैं या जो जिले से हट कर उच्च न्यायालय तक पहुंच रहे हैं, मैं उनकी तरफ कानून मंत्री जी का ज्यादा ध्यान आकर्षित करना चाहूंगा। ऐसे अधिवक्ताओं को अपने पेशे में बहुत सी दिक्कतों का सामना करना पड़ता है। उन्हें कहीं बैठने की जगह नहीं मिल रही है, उन्हें ऐसा कहीं अच्छा चैम्बर नहीं मिल रहा है जहां बैठ कर वे अपनी वकालत कर सकें और उन्हें कहीं ऐसा पुस्तकालय नहीं मिल रहा है जहां बैठ कर वे पुस्तकें पढ़ सकें। आपने उनके आकस्मिक निधन और दूसरी चीजों के लिए प्रावधान किया है। मैं चाहूंगा कि गांव से निकलने वाले अधिवक्ता चाहे वे तहसील में बैठते हों, उन्हें बेसिक सुविधाएं मिलनी चाहिए। उन्हें प्रोत्साहित करने के प्रयास होने चाहिए। जब वे बीमार हो जाते हैं तो उनके सामने पैसे की दिक्कत आती है।

अध्यक्ष महोदय, माननीय मंत्री जी जब जवाब देगे तो इस बात की ओर ध्यान देंगे कि जो नौजवान आपके पेशे में आ रहा है, उनके सामने कितनी दिक्कतें आ रही हैं या उनकी क्या दशा हो रही है। उनके स्वास्थ्य सुविधा के लिये कोई व्यवस्था नहीं है, चैम्बर में बैठने के लिये जगह नहीं। हम तहसील जाते हैं, तो देखते हैं कि चाहे बरसात हो, गर्मी हो या धूप हो, उसके लिये बैठने के लिये जगह नहीं होती। इसके अलावा उन लोगों के लिये कोई सुविधा नहीं है। माननीय मंत्री जी तो बड़े वकील हैं और सुप्रीम कोर्ट या हाई कोर्ट में जाते हैं और मेरे ख्याल से तहसील की कचहरी में भी गये होंगे और उनकी दयनीय हालत को देखा होगा।

अध्यक्ष महोदय, सरकार आने वाले दिनों में जो भी कानून बनाये, वह इस बात का जरूर ध्यान रखे कि नये अधिवक्ताओं को काम करने का मौका मिले। ऐसे बहुत से कानून मंत्री हुये हैं जो सुप्रीम कोर्ट या हाई कोर्ट में वकालत करते रहे हैं। श्री शान्ति भूषण जी उनमें से एक रहे हैं जो इलाहाबाद हाई कोर्ट में वकालत करते रहे हैं। बहुत सारे जज भी वकील रहे हैं। माननीय मंत्री जी को मालूम होगा कि जितनी इनकम सुप्रीम कोर्ट या हाई कोर्ट से वकील को होती है, उसकी अपेक्षा जिला स्तर के न्यायालयों में बहुत कम होती है। सरकार जो विधेयक ला रही है, उसमें कम से कम इस बात का प्रावधान होना चाहिये कि फीस निश्चित होनी चाहिये। गांव के आदमी की हिम्मत नहीं कि आप जैसे लोगों के बीच में आकर सुप्रीम कोर्ट या हाई कोर्ट में इतनी भारी फीस अदा कर सके। यह फीस निश्चित की जानी चाहिये। साथ ही नये अधिवक्ताओं के कल्याण निधि में पैसे का प्रावधान किया जाना चाहिये।

अध्यक्ष महोदय, सरकार ने बिल में प्रावधान किया है कि वकील के कल्याण के लिये 30 हजार रुपये का प्रावधान किया जायेगा। यदि कोई वकील एक्सीडेंट में मर जाता है तो उसके बच्चों के लिये निश्चित धनराशि का प्रावधान होना चाहिये क्योंकि यह देखा गया है कि मृत्यु की स्थिति में उसके बच्चे भूखों मर रहे होते हैं। इसलिये कम से कम नये अधिवक्ताओं के लिये जो जिला, कस्बे में वकालत करने वाले हों, उनकी मृत्यु के पश्चात् एक निश्चित राशि का प्रावधान किया जाना चाहिये।

इन्हीं शब्दों के साथ मैं अपनी बात समाप्त करता हूं।

**डॉ. रघुवंश प्रसाद सिंह (वैशाली) :** अध्यक्ष महोदय, माननीय मंत्री जी अधिवक्ता कल्याण निधि विधेयक लाये हैं, इससे पूर्व उत्तर प्रदेश, बिहार में 1974 में और केरल में 1980 में तथा अन्य राज्यों में लाया गया है। पहले जमाने में जो बड़े आदमी होते थे, वही वकालत किया करते थे। गरीब इस पेशे में नहीं जा पाते थे। हम लोगो ने यह भी देखा है कि आजादी की लड़ाई के शुरुआत में जिन लोगो ने आन्दोलन में भाग लिया, वे सभी लोग पेशे से वकील थे। बड़े लोग विदेश से वकालत पढ़कर आते थे जिसे बैरिस्टर, बार-एट-लॉ आदि के नाम से जाना जाता था। आजादी मिलने के बाद यह देखा गया कि अदना परिवार के आदमी, देहात के आदमी भी वकालत के पेशे में आने लग गये।

अध्यक्ष जी, अभी पटेल जी बता रहे थे कि तहसील और जिला अदालत में जाने पर देखने को मिलता है कि वकीलों के बैठने के लिये स्थान ही नहीं होता लेकिन मेरा यह कहना है कि वकील को बैठने के लिये भी शायद फीस देनी पड़ती है क्योंकि उसकी कुर्सी जंजीर के साथ एक खम्बे से बंधी रहती है ताकि उसे कोई दूसरी जगह उठाकर न ले जाये।

वहां कुर्सी पर छीना-झपटी होती है। मैंने कई न्यायालयों में देखा है कि कुर्सी के पैर में जंजीर लगाकर उसे खम्बे या टेबल में बांधकर ताला लगा देते हैं। उन पर वकील साहब बैठते हैं। जिन क्लाइन्ट्स के केस होते हैं, उनके लिए बैठने की जगह नहीं होती, वे इधर-उधर खड़े रहते हैं। जो जूनियर वकील होते हैं, उन्हें भी बैठने की जगह नहीं मिलती है। कुछ नामी वकील जो ज्यादा होशियार होते हैं, उनके क्लाइन्ट्स भी ज्यादा हो जाते हैं। उनकी फीस भी बहुत ज्यादा एक लाख, दो लाख और तीन लाख रुपये या इससे भी ज्यादा होती है। वे बड़े आदमियों के वकील होते हैं। हमारे कानून मंत्री जी भी बहुत होशियार हैं। कितने दांव जानते हैं। हाई कोर्ट से सुप्रीम कोर्ट तक इनका बोलबाला है। पुराने कानून मंत्री श्री राम जेठमलानी भी बहुत होशियार वकील थे, लेकिन यह उनसे भी ज्यादा होशियार निकले। उन्हें हटाकर खुद यहां आ गये।

अध्यक्ष महोदय, उस क्लास में, उस सरजमीन पर जनता की समस्याओं से और गरीब आदमियों के बीच से लड़ते-लड़ते आदमी उस क्लास तक आता है, लेकिन इन्होंने इतनी चालाकी से पैरवी की कि यह पहले राज्य सभा में मੈम्बर बन गये और फिर मंत्री बन गये। हम इनकी होशियारी के कायल हैं। इसलिए यह राजनीतिक दां व-पेंच में भी चतुर हैं। न्यायालय में भी दो ही तरह के वकील होते हैं - एक वे जिनकी फीस बहुत ज्यादा है और एक वे जो नये वकील हैं काला कोट पहनकर आते हैं, पता नहीं उन्हें दस रुपये भी मिलते हैं या नहीं, बेचारों को चाय-नाश्ते का पैसा भी मिलता है या नहीं। उनकी फीस बहुत कम है। उनके लिए बहुत कठिनाई है। वहां भी दो वर्ग हो गये हैं - एक बड़े सम्पन्न, ज्यादा आमदनी वाले और क्लाइन्ट को धक्का देने वाले वकील हैं। उनकी फीस पर कोई नियंत्रण होना चाहिए। इनकी फीस का कोई अन्त नहीं है। जैसे गांव में कोई शादी में दहेज और तिलक में पैसा देते हैं, गांव में चारों भुजा से सम्पन्न लड़का है, नौकरी पाया हुआ और पढ़ा-लिखा है तो उसके तिलक का कोई अन्त नहीं है। वह कितना दहेज मांगेगा, कितना तिलक मांगेगा, इसका पता नहीं है। इसी प्रकार से बड़े और नामी वकील की फीस का कोई अन्त नहीं है। यह मुंहमांगी होती है। वकील अपना मुंह नहीं खोलते हैं, मुन्शी बताते हैं। मुन्शी वकीलों से ज्यादा क्लाइन्ट को परेशान करते हैं। यदि गरीब जनता से कोई गरीब क्लाइन्ट आये और कहे कि मेरे पास फीस नहीं है, आप हाई कोर्ट और सुप्रीम कोर्ट तक चले जाइये, वैसे वकील साहब नहीं बोलेंगे, लेकिन ठीक से बात भी नहीं करेंगे और हैरान करते हैं। इसीलिए इस कल्याण निधि के बारे में सभी लोगो ने महसूस किया, जो नये वकील आते हैं, जिन्हें क्लाइन्ट भी नहीं मिलता, जिनकी आमदनी नहीं होती है। पुराने जमाने में बड़े आदमी साल-दो साल अपने घर से अच्छी स्टैन्डर्ड की किताबें पढ़कर रह सकते थे। लेकिन जो गरीब आदमी हैं, खास तौर से हमारे देश में बेरोजगारी है। लोग पढ़ते हैं, पढ़ते-पढ़ते जब कोई रोजगार-कारोबार नहीं मिलता है तो बेरोजगारी छिपाने के लिए उनके पास दो जगहें होती हैं - उसमें जगह नम्बर एक में लोग बी.ए., एम.ए. करते हैं, यदि फिर भी काम नहीं मिलता तो पी.एच.डी. करते हैं। उससे भी बात नहीं बने तो फिर वकालत कर लेते हैं। वकीलों की परीक्षा में कानून बना हुआ है। कहते हैं कि जब वकील कोर्ट में बहस करते हैं तो मुंहजबानी कोई बहस नहीं करते, बिना किताब के वे बहस नहीं करते हैं। उसी तरह परीक्षा में चलन सा हो गया है कि परीक्षा भी देखकर देते हैं। इस तरह से कम पढ़ाई करने वाला भी वकालत पास कर लेता है और वकील बन जाता है। (व्यवधान)

**अध्यक्ष महोदय :** रघुवंश जी, कभी-कभी हाउस में भी ऐसा होता है।

**डॉ. रघुवंश प्रसाद सिंह :** सांसद होशियार माने जाते हैं, लेकिन वे भी हर समय ऐसा करते हैं। सब लोग पुर्जे पर लिखकर लाते हैं। यहां पुर्जा पढ़कर बहस करते हैं, मुंहजबानी बहस नहीं कर सकते।

उसी तरह से ज्यादातर लोग वकालत पढ़ने के लिए फीस देकर आ जाते हैं और उनको भी रोजगार नहीं मिल रहा है। उन नए वकीलों की जो खासकर गरीब घरों के हैं, बड़ी दयनीय हालत है। उनके रहन-सहन का कोई स्तर नहीं है।

**श्री प्रियरंजन दासमुंशी (रायगंज) :** वे अपने क्लाइंट के लिए कागज भी नहीं लिख सकते।

**डॉ. रघुवंश प्रसाद सिंह :** इसलिए उनके सीनियर्स को चाहिए कि नये वकीलों को कुछ सिखाएं। मगर वे सोचते हैं कि नया वकील काबिल हो गया तो कहीं उसका हिस्सेदार न हो जाए।

ॐ। (व्यवधान)

**श्री थावरचन्द गेहलोत (शाजापुर) :** आपसे कुछ नहीं हुआ तो दाढ़ी रखकर कर्पूरी ठाकुर और लालू जी के साथ आ गए।

**डॉ. रघुवंश प्रसाद सिंह :** स्वर्गीय कर्पूरी ठाकुर जी जननायक थे। वे गरीबों के नायक थे, आम आदमी की बात सुनते थे और बोलते थे। उनकी पाठशाला के हम भी विद्यार्थी हैं। कर्पूरी ठाकुर और लोहिया जी ने हमें सिखाया कि हमेशा हिन्दुस्तान के करोड़ों दुखी लोगों की बात कहना चाहे जैसी भी सभा हो, जैसे भी श्रोता हों मगर स्वर अपना वही हो। बड़े आदमियों की बात तो हर कोई करता है, उनकी तो खुशामद करने वाले मिल जाते हैं, हमारे यहां जो इंडस्ट्रियलिस्ट हैं, वह जैसे चाहे वैसे हुकूमत चलवाते हैं, कानून बनवा लेते हैं लेकिन जो दबे हुए, गरीब आदमी गांवों में रहते हैं उनके लिए आवाज उठाने वाला कोई नहीं है। हमारे यहां बिहार में एक कहावत है कि "सुखले फुटानी ऐसे," मतलब धन घटता जाए मगर हुकूमत बढ़ती जाए। पैसा एक नहीं लगा रहे हैं और कानून बना रहे हैं। अभी बरकला राधाकृष्णन जी ने ठीक कहा कि इनके कानून बनाने का कोई अर्थ नहीं है। पांच रुपया स्टाम्प ड्यूटी तो क्लाइंट को ही पड़ेगी। डेढ़ दो रुपये का स्टैम्प पेपर जो ऐडवोकेट बनाकर देते हैं उस पर जो पैसा लगता है वह क्लाइंट ही देता है, सरकार का क्या गया। इसी प्रकार इस बिल में सरकार की तरफ से एक रुपया भी नहीं दे रहे हैं। जो ज्यादा आमदनी वाले वकील हैं, उनके द्वारा अंशदान का प्रावधान भी इस बिल में नहीं रखा गया है। उसका प्रावधान इस बिल में होना चाहिए। सरकार की तरफ से फंड का भी प्रावधान होना चाहिए और जो नए वकील हैं और जिनको बैठने की जगह भी नहीं है और काम नहीं मिल रहा है, उन लोगों के ग्रुप इश्योरेन्स और स्वास्थ्य की सुविधा का प्रावधान भी करना चाहिए, इस मायने में भी यह बिल अपर्याप्त है। इसके लिए पर्याप्त प्रावधान सरकार इस बिल में करे। इसमें अधिवक्ता लोगों का भी ज्यादा प्रतिनिधित्व होना चाहिए नहीं तो इसमें जिसको कुछ मिलना होगा तो अधिकारी लोग ऐसे पेंच लगा देंगे कि उनको कुछ मिल नहीं पाएगा। इसलिए यह बिल और सरल हो और हम इसका समर्थन करते हैं कि अधिवक्ताओं के लिए कल्याण निधि बने। उसमें ज्यादा निधि जमा हो सके और सरकार इस पर ज्यादा ध्यान दे और ठीक कहा कि हरेक राज्य में एकरूपता इसमें नहीं है, हर राज्य अपने अपने ढंग से इसको बना रहे हैं। तो उनमें भी एकरूपता इससे आएगी और जो दबे हुए, गरीब घरों के नए अधिवक्ता लोग हैं, उनका कल्याण इस बिल के द्वारा हो, यही कहते हुए हम इस बिल का समर्थन करते हैं।

**SHRI E.M. SUDARSANA NATCHIAPPAN (SIVAGANGA):** Sir, I fully support this Bill. At the same time, I would like to draw the attention of the Government towards the sufferings of the advocates due to economic disabilities. The Government has taken a view as if all the senior advocates are having good practice and they need not be given any retirement benefits. I personally know a number of senior advocates, who have been elevated as senior advocates after being into practice for five to ten years, whose life style changes totally due to their own family circumstances.

Therefore, these people should not be prohibited from getting the benefit out of this fund.

I can tell you from my own experience as a lawyer who practised in the mofussil court, the High Court and then in the Supreme Court that only 20 per cent of the lawyers are getting regular practice. Rest of the people are not having the practice. They get only one or two cases per month or even once in six months. Therefore, their families and their welfare should be looked into. I know certain people who used to say that if you are in the practice for four years, then you would not be fit for any other profession. It is because things like laziness and taking things in their own way creep in them. These things entice the lawyers not to go away from practice for other jobs. Therefore, this situation should also be taken into consideration and people who are suffering should be benefited.

Sir, only three clauses are focussing upon the benefits which they are going to get. These are clauses 19, 21 and 24. Under clause 19, there is a provision for *ex gratia* for particular disease. Leprosy is also included in it. But leprosy is now being eradicated by the Department of Health.

Sir, many advocates are dying because of heart attack. These people should be looked after. People who are having low status and are practising in mofussil courts are suffering. Therefore, the *ex gratia* payment should be fixed so that it could be compensatory. If there is any medical expenditure amounting to Rs.1 lakh or Rs.1.25 lakh, that should be compensated. They should not be left in the lurch because their families are having no other source of income except practising.

I would like to draw the attention of the Government to clause 21 regarding cessation of practice. After 65 years of age, there should be some age of retirement. The advocates who are ready to do away practice, may be given voluntary retirement. It should not be compulsory retirement. Then only young lawyers can come up. Otherwise, people who are retiring as judges, are again doing practice. They occupy a place. With the result, the young lawyers are unable to compete with them. Therefore, the competition is also very high. Therefore, if some ceiling of 65 years or 70 years is given for application of this particular clause, it will be very useful for the youngsters to come up. I would also like to draw the attention of the Government that the senior lawyers are not filing the *vakalatnama*. Therefore, they are not going to give any contribution. So, they will not be worrying about it. But at the same time, they should also be benefited and their families should be taken care of.

Sir, normally, the lawyers are not getting any advances from any bank. The lawyers, the policemen, and the Press people are disqualified from taking any loan from banks. The same disqualification is there in getting a house or office on rent. Therefore, there should be a provision in clause 24 for getting loan for constructing house or office. When you are framing the rules, that aspect may also be looked into.

**A provision for electronic acknowledgement is also provided. It is in clause 11(2)(g) which says:**

"communicate to the applicants, by registered post with acknowledgement due or through electronic mode.. "

Clause 24 provides for monies for members of the Fund for purchase of books and add, "electronic goods, namely, CDs."

Now, all the law books are available as CDs. That also should be provided.

Finally, I would like to sum up with the social aspect saying that the life of lawyers should be looked into when the rules are framed. There should be representation for the Mofussil Bar in the Committee at the State level.

Section 26 (6) says:

"â€¦State Bar Council after paying the value thereof as reduced by ten per cent of such value towards incidental expenses."

That also should be given to the subordinate court associations. There should be some ceiling for the associations. There should not be more than one association in one area. Otherwise, there will be rivalry in getting the associations registered.

SHRI SOMNATH CHATTERJEE : Sir, it is good that some sort of a thinking is there. This is not a pioneering legislation nor I think it is an improvement on the State legislation either. We do not know whether the Central Government or the hon. Minister felt it necessary to ascertain the experiences of the different State Governments about the applicability of this law. At least I tried to find it out from my State and they said that nobody contacted them. They have not tried to get the opinion of the State Governments and nobody consulted them. Therefore, we have been hearing many views on the subject. All are supporting the Bill. But there are certain areas where still some doubts are there. Every suggestion is, I believe, for the improvement of this legislation. Therefore, it would have been better if the experience of different State Governments had been taken note of.

Here, everybody understands it and as Shri Bansal said, almost all the State Bar Associations of Bar libraries as in my State at Kolkata, have some sort of non-official and voluntary funds from which some help is given at the time of difficulties to our friends in the profession. But so far as this is concerned, the matter of greatest importance is the availability of money. Now, where does the money come from? I do not know whether there is any computation made by the Central Government or assessment by the Ministry on the basis of contribution of Rs.50, Rs.100 and Rs.1000. I think this law will be applicable to Delhi. How much money are you expecting from Delhi, what would be the need and whether sufficient money will be there or not? After all, so far as insurance purpose is concerned, it would be done through the LIC and rightly, it should be done so. But unless there is a sizeable contribution made, I should have thought that many problems could have been solved if the Government of India had decided to provide funds even to the State Governments because all these are non-partisan matters. These are not to be treated either as political matters or party matters. There is a general desire that our colleagues who are in the profession should lead a secure life. Some reasons have been pointed out by Dr. Raghuvansh Prasad Singh. The legal profession has become the easiest of professions to get into. Although it is a profession with a principle and also self-employment – I have the privilege to be in this profession – the sheer number now has made it impossible for a lawyer to succeed easily . We have a huge population and we find that other avenues of employment are reducing. There are problems of going into business faced by the middle class. Therefore, they are going into the legal profession. I agree that senior lawyers are not doing their duty. They are not training the young lawyers also. There are very many pitfalls which I am not going into at the moment.

But I would expect the hon. Minister to make a commitment here. Otherwise, everybody is questioning as to what is the role of the Central Government and what motivated the Government to bring forward this legislation, except giving a pat on his own back saying that he has piloted this Bill.

Sir, it is very good to say that the lawyers will pay the amount themselves, but they will get it from their clients and pay, but these are meaningless provisions. Therefore, I thought that some contribution coming from the Government would be of real help instead of nibbling here and there. I agree with Shri Varkala Radhakrishnan. He has raised a very pertinent point. There are many senior advocates who are very willing to pay. The amount is also, according to me, a pittance. But, I think, this Bill was drafted probably before the hon. Minister's Government came into power. Thanks to this Government, the money value of the rupee is nothing; it is in steep decline. Therefore, what can you do with this amount of Rs.30,000? After 30 years, even if you give this amount, probably nobody will take it.

Sir, this is a provision for those lawyers who are going out of practice or giving up practice and those who have got certain difficulties. I believe Clause 19 deals with personal problems like hospitalisation, certain illness, etc. What is actually needed is that there should be some provision for enabling the junior lawyers and those lawyers who are not that successful, to have the benefit of accommodation, library, or some sort of a common facility centre, if it could be provided. The hon. Minister has a lot of experience and, I am sure, he must have also visited many of the district court bars or even the sub-divisional level courts and seen the pathetic conditions prevailing there. Everywhere it is the same thing. There is hardly adequate accommodation; there are no library facilities and they are really struggling even for just a place to sit and a place to work, apart from the miserable condition of the court rooms also in many places. Therefore, some help during the practice would be welcomed more.

I certainly join all my colleagues here who have spoken of the paucity of the amount. This amount should be raised and a more comprehensive provision should be made for this. I know this Bill has a limited scope, but let the Minister also consider this point that if we are really sincere and serious to see that those who are taking part in the legal profession can at least, render better service, we have to provide the lawyers this much confidence that something would be available to them after they choose to retire.

Sir, speaking for myself, we have no pension, except as a Member of Parliament. I do not know whether Shri Arun Jaitley is eligible for pension; probably he will be eligible for that if he continues to remain a Minister. So, we have no pension, provident fund and gratuity. Therefore, I would request the Minister to make it a sum which is worthwhile. Secondly, the senior advocates will have no compulsion, except to pay, but they will not at all be the beneficiaries.

I do not know whether it amounts to taxation or not. That has to be considered.

Shri Jaitley, I am sure that you feel for these people. You are aware of their problems. We can all discuss how to do it. You can formulate some mechanism to stand by the people who, in their own way, are also contributing to the development of our society, resolving the problems and disputes that are arising between the people. Therefore, whatever may be the light in which the lawyers may be looked at at some places by some people, after all, we are trying to render service to the society. Therefore, they are also eligible for this consideration. But the Government shall have to take a leading role in the matter. That is my humble submission.

MR. SPEAKER: Now, the hon. Minister.

SHRI A.C. JOS (TRICHUR): Sir, please allow me to speak.

MR. SPEAKER: You can seek a clarification after the Minister finishes his speech. I called your name but you were not available.

...(Interruptions)

MR. SPEAKER: You can seek the clarification later on. Please understand that we have to take up another matter at four o'clock.

SHRI A.C. JOS : May I suggest a point? Everybody said about Rs. 30,000. My request to the hon. Minister is about the powers to use the amount. By the time the Fund is enhanced, the power to give money to calculate it should be given to the Trustees so that if there is more money, Rs. 30,000 shall not be pegged to that amount. This can be decided.

All Bar Councils have a lot of money. They have got the enrolment fee. Now, section 15 provides that 20 per cent of the money can be taken from the Bar Council's Fund to this Fund. The hon. Minister can accept it. At least 30 per cent of the money can be taken from the Bar Council's Fund.

Now, the amount towards the LIC could also be enhanced. At least Rs. 10 lakh can be given.

MR. SPEAKER: Shri Chakraborty, what is your viewpoint?

**SHRI AJOY CHAKRABORTY (BASIRHAT):** Our point is that we have been deprived from speaking on many things. In this House, the lawyers should get a chance. I have been a practising advocate for more than 20 years. I belong to a lower court. I think, Shri Arun Jaitley and Shri Somnath Chatterjee are not able to appreciate the problems faced by the lawyers, and the plight and fate of the lawyers in the lower courts. So, we have been deprived of a chance to highlight it because we are lawyers from the lower courts. They are lawyers of the higher courts, so they got a chance earlier.

MR. SPEAKER: What is your viewpoint? The time is very short.

...(Interruptions)

**श्री मुलायम सिंह यादव (सम्मेल) :** स्पीकर होने के साथ-साथ आप भी तो वकील हैं, आप भी कुछ इस मामले में इंटरवीन कीजिए।

**SHRI AJOY CHAKRABORTY :** Due to constraint of time, I will not go into the details. I support and welcome the Advocates' Welfare Fund Bill with some reservations. This Bill has been brought forward with the intention to render social security by way of financial assistance to the junior lawyers and the lawyers of other classes. In our country, there are two classes of lawyers. One is the privileged class. They are practising in the Supreme Court and the High Courts. The other class of lawyers practise in the district courts and the subordinate courts.

I have already told that the lawyers like Shri Arun Jaitley and Shri Somnath Chatterjee have not been able to appreciate the plight and the sufferings of the lawyers of the district courts and the subordinate courts. So, the lawyers of the Supreme Court and the High Courts are demanding and getting a huge amount of fees that are unthinkable and unimaginable. It is very much a problem on the part of the common people to reach the High Courts or the Supreme Court and engage senior lawyers. I belong to a lower court.

There is no facility of library. Sometimes I have to rush to my district court in Barasat ...(Interruptions)

**SHRI G.M. BANATWALLA (PONNANI):** Sir, I have a point of order and that is that advocates are themselves a party in this, so they should not be allowed to speak.

**SHRI AJOY CHAKRABORTY :** There is no facility for purchasing books, even though the lawyers practising at the lower courts have no financial capacity. They have sub-standard chambers. And also the buildings of the library of Bar Association and of the lower courts are in dilapidated conditions. The lower court does not have any capacity even to rebuild its own buildings.

I have seen in the lower courts the lawyers sitting on torn benches and chairs. This is the condition of the lawyers there. So, special provision should be made for the construction of Bar Association library, for providing facilities to purchase books and special provision should be made for the welfare of the advocates and giving financial assistance to the libraries at the district court and the subordinate court. They are the pillars and architects of our judicial system.

The lawyers appearing for their cases in the lower courts have to appear for the cases under Section 302, Section

364, Section 376 of the IPC and so on. They are advocating the cases on behalf of their clients in such cases. So, I urge upon the hon. Law Minister to make a special provision for the welfare fund of the district courts and lower courts lawyers. The 30 per cent amount which is fixed for the lawyers is not sufficient amount. I would appeal to the hon. Minister not to treat the lawyer as a beggar. After thirty years, they will get only Rs.30,000. After thirty years the value of this amount of Rs.30,000 will be Rs.3 only.

Sir, one more point I would like to say before I sum up. The trustee committee consists of a secretary, there is no lawyer. So, lawyers must also be represented in this committee. So, I urge the hon. Minister to make a special provision for the welfare of the lawyers of subordinate courts and district courts.

SHRI ARUN JAITLEY: Sir, I am extremely grateful to the Members who have participated in the discussion on this Bill and almost all of them, without exception, not only supported the Bill but also suggested some areas where it could be improved upon.

I must clarify at the very outset the question which Shri Somnath Chatterjee has raised. From amongst the State Government which had it and the State where it has been implemented, we did seek copies of all the State legislations. I consulted the Bar Council of India, several Bar Associations, the Law Commission as to what is the experience in each of the State. There were a large number of States where this law was not applicable because there was no law. In the Union Territories, there was no law and in some of the States, we also noticed that the implementation did lack because of certain specific reasons. Therefore, the areas of concern which had been expressed, we wanted to give the rights to the States to continue with their own legislation, with an option that if they found the Central legislation more beneficial, they could opt for it.

SHRI SOMNATH CHATTERJEE : They want Central money.

SHRI ARUN JAITLEY: Sir, I may at the very outset deal with three-four principal issues which have been raised by several Members. The first, as to where the entire corpus of the fund really will come from?

That, in fact, Shri Chatterjee and other Members were right that really is the heart and soul of the matter as to whether it will have only those Rs.50,000 which he referred to or will it be an active fund. In a number of States, the membership was not compulsory and that was one reason that enforceability of the welfare stamp on a regular basis was not possible. This was one of the reasons where it was found lacking in implementation in some of the States.

SHRI VARKALA RADHAKRISHNAN : We have enforced it in our State.

SHRI ARUN JAITLEY: That is why, Kerala is very successful. Therefore, under clause 3, we have enumerated the various areas where the funds will come from. The funds will come from in the form of 20 per cent of the entire collection made by a Bar Council from the enrolment fee, which will be transferred to the welfare fund rather than we spend it on the administrative expenses of the Bar Council itself.

#### **16.00 hrs.**

If there is surplus money, as Shri Jos was suggesting to me, then the surplus money can be transferred by the Bar Councils. Under clause 3 (2) (d), we have made a specific provision that the Central and the State Governments, after due appropriation can also contribute to this fund. Under articles 203 and 204, we are enabling a fund here. We cannot say as to how the States will appropriate their expenses. So, an enabling provision was created.

...(Interruptions)

SHRI VARKALA RADHAKRISHNAN : You can bring a provision applicable to the Government. You can compel the State Government . ... (Interruptions)

SHRI ARUN JAITLEY: There is an enabling provision for both the Central and the State Governments to make a contribution. Clause 3(2)(d) has been specifically provided for. Kindly do not have a worry on that score.

Finally, besides the insurance policies, interest, all sums which are collected by sale of stamps under clause 26, and the sale of stamps and the model which we have adopted from some of the States, where the State Government print those stamps on behalf of the Bar Council. The Bar Council is the agency through which it is distributed and the membership is compulsory. Annual subscription is also payable by those who become a member, and, therefore, by this entire process, which has been made mandatory, it is being made sure that adequate amount of money is collected in this fund. I cannot give you how much each State will collect. But if you were just to take a broad assessment of the number of cases filed in the subordinate courts in the country itself every year, it is over a crore. Therefore, if you multiply the all India figure at Rs.5/- into two – there will be two sides

every year - that itself will give you how much will be in the subordinate courts.

Shri Pawan Kumar Bansal asked, what about other authorities. We have made it very clear in the Act itself that these are required to be put in all courts subordinate to the district courts and all other authorities also. That is a provision. It is contained in the Act itself. ...(*Interruptions*)

SHRI PAWAN KUMAR BANSAL : I did not say that. I only said that the power to collect should vest with the Trustee Committee and not with the bar council.

SHRI ARUN JAITLEY: I will explain the reasons for that. Under clause 27, the point Shri Bansal has made is that it is Rs. 5/- in District Court and subordinate Court; Rs.10/- in Tribunals, other authorities, and High Courts. For every authority, where vakalatnama is required to be filed, this fund has been made mandatory.

The membership of the fund has been made compulsory under clause 18 of the Bill itself. A question has been raised and which has agitated a large number of members as to this amount of Rs.30,000/- after thirty years is itself on the seemingly inadequate. If we see the prescription which has been made under this Act as to what is the purpose for which moneys are going to be spent, moneys are going to be spent under section 19 for *ex-gratia* payments in cases of illness and disease where treatments are required. Moneys are going to be paid under section 21 for cessation of practice. We checked up the Schedules in most of the State legislation and in a predominantly large number of them, the Schedules were almost identical. But the Schedule, as Shri Jos has very rightly observed, should not be a mandatory Schedule and we have to amend the law. Therefore, we have incorporated the all India pattern and that Schedule is only for a limited payment. It is not the entire payment under this Act. I will explain what the payments are. Under clause 32, we have made a provision, as Shri Jos has said, that upon cessation of practice, if it is Rs. 30,000/-, depending upon the fund available and on the recommendation of the Trustee Committee, the State Government can change and alter this amount. Therefore, this amount depending on the moneys available in a State fund are amendable by an Executive notification itself and that power has been given to the State Government on the advice of the Trustee Committee. But then, this is not the entire payment, which is envisaged. ...(*Interruptions*)

SHRI VARKALA RADHAKRISHNAN : Where is the provision? â€¦ (*Interruptions*) You have to bring it. ...(*Interruptions*)

SHRI ARUN JAITLEY: Sir, indexing in a large number of legislation, either by indexing or amendment of the Schedule is a power, which the legislation itself can provide. Clause 32 (1) very clearly says:

"The appropriate Government may, on the recommendation of the Trustee Committee, by notification, and having regard to the availability of the amount in the Fund, amend the rates specified in the Schedule I."

This power has been given in the Bill itself.

The most important thing is that this amount of cessation of practice or *ex-gratia* amounts are only two of the incidental payments. If you kindly turn to clause 24, there are payments by way of life insurance; there are payments by way of medical and educational benefits; and there are payments which provide for a scheme for purchase of books.

The hon. Member was very right when he said the best beneficiaries of this Fund have to be those who needed the most, that is, the advocates practising in the subordinate courts. Ten per cent of this Fund would be spent in every State for amenities only for common facilities in the District Bar Association, that is, in the subordinate court itself, for adding common facilities, etc. This is not there in any State legislation but for the first time we have provided it.

Section 24 provides fund for every other purpose that the Trustee Committee may decide.

MR. SPEAKER: Hon. Minister, just a minute please. Hon. Members, in fact, at four o'clock, we have to start the discussion under rule 193. If the House agrees, we can take up the discussion under rule 193 after passing this Bill.

SEVERAL HON. MEMBERS: Agreed.

SHRI ARUN JAITLEY: Under section 24, there is also a provision for preparing a scheme depending on the availability of funds. One of the indicated areas in the Act itself in section 18 is that in the event of death, both from the insurance policy, the common policies under the Fund, and the amounts available, amounts would be given to the relatives of the deceased advocate, for which he has to make a nomination under section 18.

SHRI VARKALA RADHAKRISHNAN : What about the premium? Is it individual premium or collective premium? Why not it be a collective premium?

SHRI ARUN JAITLEY: The premium is under the scheme.

MR. SPEAKER: Shri Varkala Radhakrishnan, you are not using the earphone. Please use earphone. I think there is some problem.

SHRI PAWAN KUMAR BANSAL : Some premium from the Life Insurance Corporation would go to the corpus.

SHRI ARUN JAITLEY: Yes, you are right. That is the common facility. There will be an insurance. There will be a nomination. There will be funds going into the corpus and there will be a scheme that in the event, in addition to medical assistance, in addition to facilities of books for young lawyers, there would also be a scheme under which, in the event of death, the entire residual funds including the amount received to the Fund from the common insurance policy, how much is to be given to the relative of the deceased which is not a part of the Rs.30,000 which is given on the cessation of practice. That is the figure which we have indexed, which can get increased. So, there is a provision for facilities for aid to young lawyers, to the needy. There is a provision for giving *ex-gratia* and medical aid in the event of death, to his relative, and this entire money comes from the entire corpus which we have envisaged as far as the Fund is concerned....(*Interruptions*)

SHRI SOMNATH CHATTERJEE : These are enabling provisions the Trustee Committee will make use of. The only thing is if the money is there, they will do it.

SHRI ARUN JAITLEY: I am grateful to what Shri Somnath Chatterjee says. Therefore, we have made sure, studying the experience of the various States, that it is necessary to make the membership compulsory to have a mandatory stamp because this is where some of the State legislations really could not be enforced in full. We have studied those experiments. We have consulted people across the country, who have participated in the experiments. We have consulted the Bar Council. We have consulted the Law Commission on this. Therefore, the core of the issue is that the help goes to the persons who need the help the most. You increase the corpus of the Fund by making some mandatory guidelines. You indicate statutorily as to where the money can be spent. This Rs.30,000 is one of the areas where it could be given. That also is a variable figure which has been left depending on the availability of fund. This is the amount which has been indicated. There are only certain categories of persons who have been excluded. For instance, a point was made about senior advocates. The exclusion is only with regard to two of the funds. In all their insurance policies, etc., which they contribute, the exclusion is not there because that would be a benefit they would be entitled by virtue of the contribution which they are making. It is only benefit under section 19, 21 and some of the section 24 benefits from which they have been excluded.

Here are the several areas where I tried to improve upon the State legislations. One of the areas is compulsory. One of the areas is, common amenities should be contributed for. One of the areas is assistance be given to some new entrants who need in terms of library etc. This is really one of those welfare measures which we have tried to bring about, the object, being that the Central Government, the Parliament brings a facilitating legislation, makes arrangements where the funds will come from and makes sure that those who deserve them the maximum, get the benefit out of those funds.

Sir, an objection was raised or a suggestion was made as to under which section we should have this provision with regard to mandatorily providing that the advocate has to pay himself and not transfer the burden on to the clients. Several comments have been made on this and difficulties have been apprehended which have been suggested by the Members.

We studied the pattern as far as the country is concerned. There is a corresponding provision in most legislations which the State Legislatures have drafted and those State legislations which have been drafted, which have been implemented. In this area, out of an identical provision, which Shri Khandelwal was apprehensive about, at least, no problem has been felt anywhere, in any of the State legislations implemented till today.

Sir, it was an attempt by us to frame a facilitating legislation. I am extremely grateful to the hon. Members of the House who have almost unanimously supported this legislation. Most of the suggestions are already incorporated in it and if we do see any problem in its implementation or improvement once it is implemented, I am sure that this House will always be there to correct and set it right. ...(*Interruptions*) Shri Somnath Chatterjee had made a point. I have studied this in various legislations including the West Bengal legislation. The appeal is provided to the full Bar Council of the State. Now, a question was raised as to who are the members of this Trust. It is true that the membership of the Trust comprises of Advocate-General, two officers of the State Government, Chairman and Secretary of the Bar Council and two other members nominated by the Bar Council. Now, it is predominantly a body where there would be a larger lawyer representation. The appeal is to the Bar Council. Rules will have to be framed. Obviously, the rules can also clarify that those who participate in the original decisions will not be sitting as part of an Appeal Tribunal. A suggestion was made by Shri Radhakrishnan that two members of the Bar Association should be there. I have studied the experiment in the States. In most States, they have not kept it for the reason that there are innumerable number of Bar Associations in every State. You have Bar Association at the district level, at

the *tehsil* level and at the High Court level. Which is the Bar Association to which we will give representation? This will always be an area which will not be free from doubt. Since there is only one Bar Council and the Bar Council is a statutory body, we have given predominant representation to the Bar Council of India.

Sir, I am grateful to the Members. I commend to this House that this Bill be accepted.

MR. SPEAKER: The question is:

"That Bill to provide for the constitution of a welfare fund for the benefit of advocates and for matters connected therewith or incidental thereto, be taken into consideration."

*The motion was adopted.*

MR. SPEAKER: The House will now take up clause-by-clause consideration of the Bill.

#### Clause 2 Definitions

MR. SPEAKER: The question is:

"That clause 2 stand part of the Bill."

*The motion was adopted.*

*Clause 2 was added to the Bill.*

#### Clause 3 Advocates' Welfare Fund

MR. SPEAKER: There is an amendment No. 2 to clause 3 to be moved by Shri Varkala Radhakrishnan. Are you moving your amendment?

SHRI VARKALA RADHAKRISHNAN : Sir, I beg to move:

Page 3,--

*for lines 11 and 12, substituteâ€*

"(d). An amount not less than Rs. 1 crore per annum by the appropriate Government;" (2)

MR. SPEAKER: I shall now put amendment No. 2 moved by Shri Varkala Radhakrishnan to clause 3 to the vote of the House.

*The amendment was put and negatived.*

MR. SPEAKER: The question is:

"That clause 3 stand part of the Bill."

*The motion was adopted.*

*Clause 3 was added to the Bill.*

Clause 4- Established of trustee Committee

MR. SPEAKER: There is an amendment No. 3 to clause 4 of the Bill to be moved by Shri Varkala Radhakrishnan. Are you moving your amendment?

SHRI VARKALA RADHAKRISHNAN : Sir, I beg to move:

Page 3,--

*after line 48, insertâ€*

"(h) Two advocates to be nominated by the State Bar Association"--Members (3)

MR. SPEAKER: I shall now put amendment No. 3 to clause 4 moved by Shri Varkala Radhakrishnan to the vote of the House.

*The amendment was put and negatived.*

MR. SPEAKER: The question is:

"That clause 4 stand part of the Bill."

*The motion was adopted.*

*Clause 4 was added to the Bill.*

*Clauses 5 to 26 were added to the Bill.*

Clause 27- Vakalatnama to bear stamps

MR. SPEAKER: There is an amendment No. 4 to clause 27 to be moved by Shri Varkala Radhakrishnan. Are you moving your amendment?

SHRI VARKALA RADHAKRISHNAN : Sir, I beg to move:

Page 10, line 22,—

*after "advocate" insert—*

*"who has opted out of the fund" (4)*

MR. SPEAKER: I shall now put amendment No. 4 to clause 27 moved by Shri Varkala Radhakrishna to the vote of the House.

*The amendment was put and negatived.*

MR. SPEAKER: The question is:

"That clause 27 stands part of the Bill."

*The motion was adopted.*

*Clause 27 was added to the Bill.*

*Clauses 28 to 38 were added to the Bill.*

#### **Schedule I**

MR. SPEAKER: Shri Varkala Radhakrishnan, are you moving amendment No. 5 to Schedule I?

SHRI VARKALA RADHAKRISHNAN: Sir, I beg to move:

Page 14, lines 6 to 35,--*substitute*--

*For Rs. 30,000 substitute Rs. 3,00,000*

*Rs. 29,000 substitute Rs. 2,29,000*

*Rs. 28,000 substitute Rs. 2,80,000*

*Rs. 27,000 substitute Rs. 2,70,000*

*Rs. 26,000 substitute Rs. 2,60,000*

*Rs. 25,000 substitute Rs. 2,50,000*

*Rs. 24,000 substitute Rs. 2,40,000*

*Rs. 23,000 substitute Rs. 2,30,000*

*Rs. 22,000 substitute Rs. 2,20,000*

Rs. 21,000 *substitute* Rs. 2,10,000  
Rs. 20,000 *substitute* Rs. 2,00,000  
Rs. 19,000 *substitute* Rs. 1,90,000  
Rs. 18,000 *substitute* Rs. 1,80,000  
Rs. 17,000 *substitute* Rs. 1,70,000  
Rs. 16,000 *substitute* Rs. 1,60,000  
Rs. 15,000 *substitute* Rs. 1,50,000  
Rs. 14,000 *substitute* Rs. 1,40,000  
Rs. 13,000 *substitute* Rs. 1,30,000  
Rs. 12,000 *substitute* Rs. 1,20,000  
Rs. 11,000 *substitute* Rs. 1,10,000  
Rs. 10,000 *substitute* Rs. 1,00,000  
Rs. 9,000 *substitute* Rs. 90,000  
Rs. 8,000 *substitute* Rs. 80,000  
Rs. 7,000 *substitute* Rs. 70,000  
Rs. 6,000 *substitute* Rs. 60,000  
Rs. 5,000 *substitute* Rs. 50,000  
Rs. 4,000 *substitute* Rs. 40,000  
Rs. 3,000 *substitute* Rs. 30,000  
Rs. 2,000 *substitute* Rs. 20,000  
Rs. 1,000 *substitute* Rs. 10,000

MR. SPEAKER: I shall now put amendment No. 5 moved by Shri Varkala Radhakrishnan to Schedule I to the vote of the House.

*The amendment was put and negatived.*

MR. SPEAKER: The question is:

"That Schedule I stand part of the Bill."

*The motion was adopted.*

*Schedule I was added to the Bill.*

*Schedule II, Clause 1, the Enacting Formula and the Long Title  
were added to the Bill.*

SHRI ARUN JAITELY: Sir, I beg to move:

"That the Bill be passed".

MR. SPEAKER: The question is:

"That the Bill be passed".

*The motion was adopted*

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